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EXHIBIT F45

AGREEMENT FOR CONTRACT OPERATION AND  
MAINTENANCE OF PUMP STATION AND COLLECTION  
SYSTEM, DATED APRIL 21, 2009, BY AND AMONG  
DELCORA AND BOROUGH OF FOLCROFT

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**AGREEMENT FOR  
CONTRACT OPERATION AND MAINTENANCE  
OF PUMP STATION AND COLLECTION SYSTEM**

THIS AGREEMENT, made and entered into this 21st day of April, 2009, by and between the DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY, a municipal authority in the Commonwealth of Pennsylvania, with offices at 100 East Fifth Street, Chester, Pennsylvania 19013 (hereinafter referred to as "OPERATOR") and the BOROUGH OF FOLCROFT, with offices at 1555 Elmwood Avenue, Folcroft, Pennsylvania 19032 (hereinafter referred to as "OWNER").

***RECITALS:***

- a. OWNER is the owner of the facilities described in Exhibit A.
- b. OWNER desires to engage OPERATOR to provide operations and maintenance services for the Facilities as more fully described herein and in accordance with the terms and conditions of this Agreement.
- c. OPERATOR desires to provide such services to OWNER in accordance with the terms and conditions of this Agreement.
- d. OWNER and OPERATOR have full legal capacity and authority to enter into this Agreement without the need for additional approval or authorization by any person.

**NOW THEREFORE**, in recognition of the above recitals, in exchange for the mutual consideration set forth herein, and intending to be legally bound, the parties agree as follows:

***ARTICLE #1 - DEFINITIONS:***

For purposes of this Agreement, the following terms shall have the meaning set forth below:

1.1 "Facilities" means those described in Exhibit A.

1.2 "Services" mean the Operation and Maintenance services set forth in Article 2 hereof.

#### ***ARTICLE #2 - SCOPE OF SERVICES:***

In consideration of OWNER's timely payment of the compensation set forth herein, OPERATOR will provide OWNER with the Operation and Maintenance Services set forth in Exhibit A, attached hereto and made a part hereof, in accordance with the terms and conditions set forth herein. Operator's provision of operation and maintenance services as required by the terms of this Contract shall be performed in accordance with all applicable codes, laws, rules, regulations and ordinances.

#### ***ARTICLE #3 - OWNER'S RESPONSIBILITIES:***

The OWNER shall provide OPERATOR with the items and assistance set forth in Exhibit B, attached hereto and made a part hereof.

#### ***ARTICLE #4 - TERM OF AGREEMENT:***

4.1 This Agreement shall become binding when signed by the authorized representatives of both parties hereto. OPERATOR shall commence providing the Services on May 1, 2009. This Agreement shall remain in effect until April 30, 2010, unless extended or terminated as provided herein.

4.2 This Agreement shall be automatically renewed for subsequent one (1) year terms, unless one of the parties gives written notice to the other at least sixty (60) days prior to the termination date contained herein.

#### ***ARTICLE #5 - COMPENSATION AND PAYMENT:***

5.1 In consideration of services to be provided by OPERATOR as set forth herein, OWNER shall pay OPERATOR the compensation set forth in Exhibit C, attached hereto and made a part hereof, in accordance with the payment provisions set forth in Exhibit C.

5.2 OPERATOR will invoice OWNER for the Services in accordance with the payment provisions of Exhibit C. Invoices shall be paid by OWNER within 30 days of the invoice date. No payment to OPERATOR shall be withheld by OWNER for any reason while OPERATOR is providing the Services.

5.3 Interest at the rate of one half (1.5%) percent per month shall accrue and be paid by OWNER on any amounts not paid in accordance with the payment provisions of this Agreement. OPERATOR's right to interest on any unpaid amounts shall be in addition to any other rights OPERATOR has under this Agreement or at law.

#### ***ARTICLE #6 - OWNERSHIP OF FACILITIES:***

6.1 Notwithstanding anything contained in this Agreement, OWNER shall be and remain the owner of the Facilities and any capital additions made thereto and paid for directly by OWNER.

