

Execution Version

WASTEWATER SYSTEM PURCHASE AGREEMENT
BETWEEN
BUCKS COUNTY WATER AND SEWER AUTHORITY
AND
WARRINGTON TOWNSHIP

This Agreement (“Agreement”) is made this _____ day of _____, 2019 (the “Effective Date”), by and among BUCKS COUNTY WATER AND SEWER AUTHORITY, (hereinafter referred to as “AUTHORITY”), a Pennsylvania municipal authority located at 1275 Almshouse Road, Warrington, Bucks, Pennsylvania 18976 and WARRINGTON TOWNSHIP, a Pennsylvania municipality with offices located at 852 Easton Road, Warrington, Bucks County, Pennsylvania, 18976 (hereinafter referred to as “TOWNSHIP”). The AUTHORITY and TOWNSHIP are hereinafter sometimes individually referred to as a “Party” or collectively referred to as the “Parties”.

BACKGROUND

A. The AUTHORITY is a duly formed municipal authority under the Pennsylvania Municipality Authorities Act, 53 Pa.C.S. Ch. 56, as amended.

B. The AUTHORITY, being a not-for-profit corporation registered to do business in the Commonwealth of Pennsylvania, now operates a public wastewater collection and treatment system servicing several municipalities located throughout Southeastern Pennsylvania (the “AUTHORITY Wastewater System”).

C. The AUTHORITY Wastewater System, includes but is not limited to, infrastructure, inclusive of treatment plants, wells, pumping stations, laterals, grinders, septic systems, control systems, generators, sewer mains, and other appurtenances, to provide public wastewater throughout the AUTHORITY Wastewater System.

D. The TOWNSHIP acting by and through the Board of Supervisors of Warrington Township, Bucks County owns and operates a public sanitary wastewater collection and treatment system (the “System”) that provides wastewater services to various customers in Warrington Township, Pennsylvania, to thirty (30) residences in Doylestown Township, and to twelve (12) residences in Warwick Township (the “Service Area”) as depicted upon **EXHIBIT A**.

E. The AUTHORITY in reliance upon the representations, warranties and covenants of the TOWNSHIP herein, desires to purchase and acquire from the TOWNSHIP, and TOWNSHIP, in reliance upon the representations, warranties and covenants of the AUTHORITY herein, desires to sell, transfer and convey to the AUTHORITY all of the assets of the System (other than the Excluded Assets), and in connection therewith, the AUTHORITY has

Execution Version

agreed to assume certain ongoing obligations and liabilities of the TOWNSHIP related to the Acquired Assets (defined below), all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements stated in this Agreement, the receipt and sufficiency of which hereby are acknowledged, intending to be legally bound, the Parties agree as follows:

1. **Transfer of Ownership and Operation.** Subject to the terms and conditions set forth in this Agreement, at Settlement, the AUTHORITY shall purchase from the TOWNSHIP and the TOWNSHIP shall sell, transfer, assign and deliver to the AUTHORITY, free and clear of all liens, pledges, mortgages, deeds of trust, security interests, charges, claims, options, warrants, leases, rights to possession, hypothecations, easements, rights of way, encroachments, other encumbrances, rights of first refusal, or restrictions of any kind, including any restrictions on use, receipt of income, or any other attribute of ownership (collectively, "Liens") except for Permitted Liens (defined below), all of the TOWNSHIP's right, title and interest in and to all assets, facilities, business, goodwill, properties and rights of the TOWNSHIP of every kind and description, whether tangible or intangible, real, personal or mixed, wherever situated, in each case used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of the operation or conduct of the System (whether or not any such assets have any value for accounting purposes or are carried or reflected on the books or financial records of the TOWNSHIP), but in all cases other than the Excluded Assets (collectively referred to as the "Acquired Assets"), including:

(a) the treatment plant and pumping stations, as depicted upon **EXHIBIT B**; the properties and structures as depicted upon **EXHIBIT C**; and various Fee Simple Property, Rights of Way, Easements and other property rights and facilities as described and depicted upon **EXHIBIT D** (such system and facilities hereinafter referred to as the "Real Property");

(b) all contracts, licenses, and leases to which the TOWNSHIP is a party, including, without limitation, all construction contracts, surety bonds, operation and maintenance agreements, management agreements, sludge hauling agreements, municipal services agreements, architect agreements and consultant agreements, and agreements relating to vehicles and other items of personal property as set forth on **EXHIBIT E** (the "Assigned Contracts");

(c) all supplies related to the System;

(d) all personal property and fixed assets, including all equipment and machinery, vehicles, auxiliary equipment and plant equipment, including, without limitation, those items listed on **EXHIBIT F**;

(e) all sewer tapping fees per equivalent dwelling unit ("EDU") (whether residential, industrial, or commercial) that are owed or may be owed in the future, from/by any Person (collectively, the "EDU Fees");

(f) all expenses prepaid by the TOWNSHIP and security deposits paid by the TOWNSHIP;

(g) all keys, locks, files and records related to the System;

