
EXHIBIT F5

SANITARY SEWER SERVICE, SETTLEMENT & MUTUAL
RELEASE AGREEMENT BY AND AMONG THE
TOWNSHIP OF CHELTENHAM, THE BOROUGH OF
JENKINTOWN AND SOUTHEAST PENNSYLVANIA
TRANSPORTATION AUTHORITY

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EXECUTION DOCUMENT

CHELTENHAM TOWNSHIP

SANITARY SEWER SERVICE, SETTLEMENT & MUTUAL RELEASE AGREEMENT

This **SANITARY SEWER SERVICE, SETTLEMENT & MUTUAL RELEASE AGREEMENT** (this "Agreement") is made, executed and exchanged this 8th day of February, 2017 (the "Effective Date") by and among the **TOWNSHIP OF CHELTENHAM** (hereinafter "Cheltenham"), the **BOROUGH OF JENKINTOWN** (hereinafter "Jenkintown") and **SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY** (hereinafter "SEPTA").

BACKGROUND

A. SEPTA is the owner of that certain property *situate* partially within the jurisdictional limits of Jenkintown and partially within the jurisdictional limits of Cheltenham and known to the Board of Assessment of Montgomery County, Pennsylvania, as Tax Parcel No. 31-00-11710-00-4 (the "SEPTA Property").

B. The SEPTA Property is improved with, *inter alia*, a station building (the "Jenkintown Station Building").

C. The Jenkintown Station Building is *situate* entirely within that portion of the SEPTA Property which is within the jurisdictional limits of Jenkintown.

D. As more fully set forth in the Cheltenham Township Act 537 Official Sewage Facilities Plan Update approved by the Commonwealth of Pennsylvania Department of Environmental Protection ("DEP") under and pursuant to the Pennsylvania Sewage Facilities Act (the "Act"), 35 P.S. §§ 750.1 *et seq.* (the "Cheltenham Township Official Plan"), Cheltenham owns and operates a sanitary sewage collection, conveyance and treatment system and facility (the "Cheltenham Sanitary Sewage System").

E. As more fully set forth in the Jenkintown Borough Act 537 Official Sewage Facilities Plan approved by DEP under and pursuant to the Act (the "Jenkintown Borough Official Plan"), Jenkintown owns and operates a sanitary sewage collection and conveyance system (the "Jenkintown Sanitary Sewage System").

F. The Jenkintown Sanitary Sewage System does not include a treatment system or facility.

G. Cheltenham and Jenkintown are parties to certain agreements with regard to the collection, conveyance and treatment of sanitary sewage generated at properties *situate* within the jurisdictional limits of Jenkintown, and under and pursuant to which sanitary sewage effluent from the Jenkintown Sanitary Sewage System is conveyed into and through the Cheltenham Sanitary Sewage System (collectively, the "Cheltenham-Jenkintown Sanitary Sewer Agreements").

H. Though the Jenkintown Station Building is *situate* entirely within the jurisdictional limits of Jenkintown, as aforesaid, for historical reasons unknown to Cheltenham, Jenkintown or SEPTA, sanitary sewage effluent from the Jenkintown Station Building flows

directly into the Cheltenham Sanitary Sewage System without ever entering into, traversing through or having any contact whatsoever with the Jenkintown Sanitary Sewage System (the "SEPTA to Cheltenham Direct Connection").

I. The SEPTA to Cheltenham Direct Connection is outside the scope of, and is not governed by, the Cheltenham-Jenkintown Sanitary Sewer Agreements.

J. Notwithstanding that sanitary sewage effluent flows directly into the Cheltenham Sanitary Sewage System without ever entering into, traversing through or having any contact whatsoever with the Jenkintown Sanitary Sewage System, from not later than 2001 through the Effective Date, Jenkintown submitted to SEPTA invoices for sanitary sewer service at the SEPTA Property in an aggregate amount of not less than Twenty Thousand Nine Hundred Fifty-Seven and 97/100 Dollars (\$20,957.97) (collectively, the "Jenkintown Sanitary Sewer Invoices").

