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EXHIBIT F104

ASSET SALE AND PURCHASE AGREEMENT,  
DATED JUNE 29, 2009, BY AND AMONG  
BOROUGH OF ROSE VALLEY AND DELCORA

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## **ASSET SALE AND PURCHASE AGREEMENT**

This is an ASSET SALE AND PURCHASE AGREEMENT. The binding date of this agreement is the date on which the last signature of the parties is affixed hereto, which date is declared to be June 29, 2009.

### **ARTICLE I HISTORY AND PURPOSE**

- 1.1 **THE PARTIES:** The parties to this agreement are The Borough of Rose Valley, hereinafter the "Borough" or the "Seller," a political subdivision organized under the laws of the Commonwealth of Pennsylvania, with a mailing address of P. O. Box 198, Old Mill Lane, Rose Valley, Pennsylvania, 19065; and the Delaware County Regional Water Quality Control Authority, hereinafter "DELCORA" or the "Buyer," a Municipal Authority organized and existing under the laws of the Commonwealth of Pennsylvania, with a mailing address of 100 East Fifth Street, P. O. Box 999, Chester, PA 19016-0999.
- 1.2 **THE AGREEMENT:** Seller is engaged in providing a wastewater system and sewage treatment facility for the residents of the Borough of Rose Valley as well as for certain contract customers who reside in Nether Providence Township, hereinafter the "wastewater system;" and

Buyer is a municipal authority which operates numerous wastewater systems throughout the Delaware Valley; and

Buyer desires to purchase from Seller, and Seller is willing to sell to Buyer, substantially all of the assets of Seller used or useful in operation of the wastewater system; and Buyer is willing to assume certain specified liabilities of Seller relating to the operation of the wastewater system, on the terms and conditions hereinafter set forth.

### **ARTICLE II THE ASSETS BEING SOLD.**

- 2.1 Upon the terms and conditions set forth in this Agreement, at the closing (as hereinafter defined), Seller will sell, assign, transfer and convey to Buyer and Buyer will purchase and acquire from Seller, free and clear of all liens, claims and encumbrances, except as specifically assumed by Buyer hereunder, all of the property and assets owned by the Seller and all of the Seller's interest in the wastewater system, which assets are used by or useful to the Seller in the operation of the wastewater system.

2.2 The wastewater system assets are defined and agreed to be all the assets, personal property and legal rights of the Borough, whether tangible or intangible, which are held, used or useful in collecting, conveying, pumping or treating wastewater or providing wastewater services to residents of the Borough and to Nether Providence Township.

2.3 The assets being sold include the following:

- a. All wastewater collection mains, force mains, manholes, pump stations, emergency generator, treatment plant and facilities, structures, improvements, fixtures and all appurtenances belonging or appertaining thereto; and
- b. All wastewater system supplies and inventory; and
- c. All wastewater system machinery, equipment, tools, furniture, furnishings and other tangible personal property which is part of, integral to and necessary for, the operation of the wastewater system; and
- d. All wastewater system rights and obligations of the Borough pursuant to any written or oral contract, agreement, policy, plan, instrument, registration, license, permit, certificate or any other authorization or approval of any kind, whatsoever; and
- e. All wastewater system rights of the Borough pursuant to any easement, right-of-way, license and/or wastewater system agreement, including any extensions thereto, and specifically including access to the Todmorden/Forestview Siphon Station and the Long Point Ejector System, both of which currently permit access pursuant to existing easements in favor of the Borough; and
- f. All wastewater system data, in any existing format or medium, to include plans, engineering records, system maps and customer service records.
- g. A non-exclusive list of the major tangible assets which are being sold pursuant to this agreement, is attached hereto, marked Exhibit "A" and made a part hereof.

2.4 The excluded (retained) assets which are not part of this Agreement and are not being sold, are:

- a. The real property and real property interests from which and through which the Borough wastewater treatment system operates. Those real properties and property interests include the Treatment Plant property (1.684 acres),

the Old Mill Pump Station property (0.107 acres), the Brookhaven Pump Station property (0.176 acres), the Todmorden/Forestview Siphon Station and the Long Point Ejector System. This Agreement is contingent upon the Borough, simultaneous to the closing of the transaction contemplated herein, leasing the Treatment Plant, the Old Mill Pump Station, the Brookhaven Pump Station, the Long Point Ejector System and the Todmorden/Forestview Siphon Station to DELCORA at a nominal rate, determined to be one dollar (\$1.00) per year, on terms and conditions set forth in the form of lease attached hereto as Exhibit "B." The term of the lease, or leases, is renewable for as long as the Buyer, or its successors, shall continue to operate a wastewater treatment facility on said properties; and

- b. Certain computers and other office equipment, furniture and furnishings, presently used (non-exclusively) in connection with the operation of the wastewater system, which are located in the Borough Office at Old Mill Lane, Rose Valley, PA 19065; and
- c. All cash on hand and in bank accounts relating to the wastewater system and the operation thereof by the Borough, through the date of this agreement; and
- d. All tap-in fees, including future tap-in fees, paid by NVWS, the builder of new residences known as "Traymore" in the Borough of Rose Valley. These fees will remain the property of the Borough, since they are reimbursement for prior capacity additions to the Borough wastewater system, in connection with the approval of the Traymore development.