Execution Version

(h) all authorizations and permits of or held by the TOWNSHIP (to the extent transferrable to the AUTHORITY under applicable Law), including all authorizations and permits which are environmental permits, and those items listed or described on **EXHIBIT G**; and

(i) all goodwill of the System.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TOWNSHIP MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATION AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ACQUIRED ASSETS OR THE SYSTEM, OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE ACQUIRED ASSETS OR THE SYSTEM OR ANY FUTURE RATEMAKING. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

“Permitted Liens” means (a) liens for taxes not yet due and payable or being contested in good faith by appropriate procedures and which have been recorded in the TOWNSHIP’s audited financial statements; (b) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property as disclosed on **EXHIBIT D**; (c) other than with respect to Real Property owned by the TOWNSHIP, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; and (d) other imperfections of title or liens, if any, that have not had, and would not have, a material adverse effect.

2. **Excluded Assets.** Notwithstanding anything herein to the contrary, the Acquired Assets shall not include the following (the “Excluded Assets”):

(a) all contracts, licenses and leases that are not Assigned Contracts;

(b) the seals, organizational documents, minute books, tax returns, books of account or other records having to do with the organization of the TOWNSHIP;

(c) cash and cash equivalents, including accounts receivable and amounts earned by the TOWNSHIP but not yet billed attributable to services rendered by the TOWNSHIP as of or before the Settlement Date, excluding however all EDU Fees;

(d) all insurance policies of the TOWNSHIP and all rights to applicable claims and proceeds thereunder;

(e) all rights to any outstanding lien related to non-payment by a System customer existing at or before the Settlement Date and all actions, suits or claims of any nature available to or being pursued by the TOWNSHIP, whether arising by way of counterclaim or otherwise;

(f) all assets, properties and rights used by the TOWNSHIP other than those which primarily relate to the operations of the System, including water and stormwater assets and related real property;

Execution Version

(g) the assets, properties and rights that are not related to the operation of the System;

(h) all employee-related or employee benefit-related assets files or records regarding any employees of the TOWNSHIP (other than the personnel files of the Transferred Personnel; provided, however, TOWNSHIP shall be entitled to keep copies of personnel files of the Transferred Personnel in its sole and absolute discretion);

(i) all customer-owned sewer laterals;

(j) the rights which accrue or will accrue to the TOWNSHIP under this Agreement and any related agreement, exhibit or schedule; and

(k) all funds due and payable to the TOWNSHIP to reimburse TOWNSHIP for funds previously expended by TOWNSHIP prior to Settlement to third parties to further economic development throughout the TOWNSHIP.

3. **Excluded Liabilities.** Notwithstanding the provisions of Section 2 or any other provision in this Agreement to the contrary, the AUTHORITY shall not assume and shall not be responsible to pay, perform or discharge any liabilities, obligations or commitments of any kind or nature whatsoever of the TOWNSHIP other than the Assumed Liabilities (the "Excluded Liabilities"). The TOWNSHIP shall pay and satisfy in due course all Excluded Liabilities which it is obligated to pay and satisfy.

4. **Sale Free of Liens.** After the AUTHORITY fulfills its obligations pursuant to Section 8, on the Settlement Date, the Acquired Assets will be free and clear of all Liens other than Permitted Liens. The TOWNSHIP shall convey the Acquired Assets by appropriate special warranty or other deed, bills of sale, endorsements, assignments and other instruments of transfer or conveyance described herein, and if not expressly described herein, then by transfer documents satisfactory in form and substance reasonably acceptable to the AUTHORITY and the TOWNSHIP and their counsel in their reasonable, good faith discretion. At Settlement, title to the Real Property shall be good and marketable and insured by the Title Company, at the Title Company's filed rates, as a good and marketable title, free and clear of all liens and exceptions to coverage, except for the Permitted Liens, pursuant to an owner's policy of title insurance on the American Land Title Association's Owner's Form 2006.

5. **Assumption of Liabilities.** On the terms and conditions set forth in this Agreement, the AUTHORITY shall assume and pay, perform and discharge when due any and all liabilities and obligations of the TOWNSHIP both (1) arising under any permits (arising from, related to, or based on events or circumstances occurring on or after the Settlement Date), and (2) arising out of or relating to the System or the Acquired Assets on or after the Settlement, including the following:

(a) all liabilities and obligations under the Assigned Contracts and Authorizations and Permits resulting from events that occur or conditions that arise on or after the Settlement;

Execution Version

(b) any litigation initiated against the TOWNSHIP related to the System or the Acquired Assets resulting from events that occur on or after Settlement or conditions that arise on or after the Settlement;

(c) all liabilities and obligations for taxes relating to the System, its operation, the Acquired Assets and the Assumed Liabilities attributable to the period after the Settlement Date; and

(d) all other liabilities and obligations arising out of or relating to the AUTHORITY's ownership or operation of the System and the Acquired Assets on or after the Settlement (all of the aforementioned liabilities in this Section 5 are referred to as the "Assumed Liabilities").

