

**Application of Pennsylvania-American Water Company for Acquisition of
the Wastewater Assets of Upper Pottsgrove Township
66 Pa. C.S. § 1329
Application Filing Checklist – Water/Wastewater
Docket No. A-2020-3021460**

25. Provide a copy of all municipal and affiliate contracts to be assumed by buyer as part of the acquisition and a list and annual dollar value of other contracts.

AMENDED RESPONSE:

See below a list of the municipal contracts (with exhibits and amendments thereto) to be assumed by PAWC as part of the acquisition and attached as **Amended Appendix A-25**. There are no affiliate contracts to be assumed.

Name of Contract	Amended By	Parties to Contract	Date of Contract
Joint Sewage Transportation Agreement Between Lower Pottsgrove Township and Upper Pottsgrove Township		Lower Pottsgrove Township Upper Pottsgrove Township	March 1994
Sewage Treatment Service Agreement		Borough of Pottstown Pottstown Borough Authority Upper Pottsgrove Township	September 13, 2004
	Transfer of Capacity Rights Agreement	Borough of Pottstown Upper Pottsgrove Township	June 2005
	Transfer of Capacity Rights Agreement	Borough of Pottstown Pottstown Borough Authority Upper Pottsgrove Township	March 2009
	Agreement Amending Sewage Treatment Service Agreement	Borough of Pottstown Pottstown Borough Authority Upper Pottsgrove Township	October 2011
	Purchase of Additional Capacity Agreement	Borough of Pottstown Pottstown Borough Authority Upper Pottsgrove Township	June 2013

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	Purchase of Additional Capacity Agreement	Borough of Pottstown Pottstown Borough Authority Upper Pottsgrove Township	May 2018
	Purchase of Additional Capacity Agreement	Borough of Pottstown Pottstown Borough Authority Upper Pottsgrove Township	April 2020
	Purchase of Additional Capacity Agreement	Borough of Pottstown Pottstown Borough Authority Upper Pottsgrove Township	September 2020

Please see below a listing and dollar value of other contracts.

List of Other Contracts & Annual Dollar Value							
Name of Contract		Parties to Contract		Date of Contract		Subject	Annual Dollar Value
Hach Meter Contract		Hach Company and Upper Pottsgrove Township		Original 10/31/2011 Amendment 11/07/2016		Flow Data	\$42,912

JOINT SEWAGE TRANSPORTATION AGREEMENT
BETWEEN UPPER POTTS GROVE TOWNSHIP
AND LOWER POTTS GROVE TOWNSHIP AUTHORITY

THIS AGREEMENT, made this *28th* day of *March*, 1994, by and between UPPER POTTS GROVE TOWNSHIP, a first class township in the Commonwealth of Pennsylvania (hereinafter referred to as "Township"), and

LOWER POTTS GROVE TOWNSHIP AUTHORITY, a municipal authority duly organized under the Municipality Authorities Act of 1945, as amended, serving Lower Pottsgrove Township (hereinafter referred to as "Authority").

WITNESSETH:

WHEREAS, Authority maintains and operates a waste water collection and conveyance system, a portion of which is referred to in this Agreement as the Sprogel's Run System; and

WHEREAS, Township proposes to connect to the Sprogel's Run System certain new waste water collection lines to provide for waste water collection service in a portion of the Township; and

WHEREAS, Authority desires to accept the flows from Township and convey them through the Sprogel's Run System to the Borough of Pottstown Waste Water Treatment Plant which is the central waste water treatment facility for both Lower Pottsgrove and Upper Pottsgrove Townships.

NOW, THEREFORE, the parties hereto, intending to be legally bound on behalf of themselves, their successors and assigns, represent that each has the proper legal authority to enter into this contract and each, intending to be legally bound hereby, do hereby represent, covenant and agree as follows:

ARTICLE I

TERMS OF AGREEMENT

Section 1. This Agreement shall come into effect immediately upon its execution by the parties hereto and shall continue indefinitely unless it is terminated with the written approval of both parties.

Section 2. Authority does hereby agree to transport municipal waste water flows from Township up to a total amount of 192,000 gallons

per day as calculated per the definition set forth herein. Said flows are to enter the Authority's lines by way of a manhole located near Sprogel's Run off of Charlotte Street (Pa. Route 663) as further identified in Exhibit "A" attached hereto and made a part hereof.

Section 3. Following the 1st of January of the year immediately subsequent to the year, in which the flow meter (provided at Section 5) is first installed and working, and each succeeding January, Authority shall submit to Township an invoice, with supporting documentation, indicating the total annual costs for the preceding calendar year for the operation and maintenance (O & M) of the Sprogel's Run pump station, interceptor and force main, and requesting payment from Township for its share of the annual O & M costs in an amount equal to the percentage of flows through the Sprogel's Run System applicable to Township based on meter flows. Subject to the right of Township to dispute all or part of the invoice, Township shall pay Authority the total invoiced amount of Township's share of the O & M costs within forty-five (45) days of receipt.

Section 4. Township shall pay to Authority the amount of \$350,000.00 as of the signing date of this Agreement, with time being of the essence, said payment representing costs previously incurred by Authority to provide for the necessary capacity within the Sprogel's Run System to accept the Township flows. Except for O & M costs as defined in Section 3 and Article II herein, no other payment shall be required of Township for the transportation of the 192,000 gallons per day.

Section 5. Township or its designee shall purchase and install a flow meter that meets the specifications as delineated in the definitions section herein and which will allow Authority to monitor the waste water flows in regard to the annual billing for O & M for the Sprogel's Run System and to determine total flows, either the average daily flow or the instantaneous peak flow used including flows from infiltration and inflow. The flow meter shall be installed and working no later than the date of the first new connection of a dwelling in Township to the Sprogel's Run System. If the flow meter is not installed and working by this date, Authority shall have the right to install the appropriate meter and bill Township. Township shall be responsible for maintenance of the flow meter and shall allow Authority access to the flow meter from time to time to confirm the information submitted by Township.

Section 6. Should total flows as defined herein be achieved, Township shall be prohibited from further connections which would add additional flows to the Sprogel's Run System until either existing flows have been reduced below the 192,000 gallon per day threshold or this Agreement has been amended in writing. Authority reserves the

right to surcharge Township for each gallon of flow in excess of the threshold herein defined at $2\frac{1}{2}$ times the rate, on a per gallon basis, utilizing the information from the then most immediately preceding billing period, charged to Township for O & M for the Sprogel's Run System.

Section 7. Any fines or surcharges assessed by a governmental entity based on flows will be allocated between Township and Authority in accordance with the pro rata share of each for O & M for the Sprogel's Run System from the then most immediately preceding billing period; however, if the cause for the surcharge can be identified and responsibility for the situation which gave rise to the surcharge is properly allocable on other than a pro rata basis, the adjusted allocation will be used.

Section 8. Township agrees that all new sewer lines, laterals and appurtenances, which will be located in Township and connected to the Sprogel's Run System, shall be properly constructed and inspected to insure that excessive infiltration and inflow (I & I) of water shall not occur. Excessive I & I for the lines, laterals and appurtenances located in Township shall be promptly corrected by Township.

Section 9. Township will only utilize capacity in the Borough of Pottstown Waste Water Treatment Plant which it has purchased per the Joint Sewage Treatment Contract involving the Borough of Pottstown, Authority and Township and not capacity purchased by the Authority. If Township wishes to purchase any treatment capacity of Authority, that shall be the subject of a separate agreement.

Section 10. The bulk of the flows from Township will be non-industrial users. Any flows from industrial users will be allowed only in strict conformance with Lower Pottsgrove Township Ordinance No. 166B, as amended, and the duly adopted rules and regulations of the Borough of Pottstown Waste Water Treatment Facility.

Section 11. This Agreement is contingent on the approval of Act 537 Plan Amendments of the Lower Pottsgrove Township Waste Water Plan and the Upper Pottsgrove Township Waste Water Plan by the Pennsylvania Department of Environmental Resources and the Board of Commissioners of each municipality. Each party agrees to take the steps necessary to obtain these approvals in a timely manner.

Section 12. There are approximately thirty (30) existing equivalent dwelling units ("EDUs") in Township currently providing flows to the Sprogel's Run System by connections with the Borough of Pottstown. For purposes of this Agreement, those thirty (30) EDUs shall be included for the calculation of shared O & M costs and for the total flows purchased. For calculation purposes, each present or

future EDU shall be estimated at 300 gallons per day. Township shall make the same assurances as referred to herein to Authority with regard to correction of I & I problems in this area. Authority may request that Township perform certain metering of flows from time to time to determine that no excessive flows are occurring. Within one hundred eighty (180) days of this Agreement, Township shall prepare and submit to Authority a list of all such connections and the amount of EDUs therein.

ARTICLE II

DEFINITIONS

For purposes of this Agreement, the following definitions are hereby identified:

EQUIVALENT DWELLING UNIT ("EDU"). For purposes of this Agreement an EDU is equal to 300 gallons per day of flow.

TOTAL FLOWS PURCHASED. This Agreement provides for the purchase of 192,000 gallons per day of waste water flow transportation capacity by the Township from Authority through the Sprogel's Run System. This shall be based upon a thirty (30) day average of flows as recorded by flow meter as provided for in this Agreement. The instantaneous peak flow rate shall not exceed 480,000 gallons per day.

FLOW METER. The flow meter shall be installed at a point in Township where flows from Township can be accurately measured. The flow meter will be installed by Township, or its designee, and may be recalibrated on a regular basis. Township shall be responsible for the maintenance thereof. Authority shall have access to the flow meter and records thereof on a regular basis but not less than once every ninety (90) days.

OPERATION AND MAINTENANCE (O & M) COSTS. These costs shall include the total costs which shall be reasonable and directly related to the operation, maintenance and repair of the Sprogel's Run System: (1) actual allocated salaries and wages of administrative, supervisory, operating and maintenance personnel and employees of the Authority and Lower Pottsgrove Township engaged in operating and maintaining the Sprogel's Run System and administrative functions associated therewith, together with the social security and unemployment taxes, workmen's compensation, insurance premiums and pension benefits or any other similar benefits or costs applicable thereto; (2) power, supplies and equipment or tools used or employed for the Sprogel's Run System; (3) costs of routine maintenance and minor repairs including minor replacements; (4) major repairs and/or capital construction improvements to the Sprogel's Run System as necessary to continue

operation; (5) fees and expenses of consulting engineers, attorneys or certified public accountants for services performed in connection with the management, operation and maintenance of the Sprogel's Run System; and (6) such other costs and expenses consistent with the maintenance and operation of the system. Authority shall document all such costs to Township during the invoice process.

INDUSTRIAL USER (non-municipal flows). As defined per the provisions of Lower Pottsgrove Township Ordinance No. 166B and its amendments.

SPROGEL'S RUN SYSTEM. The system shall include the existing Sprogel's Run (also referred to as Porter Road) Pumping Station first constructed in 1971, present and future improvements.

ARTICLE III

MISCELLANEOUS

Section 1. This writing and the attachments hereto shall constitute the entire agreement between the parties and there are no other representations or agreements, verbal or written, other than those contained herein.

Section 2. Any revision or modification to this Agreement shall be set forth in a writing signed by both parties.

Section 3. If any provision of this Agreement is found to be invalid or unenforceable, the parties agree that they will continue to observe and abide by the intent of the Agreement as set forth herein.

Section 4. All notices sent in connection with this Agreement shall be sent by first class mail or delivered to the following addresses:

Upper Pottsgrove Township Board of Commissioners
1420 Heather Place
Pottstown, PA 19464

Lower Pottsgrove Township Authority
2199 Buchert Road
Pottstown, PA 19464

Section 5. This Agreement may be signed in multiple counterparts each of which shall be treated as an original.

Section 6. Each of the signatories represents that he is authorized to execute this document and bind the legal entity to the

Amended Appendix A-25

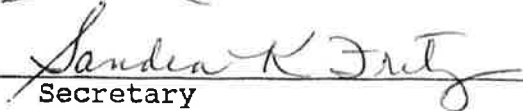
terms set forth herein.

Section 7. This document shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be executed the day and year first above written.


UPPER POTTS GROVE TOWNSHIP
BOARD OF COMMISSIONERS

BY: 
President

ATTEST: 
Secretary

LOWER POTTS GROVE TOWNSHIP
AUTHORITY

BY: 
(Vice) Chairman

ATTEST: 
(Assistant) Secretary

Amended Appendix A-25

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF MONTGOMERY : SS.

On the _____ day of _____, 1994,
before me, a Notary Public, personally appeared _____,
who acknowledged himself/herself to be the _____ of
the Upper Pottsgrove Township Board of Commissioners, and that he/she,
being authorized so to do, executed the foregoing document on behalf of
the Upper Pottsgrove Township Board of Commissioners.

WITNESS my hand and Notarial Seal the day and year aforesaid.

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF MONTGOMERY : SS.

On the _____ day of _____, 1994,
before me, a Notary Public, personally appeared _____,
who acknowledged himself/herself to be the _____ of
the Lower Pottsgrove Township Authority, and that he/she, being
authorized so to do, executed the foregoing document on behalf of the
Lower Pottsgrove Township Authority.

WITNESS my hand and Notarial Seal the day and year aforesaid.

Notary Public

SEWAGE TREATMENT SERVICE AGREEMENT

THIS SEWAGE TREATMENT SERVICE AGREEMENT, dated SEPTEMBER 13, 2004, by and among the **BOROUGH OF POTTSTOWN** (the "Borough"), Montgomery County, Pennsylvania, and the **POTTSTOWN BOROUGH AUTHORITY** (the "PBA"), on the one hand; and, the **TOWNSHIP OF UPPER POTTS GROVE** (the "Township"), Montgomery County, Pennsylvania, on the other hand.

WITNESSETH:

WHEREAS, PBA presently owns the PBA Sewage Collection System, the Common Transportation Facilities and Treatment Plant, for rendering sanitary sewage collection, transportation, treatment and disposal service in and for the Borough, as well as rendering transportation, treatment and disposal service for the Township and Lower Pottsgrove Township and West Pottsgrove Township (the "Townships"); and,

WHEREAS, PBA heretofore entered into a Lease with the Borough whereby PBA, as Lessor, has leased the Treatment Plant, the Common Transportation Facilities and the PBA Sewage Collection System to the Borough, as Lessee, for a term of years, and whereunder the Borough has agreed, inter alia, to operate and maintain the same and to pay certain minimum net rentals to PBA or its assigns; and,

WHEREAS, the Townships presently own and operate Sewage Collection Systems required for rendering sanitary sewage collection and transportation, but not treatment or disposal, service in and for certain portions of the Townships; and,

WHEREAS, certain of the Townships presently utilize a portion of the Sewage Capacity in the Common Transportation Facilities for transportation of Sewage to the Treatment Plant, and will continue to utilize the same in transporting Sewage to the Treatment Plant; and,

WHEREAS, on February 28, 1989, the parties hereto entered into a Sewage Treatment Service Agreement providing, among other things, terms and conditions under which the Borough provides Sewage treatment and transportation services to the Township, for consideration, which Sewage Treatment Service Agreement shall cease to be operative and shall be superseded by this Sewage Treatment Service Agreement upon execution and delivery hereof by the parties hereto; and,

WHEREAS, the Treatment Plant is currently meeting the PaDEP permit requirements; and,

WHEREAS, in order to comply with the future upgrades to the Treatment Plant, as required by PaDEP permits and/or PaDEP mandate, or as requested by one of the Townships, PBA will provide for the acquisition and construction of any future improvements to the Treatment Plant and improvements to the Common Transportation Facilities, and incur the costs and expenses related thereto; and,

WHEREAS, the Township has reserved Capacity in the Treatment Plant for its present and future use, and will share in the costs and expenses of modifying, operating and maintaining such Treatment Plant and the Common Transportation Facilities; and,

WHEREAS, PBA and the Borough, pursuant to the request of the Townships and by reason of the PaDEP determination, agree to reserve and allocate Capacity in the Treatment Plant for the present and future use of the Townships, and to continue to operate and maintain the Common Transportation Facilities under the terms and conditions set forth herein.

ARTICLE I

DEFINITIONS

SECTION 1.01. Defined Terms. The terms defined in this Section 1.01, whenever used or referred to in this Service Agreement, shall have the respective meanings indicated unless a different meaning clearly appears from the context.

"Ammonia Nitrogen" (NH₃-N) shall mean the quantity of nitrogen measurable by distillation followed by nitrogen determination using nesslerization or titration.

The standard laboratory procedure for this analysis and any laboratory analyses hereinafter listed shall be that found in the latest edition of "Standard Methods For the Examination of Water and Wastewater," published by the American Public Health Association, or an equivalent method agreed to by the parties.

"Annual Average Flow (AAF)" shall mean the total flow received at the Wastewater Treatment Plant or discharged from a development or Municipality during any one (1) calendar year, divided by the number of days in the respective calendar year.

"Average Annual Debt Service", as used in this Service Agreement, shall be computed as set forth in this definition and shall apply to a hypothetical bond issue in an aggregate amount that would have been required to be issued to finance upgrades to the Treatment Plant, and/or the Common Transportation Facilities, as applicable, assuming that no capital contributions were made. The hypothetical bond issue shall be designed to be amortized over the same life as the Bonds on an approximately level annual debt service schedule. Interest shall be deemed to be capitalized for the same periods of time, and in the same relative amounts, as is capitalized on the Bonds. Interest rates assigned to the hypothetical bond issue shall be at the identical rates applicable to the Bonds for the same years of maturity.