### **ARTICLE III ASSUMPTION OF LIABILITIES.**

- 3.1 Assumed Liabilities: At the closing, the Buyer shall assume and has agreed to pay, perform and discharge when and as the same shall become due, all the liabilities and obligations of the Borough relating to the wastewater system, which are set forth on Exhibit "C," attached hereto and made a part hereof, and which are in existence as of the closing date, excluding however, any liability or obligation of the Borough relating to the excluded/retained assets.
- 3.2 Excluded Liabilities: Except as set forth above, Buyer will not assume or be responsible for any liabilities, obligations, undertakings or commitments of Seller of any kind or character whatsoever, whether or not arising out of or relating to the operation of the wastewater system, or any claims or demands based thereon or attributable thereto, whether accrued, absolute or contingent, whether known or unknown and regardless of the terms thereof or the manner of assertion. All such

liabilities, obligations, undertakings and commitments and all such claims and demands shall remain the sole obligation and responsibility of Seller, including:

- a. All liabilities, costs, obligations or expenses of the Seller incurred in connection with this Agreement and all of the transactions pursuant hereto; and
- b. All liabilities or obligations under any employment agreement, incentive compensation or bonus plan, collective bargaining agreement, employee benefit plan, pension plan or other obligation or duty of Seller to any employees or agents of Seller, whether or not associated with the operation of the wastewater system; and
- c. All liabilities owed to any person, corporation, bank, financial institution or other legally constituted entity for any money borrowed, whether secured or unsecured, advances under any note, loan or similar obligation, except any liability of the Seller expressly assumed by the Buyer hereunder; and
- d. Any liability or other claim of any description whatsoever relating to any services rendered with respect to, or on account of, the Seller or the operation of the wastewater system, prior to the actual closing; and
- e. Any liability arising out of any violation or alleged violation by the Seller prior to the closing, of any applicable federal, state, county, or local laws, decrees, rules or regulations; and
- f. All liabilities arising out of the Seller's breach of this Agreement, which occurs prior to the closing; and
- g. All liabilities, debts or obligations arising out of Seller's conduct in operating the wastewater system prior to the closing; and
- h. Any claims or assessments against the Seller pertaining to the operation of the wastewater system, arising prior to the closing, whether or not they were asserted prior to the closing.

#### **ARTICLE IV PURCHASE PRICE.**

- 4.1 In consideration of the transfer and sale of the assets as set forth herein, from the Seller to the Buyer, at the closing the Buyer shall pay to the Seller the sum of One Dollar (\$1.00), nominal, **and other good and valuable consideration.**

4.2 The nominal amount (\$1.00) is symbolic of DELCORA's commitment to provide quality wastewater services to the residents of Rose Valley Borough and the contract customers in Nether Providence Township at the lowest possible cost.

4.3 Pro-rata Division of Sewer Fees.

- a. Annual sewer fees for the calendar year 2009, for all Rose Valley Borough residents, and certain contract persons, who use the Borough wastewater system, shall be divided on a pro-rata basis between the Seller and the Buyer, regardless of whether those customers have been billed or remain unbilled, or whether the bill has been collected or remains uncollected, with the closing date to be used as the final date of apportionment; and
- b. All 2009 sewer fees already collected by the Borough shall be apportioned so that the Borough shall retain the amount thereof attributable to the time period beginning January 1, 2009, through the closing date; and DELCORA shall receive from the Borough the remaining portion of the 2009 collected sewer fees attributable to the period beginning the day after the closing and continuing through December 31, 2009; and
- c. After the closing, the Borough shall be responsible for collecting and distributing the 2009 sewer fees that were unpaid as of the date of closing. On or before the fifth day of each month, for the balance of the calendar year 2009, the Borough shall provide DELCORA with a written statement for the previous month, showing the amount of the sewer fees collected that previous month. The monthly statement shall be accompanied by a payment to DELCORA for its share of the collected sewer fees, apportioned as of the date of the closing. Any sewer fees for the year 2009 that are delinquent at the end of 2009 and are collected in 2010, and beyond, shall be shared with DELCORA, apportioned as of the date of the closing.
- d. The Borough shall retain all of the delinquent sewer fees and liens from the years 2008 and before, which may be collected subsequent to the closing.

**ARTICLE V  
FUTURE BILLINGS BY DELCORA.**

5.1 For the calendar year 2010, DELCORA shall bill Rose Valley residents at a rate equal to the rate at which they were billed for 2009, plus the inflationary factor set forth in paragraph 10.1 of this Agreement. For the calendar year 2011, DELCORA shall bill Rose Valley residents at a rate equal to the rate at which they were billed for 2010, plus the inflationary factor set forth in paragraph 10.1 of this Agreement.

- 5.2 Prior to January 1, 2010, DELCORA shall present a public information program, in which they outline their intended billing system to the residents of Rose Valley and the contract customers from Nether Providence Township.

## **ARTICLE VI CLOSING COSTS.**

- 6.1 Any and all costs charged to the Borough which are associated with the preparation of this agreement and its submission to the PUC or any other governmental authority, necessary for the approval of the transfer of this system from the Borough to DELCORA, including filing fees, legal fees, engineering fees and any other fees and costs, not to exceed \$20,000.00, shall be reimbursed to the Borough by DELCORA, within 60 days of the submission of a written statement of such costs by the Borough to DELCORA. These costs shall not include or any costs already incurred, or to be incurred in the future, related to the Act 537 update.