#### ***ARTICLE #7 - INDEMNIFICATION AND INSURANCE:***

7.1 OPERATOR agrees to indemnify, defend and hold OWNER and its elected and appointed officials, contractors, employees, directors and agents harmless from and against liability damages, costs, expenses, and attorneys' fees from personal injury, including death, or property damage to the extent caused by the negligence, recklessness and/or intentional act(s) and/or omission(s) or other fault of OPERATOR, its employees, subcontractors and/or agents in connection with the performance of the services hereunder. OWNER agrees to indemnify, defend and hold OPERATOR and its officers, employees, subcontractors, directors, and agents harmless from and against liability damages, costs, expenses, and attorneys' fees from personal injury, including

death, or property damage to the extent caused by the negligence, recklessness and/or intentional act(s) and/or omission(s) or other fault of OWNER, its officials, contractors, employees and/or agents. In the event that both OPERATOR and OWNER are finally determined to have jointly caused any liability for claims or damages as aforesaid, such liability and damages shall be apportioned between the parties in accordance with their pro-rata percentage of fault.

7.2 OPERATOR warrants that it will exert the degree of care and skill in the performance of the Services ordinarily exercised, under similar circumstances, by similar professionals at the time such Services are rendered. THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, IF APPLICABLE.

7.3 OWNER will obtain and maintain adequate property insurance, naming the OPERATOR as an additional insured, on the Facilities and any other insurance coverage required under any financing agreement or regulatory requirements with respect to the Facilities and operation thereof. OWNER will provide OPERATOR with a certificate of insurance evidencing such coverage upon OPERATOR's request.

7.4 OPERATOR shall maintain the following types and amounts of insurance during the term of this Agreement. The OWNER shall be named as an additional insured in the applicable liability insurance policies for claims arising out of OPERATOR's negligence:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Worker's Compensation	Statutory
General Liability	\$2,000,000
Excess General Liability	\$5,000,000
Automobile Liability	\$500,000
Excess Automobile Liability	\$5,000,000
Pollution Control and Liability	\$1,000,000

OPERATOR will provide OWNER with a certificate of insurance evidencing the required coverage upon OWNER's request.

7.5 The insurance obligations of both parties shall become effective upon execution of this Agreement.

#### **ARTICLE #8 - TERMINATION:**

8.1 The failure of either party to comply with the terms of this Agreement shall constitute a default. Upon default by one party, the other party may send a Notice of Termination, in accordance with Article 17. Such notice shall clearly specify the nature of the default and provide the defaulting party with ninety (90) days to cure the default. If the default is capable of being cured within ninety days but is not cured within ninety days, this Agreement shall terminate at midnight of the ninetieth day following receipt of the Notice. In the case of a default that cannot be cured within ninety days, this Agreement shall continue for a reasonable period of time beyond the ninetieth day if the defaulting party has

commenced and is diligently pursuing a cure. Evidence of such cure shall be provided from the party determined to be in default to the satisfaction of the other party.

8.2 In the event of termination of this Agreement under the above paragraph, OWNER shall pay OPERATOR for the Services provided and invoiced by OPERATOR up to the effective date of termination.

#### ***ARTICLE #9 - SERVICE DELAYS:***

Neither OWNER nor OPERATOR shall be liable for any loss or damage, failure or delay in rendering any Service or performing any obligation required under this Agreement resulting from a strike, work stoppage, or slowdown on the part of OWNER's employees and from any cause beyond the reasonable control of OWNER or OPERATOR including, but not limited to: acts of God; acts or omissions of civil or military authority; acts or omissions of contractors or suppliers; fires; floods; epidemics; quarantine restrictions; severe weather; strikes; embargoes; wars; political strife; riots; delays in transportation; or fuel, power, materials, or labor shortages.

#### ***ARTICLE #10 - REPRESENTATIVES:***

Each party hereto will designate a person to serve as that party's Authorized Representative. All requests for changes to this Agreement shall be transmitted between the Authorized Representatives of the parties. The initially-designated Authorized Representatives for the parties shall be:

##### **For OWNER:**

Borough of Folcroft  
1555 Elmwood Avenue  
Folcroft, PA 19032  
Attn: Borough Manager

**For OPERATOR:**

Delaware County Regional Water Quality Control Authority  
P.O. Box 999  
Chester, PA 19016-0999  
Attn: Executive Director

Either party may change its Authorized Representative at any time by written notice to the other party.