The Average Annual Debt Service shall mean, with respect to the aforesaid hypothetical bond issue, the sum of the "Debt Service Requirements," as hereinafter defined (excluding, however, any Debt Service Requirements deemed to be capitalized) for all years of the hypothetical bond issue divided by the number of years contained in the period of said hypothetical bond issue. "Debt Service Requirements," as used herein, shall mean the sum of amounts required to be set aside in each bond year for payment of interest on and principal of said hypothetical bond issue. If said hypothetical bond issue, in order to conform to the structure of the same as nearly as possible to the structure of the Bonds, contemplates the use of any sinking, purchase, redemption or analogous fund, the "Debt Service Requirements," with respect to any bond year, shall be determined after projecting operation of such fund to retirement of the hypothetical bonds in a manner conforming as nearly as possible to the structure of retirement of the Bonds and giving effect to reduction of interest payments to be made with respect to the

hypothetical bond issue by reason of such retirement.

"Biochemical Oxygen Demand" (BOD5) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade expressed in milligrams per liter (mg/l). The procedure shall include thiouras or other suitable inhibitors to prevent nitrification from simultaneously occurring and affecting BOD results.

"Bonds" shall mean any and all notes, bonds or other debt obligations authorized and issued by PBA for the purpose of financing the acquisitions or construction of additions, improvements, enlargements and/or modifications to the Treatment Plant and Transportation Facilities, from time to time, or to refund the same.

"Borough" shall mean the Borough of Pottstown, Montgomery County, Pennsylvania, a municipal corporation of the Commonwealth, acting by and through its Council, a party thereto.

"Capacity" shall mean the daily quantity of Sewage flow measured in the manner described herein or, as applicable, determined by the Consulting Engineers, calculated in the manner approved by governmental bodies having jurisdiction, measured in GPD or MGD.

"Certified Public Accountant" shall mean a person, who shall be Independent, appointed by the governing body of a Municipality or PBA, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the Commonwealth.

"Common Transportation Facilities" shall mean any underground pipeline or pipelines, operated and maintained by the Borough, and used, *inter alia*, for the transportation of Sewage, regardless of its concomitant use by the Borough to collect Sewage within the PBA Sewage Collection System, now or hereafter used in common by the Borough and the Townships for the transportation of Sewage.

"Commonwealth" shall mean the Commonwealth of Pennsylvania.

"Consulting Engineer" or "Consulting Engineers" shall mean a person who shall be Independent, appointed, by the governing body of PBA and/or the Borough, qualified to pass upon engineering questions relating to Sewage collection, transportation, treatment and/or disposal systems and having a favorable reputation for skill and experience in supervising construction and operation of such systems. He shall be a professional engineer duly registered under laws of the Commonwealth. If such person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth.

"Consulting Engineers' Certificate" shall mean a certificate executed by Consulting Engineers.

"Corrective Action Plan (CAP)" shall mean a Plan required to address the planning, design, financing, construction and operation of the Sewage Facilities that may be necessary to provide a Requested Capacity that will meet anticipated demands for a reasonable time in the future and resulting in a project that is consistent with this Agreement and applicable official Plans approved under the Pennsylvania Sewage Facilities Act (Act 537). A CAP shall include,

Modified flow of Record - Anticipated flow based on repairs - it does not state what happens if no "actual reduction" is realized.

but not be limited to, setting forth steps to be taken by the contributing Municipality to prevent the Requested Capacity from being exceeded, and a Schedule showing the dates each step toward compliance with the Agreement shall be completed. If necessary, to address exceedance of the Requested Capacity, it will include limitations on, and a program for control of, new connections to the Sewage Facilities. A CAP may include a projection of the anticipated flow reduction. Where flow reduction projections are applicable, they shall be determined by the PBA Engineer. The Municipality will be required to provide data, as requested, to the PBA Engineer to assist in determination of the flow reduction. Upon completion of elements of a CAP, a Municipality shall receive the flow reduction credit associated with the improvements, as listed in the CAP, and the Flow of Record shall be modified for planning purposes. The Modified Flow of Record will remain in effect for a three (3) year period after the completion of the CAP. At the end of the three (3) year period, the Modified Flow of Record calculation, associated with the particular CAP, will be terminated, and the Flow of Record will be recalculated as defined in this Section.

"Costs", "Costs of Acquisition" or "Costs of Construction", without intending to limit any proper definition thereof under sound accounting or engineering practice, shall mean and include, with respect to any improvements or additions to the Treatment Plant or Common Transportation Facilities:

- A. Obligations incurred and payments made or required to be made by PBA and/or the Borough to workmen and laborers or to contractors, builders, suppliers and materialmen;
- B. Interest on Bonds issued to finance acquisition or construction during the design, acquisition or construction periods with respect to any particular series of Bonds;
- C. Administrative expenses of PBA and/or the Borough relating to design, acquisition or construction, including the financing thereof, if applicable;
- D. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the construction; amounts of any damages incident to or consequent upon acquisition or construction; and payments or restoration of property damaged or destroyed in connection with construction;
- E. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable for carrying out purposes of PBA and/or the Borough relating to the construction, including, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, including the Treatment Plant, or portions thereof, which can be operated as part of the construction and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;
- F. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any

governmental regulatory authority related to construction of any part of the construction, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;

G. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations therefore, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any design, acquisition or construction and the financing thereof;

H. Expenses of audits, initial compensation of the trustee or paying agent with respect to Bonds of any series issued to finance design, acquisition or construction; fees and expenses of the trustee or paying agent relating to the Construction Fund, if any; financing costs, fees and expenses, including compensation and expenses of a financial adviser, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses; advertising expenses; insuring bondholders against the risk of nonpayment of the principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by PBA and/or the Borough and/or the Townships in connection with preparing this Service Agreement, financing acquisition or construction and issuing Bonds to finance acquisition or construction;

I. Other costs, charges and expenses incident to completion of the construction which properly are chargeable to the cost of design, acquisition or construction under sound accounting or engineering practice;

J. Reimbursement to PBA and/or the Borough for advances made by it or them for any of the above items, including any interest paid or required to be paid by PBA and/or the Borough with respect to any such advances, or for any other costs incurred by PBA and/or the Borough or for work done by PBA and/or the Borough, which properly are chargeable as costs related to financing acquisition or construction;

K. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;

L. Any sums required to reimburse PBA and/or the Borough or to refund or pay any Bonds or other indebtedness incurred by PBA and/or the Borough, including payment of obligations of PBA and/or the Borough, with interest thereon, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and,

M. Interest on and issuing costs of any Bonds issued by PBA in anticipation of receipt of federal or state grants, if any, less any interest income earned thereon.

"Debt Service Charge" shall mean the charge calculated pursuant to Section 5.01 hereof and applicable to the extent provided in Section 5.02; provided, however, that with respect to any refunding bonds issued to refund the Bonds, the Debt Service Charge shall be the lower of the Debt Service Charge on the Bonds, or the Debt Service Charge on the refunding bonds, unless the Municipalities otherwise consent.

"DEP" shall mean the Department of Environmental Protection of the Commonwealth of Pennsylvania.

"Fiscal Year" shall mean the fiscal year of the applicable Municipality as provided by laws of the Commonwealth which, unless otherwise stated, shall be a calendar year.

"Flow of Record" shall mean the highest Maximum Three (3) Month Flow of Record over the last thirty-six (36) months. The initial thirty-six (36) month period will be calculated to include from *(date of execution of Agreement)*. ✓

"GPD" shall mean gallons of Sewage per day.

"Independent" shall mean, with respect to a Certified Public Accountant and Consulting Engineers, a person who is Independent in fact and who is not a member of the Board, officer or employee of any Municipality or any elected or appointed official or employee of any Municipality, or which is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the Board, officer or employee of any Municipality, or an elected or appointed official or employee of any Municipality; provided, however, that the fact that such person is retained regularly by any Municipality shall not make such person an employee within the meaning of this definition.

"Lease" shall mean an Agreement of Lease between PBA, as Lessor, and the Borough, as Lessee, more particularly described in the preamble hereof, and such other or future agreements conveying a leasehold interest to the Borough in the PBA Sewage Collection System, the Treatment Plant and/or the Common Transportation Facilities, as such shall exist, from time to time.

"Lower Pottsgrove Authority" shall mean the Lower Pottsgrove Township Authority, a municipality authority incorporated by appropriate action of Lower Pottsgrove Township under laws of the Commonwealth, a party hereto.

"Lower Pottsgrove Township" shall mean the Township of Lower Pottsgrove, Montgomery County, Pennsylvania, a political subdivision of the Commonwealth, acting by and through its Board of Commissioners, a party hereto.

"Maximum Month Flow (MMF)" shall mean the highest monthly flow during a calendar year.

"Maximum Three (3) Month Flow (MTMF)" shall mean the highest average flow for any three (3) month consecutive period during a twelve (12) month period.

"MGD" shall mean millions of gallons of Sewage per day.

"Modified Flow of Record" shall mean the Flow of Record minus the flow reduction credit assigned to a particular CAP.

"Municipality" or "Municipalities" shall mean, individually or collectively, as applicable and appropriate, PBA, the Borough, and/or the Townships.

"O&M Charge" shall have the meaning given in Section 6.01 hereof.

Amended Appendix A-25

"Operating and Maintenance Cost" shall have the meaning given in Section 6.02 hereof.

"PBA" shall mean Pottstown Borough Authority, a municipality authority, incorporated by appropriate action of the Borough under laws of the Commonwealth, a party hereto.

"PBA Sewage Collection System" shall mean the Sewage collection and transportation system facilities presently existing or hereafter to be acquired and/or constructed by PBA, for use and operation by the Borough, together with all appurtenant facilities and properties which have been acquired or hereafter shall be acquired in connection therewith, excluding the Common Transportation Facilities.

"Peaking Factor" shall mean the MMF or MTMF divided by the AAF for the same period.

"Person" or "Persons" means an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipality, a municipality authority or any other group or entity.

"Project" shall mean the construction of certain alterations, additions and improvements to the Treatment Plant and/or the Common Transportation Facilities, and other related and necessary appurtenant facilities.

"Projected Flow" shall mean:

A. Projected Flow will be the calculated flow from developments with approved planning modules, either during or prior to construction. The Projected Flow is the sum of residential and non-residential flow for the development.

B. Residential flow projections will be based on flow per Equivalent Dwelling Unit ("EDU"). Typically, the residential per EDU AAF will be 200 gallons per day (gpd), and the per EDU MTMF will be 300 gpd. If deemed necessary by the Consulting Engineer, the Municipality will determine specific AAF and MTMF gpd/EDU rates for the proposed development. These rates will be backed up by water meter data and/or metered sewage flows (3 year history) from developments of a similar age and type of property usage or, if requested, by an alternative method deemed suitable by the Consulting Engineer.

C. Non-residential flow projections will be based on water consumption data (3 year history) from an existing similar facility. This data will be used to predict AAF and MTMF (noting the time of year that peaks will occur) for the proposed development.

"Requested Capacity" shall mean Capacity in the Treatment Plant in the quantities described in Section 4.01 hereof, as such quantities may, from time to time, be amended, allocated to each Municipality and reserved for its respective and exclusive use. The Requested Capacity shall be expressed in terms of the MTMF discharged from the Municipality in question.

"Service Agreement" shall mean this document and any amendments and/or supplements hereto.

"Sewage" shall mean domestic sanitary sewage and/or industrial wastes, as such phrases usually and customarily are used by sanitary engineers.

"Sewage Collection System" shall mean the Sewage collection and transportation system facilities existing or hereafter to be acquired and/or constructed by each respective Township, for use and operation by it, together with all appurtenant facilities and properties which have been acquired or hereafter shall be acquired in connection therewith, excluding the PBA Sewage Collection System and the Common Transportation Facilities.

"Total Suspended Solids" (TSS) shall mean the total suspended matter that either floats on the surface of or is suspended in wastewater and which is removable by laboratory filtering.

"Township" shall mean Upper Pottsgrove Township.

"Townships" shall mean Lower Pottsgrove Township and Lower Pottsgrove Authority, collectively, Upper Pottsgrove Township and West Pottsgrove Township.

"Transportation Charge" shall mean the charge payable to the Borough, in connection with certain costs and expenses associated with the Common Transportation Facilities, calculated pursuant to Section 6.03 hereof.

"Treatment Plant" shall mean the Sewage transportation, treatment and disposal facilities owned by PBA and operated by the Borough.

"Unused Requested Capacity" shall be calculated by subtracting the sum of the Flow of Record and the Projected Flow from the Requested Capacity, expressed in terms of MTMF. ✓

"Upper Pottsgrove Township" shall mean the Township of Upper Pottsgrove, Montgomery County, Pennsylvania, a political subdivision of the Commonwealth, acting by and through its Board of Commissioners.

"West Pottsgrove Township" shall mean the Township of West Pottsgrove, Montgomery County, Pennsylvania, a political subdivision of the Commonwealth, acting by and through its Board of Commissioners.

ARTICLE II

CONSTRUCTION AND OPERATION OF SEWAGE COLLECTION SYSTEMS

SECTION 2.01. Construction and Operation of Sewage Collection Systems. PBA and the Borough will be solely responsible for all costs and expenses related to the acquisition, construction, operation and maintenance of the PBA Sewage Collection System and Common Transportation Facilities, and the Township will be solely responsible for all costs and expenses related to the acquisition, construction, operation and maintenance of its Sewage Collection System.

SECTION 2.02. Connection with Sewage Collection Systems. The Township shall be solely responsible for continuously maintaining connection of its Sewage Collection System to the Treatment

Plant and/or the Common Transportation Facilities, as applicable, at the existing point or points of connection or such other point or points as shall be agreed upon by the Borough and PBA.

SECTION 2.03. Cooperation; Sharing of Information. Each Municipality agrees, to the extent possible and economically practicable, to cooperate and share pertinent information with the other Municipalities in facilitating the construction, maintenance and/or operation of its respective Sewage Collection System; provided, however, that no Municipality shall be financially or otherwise responsible for the Sewage Collection System of another Municipality unless agreed to, in writing, by it.

ARTICLE III

CONSTRUCTION, PREPARATION OF PLANS AND SPECIFICATIONS; TERM OF SERVICE AGREEMENT; EXPENSES

SECTION 3.01. Construction. The Township designates PBA and the Borough to operate and ~~maintain the Treatment Plant and the Common Transportation Facilities, and any enlargements, additions, improvements and modifications thereto.~~

SECTION 3.02. Term of Service Agreement. Subject to the terms and conditions set forth herein, each Municipality shall have the right to the Requested Capacity allocated to it pursuant to Section 4.01, for the greater of thirty (30) years from the date hereof, or the term of any Bonds. At the expiration of the current term, or any subsequent term, the Agreement will automatically renew for an additional thirty (30) year period, absent either party giving the other twenty-four (24) months written notice prior to the expiration of the then current term of its intention not to renew the Agreement.

SECTION 3.03. Preparation of Plans and Specifications. The parties hereto agree that the acquisition and construction of any improvements or additions to the Treatment Plant and Transportation Facilities shall be in accordance with plans and specifications prepared or to be prepared by the Consulting Engineer to the PBA.

SECTION 3.04. Grants. The Townships and/or Authority may seek, apply for and accept any aid, grants, subsidized loans or other beneficial programs from any federal, state or other governmental agency for use in constructing, modifying, enlarging, improving or adding to its respective Sewage Collection System, including the PBA Sewage Collection System. Proceeds from such sources shall be applied by the Townships or Authority receiving the same in its discretion.

Proceeds of any grants, reimbursements, subsidies or other payments received by the Borough with respect to the Treatment Plant or the Common Transportation Facilities shall be applied to the Costs thereof or to costs and expenses of operation of such facilities so that each party hereto will derive benefit therefrom proportionate to its Treatment Plant Capacity, in the case of capital Costs, or its metered flow in the case of Operating and Maintenance Costs.

ARTICLE IV

REQUESTED CAPACITY

SECTION 4.01. Allocation of Requested Capacity. The parties hereto agree that Township and Borough shall have the right to discharge Sewage into, for treatment by, the Treatment Plant in the respective quantities set forth in Exhibit "A" hereto, constituting the Requested Capacity of Township and Borough, as such quantities may be amended, from time to time, under the terms hereof.

If it is determined, at any time, that the total Capacity of the Treatment Plant, as certified by the Consulting Engineers, exceeds the designed or rated Capacity of such Treatment Plant, then the excess of such total actual Capacity over the designed or rated Capacity shall be allocated pro rata among the Townships and the Borough on the basis of the then Requested Capacity of each Municipality in the Treatment Plant, as designed. Likewise, if the total actual Capacity shall be less than the designed or rated Capacity of such Treatment Plant, then such reduced Capacity shall be similarly allocated pro rata among the Townships and the Borough on the basis of the then Requested Capacity of each Municipality as a reduction in such Requested Capacity. To the extent that such adjustments result in a change in the Requested Capacity of any Municipality, such adjustment shall be reflected by an amendment to Exhibit "A".

In order to assure the financial feasibility and financial integrity of the Treatment Plant, the Township and Borough covenant and agree that neither will discharge Sewage into the Treatment Plant, in such a volume as may jeopardize the Requested Capacity assured any other Municipality, except as may be permitted hereunder.

If the Township or Borough discharges Sewage into the Treatment Plant in a volume that jeopardizes or threatens to jeopardize the Requested Capacity assured another Municipality, as provided hereunder, and the Township or Borough does not take immediate steps to correct such violation, and no other Municipality is willing or able to rent or sell a portion of its Requested Capacity to the Township or Borough under the terms hereof, any or all of the nonviolating Municipalities may bring suit at law or in equity in the Court of Common Pleas of Montgomery County, Pennsylvania, or other Court of competent jurisdiction, to compel appropriate corrective action. The violating Municipality agrees to pay the costs and expenses, including legal fees, of any such legal action.

On a quarterly basis for each calendar year, the Borough shall advise the Municipality of the current Unused Requested Capacity, based on Flow of Record and Projected Flow. When the Flow of Record plus the Projected Flow is within ninety-three percent (93%) of the Requested Capacity, the Municipality shall, within one hundred twenty (120) days, provide an acceptable CAP to the Borough.