## **ARTICLE VII TAXES.**

- 7.1 The buyer shall be responsible for payment of any and all taxes imposed or assessed, including sales tax, on account of the transfer of the wastewater system assets pursuant to this agreement.

## **ARTICLE VIII GOVERNMENT SUBMISSIONS.**

- 8.1 The Buyer shall be solely responsible for the preparation and submission of any and all applications, documents, reports and all follow-up material which is required to be submitted by the Buyer to any government agency in order to obtain the appropriate authorizations, licenses and approvals needed to complete the sale or transfer of assets herein; excluding therefrom the former costs related to the Act 537 update.

## **ARTICLE IX CUSTOMER SERVICE AND COMPLIANCE.**

- 9.1 After the closing, DELCORA shall manage the wastewater system in compliance with all applicable federal, state and local laws and regulations, and continue to properly service existing and new customers in the Borough and to perform all necessary and proper maintenance, and to provide emergency services as part of an overall waste management program, as specified in 25 Pa. Code 71.71.

- 9.2 It is agreed that Nether Providence Township has no requirement to enter into future contracts with DELCORA on behalf of any of the Township's residents. Notwithstanding, it is agreed that DELCORA will use its best efforts to negotiate an ongoing contract with Nether Providence Township for the purpose of accepting bulk wastewater and sewage from certain areas of Nether Providence Township, currently consisting of 145 residences, which already have an existing contract with the Borough for wastewater and sewage treatment. The intended goal of these negotiations is an ongoing contract with those residents of Nether Providence Township for wastewater and sewage treatment, which contract maintains a reasonable and equitable sharing of system costs (operating expenses, overhead and capital expenditures) between Rose Valley residents and Nether Providence Township.

## **ARTICLE X LIMITATIONS ON RATE INCREASES.**

- 10.1 For the first three years after the closing, DELCORA agrees to limit the average rate increases that it charges Rose Valley Borough customers, each year, to a maximum of the percentage of the Consumer Price Index (CPI) increase plus 5%. The CPI measure used to establish this limitation shall be the Philadelphia Area CPI-U (Consumer Price Index for All Urban Customers), as reported by the federal Department of Labor. In the event the CPI decreases in any of these three years, the CPI decrease can be ignored and the maximum allowable average rate increase will not exceed 5%.
- 10.2 The Borough will provide to DELCORA, at or before closing, with a list of all individual customers and their 2009 sewer fee expense, which will give DELCORA a base level for 2009 to use as a starting point.

## **ARTICLE XI SYSTEM IMPROVEMENTS.**

- 11.1 DELCORA shall be responsible for the performance of certain system improvements as defined in the Act 537 Sewage Facilities Update for Western Delaware County, dated May 1, 2003, at Section 6.5.
- 11.2 The specific system improvements center around the correction of Inflow and Infiltration (I & I) problems and include, but are not limited to, the following:
- a. Inspection of damaged conveyance/collection lines which are believed to be the major sources of Inflow and Infiltration.



- b. Inspection is to be followed by replacement, slip lining, or other suitable corrections, as needed.
- c. The agreed-upon program for system improvements is based upon annual budgets, with the understanding that the budgeted capital for these system improvements by DELCORA shall not exceed \$15,000.00 for the year 2009, \$30,000.00 for the year 2010 and \$30,000.00 for the year 2011. It is further agreed that the total of budgeted capital for system improvements for these three years shall not exceed \$75,000.00, in the aggregate.
- d. The priority for the system improvements, for the years 2009, 2010 and 2011, per the budgets set forth above, is the following:
  - First: Repair/replace the 262 foot section of 10 inch terra-cotta sewer main, damaged in sections, running between Manhole # 27 and Manhole #28 in the valley off Vernon Run.
  - Second: Examine the extent of the Inflow and Infiltration problems in the remaining 600 feet (approximately) of 8 inch and 10 inch terra-cotta sewer mains in the valley of Vernon Run. Repair/replace as appropriate.
  - Third: Utilize Manhole repairs/inserts/grouting, in the sewer mains in the valley of a Vernon Run in an effort to substantially reduce Inflow and Infiltration in that area.
- e. The agreed-upon limitation for further system improvements is also based upon budgets, with the understanding that the budgeted capital for these system improvements by DELCORA shall not exceed \$30,000.00 for the year 2012 and \$30,000.00 for the year 2013. It is further agreed that the two-year total of budgeted capital for system improvements for these two years shall not exceed \$60,000.00, in the aggregate.
- f. The priority for the system improvements, for the years 2012 and 2013, as limited by the budget constraints set forth above, is the following:
  - First: Complete any items not completed in the prior three year period.
  - Second: Televisize or use portable meters to gauge Inflow and Infiltration in sewer mains that run along Rose Valley Road from Old Mill Lane, north for 1,713 feet (approximately) and Southeast for 1,332 feet (approximately). Repair/replace where appropriate.
  - Third: Perform regular sewer cleaning, sewer inspection and sewer maintenance throughout Rose Valley, Central Rose Valley, Todmorden and Long Point, on a selective basis.