(e) At the Settlement, to the extent the TOWNSHIP is not released therefrom, the AUTHORITY shall indemnify the TOWNSHIP against any loss relating to the Assumed Liabilities in accordance with this Agreement.

(f) The AUTHORITY shall not assume or be liable to pay any liabilities or obligations relating to any liabilities or obligations that are not Assumed Liabilities.

6. **Further Assurances.** At any time and from time to time after the Settlement Date, the TOWNSHIP shall, upon the request of the AUTHORITY, and the AUTHORITY shall, upon the request of the TOWNSHIP, at the cost of requesting Party, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets to the AUTHORITY, (b) the assumption by the AUTHORITY of any of the Assumed Liabilities, (c) performance by the Parties of any of their other respective obligations under this Agreement, (d) the vesting in the AUTHORITY of all right, title and interest in the Acquired Assets and the System as provided herein, and (e) any other matters reasonably requested by a Party to carry out the provisions, purposes and intent of this Agreement.

7. **Base Purchase Price and Additional Purchase Price.**

(a) The purchase price for the Acquired Assets is Sixteen Million One Hundred Fifty Thousand Dollars (\$16,150,000) (the "Base Purchase Price") which the AUTHORITY shall pay at Settlement to the TOWNSHIP, net of any debt repayment or defeasance obligations, by wire transfer of immediately available funds to one or more accounts that the TOWNSHIP designates and provides to the AUTHORITY before the Settlement Date.

(b) **Final Billing:** The AUTHORITY is entitled to all customer billings with respect to wastewater services for the period on or after the Settlement Date, and the TOWNSHIP is entitled to all such billings for the period before the Settlement Date. The Parties shall cooperate to calculate an agreed upon proration of billing amounts and to the extent that either Party collects billings that are attributable to service provided by the other Party, the Party holding the other Party's billing collections shall pay such amount to the other Party.

Execution Version

(c) In addition, the AUTHORITY shall pay at Settlement to the TOWNSHIP, by wire transfer of immediately available funds to one or more accounts that the TOWNSHIP designates and provides to the AUTHORITY before the Settlement Date the following amounts (collectively, the “Additional Purchase Price”, and together collectively with the Base Purchase Price, the “Purchase Price”):

(1) Seventy Thousand Dollars (\$70,000.00).

This payment is to reimburse the TOWNSHIP for legal and engineering expenses incurred by the TOWNSHIP in connection with the preparation and execution of this Agreement.

(2) Twenty-Five Thousand Dollars (\$25,000.00). This payment is to secure permanent use and enjoyment of all TOWNSHIP Rights of Way and Easements needed for the AUTHORITY to properly operate the System.

(3) Sixty-Seven Thousand Dollars (\$67,000.00).

This payment shall provide the TOWNSHIP with funds to compensate each TOWNSHIP employee being retained by the AUTHORITY with five (5) years of service under the TOWNSHIP’s defined benefit plan.

(4) One Hundred Fifty Thousand Dollars (\$150,000.00).

This payment shall compensate the TOWNSHIP for anticipated, pending and approved land development throughout the TOWNSHIP.

8. **Representations and Warranties.** As a material inducement to the AUTHORITY to enter into this Agreement and to consummate the transactions contemplated by this Agreement, the TOWNSHIP represents and warrants, as of the Effective Date and as of the date of Settlement, as follows:

(a) Except as set forth in the financial statements and other documents and materials that the TOWNSHIP has provided to the AUTHORITY in connection with the transactions contemplated hereby, there are no liabilities of any nature whatsoever of the TOWNSHIP, nor any litigation pending or, to the knowledge of the TOWNSHIP, threatened, relating to the Acquired Assets or the System, other than liabilities incurred in the ordinary course.

(b) To the knowledge of the TOWNSHIP, the TOWNSHIP has operated and is operating the System in compliance, in all respects, with all applicable laws, licenses, authorizations and permits.

(c) The TOWNSHIP has good and marketable title to, valid leasehold interest in or valid licenses to use, all of the Acquired Assets, free and clear of all Liens, other than Permitted Liens and Liens which will be fully and unconditionally released at or prior to Settlement.

Execution Version

(d) The System, as currently operated by the TOWNSHIP, and all operations and activities conducted by the TOWNSHIP with respect to the System are in compliance in all material respects with all applicable laws, rules, and regulations (including common law) relating to human health, pollution, or protection of the environment (including ambient air, surface water, ground water, land surface or surface strata), including without limitation all regulations of the U.S. Environmental Protection Agency (the "EPA") and/or the Pennsylvania Department of Environmental Protection (the "PaDEP") (collectively, the "Environmental Laws"). The AUTHORITY has not received any notice from any governmental authority, including without limitation the EPA or PaDEP, of any violation of, or non-compliance with, any Environmental Laws, which has not been resolved to the satisfaction of such governmental authority.

9. Easement Rights and License.

(a) At Settlement, the TOWNSHIP shall give the AUTHORITY a permanent blanket easement to run in perpetuity in favor of the AUTHORITY, across all TOWNSHIP-owned roadways, cartways, rights of ways and utility easements, such easement to be in form and content mutually agreeable to both Parties.