K. SEPTA paid to Jenkintown certain of the charges imposed by Jenkintown, including under and pursuant to the Jenkintown Sanitary Sewer Invoices, which such payments, in the aggregate, amount to Nineteen Thousand Nine Hundred Eighty-Two and 60/100 Dollars (\$19,982.60) (the "SEPTA Jenkintown Sanitary Sewer Payments").

L. From not later than 2001 through the Effective Date, Cheltenham also submitted to SEPTA invoices for sanitary sewer service at the SEPTA Property (collectively, the "Cheltenham Sanitary Sewer Invoices").

M. Notwithstanding that SEPTA had remitted the SEPTA Jenkintown Sanitary Sewer Payments to Jenkintown, as aforesaid, SEPTA's tenant paid to Cheltenham certain of the charges imposed by Cheltenham, including under and pursuant to the Cheltenham Sanitary Sewer Invoices, which such payments, in the aggregate, amount to Twenty-One Thousand Nine Hundred Ninety-Seven and 00/100 Dollars (\$21,997.00) (the "SEPTA Cheltenham Sanitary Sewer Payments").

N. Cheltenham heretofore issued various municipal liens against the SEPTA Property with regard to certain of the Cheltenham Sanitary Sewer Invoices (collectively, the "Cheltenham Municipal Liens").

O. The aggregate amount of the Cheltenham Municipal Liens is Twenty-Six Thousand Two Hundred Eighty-Two and 00/100 Dollars (\$26,282.00).

P. SEPTA is a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, and it is SEPTA's position that it and the SEPTA Property are immune from the imposition and effect of the Cheltenham Municipal Liens.

Q. As more fully set forth in, and subject to the terms, conditions and provisions set forth in this Agreement, Jenkintown is willing to waive any and all claims arising out of or in any manner or form related to the Jenkintown Sanitary Sewer Invoices and/or entitlement to realize any payments for or with regard to past, present or future sanitary sewer service at the SEPTA Property.

R. The parties hereto desire to resolve all of the disputes among them regarding the subject matter referred to in this Background Section of this Agreement and any other disputes or claims arising out of sewer billing and sewer rental fees pertaining to the SEPTA Property.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in this Agreement and the facts set forth in the Background Section and other recitals of this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged by the parties, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Incorporation of Recitals. The recitals set forth in the Background Section are incorporated herein as if here set forth in their entirety.

2. Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated herein by reference.

3. Acknowledgment of Receipt of Payments.

A. Cheltenham Sanitary Sewer Payments. Cheltenham, for itself and its successors and assigns, hereby acknowledges receipt of the SEPTA Cheltenham Sanitary Sewer Payments.

B. Jenkintown Sanitary Sewer Payments. Jenkintown, for itself and its successors and assigns, hereby acknowledges receipt of the SEPTA Jenkintown Sanitary Sewer Payments.

4. Payment by Jenkintown. Jenkintown agrees to pay to Cheltenham, within thirty (30) days of the Effective Date, Thirteen Thousand and 00/100 Dollars (\$13,000.00) of the SEPTA Jenkintown Sanitary Sewer Payments ("Jenkintown Settlement Payment") as settlement of any and all claims, demands or assertions whatsoever by or on behalf of Cheltenham of or for entitlement to all or any portion of the SEPTA Jenkintown Sanitary Sewer Payments whatsoever. It is agreed and understood by the parties that Jenkintown will retain the remaining Six Thousand Nine Hundred Eighty-Two and 60/100 Dollars (\$6,982.60) of the SEPTA Jenkintown Sanitary Sewer Payments.

5. Payment by SEPTA. Notwithstanding the SEPTA Cheltenham Sanitary Sewer Payment already paid by SEPTA to Cheltenham and the Jenkintown Settlement Payment to be paid by Jenkintown to Cheltenham in accordance with Section 4 hereof, SEPTA agrees to pay to Cheltenham, within thirty (30) days of the Effective Date, the additional sum of Eight Thousand Seven Hundred Sixty-Six and 00/100 Dollars (\$8,766.00) ("SEPTA Settlement Payment"). The SEPTA Settlement Payment shall serve as full and complete satisfaction and accord of the Cheltenham Sanitary Sewer Invoices and/or any and all amounts claimed by Cheltenham to be due thereunder or pursuant thereto from 2001 through the Effective Date.

