

ORDINANCE NO. 508

AN ORDINANCE AUTHORIZING THE EXECUTION BY THE TOWNSHIP OF UPPER POTTS GROVE, COUNTY OF MONTGOMERY (THE "TOWNSHIP") OF AN ASSET PURCHASE AGREEMENT (THE "PURCHASE AGREEMENT") BETWEEN THE TOWNSHIP AND THE PURCHASER (DEFINED HEREIN); AUTHORIZING THE ASSIGNMENT OF THE TOWNSHIP'S RIGHTS AND OBLIGATIONS IN THE ASSIGNED AGREEMENTS (DEFINED HEREIN) TO THE PURCHASER; AUTHORIZING AND APPROVING ALL CONVEYANCE INSTRUMENTS (DEFINED HEREIN); AUTHORIZING COMMUNICATION OF INFORMATION AND COOPERATION WITH THE PURCHASER; AUTHORIZING ALL ACTIONS RELATING TO THE EXECUTION OF THE PURCHASE AGREEMENT AND THE ASSIGNMENT OF THE ASSIGNED AGREEMENTS AND OTHER DOCUMENTS NECESSARY TO EFFECTUATE THE FOREGOING; AUTHORIZING INCIDENTAL ACTION TO BE TAKEN BY SPECIFIED OFFICERS OF THE TOWNSHIP; AND RESCINDING INCONSISTENT ORDINANCES AND RESOLUTIONS.

WHEREAS, the Township, a Township of the First Class of the Commonwealth of Pennsylvania, currently owns and operates a sanitary wastewater collection and conveyance system (the "System") that provides sanitary wastewater service to various customers in Upper Pottsgrove Township and a small portion of Douglass Township (Berks County), Pennsylvania (the "Service Area"); and

WHEREAS, the Township previously decided to pursue the potential sale of all of the assets, properties and rights of the Township (whether tangible, real, personal or mixed) which are exclusively held and used by it in connection with the System, as set forth in the Purchase Agreement (the "System Assets") through a competitive bidding process (the "Assets Sale"); and

WHEREAS, the Township has heretofore issued a Request for Qualifications (the "RFQ") and a Request for Bids (the "RFB") to solicit bids from interested and qualified companies and entities to purchase the System; and

WHEREAS, the Township received responses to the RFQ and, after the opportunity for due diligence and negotiation and preparation of the Purchase Agreement, received bids from two interested entities ("Potential Bidders") that were found to be qualified; and

WHEREAS, the Township, by enactment of the within Ordinance, selects Pennsylvania-American Water as the highest bidder (the "Purchaser"), determining that such selection is in the best interests of the Township, as determined by the Board of Commissioners based on the advice of the Township Financial Advisor; and

WHEREAS, the Board determines that the Assets Sale is in the best interests of the Township, such determination to be evidenced through the execution by the Township of the Purchase Agreement, and the Township will sell the System Assets to the Purchaser by entering

into the Purchase Agreement with the Purchaser and proceeding to the closing of the sale of the System ("Closing"); and

WHEREAS, the Township has previously entered into a Sewage Treatment Service Agreement dated as of September 13, 2004, between the Township, the Borough of Pottstown and the Pottstown Borough Authority (the "Service Agreement"), a Lower Pottsgrove Township Agreement dated March 28, 1994 between Township and Lower Pottsgrove Township (the "Lower Pottsgrove Agreement"), a HACH Meter Contract dated October 31, 2011 between the Township and HACH Company and any amendments thereto (the "HACH Agreement", together with the Service Agreement, and the Lower Pottsgrove Agreement, the "Assigned Agreements"); and

WHEREAS, pursuant to the Purchase Agreement, the Township will assign the Township's rights and obligations under the Assigned Agreements to the Purchaser and the Purchaser will assume the Township's rights and obligations under the Assigned Agreements as necessary and appropriate and in accordance with the Purchase Agreement; and