(b) On the Settlement Date, the TOWNSHIP shall provide the AUTHORITY with all documentation related to the Real Property.

(c) On and after the Settlement Date, the AUTHORITY shall, at its sole cost and expense, cause an abstractor selected by the AUTHORITY and reasonably acceptable to the TOWNSHIP and the Title Company ("Abstractor"), to perform a search of the public land records of Bucks County, based on the TOWNSHIP's records and plans of the System (and such other sources of information as are reasonably related thereto), by means of searching the grantee index in the names of the TOWNSHIP and such other searches as the Abstractor may reasonably make, to (i) identify and provide the AUTHORITY with title information on all recorded Easements, and (ii) together with the TOWNSHIP, identify all missing easements, if any. The TOWNSHIP shall cooperate with the AUTHORITY and Abstractor and use commercially reasonable efforts to assist the AUTHORITY in obtaining all missing easements, if any, in a commercially reasonable manner.

(d) If requested by the AUTHORITY, on the Settlement Date the TOWNSHIP shall provide the AUTHORITY with a license agreement granting the AUTHORITY a license in all of the TOWNSHIP's rights to access any Real Property in order to allow the AUTHORITY to operate and maintain the System until such time as the AUTHORITY is provided title or easement to such Real Property as provided for in this Agreement. For the avoidance of doubt, the TOWNSHIP shall provide such title as soon as reasonably after the Settlement Date.

10. **Responsibilities of the AUTHORITY upon Settlement.** On and after Settlement, the AUTHORITY will be solely responsible for the repairs, maintenance, modifications and other like obligations for the System and the Acquired Assets with the specific exception of Excluded Liabilities. On and after Settlement, the AUTHORITY shall own and operate the System and the Acquired Assets in accordance with Standard Industry Practices. "Standard Industry Practices" means those methods, techniques, standards, and practices which,

Execution Version

at the time they are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as showing skill and good judgment in the wastewater industry as practiced in the Eastern United States for facilities of a similar nature and in a similar location as the System and Acquired Assets. Standard Industry Practices is not necessarily defined as optimal methods, techniques, standards and practices to the exclusion of others, but rather refer to a range of methods, techniques, standards and practices that are reasonable under the circumstances. At a minimum, Standard Industry Practices shall include those requirements set forth in this Agreement, the rules and regulations promulgated by the AUTHORITY, the water and wastewater ordinances, practices and procedures of the TOWNSHIP and applicable law (including the rules and regulations of the EPA and/or the PaDEP.

11. AUTHORITY Covenants:

The AUTHORITY covenants as follows:

(a) Wastewater Consumption Rate Protections.

The AUTHORITY guarantees that all AUTHORITY customers within Warrington Township shall be protected against unreasonable and inequitable future rate increases as AUTHORITY agrees that the aforesaid customers will not be billed at a wastewater consumption rate higher than the standard wastewater consumption rates charged to other similarly situated retail customers of the AUTHORITY at any time; provided however, that those rates that are agreed to by the AUTHORITY and a third party pursuant to an agreement pursuant to which the AUTHORITY acquires from such third party substantially all of the assets of a sanitary wastewater collection and treatment system that provides sanitary wastewater service shall all be excluded from the application of this Section 11(a) by virtue of being a “non-standard wastewater consumption rate.” The current TOWNSHIP standard retail wastewater consumption rate is \$6.15 per thousand gallons. This rate will not be increased for four (4) years from the Settlement Date. In addition to the above, following the expiration of the four (4) year rate freeze period, the AUTHORITY further agrees that the wastewater consumption rate charged to AUTHORITY wastewater customers within Warrington Township shall at all times remain uniform, reasonable and equal to other retail customers of the AUTHORITY, except for customers subject to a non-standard wastewater consumption rate.

(b) Protection against Special Assessments or Fees and Billing.

Excluding only customary front footage assessments, wastewater tapping fees and charges as permitted pursuant to the Pennsylvania Municipality Authorities Act typical of any new or increased wastewater services, unless required by a court of law or agency having jurisdiction, the AUTHORITY shall not make any special assessment to AUTHORITY customers within Warrington Township for future wastewater system improvements. All such improvements shall be included within the standard wastewater rates, and shall not be back charged to the individual customers. This additional protection excludes any improvements or assessments mandated by a court having jurisdiction, by lawful order of the EPA and/or by the PaDEP. The AUTHORITY shall not charge any assessment or tapping fee on any existing customer. New customers or connections shall be assessed such fees by the AUTHORITY. The

Execution Version

AUTHORITY shall bill retail customers on a monthly basis, which the AUTHORITY will prorate accordingly.

(c) Sewer Fee Protections.

In furtherance of the wastewater consumption rate protections in Section 11(a) and the protections against special assessments or fees in Section 11(b), AUTHORITY shall not bill sewer meter charges, wastewater base fees or sewer tapping fees at a rate higher than the rates charged to TOWNSHIP customers on **Exhibit H** attached hereto and incorporated herein by reference for a period of four (4) years from the Settlement Date.