6. Municipal Liens. Within thirty (30) days of the Effective Date, Cheltenham shall withdraw, with prejudice, the Cheltenham Municipal Liens. Nothing set forth in this Agreement or elsewhere is, or shall be construed to be, an acknowledgment by SEPTA or anyone acting by, through or on behalf of SEPTA of the validity of the Cheltenham Municipal

Liens, it being SEPTA's position that, as a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof, SEPTA and the SEPTA Property are immune from the imposition and effect of the Cheltenham Municipal Liens. Nothing set forth in this Agreement or elsewhere is, or shall be construed to be, an acknowledgement by Cheltenham or anyone acting by, through or on behalf of Cheltenham of the validity of SEPTA's claim of immunity from the imposition and effect of the Cheltenham Municipal Liens.

7. Billing. Except as expressly contemplated in this Agreement to the contrary, after the Effective Date, Cheltenham shall submit to SEPTA invoices for sanitary sewage service at the SEPTA Property first coming due after the Effective Date in a manner consistent with all other properties *situate* within the jurisdictional limits of Cheltenham which are served by the Cheltenham Sanitary Sewage System, which such invoices SEPTA shall pay (or cause its tenants to pay) in accordance with the terms and conditions thereof and all applicable law. The rates and methodologies for such billings shall be identical to those imposed on all other properties *situate* within the jurisdictional limits of Cheltenham which are served by the Cheltenham Sanitary Sewage System. In furtherance, and not in limitation, of the foregoing, Cheltenham acknowledges that payment of any such invoices by SEPTA's tenant(s) at the SEPTA Property shall constitute payment by SEPTA for all intent and purposes whatsoever. In further furtherance, and not in limitation, of the foregoing, each of Cheltenham and Jenkintown are aware of SEPTA's position that SEPTA (and the SEPTA Property) is immune from the imposition and effect of municipal fines, penalties, late fees, interest, or similar charges.

8. Sanitary Sewer Service to SEPTA Property.

A. Cheltenham Obligation to Accept Effluent. Cheltenham shall accept, convey and treat all sanitary sewage effluent from the SEPTA Property including, without limitation, any effluent which may be hereafter discharged from the SEPTA Property through either the SEPTA to Cheltenham Direct Connection or a sanitary sewer lateral constructed to replace and/or supplement the SEPTA to Cheltenham Direct Connection; provided, however, notwithstanding the foregoing, Cheltenham only agrees to accept, convey and treat sanitary sewage effluent from the SEPTA Property at quantities, quality and volume of flow historically generated from the SEPTA Property, and no agreement or promise is made with SEPTA with regard to any additional sewage capacity should the Jenkintown Station Building be demolished, expanded, reconstructed, redeveloped, reconfigured, or substantially altered after the date of this Agreement, provided further, however, that, in the event that there is an increase in the volume of sanitary sewage effluent (or other non-volume-related change in the sanitary sewage effluent which does not violate any permit limitation, or applicable regulations) from the SEPTA Property, Cheltenham shall follow applicable protocols under the Act, and will work in good faith with SEPTA to address such increase or change at no cost to Cheltenham other than regular and customary charges incurred by Cheltenham in the normal course of discharging municipal obligations under and pursuant to the Act. Notwithstanding the foregoing, any reclamation of historical flow for a use or a portion of a use which has been vacated for a period of one (1) or more years shall be subject to the approval of DEP if it generates more sewage than any prior use. Notwithstanding the foregoing, any changes in use, *e.g.*, restaurant to retail, is required to be approved by DEP if it generates more sewage than any prior use.

B. SEPTA Property Customer of Cheltenham. Except as set forth at Section 14. of this Agreement, the SEPTA Property (and any and all users, tenants, lessees or licensees thereof) are and shall at all times remain a customer(s) of Cheltenham and the Cheltenham Sanitary Sewage System as and if, for all intents and purposes, the SEPTA Property is *situate* within the jurisdictional limits of Cheltenham.