- g. DELCORA shall spend the specified annual amounts on system improvements but reserves the right, after an appropriate study or evaluation, to change the priority of the listed projects as it, in its sole discretion, deems appropriate or necessary in order to provide the most benefit to the Borough and the subscribers to the wastewater system.
- h. DELCORA, unless recommended by DEP or other governmental actions, will not connect any or all of the approximately thirty (30) On Lot Disposal Systems (OLDS) currently in existence in the Borough, to the existing wastewater system, unless and until additional sewage treatment capacity is made available. Should any current OLDS property owner request connection to the wastewater system for any reason, before additional sewage treatment capacity becomes available, such connection to the wastewater system should be communicated to the Borough Manager and the Borough Engineer.
- i. Nothing contained in this paragraph 11.2 shall be interpreted as a limitation on the level, types, amounts or costs of improvements or maintenance DELCORA may make to the system during the periods set forth herein. It is understood that DELCORA shall be free to make additional improvements or maintenance as it may see fit.

## **ARTICLE XII REPRESENTATIONS AND WARRANTIES OF SELLER**

- 12.1 Seller is a local municipality, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and is qualified to conduct this transaction. Seller has full power and authority to own, hold, occupy, lease or sell all of its property and assets and to perform and discharge all of its obligations and liabilities hereunder.
- 12.2 Seller has full and absolute power and authority and has obtained all approvals necessary to sell, transfer and convey the assets to DELCORA free and clear of all liens, claims or encumbrances. The execution and delivery of this agreement by Seller has been duly authorized by all necessary action of the Borough Council. This Agreement constitutes a valid and binding obligation of Seller and is enforceable in accordance with its terms and conditions, under the law of this Commonwealth.
- 12.3 Seller is not required to obtain any authorization, consent or approval from any governmental or regulatory authority or other person in connection with this Agreement or the consummation of the transactions contemplated by this Agreement which has not been obtained.

- 12.4 Seller warrants that it is conveying good and marketable title and that it owns outright all of the assets described in this Agreement free and clear of any claims, liens, encumbrances or debts.
- 12.5 All equipment included among the assets is in good operating condition and repair, subject only to ordinary wear and tear and is adequate for its intended use.
- 12.6 There is no action, suit, proceeding or claim by any person, or any investigation by any governmental agency or instrumentality, either pending or threatened against or involving the Seller. There are no outstanding judgments, orders, writs, injunctions or decrees or, to the knowledge of the Seller, there are no applications, requests or motions therefor, pending in any court or governmental agency.
- 12.7 Neither Seller nor anyone on behalf of Seller, has offered, paid or agreed to pay to any person or entity, including any governmental official, or solicited, received or agreed to receive from any such person or entity, directly or indirectly, any money or anything of value for the purpose or with the intent of facilitating or influencing the consideration, execution or performance of this Agreement.
- 12.8 Seller will not enter into any other contract or commitment, incur any liability, or dispose of any material property or assets in connection with operation of the wastewater system.

### **ARTICLE XIII SELLER'S DISCLAIMER OF ALL OTHER WARRANTIES**

- 13.1 Except as to those specific warranties set forth herein above, seller makes no warranties of any kind, express or implied, including but not limited to any particular warranties of merchantability, or fitness for a particular purpose. Buyer expressly acknowledges and agrees that the equipment herein conveyed, is sold "as is."
- 13.2 There have been no affirmations of fact, nor any promises by the Seller, which relate to the equipment or which are a part of this agreement, other than those which are specifically set forth herein.

### **ARTICLE XIV REPRESENTATIONS AND WARRANTIES OF BUYER**

- 14.1 Buyer is a municipal authority duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has full power and authority to carry on its business and to perform all of its obligations under this Agreement.

- 14.2 Buyer has full and absolute power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Buyer and will not result in a violation of any provision of the Buyer's charter or bylaws, or any other law, regulation or rule applicable to the Buyer in this Commonwealth.
- 14.3 This Agreement constitutes a valid and binding obligation of the Buyer and is enforceable in accordance with its terms, except as to the extent such enforceability may be limited by bankruptcy, insolvency or other laws relating to or affecting the rights of creditors.
- 14.4 Buyer is not required to obtain any authorization, consent or approval from, or file any notice or report with comment any governmental or regulatory authority or other person in connection with this Agreement or the consummation of the transactions contemplated by this Agreement.
- 14.5 Buyer acknowledges that it has inspected the equipment which is the subject of this Agreement, or that it has been given adequate opportunity to inspect the equipment that is the subject of this Agreement.

#### **ARTICLE XV CLOSING.**

- 15.1 At the closing, the Seller shall deliver to the Buyer the following:
- a. The apportioned 2009 sewer fees due to DELCORA per Article IV, Section 4.3, Subsections a and b.
  - b. An assignment of all easements incident to ownership of the system.
  - c. A Bill of Sale reflecting the transfer of the assets.
  - d. The RVB Customer List.
  - e. An Assignment of the Agreement with Nether Providence Township.
- 15.2 At the closing, the Buyer shall deliver to the Seller the following:
- a. All five (5) Leases for the real property.
  - b. A Bill of Sale confirming the transfer of the assets.