***ARTICLE #11 - INDEPENDENT CONTRACTOR:***

The parties agree and acknowledge that OPERATOR is and shall act as an independent contractor in performing under this Agreement, not as an Employee of OWNER. OPERATOR shall not be an agent of OWNER, and nothing in this Agreement shall be construed as creating a partnership, joint venture or similar relationship of any kind between OWNER and OPERATOR. OPERATOR shall be responsible for payment, including any withholding, of any and all taxes payable by OPERATOR and, as applicable, any person employed by OPERATOR, with respect to monies paid to OPERATOR by OWNER in consideration for service performed hereunder.

***ARTICLE #12 - RECORDS:***

OPERATOR shall maintain a record of the operation and maintenance tasks performed for the Facilities in accordance with the Services described herein. These records shall be provided to the OWNER monthly. OWNER shall be the custodian of these records. OPERATOR shall make these records available for inspection at all reasonable times during normal daylight office hours and upon twenty four (24) hours advanced notice to OPERATOR.

***ARTICLE #13 - CHANGES:***

13.1 This Agreement may only be modified by way of a written document executed by both parties.



13.2 In the event that any changes in the scope of operations of the Facilities shall occur, including but not limited to a change in applicable governmental regulations, permit requirements, reporting requirements, changes in influent or effluent volume or characteristics, or changes to conditions affecting the Facilities or the Services that impact on the cost or liability of providing the Services hereunder, OPERATOR will make a written request to OWNER for a modification to the Compensation due OPERATOR or to other provisions of this Agreement. Such notice shall specify the change required, the reasons therefore, and the effective date thereof. OWNER shall review such request within sixty days after receipt thereof and either approve or disapprove such request by written notice to OPERATOR within such sixty-day period. Such additional compensation shall be retroactive.

13.3 Any change properly justified and requested by OPERATOR which is necessary to meet the terms and conditions of this agreement including, but not limited to, permit requirements, and submitted in accordance with the terms and conditions of this agreement that may be disapproved by OWNER within such sixty-day period, may, at the discretion of OPERATOR, result in the termination of this agreement by OPERATOR in accordance with the termination provisions of this agreement.

#### **ARTICLE #14 - WAIVER:**

The failure of either party to enforce, at any time, the provisions of this Agreement shall not constitute a waiver of such provisions in any way or the right of OWNER or OPERATOR at any time to avail themselves of such remedies as either may have for any breach or breaches of such provisions.

#### **ARTICLE #15 - ASSIGNMENT:**

Neither party shall assign its rights, interests, or obligations under this Agreement without the expressed written consent of the other party. Any assignment made without such written consent shall be void; however, such consent shall not be unreasonably withheld. OWNER may make final

determination on assignment by OPERATOR.

**ARTICLE #16 - APPLICABLE LAW/VENUE:**

This Agreement shall be subject to and construed in accordance with the laws of the Commonwealth of Pennsylvania. OPERATOR and OWNER agree to comply with all applicable laws and regulations related to the Facilities and the operations thereof. The parties consent to the exclusive jurisdiction of the Court of Common Pleas of Delaware County, Pennsylvania for the resolution of any dispute arising hereunder or in any way related hereto, and suit to resolve any such dispute may only be initiated in that Court.

**ARTICLE #17 - NOTICES:**

17.1 Any written notices required to be given hereunder shall be delivered by hand, or sent by overnight courier or registered U.S. mail, return receipt requested, and addressed to the receiving party as follows:

**To OWNER:**

Borough of Folcroft  
1555 Elmwood Avenue  
Folcroft, PA 19032  
Attn: Borough Manager

**To OPERATOR:**

Delaware County Regional Water Quality Control Authority  
P.O. Box 999  
Chester, PA 19016-0999  
Attn: Executive Director

17.2 All notices shall be deemed made when actually delivered to the receiving party. Acceptance by the receiving party of any such notice shall constitute a waiver of any and all defects of delivery of said notice.

**ARTICLE #18 - ENTIRE AGREEMENT:**

This Agreement shall constitute the entire and integrated understanding between the parties and supersedes all prior and contemporaneous negotiations, representations and agreements, whether written or oral, with respect to the subject matter herein.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the date set forth above.