WHEREAS, under the Purchase Agreement, the Township will transfer to the Purchaser at Closing the ownership of the System Assets through the execution and delivery of all necessary and required bills of sale, instruments of assignment, consents to transfer, deeds, and other agreements, documents, and instruments of conveyance (collectively, the "Conveyance Instruments"); and

WHEREAS, the Township currently receives information as to water consumption by customers within the service area of the System from companies and municipalities to facilitate accurate billing (the "System Billing Information") and intends to pass on the System Billing Information and any and all rights of the Township in connection therewith, to the Purchaser and cooperate with the Purchaser as is required for the continued operation of the System;

NOW, THEREFORE, the Board of Commissioners of the **TOWNSHIP OF UPPER POTTS GROVE**, hereby ordains as follows:

1. **Selection**

The Board determines that the Assets Sale is in the best interests of the Township, such determination to be evidenced through the execution by the Township of the Purchase Agreement, and the Township will sell the System Assets to the Purchaser by entering into the Purchase Agreement with the Purchaser and proceed to Closing of the sale of the System.

2. **Approval of the Purchase Agreement**

The Board hereby authorizes and approves the execution, delivery, and performance of the Purchase Agreement substantially in the form attached hereto as Exhibit A. The President or Vice President of the Board are hereby authorized and directed on behalf of the Township to execute any and all papers and documents and to do and cause to be done any and all actions and things necessary or proper to execute the Purchase Agreement.

3. Assignment of Assigned Agreements

The Board hereby authorizes and approves the assignment of the Township's rights and obligations under the Assigned Agreements. The President or Vice President of the Board are hereby authorized and directed on behalf of the Township to execute any and all papers and documents and to do and cause to be done any and all actions and things necessary or proper to effectuate such assignment, provided that the terms and conditions of all such papers and documents are satisfactory to the Township Solicitor and Special Counsel to the Township.

4. Approval of Deeds, Certificates, and Related Documents

The Board hereby authorizes the execution and delivery by the President or Vice President of the Board of the Conveyance Instruments necessary and required to be executed and delivered under the Purchase Agreement, provided that the terms and conditions of such Conveyance Instruments are satisfactory to the Township Solicitor and Special Counsel to the Township.

5. Disposition of Proceeds

The proceeds of the sale shall be utilized at the discretion of the Board of Commissioners in a manner consistent with the Pennsylvania First Class Township Code and subject to the advice of the Township's Financial Adviser; provided, however, the proceeds of the sale shall be utilized, first and at a minimum, to pay down all existing sewer debt of the Township.

6. Information and Cooperation

The Board hereby authorizes the Township, its agents and employees, to communicate the System Billing Information and any and all rights of the Township in connection therewith and other information required or desirable in the sole discretion of the President or Vice President of the Board to the Purchaser and cooperate with the Purchaser for the continued operation of the System and the use of the System Assets.

7. General Authorization

The Board hereby further authorizes the Township, its agents and employees, to take any and all necessary actions required by the First Class Township Code and other applicable law, to cooperate with and assist Purchaser in its application to the Pennsylvania Public Utility Commission for approval of its purchase of the System and to execute such other documents and agreements as may be necessary to effectuate the sale of the System Assets as contemplated herein.

8. Severability

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby

declared to be the intent of the Board that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provisions had not been included herein.

9. Effective Date

This Ordinance shall take effect and be in force from and after its enactment as required by the law.

10. Repealer

All other ordinances and resolutions or parts thereof as they are inconsistent with this Ordinance shall be deemed repealed at the time of closing of the Assets Sale with Purchaser.

ORDAINED and **ENACTED** at the public meeting of the Upper Pottsgrove Township Board of Commissioners held on April 20, 2020.

UPPER POTTS GROVE TOWNSHIP

By:



Trace Slinkerd, President
Board of Commissioners

Attest:



Jeannie DiSante, Township Secretary