While a CAP is being prepared and/or implemented, and is following the approved and practical time schedule, the Borough will continue to certify Planning Modules for Chapter 94 consistency in accordance with the terms of this Agreement. If Flow of Record plus Projected Flow exceeds the Requested Capacity, further Planning Modules will not be certified by the Borough.

SECTION 4.02. Rental or Transfer of Requested Capacity. Should the Township or Borough be discharging Sewage into the Treatment Plant in a volume less than its then Requested Capacity (as adjusted as provided herein), such unused Requested Capacity shall be deemed to be available for rental by the other Municipalities. When the Maximum Month Flow of any Municipality discharging Sewage directly or indirectly into the Treatment Plant is in excess of the Requested Capacity (adjusted as herein

provided), such Municipality shall be deemed to rent such excess Capacity for the entire calendar year in which such excess Discharge occurred. Capacity shall be leased first from the Borough to the extent that the Borough is not then utilizing all of its Requested Capacity, or if the Borough is utilizing all of its Requested Capacity or otherwise declines to rent a portion of its Requested Capacity, then from the Municipality with the largest amount of unused Requested Capacity. The amount of Capacity rented shall be determined by calculating the average daily volume of discharge, measured in MGD in accordance with Section 4.03, attributable to such lessee Municipality for the calendar month in which the volume of discharge exceeded the lessee Municipality's Requested Capacity in MGD, which shall be deemed to be the volume by which such lessee Municipality exceeded its Requested Capacity during the entire calendar year in question. If there has been no capital contribution by the lessee Municipality as permitted by Section 5.02, then such Municipality discharging Sewage in excess of its Requested Capacity shall pay therefore the amount obtained by dividing the total debt service and coverage applicable to the Treatment Plant for the applicable calendar year by the total Requested Capacity of all Municipalities resulting in the debt service per MGD, and multiplying that figure by the total of the excess Sewage deemed to be discharged by the lessee Municipality during such Calendar year, and multiplying the product by two (2) (Capital Cost Recovery Factor), illustrated as follows:

LM = Lessee Municipality

Hypothetical Example:

Average Daily Sewage Discharged by LM During Calendar Month		.90 MGD
- <u>Requested Capacity of LM</u>	-	<u>.80 MGD</u>
= Capacity Rented by LM For Entire Year		.10 MGD
Annual Debt Service and Coverage For Treatment Plant		\$2,400,000/
/ <u>Total Requested Capacity of All Municipalities in Treatment Plant</u>	/	<u>15.60 MGD</u>
= Debt Service Per MGD	=	\$ 153,846
Debt Service Per MGD		\$ 153,846
x <u>Capacity Rented by LM For Entire Year</u>	x	<u>.10 MGD</u>
= Debt Service Attributable to Rented Capacity		\$ 15,385
Debt Service Attributable to Rented Capacity		\$ 15,385
x <u>2 (Capital Cost Recovery Factor)</u>	x	<u>2</u>
= Annual Rental Payable by LM to Lessor Municipality		\$ 30,770

If there has been a capital contribution by the lessee Municipality as permitted by Section 5.02, then the Average Annual Debt Service shall be used in substitution for the applicable annual debt service referred to above or such other method of calculation as shall be equitable to all parties. The Capacity thus rented shall be deemed to be rented annually by such Municipality until the lessor Municipality determines, in its sole discretion, that it no longer desires to rent Capacity, at which time the lessee Municipality shall surrender such Capacity rented by it and shall, at its sole expense, replace the

capacity rented by it by the purchase or construction of Capacity or otherwise as may be permitted hereunder, so that the lessor Municipality will have access to its total Requested Capacity. In no event shall any rental of Capacity be construed to increase the Requested Capacity of the lessee Municipality unless such Capacity is sold to the lessee Municipality by the lessor Municipality, in writing, which writing shall be furnished to all Municipalities. Any sale of Requested Capacity shall result in an appropriate readjustment of the Debt Service Charges, if any, payable by the purchaser and seller Municipalities and an amendment to Exhibit "A" hereof to reflect the increased share of debt service payable by the purchaser and a decrease in the future debt service payable by the seller.

The rental fee owed by the lessee Municipality, together with the proposed distribution thereof to the lessor Municipality, shall be shown as separate items in the annual statement furnished under Section 7.04. Any rental fees owed by a lessee Municipality shall be paid to the lessor Municipality within sixty (60) days of receipt of said annual statements, or the rental fees may be applied by the Borough to the respective charges owed by each hereunder, at their option. Any rental fees owed by the Borough shall be credited against the Debt Service Charge and/or the O&M Charge payable by the lessor Municipality on the next applicable payment date.

If any rental due and payable under this Section shall not be made as herein provided, interest shall accrue thereon at the rate as provided in Section 7.06.

Nothing in this Section or elsewhere in this Service Agreement shall be interpreted to prevent the Township or Borough from assigning, leasing, or selling to another Municipality any portion of its Requested Capacity (as set forth in Exhibit "A" hereto), provided that any such assignment, lease or sale shall not cause the Township or Borough to be in violation of any requirements of a governmental agency.

Except as permitted by Section 10.10, if a Township is undertaking a CAP, it may not transfer any portion of its Requested Capacity (as set forth in Exhibit "A" hereto) to any Person who is not one of the Municipalities, without the consent of PBA and the Borough.

Notwithstanding anything to the contrary stated herein, if a Municipality exceeds its Requested Capacity solely due to a reduction in its Requested Capacity, as provided by Section 4.01, the rental fee to be charged to the Municipality requiring additional capacity shall, on an annual basis, be as provided for in this Section 4.02, but shall not include the Capital Cost Recovery Factor. Such rental shall continue for a period of twenty-four (24) months, during which time the Municipality shall take whatever corrective action is necessary to reduce its MMF to the WWTP in an amount equal to or less than the reduced Requested Capacity. If, after the twenty-four (24) month period, the Municipality's MMF still exceeds the Requested Capacity, it shall be deemed to have rented any required additional capacity in accordance with the provisions herein, including the Capital Cost Recovery Factor.

SECTION 4.03. Measurement of Flow. The volume of discharge shall be determined by at least monthly inspection by the Borough of the Sewage flow meters heretofore installed or hereafter to be installed by each Township at the point or points of discharge from each respective Sewage Collection System to the Treatment Plant or the Common Transportation Facilities, as applicable.

The volume of discharge attributable to the Borough shall be measured by subtracting the total flow measured at all such Township Sewage flow meters from the volume of discharge measured at the flow meter or meters located at the Treatment Plant.

In instances where, in the opinion of the Consulting Engineer, volume of discharge, or portions thereof, by a Municipality cannot be accurately measured by a particular flow meter by reason of malfunction of the meter, the volume of Sewage discharge shall be measured by estimates using one (1) of the following methods: (a) according to the number of "Equivalent Dwelling Units," as that term shall be defined by the Consulting Engineer, from time to time, constituting improved properties served by the particular Sewage Collection System, or portion thereof, discharging Sewage through such flow meter or point of discharge; (b) measured or estimated water consumption by the applicable customers of the Municipality; (c) based upon a monthly average of Sewage flow measured at such location during a preceding twelve (12) month period selected by the Consulting Engineer; or (d) use of Graphical Correlation of flows based on the prior four (4) quarters of recorded data, as developed by the Consulting Engineer. The use of Graphical Correlation of flows shall be the preferred method of estimating flows whenever sufficient suitable historic data is available with which to develop the graph. The determination by the Consulting Engineer shall be conclusive.

Metered flow shall be inspected and recorded by the Borough at least once each month, which information shall be forwarded to the Township within a reasonable time thereafter. Flow meters shall be available for inspection at all times by the Borough. Subject to the requirement for estimates described above, the readings set forth at said flow meters shall constitute conclusive evidence of the amount or volume of Sewage flow discharged by each Municipality into the Treatment Plant or the Common Transportation Facilities, as applicable. Upon request of the Borough, each Township will acquire and install equipment for telemetering of information from flow meters to a recording device in the Treatment Plant. The cost of reading such telemetering devices shall constitute an Operating and Maintenance Cost. Existing and future flow meters shall be installed, maintained and owned by the Township, at its sole cost and expense, but shall be read by the Borough as an Operating and Maintenance Cost. Flow meters used in common by the Borough and any other Township shall constitute part of the Common Transportation Facilities. The Borough shall have the right to review and approve all plans and specifications for, and installation of, such future installed flow meters.

Flow meters shall be calibrated at least annually by the Borough through the employment of a Contractor qualified to calibrate the meters involved. The Borough shall first obtain a cost proposal for the calibration, which proposal, along with the qualifications of the Contractor involved, shall be provided to the Township for approval. If the Township fails to respond within thirty (30) days after receiving the cost proposal and qualifications, it shall be assumed that the proposal and qualifications of the Contractor performing the work are acceptable, and the Township will be responsible for the costs incurred for the calibration work. The Borough may, upon thirty (30) days notice to the Township, contract with an Independent third party for the calibration or recalibration of any flow meter suspected by the Consulting Engineers to be malfunctioning or otherwise inaccurate. The cost of such calibrations shall be paid by the Township which owns the particular flow meter if the flow meter is determined to be defective, or the Borough if the flow meter is not found to be defective. In the event of malfunction, such Township will repair or replace the offending flow meter if, in the opinion of the Consulting Engineers, such repair or replacement will reasonably cure the malfunction. Any Township may request the Borough to re-calibrate flow meters located at the Treatment Plant. The cost of such calibration shall be paid by the Township requesting same if no malfunction is determined or by the Borough if such calibration reveals a malfunction. In the event of a malfunction, the repair or replacement of the offending flow meter shall constitute an Operating and Maintenance Cost.

In cases where the Consulting Engineer has determined that it is not feasible to measure the flow and where the projected AAF is less than one thousand (1,000) gpd, the flow shall be estimated using one (1) of the following methods as determined by the Consulting Engineer: (a) wherever practical, the water meter reading for the specific property will be considered the Average Daily Flow; or (b) where

applicable, the specific property will be assigned an average flow per EDU. The determination by the Consulting Engineer shall be conclusive.

If any party asserts that any determination of any type by the Consulting Engineer is inaccurate or incorrect for any reason, that determination may be contested. The burden of proof shall be upon the party making such assertion. Such burden shall be established by a preponderance of the evidence that the Consulting Engineer's determination is inaccurate or incorrect. A failure to satisfy such burden of proof will result in the decision of the Consulting Engineer being found to be accurate and correct. The determinations by the Consulting Engineer shall be binding on each party unless, within thirty (30) days of the delivery of written notice to such party of such determination, the party shall contest, in writing, such determination. The written notice contesting the determination of the Consulting Engineer shall include the basis, along with supporting evidence, for contesting the determination. In the event that a contest to a determination of the Consulting Engineer is not resolved, the matter will be referred to a neutral Consulting Engineer agreeable to all involved parties for a resolution, which resolution shall be binding. The cost of such neutral Consulting Engineer will be borne by the protesting party. The issues submitted to the neutral Consulting Engineer shall be decided by such neutral Consulting Engineer based upon generally accepted engineering principles and practices. The neutral Consulting Engineer shall present his or her findings in a written report.

ARTICLE V

DEBT SERVICE CHARGE, CAPITAL CONTRIBUTION AND CONSTRUCTION

SECTION 5.01. Calculation of Debt Service Charge. Following the receipt of construction bids for the Project, the Consulting Engineer will submit to the respective Municipalities a report in reasonable detail and in writing as to the amount of each bid received and the lowest responsible bidders to whom contracts are to be awarded. The report will set forth the estimated Costs directly attributable to design, acquisition or construction for which funds are anticipated, together with an allocation of indirect costs, i.e., legal fees related to financing, debt service reserve fund, if any, financial printing, financing costs, trustee fees, bond insurance, notary, advertising, etc., and including the amounts required to retire any Bonds previously issued to pay Costs.

The underwriter or lender of PBA will provide to the respective Municipalities, if Bonds are required, each Municipality's share of the Costs of the Project for purposes of computing each Township's capital contribution, or in lieu thereof, an estimate of the total debt service, including coverage requirements, if any, attributable to each Municipality and the Project after taking into consideration any interest earned or anticipated to be earned on any proceeds of the Bonds during the period of design, acquisition or construction of the Project and other funds available for the purpose.

Except as provided in Section 5.02 hereof, an annual Debt Service Charge shall be paid by each Township to the Borough equal to its proportionate share of the total annual debt service and cover payable on the Bonds outstanding, less any proportionate share of interest income anticipated to be received on any reserve or similar fund, allocated on the basis of: (a) the Requested Capacity of each Municipality; (b) the increase represented thereby over the allocated capacity of each Municipality in the Treatment Plant; and, (c) the term of payments requested by the Municipality. Payment of the Debt Service Charge and Transportation Charge shall commence upon issuance of the Bonds, taking into account capitalized interest, if any, on deposit with PBA, and expected investment earnings on bond proceeds, or at such other time as may be required to assure the timely payment of debt service on the

Bonds.

SECTION 5.02. Capital Contribution. In lieu of payment of all or a portion of the Debt Service Charge and Transportation Charge, each Township shall have the right to make a one time, lump sum capital contribution to PBA not later than thirty (30) days prior to the date established for the sale of the Bonds to an underwriter or a lender, unless otherwise agreed to by PBA, to be credited against the base upon which such Township's Debt Service and/or Transportation Charge are calculated, as appropriate, less those proportional expenses directly attributable to issuance of the Bonds, i.e., bond discount, legal printing, engineering expenses related to reports required to be prepared in anticipation of or settlement of the Bonds, the portion of bond counsel's fee attributable to issuance of tax opinion, other related opinions and legal work performed relating directly to the bond issue, paying agent's fees, underwriter's or bank's fees, but only as they relate to marketing the bond issue or purchasing the note, and such other costs and expenses directly related to issuance of the Bonds. Such Township shall advise PBA of its intention to make a capital contribution at least twenty (20) days prior to the date established for payment of such contribution. It is the intention of this Section that if a Township makes a capital contribution in lieu of payment of all or a portion of the Debt Service Charge and/or the Transportation Charge, it will only be charged that share of expenditures necessarily made by PBA, if any, by reason of its issuance of Bonds to pay such Township's portion of the applicable Costs of the Project prior to the tendering of such capital contribution. If a Township tenders a capital contribution prior to issuance of Bonds of the Borough, or such Bonds exclude the Costs attributable to such Township, then the Township shall not be responsible for any costs or expenses of issuance of the Borough's Bonds.

PBA may, in its discretion, accept and apply any capital contributions tendered by a Township following issuance of the Bonds and, if appropriate, make an adjustment to such Township's Debt Service Charge and/or Transportation Charge. In the event PBA finances the Project in advance of the receipt of bids, any subsequent capital contribution intended to relieve a Township of payment of the Debt Service Charge and/or the Transportation Charge must be sufficient to refund and retire in full such Township's applicable share of PBA's Bonds then outstanding, including the Costs associated with issuing such Bonds and redemption of the Bonds.

SECTION 5.03. Construction Fund. PBA shall deposit all capital contributions delivered by any Municipality pursuant to Section 5.02, together with the proceeds of the Bonds issued for the Project, and all other amounts received allocable to the Cost of the Project, in a Construction Fund. Proceeds of each such capital contribution shall be deposited in a segregated account within the Construction Fund maintained with the Borough's Trustee, in the name of the appropriate Township, and invested at the direction of the Township and the investment earnings shall inure to the benefit of such Township. The proceeds of each such capital contributions shall be applied, to the extent practicable, to the Costs of the Project proportionate to the Township's Requested Capacity and use of the Common Transportation Facilities. Proceeds of Bonds deposited in the Construction Fund shall be held, secured and invested by PBA in its discretion.

SECTION 5.04. Payments From the Construction Fund.

(a) PBA agrees that payments from the Construction Fund shall be made only upon duly executed requisitions prepared by PBA, and certified by the Consulting Engineers or PBA's Solicitor, copies of which shall be available to each Municipality. Approval of each requisition shall be evidenced by the signature of a designated officer of PBA. Each requisition shall state:

- (1) The amount requested;

(2) The obligation for or on account of which the requisition is made, showing separately the total obligation, the amount already paid, if any, and the balance remaining to be paid;

(3) The person to whom the payment shall be made and his address;

(4) That the item for which requisition is made has not been paid; and,

(5) That, with respect to a final payment of such item, there are no vendors', mechanics' or other liens or secured transactions which will not be discharged by such payment.

(b) Each such requisition for construction Costs also shall contain a certificate of the Consulting Engineers certifying approval of the requisition and further certifying that such obligation has been properly incurred and is then due and unpaid and that, insofar as such obligation was incurred for work, materials, supplies or equipment, such work was actually performed or such materials, supplies or equipment were actually installed in or about the construction of the Project, or delivered at the site of the work for that purpose, or delivered for fabrication at the place approved by the Consulting Engineers; and that all work done and materials, supplies or equipment furnished for which such obligation was incurred are, in the Consulting Engineers' opinion, in accordance with the plans and specifications for the Project.

SECTION 5.05. Completion. Upon completion of the construction of the Project, PBA shall deliver to each Municipality a certificate of the Consulting Engineers which shall recite:

(a) The fact of such completion; and,

(b) In reasonably itemized form, the actual total Costs of the Project, adjusted as appropriate as provided in Section 5.02, the amount of any applicable insurance proceeds or federal or state grants received or to be received and appropriate adjustments in respect of net income and gain or loss from investment of the money in the various accounts within the Construction Fund; and,

(c) The applicable provisions of this Section so as to give notice to the party receiving the same as to the deadline for responding.