C. No Service Area in Jenkintown. This Agreement pertains only to the SEPTA Property which, as set forth in the Background Section of this Agreement, is connected to the Cheltenham Sanitary Sewage System through the SEPTA to Cheltenham Direct Connection as a result of historical factors unknown to Cheltenham, Jenkintown or SEPTA, and not as a result of active solicitation by Cheltenham of SEPTA and/or the SEPTA Property as a customer of the Cheltenham Sanitary Sewage System. Nothing set forth in this Agreement or elsewhere is, or is intended to be, a basis for establishment of jurisdiction of the Pennsylvania Public Utility Commission whether pursuant to the Pennsylvania Public Utility Code, 66 Pa.C.S.A. §§ 101 *et seq.*, or otherwise.

9. Status of Official Plans.

A. Cheltenham. Cheltenham represents and warrants to each of SEPTA and Jenkintown that this Agreement and the obligations of Cheltenham under and pursuant to this Agreement are consistent with the Cheltenham Township Official Plan and that no amendment to the Cheltenham Township Official Plan is necessary, whether pursuant to the Act or otherwise, in order for sanitary sewage effluent to flow from the SEPTA Property to the Cheltenham Sanitary Sewage System through the SEPTA to Cheltenham Direct Connection or any sanitary sewer lateral hereafter constructed to replace and/or supplement the SEPTA to Cheltenham Direct Connection.

B. Jenkintown. Jenkintown represents and warrants to each of SEPTA and Cheltenham that this Agreement and the obligations of Jenkintown under and pursuant to this Agreement are consistent with the Jenkintown Township Official Plan and that no amendment to the Jenkintown Township Official Plan is necessary, whether pursuant to the Act or otherwise, in order for sanitary sewage effluent to flow from the SEPTA Property to the Cheltenham Sanitary Sewage System through the SEPTA to Cheltenham Direct Connection or any sanitary sewer lateral hereafter constructed to replace and/or supplement the SEPTA to Cheltenham Direct Connection.

10. Release by Cheltenham. Cheltenham hereby remises, releases and forever discharges Jenkintown and SEPTA, and each of them, and any of its, their or either of their agents, contractors, employees, officials, officers, board members, subcontractors and/or tenants and/or sub-tenants, licensees and lessees of and from any and all manner of past, present or future actions and causes of action, claims, costs, expenses, controversies, warranties, trespasses, liens, damages, right, suits, debts, dues, accounts, contracts, judgments and demands of any kind or nature in law or equity, whether for actual or punitive damages (if applicable), regardless of a theory of recovery, whether foreseen or unforeseen pertaining to sanitary sewer service at or with regard to the SEPTA Property between the beginning of recorded time and the Effective Date, all matters reasonably related to the facts described in the Background Section of this Agreement (including, without limitation, the Cheltenham Sanitary Sewer Invoices), and all Cheltenham Municipal Liens, except for issues pertaining solely to the enforcement of this Agreement.

11. Release by Jenkintown. Jenkintown hereby remises, releases and forever discharges Cheltenham and SEPTA, and each of them, and any of its, their or either of their agents, contractors, employees, officials, officers, board members, subcontractors and/or tenants and/or sub-tenants, licensees and lessees of and from any and all manner of past, present or future actions and causes of action, claims, costs, expenses, controversies, warranties, trespasses, liens, damages, right, suits, debts, dues, accounts, contracts, judgments and demands of any kind or nature in law or equity, whether for actual or punitive damages (if applicable), regardless of a theory of recovery, whether foreseen or unforeseen pertaining to sanitary sewer service at or with regard to the SEPTA Property between the beginning of recorded time and the Effective Date, all matters reasonably related to the facts described in the Background Section of this Agreement (including, without limitation, the Jenkintown Sanitary Sewer Invoices), except for issues pertaining solely to the enforcement of this Agreement.