**BOROUGH OF FOLCROFT**

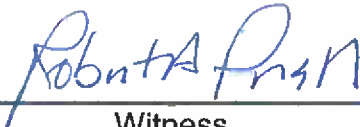
By:   
Witness

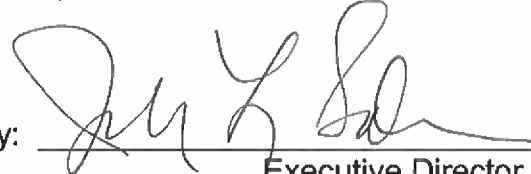
ANTONIA MELOGRANO  
(Print Name)

By:   
Borough Manager

JUDITH SERRATORE  
(Print Name)

**DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY**

By:   
Witness  
Robert A. Powell

By:   
Executive Director  
Joseph L. Salvucci

<b>EXHIBIT A - SCOPE OF SERVICES</b>
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OPERATOR will provide the following basic services:

1.1 OPERATOR shall provide the services of qualified personnel who shall be responsible for the operation and maintenance activities associated with the Facilities.

1.2 OPERATOR shall be responsible for the operational and maintenance activities associated with the Facilities. These duties and responsibilities shall include:

- a. Provide staffing for weekly inspections of the Pump Station.
- b. Provide an adequate number of on-call personnel, for 24 hours per day emergency response and respond to said emergencies within one hour, OWNER to be billed as an additional cost;
- c. Utilize a comprehensive computerized maintenance management system and geographical information system for corrective and preventive maintenance. Maintain said records to properly operate and maintain the Facilities in accordance with regulatory agency guidelines and standard industry practices. Make said records available to the OWNER, its representatives, or regulatory agencies during normal business hours;
- d. Attend OWNER's meetings that occur outside of normal business hours when requested, OWNER to be billed as an additional cost;
- e. Perform high pressure cleaning of the gravity collection system as directed by the OWNER or the OWNER's Engineer;
- f. Perform closed circuit television (CCTV) inspection of the gravity collection system as directed by the OWNER or the OWNER's Engineer;
- g. Survey and inspect condition of manholes in the gravity collection system as directed by the OWNER or the OWNER's Engineer;
- h. Perform repairs to manholes as directed by the OWNER or the OWNER's Engineer;
- i. Perform repairs to gravity collection system as directed by the OWNER or the OWNER's Engineer.
- j. Meet with regulatory officials, on behalf of the OWNER, during normal business hours;

k. Meet with OWNER's representatives during normal business hours;

l. OPERATOR will be responsible for securing the Facilities using existing devices;

m. Maintain an on-site log of all activities, observations, and readings;

n. Perform routine inspections of the Pump Station to check pumps and generator, record flow, pump run hours, and other readings, check generator and perform routine preventive maintenance as needed for proper operations.

o. Order and maintain the proper amount of spare parts and maintenance supplies to ensure consistent, uninterrupted operation of the Facilities. Operator will obtain prior authorization for any single or combined monthly purchases exceeding \$500.00. The OWNER to be billed by OPERATOR for these items;

p. Provide additional labor as needed to perform routine maintenance and housekeeping of the Pump Station. The cost for materials and supplies to perform routine maintenance shall be paid by OPERATOR and billed to OWNER. Services which are specifically excluded by OPERATOR are grass cutting, snow removal, building maintenance, and any other maintenance services performed by subcontractors;

q. OPERATOR shall advise the OWNER of capital improvements which are needed. These may include major rehabilitation or overhaul of equipment, replacement equipment, new equipment or improvements required for the operations of the Facilities;

r. OPERATOR will arrange for and coordinate the annual calibration of flow meters and service of the generator by experienced contractors, OWNER to be billed by OPERATOR for all costs;

In accordance with the above, OPERATOR agrees to operate and maintain the following, defined as the FACILITIES:

Folcroft Pump Station  
Folcroft Collection System

## **EXHIBIT B - OWNER'S RESPONSIBILITIES**

1. OWNER warrants that it has and shall maintain all permits, easements, license, and equipment warranties for the mutual benefit of both parties and necessary for the proper operation of the Facilities.

2. OWNER agrees to provide all process equipment presently located at the Facilities that is necessary for the proper operation of the Facilities. OWNER warrants that all equipment provided by the OWNER is in good and serviceable condition and complies with all OSHA, State, and Local safety requirements and ordinances. Any process equipment not in good and serviceable condition must be rendered so by the OWNER within a reasonable time limit agreed to by OPERATOR at no cost to OPERATOR. In addition, OPERATOR has the right to make necessary emergency repairs, as determined by OPERATOR, and to recover such reasonable costs from the OWNER.