If any Municipality's share of the actual Costs of the Project is less than the total amount deposited by it pursuant to Section 5.02 of this Agreement, adjusted as appropriate as provided in Section 5.02, PBA will refund the excess of such deposits to such Municipality within sixty (60) days of the date of such certificate unless, within forty-five (45) days of receipt of said certificate, such Municipality has requested in writing a readjustment or audit and, in the event of such request, said excess share shall be refunded within fifteen (15) days after the matter is resolved. Any remaining proceeds attributable to a Municipality which has not elected to make a capital contribution shall be applied to redeem Bonds or be invested by PBA so as to effectuate a proportionate reduction in the Debt Service Charges of such Municipality.

SECTION 5.06. Financing Deficiencies and Extraordinary Repairs or Improvements.

(a) In the event that any money available for the Costs of the Project are determined

by PBA to be insufficient, or if additional funds are required for extraordinary repairs or improvements to the Treatment Plant or Common Transportation Facilities recommended by the Consulting Engineers, PBA shall request an additional capital contribution from respective Municipalities which shall be payable within ninety (90) days from such request, unless otherwise extended by mutual agreement, or at the Municipality's request, finance such deficiencies or such capital projects, as needed, and such Costs, including interest, legal fees and other financing costs, shall be paid by the Municipalities proportionately, in the manner provided for the payment of the Debt Service Charge, in the case of the Treatment Plant, or the Transportation Charge, in the case of the Common Transmission Facilities, and, if appropriate, adjustments shall be made to the Debt Service Charge and/or Transportation Charge required to be paid by the Municipality or Municipalities, as applicable, such adjustment to be calculated in substantially the same manner as provided in this Article for the initial Project.

(b) In the event that any Municipality fails to pay any amount hereunder when such amount is due, PBA may finance such amount in any such reasonable manner and upon any such reasonable terms as PBA, in its sole discretion, may approve. PBA shall be entitled to reimbursement from such Municipality for any amount borrowed, together with any penalties, charges and financing costs paid in connection therewith.

SECTION 5.07. Responsibility of a Particular Municipality. If the Project is required because of the quality or quantity of sewage from a particular Municipality or Municipalities, then only such Municipality or Municipalities causing said problem shall bear the total of the Project in proportion to the amount determined by the Consulting Engineer.

SECTION 5.08. Additions to Treatment Plant.

(a) If a Municipality wishes to acquire additional Capacity and no additional Capacity is available or such Municipality is required to relinquish Capacity leased from another Municipality, as provided hereunder, and such lessor Municipality does not agree to rent or continue to rent any portion of its Requested Capacity, or upon certification by the Consulting Engineers that: (i) the Flow of Record plus Projected Flow of one (1) or more of the Municipalities have exceeded or is expected to exceed ninety-three percent (93%) of their Requested Capacity, as defined in Section 4.01; or, (ii) the Treatment Plant or Common Transportation Facilities are at or are approaching maximum legal Capacity, or otherwise will violate legal requirements; or if a Municipality otherwise desires additional Capacity or other improvements in any portion of the Common Transportation Facilities, the Treatment Plant or other facilities of PBA, then the lessee Municipality, or any Municipality otherwise requiring additional Capacity or other improvements, shall notify PBA and the Borough in writing that it is requesting additional Capacity or intends to undertake a CAP. Within a reasonable time after receipt of such notification, PBA and the Borough shall notify the Municipality, in writing, of the conditions, means and schedule of construction of such improvements, which shall be satisfactory to the Borough's Consulting Engineers as being appropriate for and consistent with the treatment configuration of the Treatment Plant, site limitations and potential adverse impact or indirect costs on any other Municipality.

(b) If PBA agrees to the construction of additional Capacity or other improvements, it shall use its best efforts to obtain appropriate plans and specifications and financing, if necessary, and construct the enlargements, additions, improvements or modifications to the appropriate facility necessary to provide additional Capacity in such quantity and with such design as PBA shall determine. The Municipality or Municipalities receiving the benefit and use

of such additional Capacity or other improvements shall pay for all of the Costs and expenses associated therewith consistent with the terms of this Agreement. Payment of such capital Costs and expenses shall be made in accordance with this Article V and Article VI.

SECTION 5.09. Combined Additions and Upgrading. If, concurrently, a project is required to be undertaken pursuant to Section 5.07 and Section 5.08 and it becomes impossible to directly relate the Costs thereof to either the upgrading requirement or to discretionary expansion, such Costs shall be allocated or equitably apportioned by the Consulting Engineers on the basis of sound and acceptable engineering and/or accounting principles.

SECTION 5.10. Long-Term I/I Plan. The Borough and Township shall develop a Long-Term I/I Plan that shall address, for a minimum five (5) year period, the following:

- (a) Identify the sources of I/I through a comprehensive meter program.
- (b) Ongoing program to address I/I.
- (c) Other items proposed by Municipality.

The first Plan shall be due six (6) months following the execution of this Agreement.

Annual Chapter 94 Reports prepared by the Township shall include steps taken under the Long-Term I/I Plan.

ARTICLE VI

O&M CHARGE

SECTION 6.01. O&M Charge. The Township agrees to pay to the Borough in each calendar year or portion thereof, and the Borough agrees to deposit or set aside in a separate fund each calendar year or portion thereof, for the period of this Service Agreement, beginning when the measurement apparatus described in Section 4.03 is operational and when the first Operating and Maintenance Costs are incurred, and continuing thereafter for as long as this Service Agreement is in effect, subject to the other provisions hereof, an O&M Charge for the sewage treatment services rendered hereunder. Said O&M Charge shall be determined in the following manner: first, the total annual Operating and Maintenance Costs associated with the Treatment Plant and the Common Transportation Facilities shall be determined pursuant to Section 6.02 hereof; second, such Operating and Maintenance Costs will then be allocated to each Municipality in proportion to the measured or estimated volume of Sewage, calculated in accordance with Section 4.03, discharged annually into the Treatment Plant by each Municipality. Until such time as the O&M Charge described herein shall be imposed, the Township shall pay to the Borough, in addition to any Debt Service Charge and/or Transportation Charge payable hereunder, as its share of the Operating and Maintenance Costs associated with the Existing Treatment Plant or the Treatment Plant, as applicable, an O&M Charge equal to the total charge payable by the Township under contracts existing immediately preceding execution of this Agreement for sewage service rendered by the Borough.

SECTION 6.02. Operating and Maintenance Costs. Operating and Maintenance Costs shall mean the total of the following items, each such item being determined for the calendar year or portion thereof under consideration, consisting of all the expenses and costs of effective and reasonable operation, maintenance and repair of the Treatment Plant and the Common Transportation Facilities, including: (a) actual or allocated salaries and wages of administrative, supervisory, operating and maintenance personnel and employees of the Borough engaged in operating and maintaining the Treatment Plant and the Common Transportation Facilities, and administrative functions associated therewith, together with the social security and unemployment taxes, workmen's compensation, insurance premiums, health and accident insurance premiums and pension benefits, or any other similar benefits or costs applicable thereto, prorating such items in accordance with employee's time spent on the Treatment Plant and the Common Transportation Facilities; (b) power, chemicals, fuel, materials, supplies, equipment and tools used or employed for the operation and maintenance of the Treatment Plant and the Common Transportation; (c) costs of routine maintenance and minor repairs (including minor replacements), excluding major items deemed by the Borough and PBA to require financing under Section 5.06, with respect to the Treatment Plant and the Common Transportation Facilities; (d) the fees and expenses of attorneys, Consulting Engineers and Certified Public Accountants for services performed in connection with the management, operation and maintenance of the Treatment Plant and the Common Transportation Facilities; (e) premiums for insurance on the Treatment Plant and the Common Transportation Facilities; (f) cost of hauling, dumping and disposal of residue from the Treatment Plant and the Common Transportation Facilities; (g) fines, penalties or surcharges imposed by DEP or other governmental body having jurisdiction, pertaining to the Treatment Plant, the Common Transportation Facilities or the Project (except as provided in Sections 8.05 and 8.06); and, (h) all other costs and expenses reasonably incurred and properly attributable, under sound engineering and accounting practice, to the administration, operation, maintenance, repair and replacement of the Treatment Plant and the Common Transportation Facilities, as may be constituted from time to time. The sum of such Operating and Maintenance Costs used in calculating the O&M Charge shall be the same for all Municipalities, which shall be allocated as described above. Such sum shall be reduced by any Federal or Commonwealth grants, reimbursements, subsidies or other payments designated by law or regulation for such purposes, together with any interest income anticipated to be earned on operating funds held for such purpose. Written records and accounts of all such expenses and costs and expenses shall be prepared and maintained by the Borough and shall be available to the Township upon its request. It is the express intention of this paragraph that each party hereto shall be required to pay the O&M Charge based only its pro rata share of the net Operating and Maintenance Costs attributable to the actual quantity of Sewage discharged from its Sewage Collection system into the Treatment Plant and/or the Common Transportation Facilities, from time to time.

SECTION 6.03. Transportation Charge. The Township shall pay to the Borough, in addition to the O&M Charge and Debt Service Charge, a Transportation Charge in connection with the future capital costs of those portions of the Common Transportation Facilities from which it derives particular benefit and use. The amount of the Transportation Charge payable by the Township will be the amount agreed to at the time of modifications to the Common Transportation Facilities. The Transportation Charge shall be the only separate charge payable by the Township in connection with the transportation of Sewage in the Common Transportation Facilities.

SECTION 6.04. Surcharge. Any recognizable increase in the Operating and Maintenance Costs arising out of the quality or quantity of effluent discharged by the Township may be reflected in a surcharge imposed by the Borough hereunder, payable by the Township to equitably reflect the additional costs necessary to transport, treat and/or dispose of such effluent. The amount of such surcharge shall be determined by the Consulting Engineers in accordance with sound engineering principles and be payable to the Borough to reduce the O&M Charge and/or Transportation Charge payable by the other

Municipalities, as applicable and appropriate.

ARTICLE VII

PAYMENT OF CHARGES

SECTION 7.01. Estimates of Charges. On or before October 1st of each year, the Borough, based on the actual costs for the Township over the prior consecutive twelve (12) month period, will prepare and submit to the Township a statement approved by the Consulting Engineer showing, in reasonable detail, for the next succeeding calendar year: (a) the estimated amounts to be paid by the Township during such year as its estimated annual Debt Service Charge, O&M Charge and/or Transportation Charge, as applicable and appropriate, determined in accordance with the provisions hereof; (b) the amount, if any, to be credited against the estimated Debt Service Charge, O&M Charge and Transportation Charge for such year as the result of any overpayments or adjustments of payments for any preceding year as provided under Section 7.05 below; (c) any additional charge as provided in Sections 8.05 and 8.06; and, (d) the amount of any prior bill not paid pursuant to Section 7.05, plus interest pursuant to Section 7.06.

SECTION 7.02. Amended Estimates. In the event of an unusual contingency affecting the operation of the Treatment Plant or the Common Transportation Facilities, certified by the Consulting Engineers to require immediate action, an upward revision in the current estimates of the Debt Service Charge, O&M Charge and/or Transportation Charge may be made by the Borough. The Township shall commence making payments, subject to Section 7.08 hereof, and shall adjust as appropriate the rates and charges payable by its customers in accordance with the revised estimates, within sixty (60) days of receipt of notice thereof.

SECTION 7.03. Payments on Estimates. The Township agrees to pay, subject to Section 7.08 hereof, to the Borough its estimated annual Debt Service Charge, O&M Charge and Transportation Charge, in the amounts set forth in the statement described in Section 7.01, in four (4) equal quarterly installments to be paid on or before January 1, April 1, July 1 and October 1 of the applicable calendar year. All funds received by the Borough from the Debt Service Charge, O&M Charge and Transportation Charge shall be invested by the Borough, in its discretion, and any investment income therefrom will be applied to reduce the Operating and Maintenance Costs described in Section 6.02.

SECTION 7.04. Audited Statements. The Borough shall cause to be prepared and certified by a Certified Public Accountant on or before May 31 of each year, commencing in the year following the first year charges are paid hereunder, a report setting forth, in reasonable detail: (a) the debt service and Operating and Maintenance Costs of the Treatment Plant and Common Transportation Facilities paid during the preceding calendar year; and, (b) the final Debt Service Charge, O&M Charge, and Transportation Charge payable by the Township for such year determined in accordance with the provisions hereof. Such report shall contain statements setting forth the amounts of the quarterly payments theretofore made by the Township as the estimated Debt Service Charge, O&M Charge and Transportation Charge and the amount by which the total actual charges exceeded or were less than the aggregate of the quarterly payments and credits theretofore made by or allowed to the Township on account of such estimated Debt Service Charge, O&M Charge and Transportation Charge.

SECTION 7.05. Payment of Actual Charges: Credit for Overpayments. If the actual charges payable by the Township for any calendar year, as shown by the report pursuant to Section 7.04, differs from the total of the payments and credits theretofore made by or to it, based upon the aforesaid estimates, then the Township will pay the amount of any deficiency within thirty (30) days after the delivery of said certified report, and any excess of such payments on account of estimates over the actual charges shall be applied on account of the next succeeding quarterly installment of the appropriate estimated charges.

SECTION 7.06. Interest on Late Payments. If the Township fails to make full payment of any Debt Service Charge, O&M Charge or Transportation Charge or additional charge required to be paid hereunder on or before the specified payment date, there shall be added to the amount thereof owed by the Township interest at a rate equal to the prevailing national prime rate of interest per annum, as published in the Wall Street Journal, or similar publication if not so published, evidencing the base rate on corporate loans at large United States money center commercial banks, or the net interest cost attributable to the Bonds, whichever is greater, determined on and from the due date of such charge to the date on which payment is received.

SECTION 7.07. Private or Bulk Dumping. The Township shall not permit the dumping of bulk Sewage into its Sewage Collection System to private haulers or other Persons engaged in the business of transporting Sewage.

SECTION 7.08. Billing of Township Customers. The Borough, solely as billing agent for the Township, will prepare and issue all bills for Sewage service to the customers of the Township in accordance with the appropriate Township ordinances or resolutions then in effect. The Township shall be ultimately responsible for continuously providing the names and current addresses of all such customers. The Borough shall provide, upon request of the Township, a copy of the current list of customers of the Township. The Borough will collect the funds payable from the Township customers and initially apply therefrom the amounts payable to it hereunder including installments of the Debt Service Charge, the O&M Charge and the Transportation Charge, and any amounts due under Section 7.06, 8.05 or 8.06 at the times set forth herein, and remit to the Township the balance remaining within thirty (30) days after the funds have been received by the Borough. Any deficiencies in the amounts collected by the Borough from Township customers for payment of the sums due hereunder shall be subject to Section 7.06. The Township may discontinue such billing services provided by the Borough upon at least sixty (60) days prior notice to the other Municipalities, and payment of the sums due hereunder shall be collected thereafter from customers by the Township and paid directly to the Borough.

SECTION 7.09. Remedies in the Event of Default. If any Municipality defaults in the payment of any charge required to be paid hereunder, or otherwise defaults in the performance of the terms hereof, PBA and any or all of the other Municipalities may bring an action in law or equity in the Court of Common Pleas of Montgomery County, Pennsylvania, or other Court or tribunal of competent jurisdiction to obtain any or all of the following: (a) a writ of mandamus directing the governing body of the defaulting Municipality to collect by special taxation an amount sufficient to pay the amount in arrears and any expected future deficiencies, in a lump sum or in annual installments, from such special taxes during subsequent years as the Court may require; (b) a temporary restraining order, preliminary and/or permanent injunction and any other appropriate equitable relief; (c) appointment of a special trustee or receiver to collect, segregate and distribute the revenues of the defaulting Municipality and/or to enter and take possession of the facilities thereof; (d) set off against the amounts due the Borough and PBA hereunder any sums otherwise required to be remitted to the Townships under Section 7.08; (e) obtain a money judgment against the violating Municipality and liquidate same as may be authorized by law; and/or, (f) any other relief deemed just and appropriate under the circumstances. The Municipality which is determined by final judgment to have violated this Agreement agrees to pay the costs and expenses,

including legal fees, of any such legal action.

ARTICLE VIII

EFFLUENT QUALITY RESTRICTIONS

SECTION 8.01. Uniform Standards. The Borough has adopted or will adopt uniform Sewage effluent quality standards which will comply with, but not exceed, the requirements of all regulatory authorities. The Township will not discharge or permit the discharge of Sewage from its Sewage Collection System into the Common Transportation Facilities or the Treatment Plant that would violate any of such standards. The Borough will make no changes in said standards except upon ninety (90) days prior notice to the Township, and all such changes will apply equally to all Municipalities.

SECTION 8.02. Compelling Compliance with Standards. The Township shall enact or cause to be enacted an ordinance, in a form acceptable to the Borough, and will keep such ordinance in full force and effect at all times, prohibiting, and providing adequate penalties for, the discharge into its Sewage Collection System of anything violating the above-mentioned effluent quality restrictions of the Borough, and hereby covenants to enforce, and request the enforcement of, as applicable, the provisions thereof when brought to its attention. Such ordinance shall also prohibit and/or regulate the discharge into its Sewage Collection System by any Person of industrial waste, as defined in the applicable regulations of the Borough. The Township will not permit any discharge into its Sewage Collection System except in the manner and in accordance with the provisions of said ordinance, as applicable.

SECTION 8.03. Sampling Facilities. When requested by the Borough, the Township shall install, maintain and operate, at its own expense, sampling equipment or facilities at or near the point that its Sewage Collection System discharges into the Common Transportation Facilities or the Treatment Plant, or such other location requested by the Borough and, upon request of the Borough, will have samples collected and submitted to the Borough or permit the Borough to collect samples. The Township shall install, maintain and operate additional sampling, equipment or facilities at such point of discharge into the Township's Sewage Collection System from a user thereof whose discharge of Sewage, in the opinion of the Consulting Engineer, may be detrimental to the operation of the Treatment Plant or the Common Transportation Facilities, and permit the Borough to obtain samples therefrom.