12. Release by SEPTA. SEPTA hereby remises, releases and forever discharges Cheltenham and Jenkintown, and each of them, of and from any and all manner of past, present or future actions and causes of action, claims, costs, expenses, controversies, warranties, trespasses, liens, damages, right, suits, debts, dues, accounts, contracts, judgments and demands of any kind or nature in law or equity, whether for actual or punitive damages, regardless of a theory of recovery, whether foreseen or unforeseen pertaining to sanitary sewer service at or with regard to the SEPTA Property between the beginning of recorded time and the Effective Date, and all matters reasonably related to the facts described in the Background Section of this Agreement, except for issues pertaining solely to the enforcement of this Agreement.

13. Disclaimer of Liability. The parties hereto acknowledge that this Agreement shall not be construed as an admission by any party of any liability or wrongdoing whatsoever and that the settlement set forth herein is made by the parties solely in an effort to amicably compromise disputed claims and counterclaims.

14. Provisions Regarding New Sewer Infrastructure. Nothing set forth in this Agreement is intended to be, or shall be construed as, a prohibition of discontinuance and termination of the connection of the SEPTA Property to Cheltenham Direct Connection (or, as applicable, any replacement or supplement thereof) and connection of the SEPTA Property to the Jenkintown Sanitary Sewage System after express written notice of such is mailed to Cheltenham and Jenkintown via certified mail, return receipt requested. Any discontinuance and termination of the connection of the SEPTA Property to the Cheltenham Direct Connection (or, as applicable, any replacement or supplement thereof) and connection of the SEPTA Property to the Jenkintown Sanitary Sewage System, shall be in accordance with all applicable law and, as applicable, revisions to the Cheltenham Township Official Plan and the Jenkintown Borough Official Plan, respectively. In that event, SEPTA shall cease to be a customer of the Cheltenham Sanitary Sewage System and shall, for so long as such connection to the Jenkintown Sanitary Sewage System shall remain in place, be a customer of the Jenkintown Sanitary Sewage System.

15. Outstanding and Unpaid Charges. Conditioned on the fact that all of the provisions of this Agreement are fulfilled by each party, there are no outstanding and unpaid charges from either Cheltenham or Jenkintown with regard to sanitary sewer service at the SEPTA Property as of the Effective Date.

16. Successors and Assigns. The parties hereto agree that the mutual promises, covenants, acknowledgements and representations contained in this Agreement shall be binding upon them and inure to the benefit of their respective successors and assigns and the present and future officers, officials, board members, employees, servants, agents, representatives, insurers, agents, contractors, employees, officials, officers, subcontractors and/or tenants and/or sub-tenants, licensees and lessees of them, or each of them, and all other persons, firms or corporations claiming by or through them, or each of them.

17. Controlling Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of laws.

18. Amendment. This Agreement shall not be altered or amended except by mutual agreement of all parties hereto expressed in writing and signed by all parties hereto.

19. Counterparts. This Agreement may be executed in any number of identical counterparts, all of which evidence one agreement and only one of which, when produced with all other executed counterparts, need be produced for any purpose; provided, however, that this Agreement will not bind any party unless and until it is signed by all parties.


20. Severability. If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

21. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties hereto with respect to the subject matter referred to herein. There are no other terms, representations, understandings or agreements, oral or otherwise, among the parties, except as herein expressly set forth.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date and year first above written.


Attest:



Bryon T. Havir
Township Manager

CHELTENHAM TOWNSHIP

By: its Board of Commissioners,
the duly elected and
constituted governing body thereof

By: 

Name: Morton J. Simon, Jr.
Title: President

Attest:



BOROUGH OF JENKINTOWN

By: its Borough Council,
the duly elected and
constituted governing body thereof

By: 

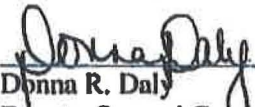
Name: Deborra Sines-Pancoe
Title: President

**SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY,**
a body corporate and politic which
exercises the public powers of the
Commonwealth of Pennsylvania
as an agency and instrumentality thereof

By: 

Name: Gino J. Benedetti
Title: General Counsel

Approved as to form:

By: 

Name: Donna R. Daly
Title: Deputy General Counsel