**ARTICLE XVI  
INDEMNIFICATION.**

- 16.1 Buyer shall indemnify and hold Seller harmless from and against any loss, cost, liability, expense or other damage suffered by Seller, including reasonable attorneys' fees and expenses suffered by the Seller and arising out of, or incurred with respect to the breach or inaccuracy of any representation or warranty, covenant or agreement made by the Buyer in connection with this Agreement; or any action, suit, proceeding, claim, demand or assessment which the Seller is required to defend in connection with any matter related to this agreement with respect to which indemnification was given by the Buyer.
- 16.2 Seller shall indemnify and hold Buyer harmless from and against any loss, cost, liability, expense or other damage suffered by the Buyer, including reasonable attorneys' fees and expenses suffered by the Buyer and arising out of, or incurred with respect to the breach or inaccuracy of any representation or warranty, covenant or agreement made by the Seller in connection with this Agreement; or any action, suit, proceeding, claim, demand or assessment which the Buyer is required to defend in connection with any matter related to this agreement with respect to which indemnification was given by the Seller.
- 16.3 Notwithstanding any other provision of this Article, no claim for indemnification shall be asserted under this Agreement on account of any breach or inaccuracy of any representation or warranty of the Seller more than twelve (12) months after the closing date, provided that Seller shall have a continuing obligation to indemnify the Buyer for any breach or misrepresentation or warranty under Article XII of this Agreement.
- 16.4 Notwithstanding any other provision of this Article, no claim for indemnification shall be asserted under this Agreement on account of any breach or inaccuracy of any representation or warranty of the Buyer more than twelve (12) months after the closing date, provided that Buyer shall have a continuing obligation to indemnify the Seller for any breach or misrepresentation or warranty under Article XIII of this Agreement.
- 16.5 Notwithstanding any other provision of this Article, any and all claims for indemnification by either party against the other shall not exceed \$20,000.00, in the aggregate, under this agreement.

**ARTICLE XVII**  
**COVENANT NOT TO COMPETE.**

- 17.1 Seller agrees that it will not compete with the Buyer in the wastewater and sewage treatment business, or in any business or enterprise which competes with any aspect of the wastewater and sewage treatment business for as long as the Buyer and its successors shall continue in the wastewater and sewage treatment business for residents of the Borough pursuant to this Agreement.
- 17.2 In the event of any breach of the covenant not to compete set forth in this Article, the parties recognize that the remedies at law alone might be inadequate and that Buyer may be entitled to equitable remedies, including injunctive relief, and such other relief as a court of competent jurisdiction may deem appropriate.
- 17.3 In the event a court of competent jurisdiction determines that any provision of this covenant not to compete is excessively broad as to duration, geographic scope or prohibited activities, or otherwise, the parties agree that the affected covenants contained herein shall be reduced or curtailed to the extent necessary to render such covenants enforceable.

**ARTICLE XVIII**  
**MISCELLANEOUS PROVISIONS.**

- 18.1 This agreement may be amended only by a written instrument executed by all parties. No oral amendments shall be valid or binding on either of the parties in a court of law or other forum.
- 18.2 All notices required to be given under the terms of this Agreement shall be given to the parties at the addresses set forth herein. Notice by first-class mail, postage prepaid, addressed to either of the parties, mailed to the address set forth in this agreement, or to any other address subsequently provided in writing, shall be deemed sufficient and proper notice hereunder.
- 18.3 This Agreement constitutes the entire agreement between the parties and supersedes without limitation all prior agreements, representations and warranties, whether written or oral, between the parties with respect to the subject matter hereof. Both parties agree that there are no other agreements, representations, or warranties between the parties other than those set forth herein.
- 18.4 Neither this agreement nor any rights of the parties hereunder shall be assignable by any party without the prior written consent of the other party. In the event of any such assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

- 18.5 The parties agree to execute such other documents, to take such other action and give such further assurances as may be reasonably necessary or desirable to complete all of the transactions contemplated by this Agreement and to carry out the terms and purposes of this Agreement.
- 18.6 This Agreement shall, at all times, be governed and controlled by the laws of the Commonwealth of Pennsylvania, as enacted and amended, both before and after the signing of this Agreement.
- 18.7 This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have each caused this agreement to be executed as of the day, month and year first above written.

SELLER:

THE BOROUGH OF ROSE VALLEY

by: Lynn C. Kelley (SEAL)  
Lynn C. Kelley, President of Council

by: Thomas F. Plummer (SEAL)  
Thomas F. Plummer, Mayor

Attested:

by: Paula W. Healy  
Paula W. Healy, Borough Secretary

BUYER:

DELAWARE COUNTY REGIONAL  
AUTHORITY

by: John L. Salter (SEAL)  
~~Chairman~~  
EXECUTIVE DIRECTOR

Witness:  
Attested:

by: Robert A. Frazin  
~~Secretary~~ - Executive Director  
BUS. DEV. MGR.

**ROSE VALLEY BOROUGH WASTEWATER SYSTEM  
MAJOR PHYSICAL ASSETS**

1. Treatment Plant. Built 1938. Expanded 1961, 1975, 2003.
  - a. Imhoff tanks. (1975)
  - b. Building.
2. Old Mill Pump Station.
  - a. Two 250 gpm non-clog Smith & Loveless pumps. (1997)
  - b. 35 kw Onan diesel emergency generator - Cummins Power System. (2000)
  - c. Building. (1974) 15' x 15' reinforced concrete and stone.
3. Brookhaven Pump Station. (1997)
  - a. Smith & Loveless Wet Well Mounted Pump Station. Two 150 gpm pumps.
4. Todmorden/Forestview Siphon Station.
5. Long Point Ejector System.
6. Collection/Conveyance System Piping. (Orig. 1938)

	Total Lengths All Kinds	Cast Iron	Terra-Cotta & Vitreous Clay	Replaced 1993-2008	Remaining T-C & V-C
18"	359		359	359	0
15"	498		498	498	0
12"	71		71	71	0
10"	1324	86	1238	242	996
8"	32201	186	32035	231	31804

Exhibit A.