(d) Emergency Response and Special Services.

The AUTHORITY shall provide twenty-four (24) hour per day emergency services, including all weekends and holidays, at no additional cost or surcharge to the TOWNSHIP or wastewater customers in the TOWNSHIP. These services will include all AUTHORITY personnel, equipment, contractors, and subcontractors as deemed necessary by the AUTHORITY to maintain wastewater service in accordance with Standard Industry Practices.

(e) Licenses, Insurance, Electricity, Chemicals, and System Repairs.

On and after the Settlement Date, the AUTHORITY shall obtain and maintain adequate liability and property damage insurance coverage for the Property, including, but not limited to, the sewer mains, pump stations, monitoring equipment, grinders, and septic systems, and to include all AUTHORITY owned sewer mains and appurtenances throughout the system, at all times.

(f) Coordination of Paving and Road Repairs.

Although difficult to quantify in terms of dollars per annum, it is the policy and practice of the AUTHORITY to provide a minimum of a “half-width” road repaving when completing major projects, such as an AUTHORITY sewer main replacement. Other than incidental repairs, the AUTHORITY will not complete only trench repairs, but even in the case of a main break, the AUTHORITY will typically re-pave up to one hundred foot (100’) sections of roadway to avoid leaving an uneven repair in the finished road surface. The AUTHORITY shall meet with the TOWNSHIP (and any successor owner of the TOWNSHIP’s sanitary sewer system) at least on an annual basis to coordinate planned sewer main work with the municipal paving schedule. The Parties shall discuss having the AUTHORITY complete its work first, including completing trench and binder replacements, after which the Parties shall share equally (fifty percent each) the final road paving costs of the area excavated by the AUTHORITY.

(g) Non-Invoiced Sewer Service. The AUTHORITY may, in its sole judgement, install meters for the purpose of metering TOWNSHIP wastewater usage. If the AUTHORITY installs such meters, it shall pay for all expenses and costs associated with acquiring, installing, testing and maintaining the meters. If easements or rights of way are necessary to install such meters, the TOWNSHIP shall reasonably cooperate to obtain them, but all expenses and costs associated with obtaining such easements or rights of way shall be paid by the AUTHORITY.

Execution Version

(h) Deduct Metering.

The AUTHORITY acknowledges and agrees that it shall honor and continue the TOWNSHIP's deduct metering program. In furtherance of the foregoing, the AUTHORITY further acknowledges **EXHIBIT I** attached hereto and incorporated herein by reference contains a list of all existing deduct meters and terms for each which AUTHORITY will honor.

(i) Special Provisions during Initial Operations.

The AUTHORITY understands that there may be specific equipment and personnel required to be retained at the TOWNSHIP administrative office during the initial twelve (12) month period of operations of the System by AUTHORITY. These circumstances may include telephonic equipment to automatically transfer customer service calls to the AUTHORITY, an administrative staff member to answer customer questions and to assist in the initial operational transition, and facilities and space for storing and distributing AUTHORITY information and literature.

(j) Right of First Refusal Regarding System Sale. The AUTHORITY grants the TOWNSHIP a perpetual right of first refusal with respect to a Sale Transaction. Upon receipt of a proposal that the AUTHORITY desires to accept, the AUTHORITY shall promptly provide the proposal to TOWNSHIP for its review. Once the TOWNSHIP receives the notice, it shall have the irrevocable and exclusive option, at its sole discretion, to become the purchaser with respect to the Sale Transaction at a purchase price that equals the depreciated value of the assets of the System that were the subject of the proposal, with such depreciated value being based on the assets of the System being acquired at fair market value on the date of Settlement. If the TOWNSHIP elects to become the purchaser, the TOWNSHIP shall deliver a written notice to the AUTHORITY of such election within one hundred twenty (120) days of its receipt of the proposal notice (the "ROFR Period"). After delivery of the proposal notice, the TOWNSHIP and the AUTHORITY shall act in good faith to negotiate and close a sale of the System to the TOWNSHIP in accordance with this Agreement. "Sale Transaction" means any proposed sale, lease, liquidation or transfer of all or substantially all of the System by the AUTHORITY to a regulated utility (e.g., a wastewater provider regulated by the PA Public Utility Commission), and including such other assets of the AUTHORITY or its affiliates included in such proposed transaction, and which are integrated into or with the System at the time of such proposed transaction. The TOWNSHIP's rights and obligations under this Section 11(i) may be assigned (in whole, but not in part) by the TOWNSHIP solely to a governmental authority at any time prior to the earlier of the expiration of the ROFR Period or the execution by the AUTHORITY of a definitive agreement with respect to a Sale Transaction with any Person other than the TOWNSHIP (subject to the AUTHORITY's compliance with the terms of this Section 11(i)); provided that the TOWNSHIP shall deliver to the AUTHORITY written notice of any such assignment not less than five (5) Business Days prior to the effectiveness of such assignment. For the avoidance of doubt, each reference to "the TOWNSHIP" in this Section 11(i) shall mean TOWNSHIP or any person or entity to which the TOWNSHIP assigns its rights under Section 11(i) in compliance with this Section 11(i).