3. OWNER shall purchase and insure that standard fire insurance policies are maintained including extended coverage to the full insurable value of the Facilities as mutually agreed between the parties and shall name OPERATOR as an additional insured according to its insurable interest under these policies during the term of this Agreement.

4. OWNER shall pay for all capital improvements (capital improvements are defined herein as those purchases or improvement(s) and equipment or structures which may be depreciated, which extends service life and which represents a non-routine type of purchase). The OWNER shall purchase said capital improvement items where reasonable justification is provided by OPERATOR.

5. OWNER shall be responsible for snow removal, building maintenance, and any landscaping or vegetation control inside and immediately outside the Pump Station.

6. Should the Pump Station's hydraulic loading exceed design parameters and capabilities as provided to OPERATOR by the OWNER, OPERATOR will continue to perform duties as identified in the scope of services but does not accept responsibility for damages associated therewith. OPERATOR shall advise the OWNER of the abnormal situation and recommend an action plan.

7. In the event that labor stoppages by employee groups or any other person(s) not employed by OPERATOR cause a disruption with OPERATOR employees working at the facilities, the OWNER, with OPERATOR assistance, or OPERATOR at its own option, shall seek appropriate legal injunctions or court orders. During such a designated period, OPERATOR shall operate the Facilities on a best efforts basis until labor relations are normalized. OPERATOR

shall not be liable for any fines or penalties associated with its responsibilities under this Agreement until labor stoppages are restored.

8. OWNER hereby authorizes OPERATOR to purchase emergency capital expense items which are identified and defined for the purpose of this Agreement as those items which are necessary for the safety of workers or the protection of public health and safety. OWNER will reimburse OPERATOR for such emergency purchases.

9. OWNER shall provide OPERATOR with potable water for the operation and maintenance of the Pump Station and for the employees while conducting their duties at the Facilities for OPERATOR. The OWNER agrees to provide said potable water at no charge to OPERATOR.

10. OWNER shall provide OPERATOR with a source of water to be used for high pressure cleaning of pipelines. The OWNER agrees to provide said water at no charge to OPERATOR.

11. OWNER shall provide for all utilities (phone, electricity, gas, etc.) as needed for the operation of the Pump Station.

<b>EXHIBIT C - COMPENSATION</b>
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**1. MONTHLY OPERATING FEE**

- a) The OWNER shall pay OPERATOR a Monthly Operating Fee of \$957.00 for the operation and maintenance of the Pump Station as defined in this Agreement, with adjustments and additions as contained herein, based on a starting date of May 1, 2009.
- b) This fee shall be payable within 30 days of the invoice date. For any portion of a full operating month, the fee shall be apportioned appropriately. Any additional compensation which has been agreed to in writing by the parties to this Agreement, shall be added to the monthly contract fee in effect at the time such adjustment was deemed necessary.

**2. ADJUSTMENTS TO MONTHLY OPERATING FEE**

- a) Starting on May 1, 2010 and continuing until the contract expires, the Monthly Operating Fee shall be increased by 3% annually.

**3. ADMINISTRATIVE FEE**

- a) OPERATOR shall be entitled to an additional fee of ten percent (10%) of the cost of any services, equipment, or material procured by OPERATOR on behalf of OWNER.

**4. ADDITIONAL SERVICES**

- a) OPERATOR shall be entitled to compensation for services provided based upon the fee schedule listed below.

Maintenance Helper	\$ 39.15/hour
Mechanic	\$ 44.35/hour
Electrician/Instrumentation Tech	\$ 44.90/hour
Collection System Helper	\$ 40.60/hour
Vacuum Truck (includes operator)	\$ 165.00/hour



CCTV Unit (includes operator)	\$ 125.00/hour
Dump Truck (includes operator)	\$ 75.00/hour
Backhoe (includes operator)	\$ 125.00/hour
Construction Equipment (street saw, compressor w/jackhammer, compactor)	\$ 20.00/hour

Rates for all services after normal business hours, Monday through Friday, and on weekends and Holidays are 1.5 times the above stated rates.