SECTION 8.04. Reports of Samples. In the event that any report submitted to the Borough analyzing any sample shall state that Sewage discharged from the Township's Sewage Collection System or from a user thereof violates the quality standards and restrictions as established for the Treatment Plant by the Borough, the Township shall have the right to appeal such determination by requesting verification of same by future sampling. Such future samples, as herein referred to, shall be submitted both to an independent water quality lab acceptable to the Borough and with the laboratory making the original evaluation that Sewage being discharged was in violation of such standard. If the results of analyzing the split sample or samples of the two (2) laboratories are consistent within normal tolerances of testing procedures, then these results shall be considered final. Provided, however, that such right of appeal shall not operate to stay remedial action taken by the Borough. The expense of such additional laboratory determinations shall be borne by the Borough should the determination be made that such Sewage is not in violation of the applicable quality standards or by the Township if such final determination supports the findings of a violation of the above-mentioned standards and restrictions.

SECTION 8.05. Treatment of Harmful Wastes. If any Sewage discharged by the Township into the Treatment Plant is in violation of the Borough's standards as determined by this Article and requires special treatment or would be harmful to the Treatment Plant, then the Township will pay the entire cost of any special treatment as a separate charge as provided in Section 7.01, and, the Township, on written notice of violation from the Borough, shall immediately act to enforce or obtain the enforcement of those quality standard Ordinances by connection ban or by providing or requiring pretreatment of such waste in such manner as is provided by said Ordinances or compel disconnection from the Sewage Collection System of the property from which harmful waste is being discharged. Failure by the Township to compel disconnection or pretreatment upon thirty (30) days written notice to same, shall entitle the Borough to suspend accepting the Township's Sewage under this Service Agreement until it complies with the Borough's request and to recover the Costs of any upgrading, enhancements or other remedial action deemed necessary by the Borough as a result of such discharge and collect the same in the manner provided by Section 7.09. The Borough shall be responsible, to the extent permitted by law, for enforcing Sewage quality standards within the Township for which there is a separate agreement requiring it to do so.

SECTION 8.06. Reimbursement For Damages From Improper Discharge. The Township will pay the cost of any damage to the Treatment Plant or the Common Transportation Facilities resulting from discharge of improper waste from its Sewage Collection System in violation of the above-mentioned quality standards and restrictions, within sixty (60) days after notice by the Borough accompanied by the itemized certificate of the Consulting Engineers, and shall indemnify and hold harmless PBA and the Borough with respect thereto.

ARTICLE IX

CONNECTIONS TO EACH SEWAGE COLLECTION SYSTEM, SEWER RENTALS OR CHARGES IMPOSED BY THE TOWNSHIP

SECTION 9.01. Mandatory Connection Ordinance. The Township, in its sole discretion, may adopt an Ordinance in a form satisfactory to the Borough and PBA, requiring all owners of improved property which legally can be required to be connected to such Sewage Collection System to connect therewith, and providing for enforcement of such Ordinance as is permitted by law. The Township also covenants that it will keep, or cause to be kept, such Ordinance or subsequent Ordinance or Ordinances requiring such connections in full force and effect continuously during the term hereof, and to enforce or cause to be enforced the same as may be permitted by law.

SECTION 9.02. User Charges. The Township covenants that it or a municipal authority incorporated thereby, will adopt an ordinance or a resolution, as applicable, imposing sewer rentals or charges upon owners of improved property which shall be connected to its Sewage Collection System for use thereof. The Township also covenants to thereafter keep or cause to be kept such ordinance or resolution or a subsequent ordinance or ordinances or a resolution or resolutions imposing such sewer rentals or charges in full force and effect continuously during the term hereof.

SECTION 9.03. Enforcement. The Township covenants to enforce or to cause to be enforced any ordinance or resolution in effect at any particular time under Section 9.02 and to collect or cause to be collected all amounts becoming due thereunder. If any amounts becoming due thereunder shall not be paid, in accordance with provisions of such ordinance or resolution at the time in effect, the Township

covenants to take or cause to be taken all necessary action to reduce the same to liens and to enforce or cause to be enforced payment of the liens and/or to enforce or cause to be enforced payment of such sewer rentals or charges in any other manner permitted by law.

SECTION 9.04. Level of Charges. The Township covenants that sewer rentals or charges imposed pursuant to Section 9.02, together with any fees, fines and/or penalties resulting from enforcement of the ordinance or ordinances in effect at the time under Section 9.01, shall be at least such that amounts which reasonably may be collected therefrom in each Fiscal Year, beginning upon accrual of the charges payable hereunder, together with: (a) any sums received periodically by it from any Person pursuant to any agreement between it and such Person whereby Sewage of such Person shall be accepted by it for treatment in the Treatment Plant, if such agreement is permitted under provisions hereof; (b) any sums appropriated by it for the purposes from current revenues, within limits then provided by law, or from other legally available funds; (c) any other sums received by it on account of operation of its Sewage Collection System; and, (d) any other monies required to be deposited in its sewer revenue account pursuant to provisions of the applicable agreement of lease or pursuant to its borrowing documents, will be sufficient to provide funds for the following purposes:

(1) Payment by the Township in such Fiscal Year of debt service, operating expenses and other necessary costs and expenses relating to its Sewage Collection System and/or any capital contribution made hereunder; and,

(2) Payment by the Township to the Borough in such Fiscal Year of the Debt Service Charge, O&M Charge, Transportation Charge and/or any other charges payable hereunder to the extent applicable and appropriate for services rendered in connection herewith.

Upon request of the Borough, the Township will submit a certificate of its consulting engineer confirming the foregoing representation, from time to time.

If such collections, receipts, appropriations and deposits in any such Fiscal Year for the Township shall be less than the sum of requirements of subparagraphs (1) and (2) above, the Township covenants that it promptly will adjust or cause to be adjusted, in the manner permitted by law, the sewer rentals or charges so that amounts thereafter to be collected therefrom, together with the other collections, receipts, appropriations and deposits, as aforesaid, shall enable it to comply with requirements of this Section and to eliminate deficiencies of any prior Fiscal Year; and, to the extent necessary, the Township also covenants that if collections, receipts, appropriations and deposits in any such Fiscal Year for the Township shall be less than the sum of requirements of subparagraphs (1) and (2) above, it will provide from its other available current revenues, within limits then provided by law, or from other legally available funds, an amount which, when added to such collections, receipts, appropriations and deposits, will be sufficient to enable it to meet such requirements.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. Insurance: Repairs and Reconstruction. The Borough will insure, or cause to be insured, the Treatment Plant and Common Transportation Facilities with a responsible company or companies authorized and qualified to do business under the laws of the Commonwealth of Pennsylvania,

against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in said Commonwealth and as approved by the Consulting Engineers. Such insurance policies shall be non-assessable. Immediately upon the occurrence of any loss or damage to any part of said Treatment Plant and Common Transportation Facilities which is covered by insurance, the Borough or PBA, as applicable and appropriate, will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by the Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the cost of such repair, replacement or reconstruction.

SECTION 10.02. Inspection. The Township and Borough shall provide each other, from time to time, all information relevant and appropriate to the proper administration of their respective responsibilities under this Service Agreement, or in respect to the interpretation hereof, as, and in such form and detail as, may be reasonably requested and the Township and Borough shall, at all reasonable times and from time to time, permit their representatives to examine and inspect their respective records and physical facilities relevant to the subject matter of this Service Agreement.

SECTION 10.03. Force Majeure. Notwithstanding any other provision of this Service Agreement, neither the Borough or the Township shall be responsible in damages to the other for any failure to comply with this Service Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, breakdown of the Treatment Plant or Common Transportation Facilities or a Sewage Collection System, or other event beyond its reasonable control. The party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with costs to be shared to the extent provided elsewhere herein.

SECTION 10.04. Indemnity. The Township and Borough each agree to indemnify and save harmless the other against all costs, losses or damage on account of any injury to persons or property occurring in the performance of this Service Agreement due to the negligence of such party or its agents or employees.

SECTION 10.05. Severability. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Service Agreement shall be affected; and this Service Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

SECTION 10.06. Headings. The headings in this Service Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

SECTION 10.07. Effective Date. This Service Agreement shall become effective as of the date of execution and delivery hereof by the parties hereto.

SECTION 10.08. Waiver. The failure of a party hereto to insist upon strict performance of this Service Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

SECTION 10.09. Counterparts. This Service Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 10.10. Successors and Assigns. The Township will not voluntarily assign this Service Agreement without the consent of PBA and the Borough, except to a municipality authority incorporated by the Township, pursuant to applicable law. Subject to the foregoing, this Service Agreement shall bind

and inure to the benefit of the respective successors and assigns of the parties hereto.

SECTION 10.11. Supersedes Prior Agreements. This Service Agreement supersedes and repeals any prior agreement, contracts, and understandings, written or oral, by or among the parties hereto with respect to the subject matter contained herein. This Service Agreement contains the entire agreement among the parties hereto, and no oral statements or representations or prior written matter not contained in this instrument shall have any force and effect.

SECTION 10.12. Modification. This Service Agreement may not be modified or amended except in writing signed by the parties hereto.

SECTION 10.13. Pennsylvania Law. This Service Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth.

IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

BOROUGH OF POTTSTOWN

BY: Jack J. Way
President of Council

ATTEST: Jack P. Zupke
Secretary

POTTSTOWN BOROUGH AUTHORITY

BY: Thomas P. Pomeroy
Chairman

ATTEST: Douglas A. Phillipone
Secretary

TOWNSHIP OF UPPER POTTS GROVE

BY: Barbara J. Reeves
President of the Board of Commissioners

ATTEST: Cynthia M. Taylor
Secretary

TRANSFER OF CAPACITY RIGHTS AGREEMENT

THIS TRANSFER OF CAPACITY RIGHTS AGREEMENT, effective as provided herein, by and between the **BOROUGH OF POTTSTOWN** ("Borough") and **UPPER POTTS GROVE TOWNSHIP** ("UPT") on the other hand.

WITNESSETH:

WHEREAS, capitalized terms and phrases used in this Agreement shall have the respective meanings set forth in Section 1.01 hereof, unless a different meaning clearly appears from the context; and,

WHEREAS, there is a finite Capacity in the Treatment Plant; and,

WHEREAS, pursuant to the terms of the Sewage Treatment Service Agreement (the "Service Agreement"), the Requested Capacity in the Treatment Plant allocated to the Borough and UPT, respectively, is 10.05 mgd, and .350 mgd; and,

WHEREAS, pursuant to the provisions of Section 4.02 of the Service Agreement, UPT has requested to purchase from the Borough 188,400 gpd of its Requested Capacity, which equals 188,400 gpd of Annual Average Capacity; and,

WHEREAS, following the purchase from the Borough, as set forth herein, the Capacity of UPT in the Treatment Plant will be 538,400 gpd of Requested Capacity, which equals 538,400 gpd of Annual Average Capacity, as noted on the Schedule attached hereto, made a part hereof and marked as Exhibit "A"; and,

WHEREAS, pursuant to the terms of this Agreement, the Borough is willing to assign, sell and transfer to UPT 188,400 gpd of its Requested Capacity in the Treatment Plant.

ARTICLE I – DEFINITIONS

SECTION 1.01 – Defined Terms. The terms defined in this Section 1.01, whenever used or referred to in this Agreement, shall have the respective meanings indicated (including the singular, plural or possessive thereof, if applicable or appropriate) unless a different meaning clearly appears from the context.

(a) “**CAPACITY**” shall mean the daily quantity of sewage flow measured in the manner described in the Service Agreement.

(b) “**DEP**” shall mean the Pennsylvania Department of Environmental Protection.

(c) “**REQUESTED CAPACITY**” shall mean Capacity in the Treatment Plant in the quantities described in the Service Agreement.

(d) “**SEWAGE TREATMENT SERVICE AGREEMENT**” (referred to herein as the “Service Agreement”) shall mean the Agreement entered into between the Borough of Pottstown, Pottstown Borough Authority and the Township of Upper Pottsgrove, dated September 13, 2004, which served to amend a prior Agreement between the same parties dated February 28, 1989.

(e) “**TREATMENT PLANT**” shall mean the sewage transportation, treatment and disposal facilities owned by the Pottstown Borough Authority and operated by the Borough.

ARTICLE II – TRANSFER OF REQUESTED CAPACITY

SECTION 2.01 – Consideration. In consideration of the payment of Six Hundred Four Thousand Seven Hundred Sixty-Four Dollars (\$604,764.00) (representing \$3.21 per gallon), the Borough does hereby transfer and assign 188,400 gpd of its Requested Capacity to UPT, pursuant to the terms and conditions of this Agreement.

SECTION 2.02 – Warranty of Borough. The Borough represents and warrants that it has unused Requested Capacity to the extent of the Requested Capacity being transferred and assigned to UPT.

Amended Appendix A-25

SECTION 2.03 – Settlement. Settlement of the transfer of Capacity shall be held on or before **July 15, 2005**, or within five (5) working days from the receipt of the last requisite approval from DEP, whichever shall last occur.

ARTICLE III – AMENDMENT TO SERVICE AGREEMENT

SECTION 3.01 – Amendment to Service Agreement. The parties acknowledge that the Borough, by this Agreement, is relinquishing a portion of its Requested Capacity as allocated under the Service Agreement so that UPT can obtain additional Requested Capacity in the Treatment Plant. The parties agree that, in accordance with the provisions of Section 4.02 of the Service Agreement, Exhibit "A" of the Service Agreement shall be amended to reflect the changes in the allocation of Requested Capacity.

ARTICLE IV – DEP APPROVAL

SECTION 4.01 – Approval. The transfer of Capacity herein is under and subject to the approval of the DEP. UPT shall make application for approval from DEP within five (5) working days from the date of execution of this Agreement by the Borough. If DEP does not approve the transfer, this Agreement shall become null and void. If approval for the transfer has not been obtained from DEP by July 15, 2005, it is agreed that the consideration of Six Hundred Four Thousand Seven Hundred Sixty-Four Dollars (\$604,764.00) will be placed in an escrow account to be controlled by counsel for the Borough and UPT. Within five (5) working days after receipt of approval from DEP, the settlement, as provided by Section 2.03, shall occur, and the escrow account and all accumulated interest will be released to the Borough. In the event that DEP does not approve the transfer of the entire 188,400 gpd, a proportionate share of the consideration and accumulated interest will be returned to UPT.

3.21/gal

ARTICLE V – MISCELLANEOUS

SECTION 5.01 – Recitals. The recitals herein are acknowledged to be true and correct and are a part of this Agreement.

Amended Appendix A-25

SECTION 5.02 – Time of The Essence. Time is of the essence in the performance of the obligations under this Agreement.

SECTION 5.03 – Headings. The headings of this Agreement are solely for convenience, and shall have no effect in the legal interpretation of any provision hereof.

SECTION 5.04 – Modification. This Agreement may not be modified or amended except in writing signed by the affected parties hereto.

SECTION 5.05 – Recording. This Agreement shall not be recorded by any party hereunder.

SECTION 5.06 – Effective Date. The effective date of this Agreement shall be the date signed by the last party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their respective duly authorized officers, and their respective seals to be hereunto affixed.

BOROUGH:

BOROUGH OF POTTSTOWN

BY: Jack D. Wolf (SEAL)

ATTEST: Jack P. Wolf (SEAL)

Date: July 11, 2005

UPT:

UPPER POTTS GROVE TOWNSHIP

BY: Edward J. [Signature] (SEAL)

ATTEST: [Signature] (SEAL)

Date: 23 June 2005

REVISED ALLOCATED CAPACITY

Based on Sewage Transfer Agreement
with Lower & Upper Pottsgrove Townships

	Borough of Pottstown		Lower Pottsgrove		Upper Pottsgrove		West Pottsgrove		Total System
	Existing (mgd)	Transfer (mgd)	Existing (mgd)	Transfer (mgd)	Existing (mgd)	Transfer (mgd)	Existing (mgd)	Transfer (mgd)	Existing (mgd)
<u>1988 Act 537</u> ⁽¹⁾									
Average Annual	8.4000		2.7000		0.3500		1.4000		12.8500
Maximum Month	10.0500		3.6000		0.3500		1.6000		15.6000
Factor	1.196429		1.333333		1.000000		1.142857		1.214008

	Proposed (mgd)	Transfer (mgd)	Proposed (mgd)	Transfer (mgd)	Proposed (mgd)	Transfer (mgd)	Proposed (mgd)	Transfer (mgd)	Proposed (mgd)
	<u>2005 Act 537</u> ⁽²⁾								
Average Annual	7.8366	-0.5634	3.0750	0.3750	0.5384	0.1884	1.4000	0.0000	12.8500
Max. Three Month	9.3616	-0.6884	4.1000	0.5000	0.5384	0.1884	1.6000	0.0000	15.6000
Factor	1.194600		1.333333		1.000000		1.142857		1.214008

(1) Allocation from Table 4-6 of the Pottstown Borough Act 537 Official Plan Revision, dated July 1988.
 (2) Revised Allocation based on Transfer Agreement & 1988 Ratio of Annual Average to Maximum Month.

Amended Appendix A-25

TABLE 11
 BOROUGH OF POTTSTOWN
 WASTEWATER TREATMENT PLANT AND INTERCEPTOR PROJECT
 ESTIMATED CAPITAL CONTRIBUTION (1)

	TOTAL	POTTSTOWN BOROUGH	LOWER POTTSGROVE	UPPER POTTSGROVE	WEST POTTSGROVE
WASTEWATER TREATMENT PLANT	\$25,075,000	\$15,421,213	\$6,717,440	\$400,660	\$2,535,687
INTERCEPTOR	4,390,000	3,139,809	-----	587,875	662,316
INTERIM IMPROVEMENTS(2)	825,000	507,378	221,012	13,182	83,427
TOTAL PROJECT COSTS TO BE FUNDED	\$30,290,000	\$19,068,400	\$6,938,453	\$1,001,717	\$3,281,431
% SHARE	100.0%	63.0%	22.9%	3.3%	10.8%

(1) A municipality which chooses not to participate in the Borough's Bond Issue will be responsible for contributing it's respective share, shown here, in accordance with the terms of the Service Agreement.