(k) Employment of TOWNSHIP Staff by AUTHORITY. The AUTHORITY shall offer employment effective on the Settlement Date, to the personnel set forth **EXHIBIT J**,

Execution Version

subject to the AUTHORITY's existing standard hiring policies and procedures applicable to new employees and the AUTHORITY's obligations under any collective bargaining agreements and defined benefit plans, and further subject to the applicable personnel's agreeing to join and become a member of International Union of The Operating Engineers Local 835 (the "835 Union") and to satisfy and be bound by any conditions, requirements, covenants, and/or agreements required by the 835 Union. The personnel who accept employment with the AUTHORITY and commence employment on the Settlement Date, are "Transferred Personnel." The AUTHORITY shall recognize the Transferred Personnel's length of service with the TOWNSHIP solely for the purposes of each such Transferred Personnel's participation in the AUTHORITY's vacation and sick time programs and policies. Subject to the AUTHORITY's obligations or limitations under any collective bargaining agreements and defined benefit plans, the AUTHORITY shall provide each of the Transferred Personnel compensation and benefits which are at least substantially comparable to, in the aggregate, to TOWNSHIP's compensation and benefits as of the Settlement (including paid vacation and sick time benefits).

(l) Capital Program. The AUTHORITY shall complete the capital projects set forth on **EXHIBIT K** within the timeline set forth therein.

(m) Easements. To the extent the TOWNSHIP holds any permanent easements upon public or private property deemed necessary to properly operate and provide access to and from all portions of the System, TOWNSHIP shall convey to AUTHORITY such easements. These easements are intended to allow the AUTHORITY to maintain the System, and shall also permit construction of future sewer main connections, extensions, and operation of all related appurtenances. The easements may be specific, or blanket, as circumstances dictate, and as mutually agreed. All easements shall be appropriately documented and executed, at Settlement, and may be recorded as a public record by AUTHORITY. Easements shall be further described within exhibits to this Agreement.

(n) Customer Relations Group. In order to facilitate continued effective communications between the Parties hereto as the transfer of the System to the AUTHORITY is implemented, and to provide a meaningful process to address any reasonable concerns of the TOWNSHIP related to wastewater system operations, rates, customer services, or other wastewater-related issues of the TOWNSHIP, the AUTHORITY agrees that within sixty (60) days of Settlement, it shall establish a committee to address any issues of concern (the "Customer Relations Group"). The Customer Relations Group shall be comprised of: (a) the AUTHORITY's Chief Executive Officer; (b) the AUTHORITY's Chief Operating Officer; (c) the TOWNSHIP's Manager; and (d) the TOWNSHIP's Assistant Manager (or another employee of the TOWNSHIP as appointed by TOWNSHIP's Manager). The Customer Relations Group shall remain in place until the tenth (10th) anniversary of the Settlement Date and shall meet on an "as needed" basis to address any planning issues and all material issues of concern to the TOWNSHIP related to wastewater system operations, rates, customer services, or other wastewater-related issues. Notwithstanding anything herein to the contrary, the Customer Relations Group shall be formed for discussion and informational purposes only, and it shall have no power or authority to take any action or implement any resolution on behalf of the AUTHORITY, the TOWNSHIP, or any other Person, whether at the initial Customer Relations Group level or otherwise. EDU Grant. Subject to PaDEP approval, at the Settlement, the AUTHORITY shall offer to the TOWNSHIP three (3) EDUs for no additional consideration,

Execution Version

which three (3) EDUs shall be applied solely to the building to be owned, used, and occupied solely by the TOWNSHIP as the TOWNSHIP's new police station (presently in the design stage), or such other building(s) as is mutually agreed upon in writing by the TOWNSHIP and the AUTHORITY (which consent shall not be unreasonably withheld, conditioned or delayed). Such three (3) EDUs shall not be assignable or transferrable to any other building or structure, except with the prior written consent of the AUTHORITY, such consent not to be unreasonably withheld if the proposed building is owned, used, and occupied solely by the TOWNSHIP. Such three (3) EDUs shall not be transferrable or assignable to any other Person and are personal to the TOWNSHIP and intended only for buildings owned, used, and occupied solely by the TOWNSHIP.

(p) Requirement for System Connection. Commencing at the Settlement, the TOWNSHIP shall be required to connect to the System all building and structures located within the Service Area owned or leased by the TOWNSHIP that that are serviceable by the System as of the Settlement and that require sanitary wastewater collection and treatment services (the "Township Connected Buildings"). The AUTHORITY and the TOWNSHIP agree that with respect to each Township Connected Building, the AUTHORITY shall charge the TOWNSHIP a flat rate of Forty-Seven and 90/100 Dollars (\$47.90) per month per EDU for sanitary wastewater collection and treatment services until such Township Connected Building is separately metered, at which time the AUTHORITY shall charge the TOWNSHIP at the metered rate for sanitary wastewater collection and treatment services for such Township Connected Building.