## LEASE

### 1. NAMES OF THE PARTIES.

LESSOR: The Borough of Rose Valley, hereinafter the "Borough" or the "Lessor," a political subdivision organized under the laws of the Commonwealth of Pennsylvania, with a mailing address of P. O. Box 198, Old Mill Lane, Rose Valley, Pennsylvania, 19065.

LESSEE: Delaware County Regional Water Quality Control Authority, hereinafter "DELCORA" or the "Lessee," a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, with a mailing address of 100 East Fifth Street, P.O. Box 999, Chester, PA 19016-0999.

### 2. DESCRIPTION OF THE PREMISES.

The premises which are the subject of this lease consist of the following:

### 3. COMMENCEMENT , DURATION, AND TERMS OF THE LEASE.

- a. This lease shall commence on the following date: June 29, 2009.
- b. This lease shall exist for term of 99 years.
- c. This lease is renewable 5 time(s) for a term of 99 years, for each renewal term.
- d. Each renewal shall commence at 12:01 a.m. on the day immediately following the last day of the preceding lease term, or any renewal thereof.
- e. Lessee shall give notice in writing to Lessor, at the mailing address of the Lessor, at least sixty (60) days prior to the final date of the lease or any extensions hereto, of its intent to renew the lease.

*Exhibit "B"*

- f. Absent such notice of renewal, this lease shall end on the regularly scheduled date, and shall be null and void as of that date.
- g. This lease sets forth all the terms and conditions of the agreement between the parties. Other terms, conditions or understandings of the parties which are not contained in this written lease, or any written modification hereto, are not binding on either of the parties. Lessee expressly acknowledges and agrees that Lessor has not made any warranties, representations, promises or statements, except to the extent that the same are set forth in writing in this lease.
- h. There are no implied warranties of merchantability, habitability, suitability, fitness for a particular purpose or any other kind of warranties arising out of this lease, except any warranties expressly set forth in writing herein.
- i. Lessor shall not be obligated to provide any services or utilities to the demised premises during the term of the lease, or any extensions or renewals thereof.

#### **4. AMOUNT AND TERMS OF PAYMENT OF RENT AND DAMAGES.**

- a. The rent is one dollar (\$1.00) per year (nominal), and other good and valuable consideration.
- b. In the event the Lessee shall fail to perform any of the terms of this lease and is dispossessed by the Lessor by reason thereof, then and in that event Lessee, its successors and assigns, is bound in the sum of one thousand dollars (\$1,000.00), which sum Lessee, its successors and assigns hereby agree to pay promptly to the Lessor upon such dispossession as stipulated and agreed herein. This payment is to be considered liquidated damages, and not a penalty.

#### **5. LIMITATIONS ON USE AND SUBLETTING.**

##### **a. No Dangerous or Toxic Materials.**

Lessee agrees that no explosive, dangerous or toxic chemicals of any kind shall be stored in or about the premises.

##### **b. Lessee Responsible for Costs.**

Lessee agrees that it shall be fully liable for all costs and expenses related to the use, storage, treatment and disposal of all waste stored, handled, treated, disposed of, discharged or produced on the premises or anywhere on the property. Waste is defined as raw, or partially treated sewage, or as anything covered by the Resource Conservation and Recovery Act of 1976,

as amended, or as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. Notwithstanding anything to the contrary contained in this subsection, Lessor acknowledges that Lessee will, from time to time, keep upon the premises certain products and materials used in the lawful conduct of Lessee's business which would technically constitute a violation of the terms of this subsection, and Lessor agrees that, with regard to such products and materials, Lessee shall not be in violation hereof so long as such products and materials are used at all times for the purposes for which and in the manner in which they are intended to be used in the business of the Lessee.

**c. Lessee Bound by Applicable Laws.**

This lease is subject to all zoning restrictions, laws and ordinances affecting any change in use of the demised premises, and the lessee agrees to be bound by such restrictions. Lessor does not warrant that any license or permit which may be required for the business to be conducted by lessee, its successors and assigns, will be granted or renewed. Lessee acknowledges that it has been advised by lessor to obtain, prior to the execution hereof, all necessary permits and approvals. Accordingly, any failure to apply for or obtain such permits or licenses, or any revocation thereof, or failure to renew them shall not release Lessee from the terms of this lease, or any renewals thereof.

**d. Hold Harmless Agreement.**

Lessee agrees to indemnify Lessor and hold Lessor harmless of and from all reasonable costs and expenses incurred as a direct consequence of any and all claims made against Lessor resulting from or arising out of any default by Lessee or any person or entity claiming by, through, or under Lessee in the performance of the Lessee's obligations contained in this lease.

**e. Lawful Use of Premises.**

Lessee is permitted to use the premises for any lawful purpose, which includes sewage and wastewater treatment.

**f. Signs.**

Lessee will not place or use or maintain any signs on the premises without first obtaining Lessor's written approval, which will not be unreasonably withheld. All signs, if approved by Lessor, shall nevertheless conform to the applicable sign ordinances and laws in effect at the time. Lessee shall maintain all lawfully approved signs in good condition at all times.

**6. CARE OF THE PREMISES WHICH ARE THE SUBJECT OF THE LEASEHOLD.**

**a. Maintenance of the Premises and Improvements.**

Lessee shall maintain the leasehold premises, and all appurtenant structures located thereon, and all equipment located or stored thereon, in good, sufficient and useable condition, and shall undertake and perform all necessary repairs and improvements to keep the said premises, structures and equipment in such condition.