(2) The cost of the Interim Improvements, which were funded through a Bond Anticipation Note (BAN), are prorated on the basis of the Wastewater Treatment Plant cost ratios developed on Table 4.

TRANSFER OF CAPACITY RIGHTS AGREEMENT

THIS TRANSFER OF CAPACITY RIGHTS AGREEMENT, effective as provided herein, by and between the **BOROUGH OF POTTSTOWN and THE POTTSTOWN BOROUGH AUTHORITY** (collectively referred to as "Borough") and **UPPER POTTS GROVE TOWNSHIP ("UPT")** on the other hand.

WITNESSETH:

WHEREAS, capitalized terms and phrases used in this Agreement shall have the respective meanings set forth in Section 1.01 hereof, unless a different meaning clearly appears from the context; and,

WHEREAS, there is a finite Capacity in the Treatment Plant; and,

WHEREAS, pursuant to the terms of the Sewage Treatment Service Agreement (the "Service Agreement"), the Requested Capacity in the Treatment Plant allocated to the borough and UPT, respectively, is 9.3616 mgd, and .5384 mgd; and,

WHEREAS, pursuant to the provisions of Section 4.02 of the Service Agreement, UPT has requested to purchase from the Borough 238,000 gpd (maximum three month flow MTMF) of its Requested Capacity, which equals 238,000 gpd of Annual Average Capacity; and,

WHEREAS, following the purchase from the Borough, as set forth herein, the Capacity of UPT in the Treatment Plant will be 776,400 gpd of Requested Capacity, which equals 776,400 gpd of Annual Average Capacity, as noted on the Schedule attached hereto, made a part hereof and marked as Attachment "A"; and,

WHEREAS, pursuant to the terms of this Agreement, the Borough is willing to assign, sell and transfer to UPT 238,000 gpd of its Requested Capacity in the Treatment Plant.

ARTICLE I – DEFINITIONS

SECTION 1.01 – Defined Terms. The terms defined in this Section 1.01, whenever used or referred to in this Agreement, shall have the respective meanings indicated (including the singular, plural or possessive thereof, if applicable or appropriate) unless a different meaning clearly appears from the context.

- (a) **"CAPACITY"** shall mean the daily quantity of sewage flow measured in the manner described in the Service Agreement.
- (b) **"DEP"** shall mean the Pennsylvania Department of Environmental Protection.
- (c) **"REQUESTED CAPACITY"** shall mean Capacity in the Treatment Plant in the quantities described in the Service Agreement.
- (d) **"SEWAGE TREATMENT SERVICE AGREEMENT"** (referred to herein as the "Service Agreement") shall mean the Agreement entered into between the Borough of Pottstown, Pottstown Borough Authority and the Township of Upper Pottsgrove, dated September 13, 2004, which served to amend a prior

- Agreement between the same parties dated February 28, 1989.
- (e) **"TREATMENT PLANT"** shall mean the sewage transportation, treatment and disposal facilities owned by the Pottstown Borough Authority and operated by the Borough.
 - (f) **"EQUIVALENT DWELLING UNIT (EDU)"** shall mean 300 gallons per day (maximum three month flow – MTMF) for a typical residential dwelling. The gallonage for an age restricted dwelling may be less provided that the process for rating set forth in the Service Agreement is followed.

ARTICLE II – TRANSFER OF REQUESTED CAPACITY

SECTION 2.01 – Consideration. Upon written request from UPT, the Borough shall transfer and assign to UPT the amount of capacity requested. The consideration shall be calculated based on the amount of capacity purchased on a per gallon basis as of the date the Borough approves a Planning Module associated with the purchase of the capacity.

SECTION 2.02 – Warranty of Borough. The Borough represents and warrants that it has unused Requested Capacity to the extent of the Requested Capacity being transferred and assigned to UPT.

SECTION 2.03 – Settlement. Upon execution of the Planning Module by the Borough, Settlement on the transfer of Capacity shall be held within sixty (60) days subject to extension if mutually agreed to by the parties.

ARTICLE III – AMENDMENT TO SERVICE AGREEMENT

SECTION 3.01 – Amendment to Service Agreement. The parties acknowledge that the Borough, by this Agreement, is relinquishing a portion of its Requested Capacity as allocated under the Service Agreement so that UPT can obtain additional Requested Capacity in the Treatment Plant. The parties agree that, in accordance with the provisions of Section 4.02 of the Service Agreement, Exhibit "A" of the Service Agreement shall be amended to reflect the changes in the allocation of Requested Capacity.

SECTION 3.02 – Township Flow Limits. The Township shall maintain the Township Sewage Collection System Upgrades to limit the Instantaneous Flow usage at the Farmington Avenue meter so as not to exceed a flow of 2,237 GPM, or such other amount as shall be set in the future as the limit for the Township's Instantaneous Flow. The term "Instantaneous Flow" expressed in gallons per minute ("GPM") shall mean the total flow during any one (1) hour period divided by sixty (60) minutes. Should the meter calculating the flow not be in working order, the flow will be estimated based on Section 4.03 (Measurement of Flow) of the New Sewer Service Agreement. In the event an Instantaneous Flow in the Farmington Avenue meter shall exceed the Township's Instantaneous Flow limit, the Authority shall notify the Township within forty-five (45) days at the time when such Instantaneous Flow in excess of the then applicable limit is recorded. For the Authority to have the right to impose the monetary penalties set forth herein for violations of the Instantaneous flow limitations, the written notice must have been given within the preceding time limits. From the time the Township is notified, the Township shall have thirty (30) days to investigate the matter and to develop a plan, with an

implementation schedule, which is reasonably expected to prevent further events of Instantaneous Flows in excess of the then applicable limits. At the end of the thirty (30) days, the plan is to be submitted to the Authority for review, and the Authority shall provide comments to the Township within thirty (30) days thereafter. Unless such plan is rejected by the Authority, the Township shall diligently proceed to implement such a plan. If the Township does not present a plan or does not diligently proceed to implement any approved plan, then the Authority shall have the right to impose a penalty on the Township. The penalty shall be in the amount of Five Thousand Dollars (\$5,000.00) per day for each day the flow exceeds the Instantaneous Flow limit. During the period that the Corrective Action Plan, pursuant to this paragraph, is being developed and is being diligently implemented, further penalties for Instantaneous Flows shall not accrue or be collected.

The present Instantaneous Flow limit of 2,237 GPM shall be increased whenever a planning module is accepted by Pottstown.

An increase in the permitted Instantaneous Flow limit shall be calculated as follows: for every 100 GPD increase in the Township Treatment Capacity under the MTMF, the Instantaneous Flow limits shall increase by 0.3472 GPM. (This amount represents the conversion of the increase in the average daily flow as measured by the maximum three (3) month average method, divided by 1,440 (representing the number of minutes in a day), multiplied by 5 (representing a peaking factor as to the permitted ratio between the peak known flow and the maximum three (3) month average flow rate that would occur if the flow was completely uniform throughout the day).

ARTICLE IV – DEP APPROVAL

SECTION 4.01 – Approval. The transfer of Capacity herein is under and subject to the approval of the DEP. UPT shall make application for approval from DEP within ten (10) working days from the date of execution of this Agreement by the Borough.

ARTICLE V – MISCELLANEOUS

SECTION 5.01 – Recitals. The recitals herein are acknowledged to be true and correct and are a part of this Agreement.

SECTION 5.02 – Time of The Essence. Time is of the essence in the performance of the obligations under this Agreement.

SECTION 5.03 – Headings. The headings of this Agreement are solely for convenience, and shall have no effect in the legal interpretation of any provision hereof.

SECTION 5.04 – Modification. This Agreement may not be modified or amended except in writing signed by the affected parties hereto.

SECTION 5.05 – Recording. This Agreement shall not be recorded by any part hereunder.

SECTION 5.06 – Effective Date. The effective date of this Agreement shall be the date signed by the last party.

Amended Appendix A-25

IN WITNESS WHEREOF, The parties have caused this Agreement to be executed and attested by their respective duly authorized officers, and their respective seals to be hereunto affixed.

BOROUGH:

BOROUGH OF POTTSTOWN
BY: [Signature] (SEAL)
ATTEST: Virginia L. Tolson (SEAL)
Date: March 26, 2009

POTTSTOWN BOROUGH AUTHORITY
BY: [Signature] (SEAL)
ATTEST: [Signature] (SEAL)
DATE: 3-26-09

UPT:

UPPER POTTS GROVE TOWNSHIP
BY: [Signature] (SEAL)
ATTEST: [Signature] (SEAL)
Date: 3-23-2009

REVISED ALLOCATED CAPACITY
Based on Sewage Transfer Agreement
with Upper Pottsgrove Township

	Borough of Pottstown		Lower Pottsgrove		Upper Pottsgrove		West Pottsgrove		Total System	
	Existing (mgd)		Existing (mgd)		Existing (mgd)		Existing (mgd)		Existing (mgd)	
2005 Act 537 ⁽¹⁾										
Average Annual	7.8366		3.0750		0.5384		1.4000		12.8500	
Maximum Month	9.3616		4.1000		0.5384		1.6000		15.6000	
Factor	1.194600		1.333333		1.000000		1.142857		1.214008	

	Borough of Pottstown		Lower Pottsgrove		Upper Pottsgrove		West Pottsgrove		Total System	
	Proposed (mgd)	Transfer (mgd)	Proposed (mgd)	Transfer (mgd)	Proposed (mgd)	Transfer (mgd)	Proposed (mgd)	Transfer (mgd)	Proposed (mgd)	Transfer (mgd)
2009 Act 537 ⁽²⁾										
Average Annual	7.5986	-0.2380	3.0750	0.0000	0.7764	0.2380	1.4000	0.0000	12.8500	0.0000
Max. Three Month	9.1236	-0.2380	4.1000	0.0000	0.7764	0.2380	1.6000	0.0000	15.6000	0.0000
Factor	1.200695		1.333333		1.000000		1.142857		1.214008	

(1) Allocation from Table 5-1 of the Pottstown Borough Act 537 Official Plan Revision, dated September 2005.
 (2) Revised Allocation based on Transfer Agreement & 2005 Ratio of Annual Average to Maximum Month.

RECEIVED
OCT 24 2011

AGREEMENT AMENDING THE
SEWAGE TREATMENT SERVICE AGREEMENT
DATED JULY 14, 2003

BY:.....

THIS AGREEMENT, DATED October 18, ~~2005~~ ²⁰¹¹, by and among the BOROUGH OF POTTSTOWN (the "Borough") and the POTTSTOWN BOROUGH AUTHORITY (the "PBA"), on the one hand; and, the TOWNSHIP OF UPPER POTTS GROVE (the "Township") on the other hand.

WITNESSETH:

WHEREAS, the parties hereto entered into a Sewage Treatment Service Agreement (the "Service Agreement"), dated July 14, 2003; and,

WHEREAS, the parties desire to amend the service agreement.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, agree to the following amendments to the service agreement:

- 1. The following new paragraph shall be added to Section 3.04:

"Income received by the Borough with respect to the operation of the Treatment Plant, including, but not limited to, grants, septage disposal fees and sludge disposal fees, shall be applied against operational and maintenance expenses at the Treatment Plant prior to the net cost of operation and maintenance being allocated among the various parties."

- 2. The second paragraph of Section 4.02 shall be amended to provide as follows:

"If there has been a capital contribution by the lessee Municipality as permitted by Section 5.02, then the above formula shall be applied, but the Average Annual Debt Service shall be used in substitution for the applicable annual debt service and no coverage shall be included. The Capacity thus rented shall be deemed to be rented annually by such Municipality until the lessor Municipality determines, in its sole discretion, that it no longer desires to rent capacity, at which time the lessee Municipality shall surrender such Capacity rented by it and shall, at its sole expense, replace the capacity rented by it by the purchase or construction of Capacity, or otherwise as may be permitted hereunder, so that the lessor Municipality will have access to its total Requested Capacity. In no event shall any rental of Capacity be construed to increase the Requested Capacity of the lessee Municipality unless such capacity is sold to the lessee Municipality by the lessor Municipality, in writing, which writing shall be furnished to all Municipalities. Any sale of Requested Capacity shall result in and appropriate readjustment of the Debt Service Charges, if any, payable by the purchaser and seller Municipalities and an amendment to Exhibit "A" hereof to reflect the increased share of debt service payable by the purchaser and a decrease in the future debt service payable by the seller."

A hypothetical of the formula to be followed is attached hereto and made a part hereof as Exhibit No. 1.

3. Section 6.02 shall be amended to include the following example demonstrating the calculation method for indirect costs allocated through the WWTP:

“Administrative Costs will be shown on future allocations in detail. Allocation of all administrative costs will be based upon the same adjusted flow basis as the WWTP Operating Costs. Determination of the portion of administrative costs that are allocated to the Sewer Fund will be based on the following method:

- (a) **General Government** – All costs within General Government, with the exception of the Mayor’s salary, are allocated 33.4% - General, 33.3% - Water, and 33.3% - Sewer. The Mayor’s salary is allocated 100% to General Fund.
- (b) **Executive** – Cost of the Executive Department will be allocated to the Sewer Fund based upon the results of an analysis of the Borough’s Personnel Budget conducted every five (5) years. Based upon the analysis of the 2001 Personnel Budget for the Borough, the current allocation of salary dollars for both the Borough Manager and the Executive Secretary is 33.3% - General, 33.3% - Water, 16.7% - Other and 16.7% Sewer.
- (c) **Financial Administration** – Cost of Financial Administration will be allocated to the Sewer Fund based upon the results of the most recent analysis of the Personnel Budget for the Borough. Financial Administration costs will be allocated to the Sewer Fund based upon the percentage of total salary dollars of the Sewage Disposal Department employees (direct costs) and any other departments salary dollars allocated to the Sewer Department (indirect costs) as compared to the total salary dollars for the Borough, excluding the Police Department. Additional adjustments will be made to specific line items of the Finance Department budget allocations to reflect items where the Borough provides no service to the Townships.
- (d) **Personnel Administration** – Cost of Personnel Administration will be allocated to the Sewer Fund based upon the results of the most recent analysis of the Personnel Budget for the Borough. Personnel Administration costs will be allocated to the Sewer fund based upon the percentage of total salary dollars of the Sewage Disposal Department employees (direct costs) and any other departments salary dollars allocated to the Sewer Department (indirect costs) as compared to the total salary dollars for the Borough, excluding the Police Department.
- (e) **General Government Building Maintenance** – Cost of General Government Building Maintenance will be allocated to the Sewer fund based upon the salary dollars allocation for all employees located within the Borough Hall.
- (f) **Public Works - General Services** – Cost of Public Works – General Services will be divided into two (2) categories, Borough Hall Electric and Other Costs.
 - 1) Cost of Borough Hall Electric will be allocated to the Sewer Fund based upon the salary dollars allocation for all employees located within the Borough Hall as reflected in the most recent analysis of the Personnel Budget.
 - 2) Costs associated with the salaries and other costs of public works will be allocated based upon the salary cost allocations for the Department as reflected in the most recent analysis of the Personnel Budget
- (g) **Insurance** – The allocation of insurance costs to sewage treatment is based upon the capital cost of the facilities as well as the likelihood that the facilities will be

damaged. These factors have been reflected in determining the cost of insurance for all facilities.

- (h) **Employee Benefits** – Cost of Employee Benefits will be allocated to the Sewer Fund based upon the percentage of total salary dollars of the Sewage Disposal Department employees (direct costs) and any other departments salary dollars allocated to the Sewer Department (indirect costs) as compared to the total salary dollars for the Borough, excluding positions that do not receive benefits or cost of benefits are applied directly. Positions in the Police Civilians, Police and Economic Development have been removed from the calculations because benefits are shown directly within these departments.

The supporting documentation for the allocation of indirect costs is attached hereto and made a part hereof as Exhibit No. 2.

- 4. Section 7.03 shall be amended to provide as follows:

SECTION 7.03. Payments on Estimates. The Township agrees to pay to the Borough its estimated annual Debt Service Charge, O&M Charge and Transportation Charge, in the amounts set forth in the statement described in Section 7.01, in four (4) equal quarterly installments to be paid on or before February 15th, May 15th, August 15th and November 15th of the applicable calendar year.”

- 5. Section 7.06 shall be amended to provide the following additional provisions:

“Beginning July 1st of each year, the Borough shall pay the Township interest on any credit due the Township as a result of the audit of the Debt Service and Operating and Maintenance Costs of the Treatment Plant and Common Transportation Facilities paid during the preceding year. Interest shall be at a rate equal to the prevailing national prime rate of interest per annum, as published in the Wall Street Journal, or similar publication if not so published, evidencing the base rate on corporate loans at large United States money center commercial banks, or the net interest costs attributable to the Bonds, whichever is greater, determined on and from the due date of such credit to the date on which the credit is applied to the Service Charge, O&M Charge and transportation Charge due from the Township.”

- 6. In all other respects, the provisions of the Service Agreement shall remain in full force and effect.
- 7. This Agreement Amending the Sewage Treatment Service Agreement Dated July 14, 2003 may be executed using one (1) or more counterparts which together shall be deemed to be an executed original. The parties may exchange the facsimile and /or original signatures of this Agreement Amending the Sewage Treatment Service Agreement dated July 14, 2003, and a facsimile or other copy of this Agreement Amending the Sewage Treatment Service Agreement dated July 14, 2003 shall be effective as an original for enforcement and any other purposes.

Amended Appendix A-25

IN WITNESS THEROF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, and their respective seals to be hereunto affixed.