12. Cooperation and Interim Covenants.

(a) The Parties agree that each shall use its best efforts and shall fully cooperate with each other to fulfill the above-stated conditions including, but not limited to, filing all necessary applications, providing necessary information for submission to regulatory and/or governmental agencies, and compliance with any and all requirements of regulatory or governmental agencies. No Party shall interfere or take any action or fail to take any action that would interfere with the fulfillment of the terms and intent of this Agreement or the rights contained herein. Both Parties shall take all actions necessary to effectuate the terms of this Agreement.

(b) Except as otherwise expressly permitted by this Agreement, as required by Law, or with the prior written consent of the AUTHORITY (which consent shall not be unreasonably withheld, delayed, or conditioned), from the Effective Date until the Settlement Date, the TOWNSHIP shall:

(1) operate and manage the System only in the ordinary course of business in accordance with past practices and procedures;

(2) comply in all material respects with all applicable laws and authorizations and permits;

(3) use its commercially reasonable efforts to maintain and preserve intact the business and assets of the System and preserve the rights, franchises, goodwill and

Execution Version

relationships of the TOWNSHIP and the System and its customers, suppliers, regulators, and others having business relationships with the TOWNSHIP and the System;

(4) afford the AUTHORITY full and free access to and the right to inspect, all during normal working hours and in coordination with the TOWNSHIP, all of the Acquired Assets, as well as any other properties, assets, premises, books, records, agreement, and other documents and data related to the System, including without limitation accounts receivable records for all customers of the System for the one (1) year period immediately preceding the Effective Date;

(5) notify the AUTHORITY in writing of any updates to the information set forth in any of the representations and warranties set forth in Section 8 hereof so that such representations and warranties as updated will be true and correct as of the date of Settlement;

(6) notify the AUTHORITY in writing of any updates to the information set forth in any of the Exhibits attached hereto so that such Exhibits as updated will be true and correct as of the date of Settlement;

(7) notify the AUTHORITY in writing of any event or condition that gives rise to a material adverse effect with respect to the Acquired Assets or the System; and

(8) enforce all of its right and the counterparties' obligations under the TOWNSHIP's official sewage facility plan submitted by the TOWNSHIP to the PaDEP (as defined herein) in accordance with the Pennsylvania Sewage Facilities Act, 35 P.S. § 750.1 *et seq.* (the "Act 537 Plan").

(c) Notwithstanding anything herein to the contrary, if TOWNSHIP closes on the sale of its water system to North Wales Water Authority (the date of such closing, the "Water Closing Date") prior to Settlement, AUTHORITY shall use Standard Industry Practices to assist the TOWNSHIP with the operation of the System during the period commencing on the Water Closing Date until the date of Settlement (or earlier termination of this Agreement), at AUTHORITY's sole cost and expense.

13. **Conditions Precedent.** The obligation of the AUTHORITY to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Settlement, of the following conditions, any one or more of which may be waived in writing by the AUTHORITY in its sole discretion:

(a) There shall not have occurred any event or condition which gives rise to a material adverse effect with respect to the Acquired Assets or the System.

(b) The AUTHORITY shall have successfully issued, and received the proceeds of, Sewer System revenue bonds in an aggregate principal amount of not less than the Purchase Price on or before the date of Settlement.

(c) The TOWNSHIP shall not have revised, amended, modified, updated, or otherwise altered, or taken any steps to do any of the foregoing, any part or all of the Act 537

Execution Version

Plan in existence as of the Effective Date without notice to and the prior written consent of the AUTHORITY, which consent shall not be unreasonably withheld.

14. Release and Indemnification.

(a) Effective as of Settlement, the AUTHORITY does hereby remise, release and forever discharge TOWNSHIP, its representatives, successors, administrators, assigns, heirs, executors, insurers, and reinsurers, from any and all liabilities whatsoever, whether at law or in equity (including any right of contribution) whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur in connection with the ownership or operation of any of the System and indemnifies and holds them harmless from and against any and all liabilities that any third party seeks to impose upon them, including legal fees, in connection with the ownership or operation of the System by the AUTHORITY.

(b) Effective as of Settlement, TOWNSHIP does hereby remise, release and forever discharge the AUTHORITY, its representatives successors, administrators, assigns, heirs, executors, insurers, and reinsurers (“AUTHORITY Indemnified Persons”), from any and all liabilities whatsoever, whether at law or in equity (including any right of contribution) whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur in connection with the ownership or operation of the System prior to Settlement, and indemnifies and holds the AUTHORITY harmless from and against any and all liabilities that any third party seeks to impose upon it, including legal fees, in connection with the ownership or operation of the System by TOWNSHIP.