**b. Damage to or Destruction of Improvements.**

Damage to or destruction of the improvements on the property, or any portion thereof, by fire or other casualty shall not terminate the Lessee's obligations under this lease, and Lessee shall be required to replace or repair the property to the extent of the damage, such that the buildings and appurtenances located on the property shall be substantially in the same condition, or better, as the condition thereof as of the date this lease was first signed.

**c. Insurance.**

During the term hereof, and any extensions or renewals hereof, the Lessee shall maintain liability, fire and extended coverage insurance on the premises and improvements thereon in an amount at least equal to the full replacement value of all improvements erected on the premises as such improvements shall exist from time to time, with insurance companies licensed to do business in the Commonwealth of Pennsylvania. Such insurance shall name the loss payees as both Lessor and Lessee.

**d. No Violations of Law Permitted.**

Lessee shall maintain the premises such that there are no violations of Borough Ordinances, State Codes and Laws, and all applicable Federal Regulations and Laws. Should any such violations exist and be brought to the attention of lessee by any Borough, State or Federal authorities, lessee shall take immediate action to remedy and correct all such violations at the expense of the Lessee, its successors and assigns.

**7. REMEDIES OF THE PARTIES.**

**a. Right of distraint.**

Neither party shall have the right of distraint against the other, or the property of the other, under the terms of this lease.

**b. Amicable Ejectment.**

It is agreed that, in the event the Lessee shall have completely vacated the premises and has no further need for the leasehold prior to the expiration of the full term of this lease, this lease shall cease and be terminated as of the end of the first full calendar month after which the Lessee shall surrender to the Lessor full and complete physical possession of the demised premises and shall have complied with the written notice provisions hereof.

**c. Modification.**

This lease may be modified only in writing signed by all parties.

**8. TERMINATION AND RENEWAL.**

- a. Any termination of this lease by either party, shall state the specific reason or reasons for termination in clear and unambiguous terms.
- b. Any attempt at termination of this lease by either party shall be sent by the terminating party to the other party in writing addressed and sent by certified mail, return receipt requested, postage prepaid, to the mailing address of the party to whom notice is being given.
- c. The bankruptcy of either party shall immediately void this lease and all of its terms and conditions.
- d. It is covenanted and agreed by and between the parties and it is the true intent and meaning of these presents, that if the Lessee, its successors or assigns, shall leave, quit or abandon the premises, for more than sixty (60) consecutive days, with or without notice to the Lessor, this lease and the term and estate hereby granted shall cease, end and be utterly void; not withstanding any other provision or term in this lease to the contrary. For the purpose of this Paragraph, unless Lessee notifies Lessor in writing otherwise, it shall be deemed to have quit the premises should it cease to operate any facility thereat.

**9. LEASE BINDING ON SUCCESSORS AND ASSIGNS.**

**a. Assignment of lease.**

This lease shall not be assigned by either party without the express written consent of the other party. Any assignment of this lease shall be construed as a covenant under the law and any breach of this covenant shall create liability for damages but shall not void or require forfeiture of the assignment.

**10. LAWS TO BE APPLIED.**

- a. The laws to be applied to this lease and any dispute arising hereunder are the laws of the Commonwealth of Pennsylvania, as amended and as written at the time the controversy is first disclosed by one party to the other in writing addressed and sent by first class mail, postage prepaid, to the mailing address of the party to whom notice is being given.
- b. The provisions of this lease shall be construed with equanimity for and against both parties. No one party shall be considered to be the drafter of this lease under the applicable law.
- c. If and whenever any dispute shall arise between the Lessor and the Lessee concerning the terms of this lease, the matter of difference shall be referred to three arbitrators, one to be appointed by each of the parties and the third, who shall serve as chair, to be appointed by the first two arbitrators, in the usual manner. The decision of the arbitrators shall be final and binding on the parties hereto, and their respective successors and assigns. If either party fails to appoint an arbitrator or if the arbitrators are unable to agree on a third arbitrator to serve as chair, then the arbitration shall be held under the rules, then in effect, of the American Arbitration Association.
- d. If any provision of this lease shall be declared invalid by any court or other judicial body, or by express act of any legislative body with the authority to affect the terms of this lease, only such provision so declared invalid shall be thus affected, and all other terms and conditions hereof not inconsistent therewith or directly dependent therefrom shall remain in full force and effect.

**11. RECORDING.**

This lease, and all renewals hereof, shall be recorded by the Lessor, at the expense of the Lessor, within sixty (60) days of the date the Lease is signed by both parties.

The lease and any renewals shall be recorded in the Office for the Recording of Deeds in and for the County of Delaware. All amendments or changes to the lease shall also be recorded, as aforesaid.

**12. COMPLIANCE WITH THE LAW.**

The Lessee shall, at all times, keep the subject premises in compliance with all of the zoning laws, building codes, health and safety provisions applicable to said property, as well as the Americans With Disabilities Act.

**IN WITNESS WHEREOF**, INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO HAVE CAUSED THIS LEASE TO BE EXECUTED BY THEIR DULY AUTHORIZED REPRESENTATIVES AND OFFICERS THIS 29<sup>th</sup> DAY OF June , 2009.