BOROUGH OF POTTSTOWN

BY: Stephen M. Torrey
President of Council

Attest: Virginia L. Tolach
Secretary

POTTSTOWN BOROUGH AUTHORITY

BY: Thomas C. Lawrence
Chairman

ATTEST: Aram Ecker
Secretary

TOWNSHIP OF UPPER POTTS GROVE

BY: Edward Taylor
President of Board of Commissioners

Attest: Cynthia M. Taylor
Secretary

EXHIBIT NO. 1

RENTAL OF SEWAGE CAPACITY

CALCULATION BASED ON FINAL PROJECT COSTS

LM = Lessee Municipality

Average Daily Sewage Discharge by LM During Calendar Month	3.981	MGD
Less: Requested Capacity of LM	3.600	MGD
<hr/>		
Capacity Rented by LM for Entire Year	0.381	MGD
Annual Debt Service and Coverage for Upgraded Treatment Plant	\$ 1,457,419	*
Divide: Total Requested Capacity of all Municipalities in Upgraded Treatment Plant	10.05	MGD
<hr/>		
Debt Service Per MGD	\$ 145,017	
Debt Service Per MGD	\$ 145,017	
Multiply: Capacity Rented by LM for Entire Year	0.381	
<hr/>		
Debt Service Attributable to Rented Capacity	\$ 55,251	

* Annual debt service of \$1,457,419 without coverage of 10 percent reflects Pottstown's average annual debt service for treatment plant.

EXHIBIT NO. 1
POTTSTOWN BOROUGH AUTHORITY
WWTP DEBT SERVICE

YEAR	DEBT SERVICE	PERCENT RESTRUCT.	1996 BONDS DEBT SERVICE	1991 BONDS PRINCIPAL	1991 & 1996 DEBT SERVICE	WWTP % OF DEBT	WWTP DEBT SERVICE
		(1)	(RESTRUCTURING)	(OUTSTANDING)	(SUMMATION)	(2)	(ACTUAL)
	(\$)	(%)	(\$)	(\$)	(\$)		(\$)
1989 BOND ISSUE							
1989	\$996,058					0.69936	\$696,605
1990	\$1,992,115					0.69936	\$1,393,210
1991	\$996,057					0.69936	\$696,605
1991 BOND ISSUE							
1991	\$995,583					0.69936	\$696,273
1992	\$2,056,562					0.69936	\$1,438,282
1993	\$2,058,451					0.69936	\$1,439,603
1994	\$2,013,650					0.69936	\$1,408,271
1995	\$2,257,584					0.69936	\$1,578,869
1996	\$2,260,059					0.69936	\$1,580,600
1996 BOND ISSUE							
1997	\$2,397,987	0.814972	\$1,954,292		\$1,954,292	0.69936	\$1,366,758
1998	\$2,452,908	0.814972	\$1,999,051		\$1,999,051	0.69936	\$1,398,061
1999	\$1,861,507	0.814972	\$1,517,076	\$590,000	\$2,107,076	0.69936	\$1,473,609
2000	\$1,470,678	0.814972	\$1,198,561	\$990,000	\$2,188,561	0.69936	\$1,530,597
2001	\$1,469,928	0.814972	\$1,197,950	\$990,000	\$2,187,950	0.69936	\$1,530,170
2002	\$1,473,488	0.814972	\$1,200,851	\$990,000	\$2,190,851	0.69936	\$1,532,199
2003	\$1,661,113	0.814972	\$1,353,761	\$990,000	\$2,343,761	0.69936	\$1,639,138
2004	\$1,669,500	0.814972	\$1,360,596	\$990,000	\$2,350,596	0.69936	\$1,643,918
2005	\$1,666,018	0.814972	\$1,357,758	\$995,000	\$2,352,758	0.69936	\$1,645,430
2006	\$1,661,080	0.814972	\$1,353,734	\$995,000	\$2,348,734	0.69936	\$1,642,616
2007	\$1,669,648	0.814972	\$1,360,716	\$990,000	\$2,350,716	0.69936	\$1,644,002
2008	\$1,670,648	0.814972	\$1,361,531	\$995,000	\$2,356,531	0.69936	\$1,648,069
2009	\$1,670,148	0.814972	\$1,361,124	\$990,000	\$2,351,124	0.69936	\$1,644,287

EXHIBIT NO. 1
POTTSTOWN BOROUGH AUTHORITY
WWTP DEBT SERVICE

YEAR	DEBT SERVICE	PERCENT RESTRUCT.	1996 BONDS DEBT SERVICE (RESTRUCTURING)	1991 BONDS PRINCIPAL (OUTSTANDING)	1991 & 1996 DEBT SERVICE (SUMMATION)	WWTP % OF DEBT (2)	WWTP DEBT SERVICE (ACTUAL)
	(\$)	(%)	(\$)	(\$)	(\$)		(\$)
2010	\$1,667,188	0.814972	\$1,358,712	\$990,000	\$2,348,712	0.69936	\$1,642,600
2011	\$1,665,673	0.814972	\$1,357,477	\$990,000	\$2,347,477	0.69936	\$1,641,737
2012	\$1,672,250	0.814972	\$1,362,837	\$995,000	\$2,357,837	0.69936	\$1,648,982
2013	\$1,666,375	0.814972	\$1,358,049	\$995,000	\$2,353,049	0.69936	\$1,645,633
2014	\$2,658,200	0.814972	\$2,166,359		\$2,166,359	0.69936	\$1,515,069
2015	\$2,658,100	0.814972	\$2,166,277		\$2,166,277	0.69936	\$1,515,012
2016	\$2,482,500	0.814972	\$2,023,168		\$2,023,168	0.69936	\$1,414,927
2017	\$2,260,750	0.814972	\$1,842,448		\$1,842,448	0.69936	\$1,288,538
2018	\$2,265,600	0.814972	\$1,846,401		\$1,846,401	0.69936	\$1,291,303
2019	\$2,259,950	0.814972	\$1,841,796		\$1,841,796	0.69936	\$1,288,082
2020	\$2,254,075	0.814972	\$1,837,008		\$1,837,008	0.69936	\$1,284,734
2021	\$2,257,700	0.814972	\$1,839,962		\$1,839,962	0.69936	\$1,286,800
TOTAL							\$48,730,589
LIFE OF BOND (YEARS)							32.5
AVG. ANNUAL DEBT SERVICE							\$1,499,403
POTTSTOWN SHARE (0.972)							\$1,457,419

NOTES

- (1) PERCENT RESTRUCTURING FROM 1996 BOND SOURCES AND USES $(\$21,120,000/\$25,915,000) = 0.814972$
(2) FROM TABLE - 1989 WWTP BOND AMOUNT, PERCENT USED FOR WWTP = 0.69936

EXHIBIT NO. 2
BOROUGH OF POTTSTOWN
FINAL WASTEWATER SYSTEM COST ALLOCATION TO COMMUNITIES
FOR THE YEAR ENDING DECEMBER 31, _____

	<u>BASIS OF</u>	<u>ANNUAL</u>	<u>LESS:</u>	<u>NET</u>	<u>UPPER</u>	<u>WEST</u>	
	<u>ALLOC.</u>	<u>COST</u>	<u>LOWER</u>	<u>COST</u>	<u>POTTSGROVE</u>	<u>POTTSGROVE</u>	<u>POTTSTOWN</u>
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 ANNUAL SYSTEM COSTS							
2 WWTP	A/B	\$2,047,254	\$611,635	\$1,435,619	\$85,397	\$336,441	\$1,013,781
3 ADMINISTRATION - *							
a. General Government	A/B	22,565	6,741	15,824	941	3,708	11,174
b. Executive	A/B	14,620	4,368	10,252	610	2,403	7,239
c. Financial Administration	A/B	206,303	52,672 **	153,631	8,605	33,903	111,122
d. Meter Reading	C	20,026	0	20,026	0	3,210	16,816
e. Personnel Administration	A/B	9,994	2,986	7,008	417	1,642	4,949
f. General Government Bldg. Maint.	A/B	10,570	3,158	7,412	441	1,737	5,234
g. Public Works - Gen. Service	A/B	11,887	3,551	8,336	496	1,953	5,887
h. Insurance	A/B	76,503	22,856	53,647	3,191	12,572	37,884
i. Employee Benefits	A/B	208,124	62,179	145,945	8,681	34,203	103,061
4 SEWER LINES -							
a. Sewer Lines	B	31,234	0	31,234	1,303	5,133	24,798
b. General Expenses	B	125,834	0	125,834	5,249	20,679	99,906
c. Maintenance & Repairs / Sewer Lines	B	51,148	0	51,148	2,134	8,406	40,609
5 TOTAL SYSTEM COSTS		\$2,836,061	\$770,146	\$2,065,915	\$117,465	\$465,991	\$1,482,459
6 DEDUCTIONS:							
7 MIPP	A/B	\$10,385	\$3,103	\$7,282	\$304	\$1,197	\$5,782
8 BULK SEWAGE COLLECTION	A/B	855,522	255,595	599,927	25,025	98,591	476,312
9 LEACHATE	A/B	66,234	19,788	46,446	1,937	7,633	36,876
10 SEWAGE HAULED	A/B	8,000	2,390	5,610	234	922	4,454
11 TOTAL DEDUCTIONS		\$940,142	\$280,876	\$659,266	\$27,500	\$108,342	\$523,424
12 NET SYSTEM COSTS		\$1,895,920	\$489,270	\$1,406,650	\$89,965	\$357,649	\$959,036
13 FINAL ALLOCATION %		100.0%	25.81%		4.75%	18.86%	50.58%

* Administration costs reflect only wastewater treatment portion of costs and exclude collection system and general fund expenses.

** Allocation of Financial Administration reflects the exclusion of billing services costs for LPTA. (Exclusion has been estimated at \$30,000 for the purpose of this example.)

BASIS FOR ALLOCATION: (from exhibit 2)

- A METERED FLOW - LOWER POTTSGROVE
- B METERED FLOW -POTTSTOWN,UPPER AND WEST POTTSGROVES
- C CUSTOMERS; WEST POTTSGROVE AND POTTSTOWN

EXHIBIT NO. 2
BOROUGH OF POTTSTOWN
Basis of _____ Final Allocations

A. THE LOWER POTTS GROVE TWP. ALLOCATION IS BASED ON METERED FLOW

PLANT FLOWS (January 1, _____ - December 31, _____)	3,282,417,390 GALS.
LOWER POTTS GROVE FLOWS (January 1, _____ - December 31, _____)	980,650,378 GALS.
BASIS OF _____ ALLOCATIONS	29.88%

B. POTTSTOWN, UPPER POTTS GROVE, AND WEST POTTS GROVE FLOW ALLOCATION

	<u>FLOW</u>	<u>% ALLOC.</u>
BOROUGH OF POTTSTOWN	1,827,486,769	79.39%
UPPER POTTS GROVE	96,013,212	4.17%
WEST POTTS GROVE	378,267,031	16.43%
TOTAL	2,301,767,012	100.00%

C. POTTSTOWN, AND WEST POTTS GROVE CUSTOMER EDU ALLOCATION

	<u>EDU'S</u>	<u>% ALLOC.</u>
BOROUGH OF POTTSTOWN	10,963	83.97%
WEST POTTS GROVE	2,093	16.03%
TOTAL	13,056	100.00%

D. NORTH END EDU'S

	<u>EDU'S</u>	<u>% ALLOC.</u>
BOROUGH OF POTTSTOWN	304	80.64%
UPPER POTTS GROVE	45	11.94%
LOWER POTTS GROVE	28	7.43%
TOTAL	377	100.00%

E. POTTSTOWN, UPPER POTTS GROVE, AND WEST POTTS GROVE FOOTAGE ALLOCATION

	<u>FOOTAGE</u>	<u>% ALLOC.</u>	<u>% ALLOC.</u>	<u>% ALLOC.</u>
BOROUGH OF POTTSTOWN	311,201	84.11%	79.39%	-
UPPER POTTS GROVE	32,578	8.80%	4.17%	0.37%
WEST POTTS GROVE	26,221	7.09%	16.43%	1.16%
TOTAL	370,000	100.00%	100.00%	1.53%

Source: Borough of Pottstown

EXHIBIT NO. 2
 POTTS TOWN BOROUGH AUTHORITY
 SEWER FLOWS 1/1/ - 12/31/
 ADJUSTED FOR NONMETERED

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total Adj. Metered Flows	Bulk (?) Adjustment	Total Adjusted Flows	
WWTP Effluent	236,455,000	236,394,000	284,897,000	251,007,000	199,922,000	390,910,000	189,526,250	197,433,830	252,525,515	267,149,795	254,444,000	321,750,000	3,282,417,390	-	3,282,417,390	100.000%
West Pottsgrove # 1	24,840,076	23,463,485	39,998,663	25,266,425	17,527,717	37,798,722	17,057,738	15,123,746	38,865,733	27,914,178	27,843,154	34,708,204	332,501,832	-	332,501,832	
West Pottsgrove # 2	3,362,847	3,194,638	5,545,836	3,441,401	2,243,325	3,361,614	2,171,369	2,334,576	5,524,374	3,833,692	3,826,817	4,873,657	45,723,396	6,611,803	45,723,396	
Adjustment for Sludge Haulers, Bulk and Leachate	(547,500)	(547,500)	(547,500)	(547,500)	(547,500)	(547,500)	(547,500)	(547,500)	(547,500)	(547,500)	(547,500)	(547,500)	(6,570,000)	-	(6,570,000)	
Metering Adjustment / EDU Basis (1)	27,655,423	26,110,673	44,097,000	28,154,327	19,223,542	42,612,236	18,681,597	19,910,821	43,842,607	31,200,170	31,132,471	39,034,761	371,655,228	6,611,803	378,267,031	11.524%
Total West Pottsgrove	5,408,322	4,481,449	6,386,135	5,781,360	3,613,607	6,637,339	2,884,960	3,258,327	6,264,119	4,684,643	5,147,784	6,096,220	60,843,865	-	60,843,865	
Upper Pottsgrove (Farmington)	874,004	695,075	903,232	859,245	954,680	908,248	715,994	749,891	939,948	978,577	913,458	933,605	10,445,976	-	10,445,976	
Upper Pottsgrove (Turnberry)	809,085	866,754	1,328,574	782,415	610,071	1,089,008	513,142	606,090	1,068,237	812,139	762,244	1,067,255	10,315,023	-	10,315,023	
Upper Pottsgrove (Hanover) (2)	428,992	611,264	787,188	430,323	382,738	587,634	269,647	279,348	538,100	442,189	433,275	502,612	5,693,030	-	5,693,030	
Upper Pottsgrove (Willow) (2)	352,850	357,246	804,351	459,333	263,028	649,503	193,037	220,218	567,090	365,176	437,902	476,845	5,146,629	-	5,146,629	
Upper Pottsgrove (Poplar) (2)	220,426	235,100	190,458	138,638	133,743	194,214	107,228	96,496	102,561	110,652	147,446	211,530	1,890,493	-	1,890,493	
Upper Pottsgrove (Applebees) (3)														1,678,195	1,678,195	
Adjustment for Sludge Haulers, Bulk and Leachate																
Metering Adjustment / EDU Basis (4)	8,093,089	7,246,889	10,599,959	8,461,364	5,989,267	10,066,166	4,684,007	5,210,068	9,480,855	7,393,276	7,842,109	9,288,067	94,335,017	1,678,195	96,013,212	2.925%
Total Upper Pottsgrove	59,773,428	48,997,940	108,741,378	61,525,177	42,979,699	99,652,391	38,619,284	44,177,197	80,609,911	59,202,681	65,674,423	84,642,863	794,602,292	-	794,602,292	
Lower Pottsgrove # 1	336,125	1,372,970	2,737,970	425,751	520,313	5,200,566	56,688	327,720	4,132,004	2,655,034	1,182,782	2,810,054	21,768,956	-	21,768,956	
Lower Pottsgrove # 2	52,218	72,378	77,056	73,468	104,808	153,717	97,869	100,642	199,826	178,273	126,425	115,275	1,356,955	-	1,356,955	
Lower Pottsgrove # 3 (Home Depot)	887,468	969,185	993,912	785,287	946,798	822,693	912,798	1,002,682	671,437	848,219	791,883	793,585	10,425,045	-	10,425,045	
Lower Pottsgrove # 4 (Ind. Hwy.)	6,132	7,723	9,838	12,689	9,507	6,419	4,063	4,748	5,385	6,519	10,301	6,997	90,320	-	90,320	
Lower Pottsgrove (Venice)	15,293,660	13,457,476	15,991,705	16,979,254	13,251,862	15,677,401	15,240,840	12,753,242	14,106,618	13,832,811	13,438,985	12,048,653	173,870,447	-	173,870,447	
Lower Pottsgrove (Occidental)	(2,246,811)	(2,974,459)	(4,225,783)	(1,972,636)	(1,534,572)	(4,102,585)	(1,858,313)	(1,743,122)	(3,838,683)	(2,726,954)	(1,948,653)	(2,981,207)	(32,173,778)	-	(32,173,778)	
North End (Deduct)	(974,004)	(695,075)	(903,232)	(869,245)	(964,680)	(908,248)	(715,994)	(749,891)	(939,948)	(978,577)	(913,458)	(933,605)	(10,445,976)	-	(10,445,976)	
Turnberry (Deduct)														17,141,117	17,141,117	
Adjustment for Sludge Haulers, Bulk and Leachate																
Metering Adjustment / EDU Basis (5)	334,583	334,583	334,583	334,583	334,583	334,583	334,583	334,583	334,583	334,583	334,583	334,583	4,015,000	-	4,015,000	
Total Lower Pottsgrove	73,562,740	61,542,720	123,756,508	71,092,328	57,648,318	116,847,938	52,669,728	56,207,801	95,261,133	73,165,589	78,697,269	96,837,178	963,509,261	17,141,117	980,650,378	29.876%
Total Pottstown (6)	127,143,148	141,493,718	206,443,533	117,198,982	117,088,873	121,183,659	113,470,907	116,105,139	203,941,721	155,190,660	136,772,151	176,593,394	1,852,917,805	25,431,116	1,827,486,769	55.675%

- (1) West Pottsgrove flows have been adjusted downward to reflect the 72 EDUs that are located in Pottstown but flow through the West Pottsgrove meters at 250 gallons per day per EDU.
- (2) Meters located at Hanover, Willow, and Poplar came online in October 2009.
- (3) Meter located at Applebees came online in October 2009. Property did not exist prior.
- (4) All flows from Upper Pottsgrove are now metered.
- (5) Lower Pottsgrove flows have been adjusted upward to reflect 28 EDUs in the North End, 2 EDUs on Rosedale Drive and 14 EDUs connected to the Klein Street Interceptor at 250 gallons per day per EDU.
- (6) Pottstown flow is calculated from the WWTP effluent less townships.
- (7) Flow from Sludge Haulers, Bulk and Leachate have been distributed to each municipality based upon adjusted metered flows.