(c) From and after Settlement, TOWNSHIP will reimburse, indemnify and hold harmless the AUTHORITY, its agents, officials and employees from and against any and all liabilities, obligations, damages, losses, actions, deficiencies, claims, fines, costs and expenses, including reasonable attorney’s fees, resulting from, relating to, or arising out of any claims asserting that TOWNSHIP does not have good and marketable title to the Property.

(d) Neither AUTHORITY nor AUTHORITY Indemnified Persons shall seek indemnification pursuant to Section 15(b) unless the aggregate amount of losses incurred by AUTHORITY and AUTHORITY Indemnified Persons under this Agreement exceeds \$200,000 in the aggregate (the “Threshold Amount”), in which case the TOWNSHIP will then be liable only for losses in excess of the Threshold Amount.

15. **Integration.** This Agreement constitutes the entire agreement of the Parties and supersedes any negotiations or prior agreement or understanding of the parties with respect to the terms of this Agreement. This Agreement may not be modified or amended by any oral statement or alleged course of conduct, but only by a written agreement signed by all Parties. There are no representations, promises, agreements, warranties, covenants or undertakings of the Parties other than those contained herein or in the Exhibits expressly referenced herein.

16. **Construction, Jurisdiction and Enforcement.** This Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania. This document contains

Execution Version

the entire agreement made as among the Parties on the matters covered by this Agreement. The Parties hereby consent to the exclusive jurisdiction of the Bucks County Court of Common Pleas, Commonwealth of Pennsylvania, with respect to any dispute arising in connection with this Agreement or the enforcement thereof.

17. **Modification.** The Parties may amend this Agreement only by the Parties' written agreement that identifies itself as an amendment to this Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

18. **Severability.** If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19. **Successors and Assigns.** Neither Party to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other Party. A purported assignment or purported delegation without prior written consent is void.

20. **Notices.** All notices, other communications and approvals required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be addressed as follows:

If to AUTHORITY:

Bucks County Water and Sewer Authority
1275 Almshouse Road
Warrington, PA 18976
Attention: Executive Director

With a Copy to:

Marcel Groen, Esquire
Fox Rothschild, LLP
Ten Sentry Parkway, Suite 200
Blue Bell, PA 19422

If to TOWNSHIP:

Warrington Township
852 Easton Road
Warrington Township, PA 18976
Attention: Township Manager

Execution Version

With a Copy to:

Warrington Township
852 Easton Road
Warrington Township, PA 18976
Attention: Township Solicitor

or such other persons or addresses as a Party may from time to time designate by notice to the other Party. A notice, other communication or approval is deemed to have been sent and received (i) on the day it is delivered, or if such day is not a business day or if the notice is received after ordinary office hours (time or place of receipt), the notice, other communication or approval is deemed to have been sent and received on the next business day, or (ii) on the fourth business day after mailing if sent by United States registered or certified mail.

21. **Headings.** The headings preceding each paragraph in this Agreement have been included for the ease of the Parties and shall not affect the meaning or construction of the text of any portion of this Agreement. Likewise, the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

22. **Inference.** All Parties have had the opportunity to review this Agreement prior to execution, and no adverse inference shall be made against the party drafting this Agreement in any dispute over the interpretation of any provision herein.

23. **Legal Authority.** The Parties hereto represent and warrant, each to the other, that they have the legal authority to enter into this Agreement, that they have taken all necessary actions to approve this Agreement and the undersigned officers have been authorized to execute same, binding the respective Parties. Furthermore, the Parties hereto represent and warrant that there are no terms or provisions contained in this Agreement that conflict, in whole or in part with the terms of any other agreement to which any of them are a Party.

24. **Settlement.** The Settlement shall take place on the earliest agreed upon date prior to the Outside Date (the "Settlement Date"), at the [Forest Park Water Treatment Plant located at 144 Park Ave, Chalfont, PA 18914], or at such other location as the Parties may mutually agree. At Settlement (i) the AUTHORITY shall deliver payment in full of the Purchase Price in accordance with Section 6; and (ii) the TOWNSHIP shall deliver the acquired Assets; and (iii) the Parties may agree to deliver all such other instruments of conveyance of assumption as shall, in the reasonable opinion of the requesting Party and its counsel, be necessary for Settlement. "Settlement" means the consummation of the sale and purchase of the Acquired Assets and assumption of the Assumed Liabilities, the release/waiver of liabilities and the other transactions contemplated by this Agreement, all in accordance with the terms and conditions of this Agreement. "Outside Date" means the ninetieth (90th) day following the Effective Date.

Execution Version

25. **Termination**. This Agreement may be terminated and abandoned at any time before the Settlement:

- (a) By the mutual consent of the Parties; or
- (b) By either Party, upon notice, if the Settlement does not occur on or before the Outside Date.

[SIGNATURES APPEAR ON NEXT PAGE]

Execution Version

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have caused this Agreement to be executed by their duly authorized officials the day and year first written above.

WARRINGTON TOWNSHIP

BUCKS COUNTY WATER AND SEWER
AUTHORITY

By: _____

By: _____

Printed: _____

Printed: _____

Its: _____

Its: _____

ATTEST:

ATTEST:

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____