LESSOR: THE BOROUGH OF ROSE VALLEY

BY: \_\_\_\_\_ (SEAL)  
Lynn C. Kelley, President of Council

BY: \_\_\_\_\_ (SEAL)  
Thomas F. Plummer, Mayor

Attested: \_\_\_\_\_ (SEAL)  
Paula W. Healy, Borough Secretary  
Title:

LESSEE: DELAWARE COUNTY REGIONAL AUTHORITY

BY: \_\_\_\_\_ (SEAL)  
Title:

Attested: \_\_\_\_\_ (SEAL)  
Title:

**List of All Liabilities and Obligations of the Borough of Rose Valley  
Relating to the Wastewater System.**

1. The following seven (7) properties which are in the Borough of Rose Valley, are connected to the Nether Providence Township sewer lines for various distances and at various locations. The property addresses are:

145 Rose Valley Road  
149 Rose Valley Road  
153 Rose Valley Road  
Methodist Manse  
402 Woodward Road  
404 Woodward Road  
406 Woodward Road

2. A Certain Agreement dated February 9, 1967, between the Borough of Rose Valley and the Township of Nether Providence, attached hereto, covering 84.30 acres of ground, and the houses erected thereon, known as "Fairfield Estates" in the said Agreement, and currently known as "Todmorden," whereby the sanitary sewers of said properties are connected to the Township sanitary sewer system and then connected to the sewer system operated by DELCORA in the City of Chester.
3. A Certain Agreement dated October 12, 1960, between the Borough of Rose Valley and the Township of Nether Providence, as amended in 1989 for the Vernon Run Outfall Sewer, for the processing of sanitary sewage from certain properties located within the Township, which is the subject of a certain Assignment and Assumption Agreement, previously approved by Nether Providence township and to be executed by Rose Valley Borough and DELCORA contemporaneously with the execution of the Asset Sale and Purchase Agreement also to be executed by Rose Valley Borough and DELCORA the same date.



AGREEMENT BETWEEN BOROUGH OF ROSE VALLEY AND  
TOWNSHIP OF NETHER PROVIDENCE RE: SEWER LINES to Chester

THIS AGREEMENT made this NINTH day of FEBRUARY  
1967 Between the BOROUGH OF ROSE VALLEY, Delaware County, Pennsylvania,  
hereinafter called "BOROUGH" and the TOWNSHIP OF NETHER PROVIDENCE,  
Delaware County, Pennsylvania, hereinafter called "TOWNSHIP"

W I T N E S S E T H:

WHEREAS, a certain area of the Borough known as "Fairfield  
Estates" can only obtain a sanitary sewer disposal system by connec-  
tion with certain existing sanitary sewer lines in the Township, and

WHEREAS, the Township sanitary sewer lines connect with  
the sanitary sewer disposal system of the City of Chester, and

WHEREAS, both the Borough and the Township have executed  
appropriate agreements with the City of Chester for the use of the  
City of Chester sewer system and the treatment plant for the disposal  
of the sewage of certain areas of the Borough and Township,

NOW THEREFORE, in consideration of the mutual promises  
contained herein, and intending to be legally bound hereby, Borough  
and Township covenant and agree as follows:

1. Borough agrees to pay to Township the sum of Ten Thou-  
sand Seven hundred three Dollars and fifty-seven cents (\$10,703.57),  
being at the rate of One Hundred Twenty-six Dollars and ninety-seven  
cents (\$126.97) per acre for 84.30 acres of Borough area serviced by  
sanitary sewers connected to the sanitary sewers of Township into sani-  
itary sewer system of the City of Chester for treatment and disposal;  
the Borough area referred to being as set out on Plan attached hereto,  
made a part hereof and marked Exhibit "A".

Exhibit "D"

2. Township agrees that it will permit connection of sanitary sewers of aforesaid area of Borough to sanitary sewers of Township.

3. Township agrees to maintain, repair and replace its sanitary sewer system involved in the aforesaid connection when and where necessary.

4. Whenever the items of maintenance, repair or replacement are made in accordance with paragraph 3 above, and if such items shall exceed Five Hundred Dollars (\$500.00) in any calendar year, such costs in excess of Five Hundred Dollars (\$500.00) shall be shared by the Borough and Township on a proportionate share of the total acreage that may be served by the line involved, said payment to be made within sixty (60) days from the date of demand by the Township.

5. In the event Borough or Township should fail or refuse to comply with the provisions of this agreement, the aggrieved party may take such legal action to enforce its rights under this agreement as may be permitted by law.

6. If any one or more of the provisions of this agreement shall be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this agreement and this agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

7. The basis of this agreement is a willingness of the Township to perform a sewage service for the Borough should such Borough so desire. To give protection and permanency to future planning

of the Borough, the Township reserves no right of termination of agreement except that which may be occasioned by failure of the Borough to abide by the provisions herein contained. Should such violations by the Borough occur, for a period not less than one hundred and twenty (120) days after due notice in writing by the Township to the Borough, this agreement may be terminated by the Township by written notice to the Borough and the discharge of sewage into the sewerage system of the Township stopped by action of the Township.

IN WITNESS WHEREOF the said Borough and Township have caused these presents to be duly executed and attested by their proper officers the day and year first written above.

BOROUGH OF ROSE VALLEY

By

John Fair  
President

Attest

J. Victor Haworth  
Secretary

Approved:

James H. Lane  
Mayor

TOWNSHIP OF NETHER PROVIDENCE

By

Wm. M. Mearns

Attest

James E. Eustice, Secretary