**PURCHASE OF ADDITIONAL CAPACITY AGREEMENT
PURSUANT TO TRANSFER OF CAPACITY RIGHTS AGREEMENT-MARCH 26, 2009**

THIS PURCHASE OF ADDITIONAL CAPACITY AGREEMENT PURSUANT TO TRANSFER OF CAPACITY RIGHTS AGREEMENT-MARCH 26, 2009, effective as provided herein, by and between the **BOROUGH OF POTTSTOWN** and **THE POTTSTOWN BOROUGH AUTHORITY** (collectively referred to as "Borough") and **UPPER POTTS GROVE TOWNSHIP ("UPT")**.

WHEREAS, the parties entered into a Transfer of Capacity Rights Agreement dated March 26, 2009 ("Transfer Agreement").

WHEREAS, consistent with the provisions of the Transfer Agreement, UPT has purchased Additional Capacity on two different dates.

WHEREAS, in accordance with the Sewage Treatment Service Agreement between the parties, dated September 13, 2004, as amended ("Service Agreement"), UPT adopted a Corrective Action Plan ("CAP") dated October 17, 2011, which was subsequently accepted by the Borough on October 18, 2011 ("2011 CAP").

WHEREAS, UPT has requested to purchase the Additional Capacity which is available under the Transfer Agreement.

WHEREAS, under the terms of the Service Agreement, because of the 2011 CAP, UPT would have to purchase sewer capacity far in excess of the Additional Capacity available under the Transfer Agreement.

WHEREAS, the Borough has determined that based on specific circumstances that the Borough will allow UPT to purchase just the amount of Additional Capacity desired by UPT as a one-time exception to the limitations otherwise applicable under the terms of the Service Agreement.

WHEREAS, the parties agree that this Purchase Agreement shall reflect the agreement of the parties on the issues herein.

1. The Transfer Agreement and the Service Agreement are incorporated herein by reference. Definitions of terms as used in the Service Agreement shall control unless superseded or redefined in the Transfer Agreement or in this Purchase Agreement.
2. UPT purchased 188,400 gallons per day Max Three Month Capacity in April 2005.
3. Pursuant to the provisions of the Transfer Agreement, UPT has the right to purchase up to 238,000 gallons per day of Max Three Month Capacity for 60 months from the date of the Transfer Agreement which was March 26, 2009 ("Additional Capacity").

Amended Appendix A-25

4. As of the date of this Purchase Agreement, UPT has purchased a total of 58,200 gallons per day of Max Three Month Capacity under the Transfer Agreement by purchasing 53,700 gallons per day in June 2010 (First Purchase”) and 4,500 gallons per day in May 2011 (“Second Purchase”).

5. As of the date of this Purchase Agreement, UPT has 179,800 gallons per day of Additional Capacity available for purchase under the Transfer Agreement.

6. Because of sewer flows generated in Upper Pottsgrove Township (“Township”), in accordance with the provisions of the Service Agreement, UPT approved a CAP on October 17, 2011, which was reviewed and accepted by the Borough on October 18, 2011. The Borough has determined that the Flow of Record from UPT is 781,000 gallons per day.

7. UPT has followed the provisions of the 2011 CAP and has provided the Borough with documentation concerning these efforts.

8. The Borough has determined that UPT is making a good-faith effort to fulfill all of its obligations under the 2011 CAP.

9. UPT has requested to purchase 6,000 gallons per day of Max Three Month Capacity from the Additional Capacity available for purchase under the Transfer Agreement (“Third Purchase”). The record of all sewer capacity purchased by UPT since 1990, including the amount of the Third Purchase, is shown on Exhibit A which is attached to and incorporated herein.

10. Both parties agree that pursuant to the terms of the Service Agreement, UPT would first have to purchase sewer capacity sufficient to handle the Flow of Record of 781,000 gallons per day. This would require UPT to purchase 184,400 gallons of Max Three Month Capacity before it could exercise the Third Purchase.

11. Because of the efforts made by UPT under the 2011 CAP the sewer flows since the adoption of the 2011 CAP, the Borough agrees to grant a one-time exemption to UPT so it is not required to purchase 184,400 gallons of Max Three Month Capacity before exercising the Third Purchase. This exemption is based on the circumstances which exist at the time of this agreement and is solely within the province of the Borough to grant. No precedent is created, no requirements are waived and no rights are vested beyond the specific exemption granted herein.

12. The price for the Third Purchase is based on \$4.71 / gallon and totals \$28,267. The calculations to support the price are shown on Exhibit B which is attached to and incorporated herein. UPT shall pay this full amount to the Borough within 30 days of the date of this Purchase Agreement. Failure to make full payment shall result in the forfeiture of the right to proceed with the Third Purchase on the terms set forth herein without any further action required on the part of the Borough.

13. The 20 EDU obtained by UPT in the Third Purchase are subject to the following conditions: 1) UPT shall disclose to the Borough in advance all properties and/or projects presently known which could seek to tie into the public sewer, which has occurred; 2) UPT will disclose to the Borough in writing the address of each property, the date of connection and the number of EDU allocated to each property as properties are tied in to the public sewer within 15 days of connection and 3) UPT will not utilize any of this capacity for the Coddington View development. Failure of UPT to abide by these conditions shall lead to a forfeiture of all capacity acquired in the Third Purchase. UPT's right to utilize the capacity from the Third Purchase shall continue, indefinitely, until the 20 EDU have been consumed or exhausted by connection to the sanitary sewer system, PROVIDED UPT fulfills all of the conditions and obligations under this Agreement.

14. The foregoing represents the entire agreement and understanding of the parties on the subject matter and may only be modified or amended in writing signed by the parties. The effective date of this agreement shall be the date signed by the last party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their respective duly authorized officers, and their respective seals to be hereunto affixed.

BOROUGH:

BOROUGH OF POTTSTOWN

By: Stephen M. Treney

Attest: Virginia L. Takach

Date: July 2, 2013

PBA:

POTTSTOWN BOROUGH AUTHORITY

By: A. E. Carrall

Attest: Aram F. Ecker

Date: July 2, 2013

UPT:

UPPER POTTS GROVE TOWNSHIP

By: Edward Taylor

Attest: Cynthia H. Taylor

Date: June 17th, 2013

Amended Appendix A-25

Upper Pottsgrove Township

History of Purchased Flow

1990 original purchase with WWTP	350,000 gallons (MTMF)
April 2005 purchase	188,400 gallons (MTMF)
June 2010 purchase	53,700 gallons (MTMF)
May 2011 purchase	4,500 gallons (MTMF)
June 2013 purchase	6,000 gallons (MTMF)
TOTAL PURCHASED	602,600 gallons

Remaining to be purchased as of 2013 under Transfer Agreement

776,400 gallons – 602,600 gallons = 173,800 gallons (MTMF)

5/29/2013

TABLE 5

BOROUGH OF POTTSTOWN
WASTEWATER TREATMENT PLANT EXPANSION AND UPGRADE
ADJUSTMENT TO ALLOCATION OF CONSTRUCTION COSTS

UPPER POTTS GROVE PURCHASES ADDITIONAL 6,000 GALLONS

Total Construction Costs	Pottstown Borough		Lower Pottsgrove		Upper Pottsgrove		West Pottsgrove	
	Costs	% Share	Costs	% Share	Costs	% Share	Costs	% Share
<u>Original Allocations</u> Total Project Costs	\$25,075,000	55.5%	\$7,729,874	30.8%	\$899,992	3.6%	\$2,535,687	10.1%
<u>Adjusted Allocations</u> Total Project Costs	\$25,075,000	55.4%	\$7,729,874	30.8%	\$912,141	3.6%	\$2,535,687	10.1%
Increased Cost (1989 Dollars)	\$0		\$0		\$12,149		\$0	
Cost Escalated to Current Dollars	\$0		\$0		\$25,051		\$0	
Cost Escalated to Current Dollars - Price Per Gallon					\$4.175			
<u>Original Allocations</u> Sludge Drying Facilities	\$7,000,000	59.6%	\$1,839,744	26.3%	\$267,705	3.8%	\$717,949	10.3%
<u>Adjusted Allocations</u> Sludge Drying Facilities	\$7,000,000	59.6%	\$1,839,744	26.3%	\$270,397	3.9%	\$717,949	10.3%
Increased Cost (2007 Dollars)	\$0		\$0		\$2,692		\$0	
Cost Escalated to Current Dollars	\$0		\$0		\$3,216		\$0	
Cost Escalated to Current Dollars - Price Per Gallon					\$0.536			
Total Cost of Purchased Capacity	\$0		\$0		\$28,267		\$0	
Price Per Gallon					\$4.71			

EXHIBIT B

EXHIBIT "B" Cost for 6000 gallons

**PURCHASE OF ADDITIONAL CAPACITY AGREEMENT
PURSUANT TO TRANSFER OF CAPACITY RIGHTS AGREEMENT
MARCH 26, 2009**

THIS PURCHASE OF ADDITIONAL CAPACITY AGREEMENT PURSUANT TO TRANSFER OF CAPACITY RIGHTS AGREEMENT-MARCH 26, 2009, effective as provided herein, by and between the **BOROUGH OF POTTSTOWN** and **THE POTTSTOWN BOROUGH AUTHORITY** (collectively referred to as "Borough") and **UPPER POTTS GROVE TOWNSHIP** ("UPT").

WHEREAS, the parties entered into a Transfer of Capacity Rights Agreement dated March 26, 2009 ("Transfer Agreement").

WHEREAS, consistent with the provisions of the Transfer Agreement, UPT has purchased Additional Capacity on three different dates (2010, 2011 and 2013).

WHEREAS, UPT has requested to purchase the Additional Capacity which is available under the Transfer Agreement.

WHEREAS, the Borough will allow UPT to purchase the amount of Additional Capacity desired by UPT as set forth herein notwithstanding the limitations otherwise applicable under the terms of the Sewage Treatment Service Agreement between the parties, dated September 13, 2004, as amended ("Service Agreement").

WHEREAS, the parties agree that this Purchase Agreement shall reflect the agreement of the parties on the issues herein.

1. The Transfer Agreement and the Service Agreement are incorporated herein by reference. Definitions of terms as used in the Service Agreement shall control unless superseded or redefined in the Transfer Agreement or in this Purchase Agreement.

2. UPT purchased 188,400 gallons per day Max Three Month Capacity in April 2005.

3. Pursuant to the provisions of the Transfer Agreement, UPT had the right to purchase up to 238,000 gallons per day of Max Three Month Capacity for 60 months from the date of the Transfer Agreement which was March 26, 2009 ("Additional Capacity"). Notwithstanding the expiration of the 60 month period, the Borough is willing to allow UPT to make an additional purchase of capacity under the Transfer Agreement.

4. As of the date of this Purchase Agreement, UPT has purchased a total of 64,200 gallons per day of Max Three Month Capacity under the Transfer Agreement by purchasing

53,700 gallons per day in June 2010 ("First Purchase"), 4,500 gallons per day in May 2011 ("Second Purchase") and 6,000 gallons per day in June 2013 ("Third Purchase").

5. As of the date of this Purchase Agreement, UPT has 173,800 gallons per day of Additional Capacity potentially available for purchase under the Transfer Agreement.

6. UPT has requested to purchase 6,000 gallons per day of Max Three Month Capacity from the Additional Capacity potentially available for purchase under the Transfer Agreement ("Fourth Purchase"). The record of all sewer capacity purchased by UPT since 1990, including the amount of the Fourth Purchase, is shown on Exhibit A which is attached to and incorporated herein.

7. The price for the Fourth Purchase is based on \$5.43/gallon and totals \$32,592. The calculations to support the price are shown on Exhibit B which is attached to and incorporated herein. UPT shall pay this full amount to the Borough within 30 days of the date of this Purchase Agreement. Failure to make full payment shall result in the forfeiture of the right to proceed with the Fourth Purchase on the terms set forth herein without any further action required on the part of the Borough.

8. The 20 EDUs obtained by UPT in the Fourth Purchase are subject to the following conditions: 1) UPT shall disclose to the Borough in advance all properties and/or projects presently known which could seek to tie into the public sewer, which has occurred; 2) UPT will disclose to the Borough in writing the address of each property, the date of connection and the number of EDU allocated to each property as properties are tied in to the public sewer within 15 days of connection and 3) UPT will not utilize any of this capacity for the Coddington View development. Failure of UPT to abide by these conditions shall lead to a forfeiture of all capacity acquired in the Fourth Purchase. UPT's right to utilize the capacity from the Fourth Purchase shall continue, indefinitely, until the 20 EDUs have been consumed or exhausted by connection to the sanitary sewer system, PROVIDED UPT fulfills all of the conditions and obligations under this Agreement.

9. The foregoing represents the entire agreement and understanding of the parties on the subject matter and may only be modified or amended in writing signed by the parties. The effective date of this agreement shall be the date signed by the last party.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their respective duly authorized officers.

BOROUGH:

BOROUGH OF POTTSTOWN

By:  _____

Attest: Virginia L. Tabach

Date: OCTOBER 16, 2018

PBA:

POTTSTOWN BOROUGH AUTHORITY

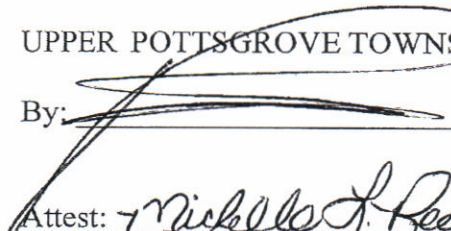
By:  _____

Attest: David R.

Date: 10/16/2018

UPT:

UPPER POTTS GROVE TOWNSHIP

By:  _____

Attest: Nicholas J. Reddick

Date: May 21, 2018

Upper Pottsgrove Township

History of Purchased Flow

1990 original purchase with WWTP	350,000 gallons (MTMF)
April 2005 purchase	188,400 gallons (MTMF)
June 2010 purchase	53,700 gallons (MTMF)
May 2011 purchase	4,500 gallons (MTMF)
June 2013 purchase	6,000 gallons (MTMF)
May 2018 purchase	6,000 gallons (MTMF)
TOTAL PURCHASED	608,600 gallons

Remaining to be purchased as of 2018 under Transfer Agreement

$776,400 \text{ gallons} - 608,600 \text{ gallons} = 167,800 \text{ gallons (MTMF)}$

4/23/2018

EXHIBIT B
BOROUGH OF POTTSTOWN
WASTEWATER TREATMENT PLANT EXPANSION AND UPGRADE
ADJUSTMENT TO ALLOCATION OF CONSTRUCTION COSTS

UPPER POTTS GROVE PURCHASES ADDITIONAL 6,000 GALLONS

	Total Construction Costs	<u>Pottstown Borough</u>		<u>Lower Pottsgrove</u>		<u>Upper Pottsgrove</u>		<u>West Pottsgrove</u>		
		Costs	% Share	Costs	% Share	Costs	% Share	Costs	% Share	
<u>Original Allocations</u>										
Total Project Costs	\$25,075,000	\$13,897,298	55.4%	\$7,729,874	30.8%	\$912,141	3.6%	\$2,535,687	10.1%	
<u>Adjusted Allocations</u>										
Total Project Costs	\$25,075,000	\$13,885,149	55.4%	\$7,729,874	30.8%	\$924,290	3.7%	\$2,535,687	10.1%	
Increased Cost (1989 Dollars)	\$0	(\$12,149)		\$0		\$12,149		\$0		
Cost Escalated to Current Dollars	\$0	(\$28,884)		\$0		\$28,884		\$0		
Cost Escalated to Current Dollars - Price Per Gallon						\$0.841				
<u>Original Allocations</u>										
Sludge Drying Facilities	\$7,000,000	\$4,171,910	59.6%	\$1,839,744	26.3%	\$270,397	3.9%	\$717,949	10.3%	
<u>Adjusted Allocations</u>										
Sludge Drying Facilities	\$7,000,000	\$4,169,218	59.6%	\$1,839,744	26.3%	\$273,090	3.9%	\$717,949	10.3%	
Increased Cost (2007 Dollars)	\$0	(\$2,692)		\$0		\$2,692		\$0		
Cost Escalated to Current Dollars	\$0	(\$3,708)		\$0		\$3,708		\$0		
Cost Escalated to Current Dollars - Price Per Gallon						\$0.108				
Total Cost of Purchased Capacity	\$0	(\$32,592)		\$0		\$32,592		\$0		
Price Per Gallon						\$5.43				

**PURCHASE OF ADDITIONAL CAPACITY AGREEMENT
PURSUANT TO TRANSFER OF CAPACITY RIGHTS AGREEMENT
DATED MARCH 26, 2009**

THIS PURCHASE OF ADDITIONAL CAPACITY AGREEMENT PURSUANT TO TRANSFER OF CAPACITY RIGHTS AGREEMENT DATED MARCH 26, 2009, AS AMENDED effective as provided herein, by and between the **BOROUGH OF POTTSTOWN** and **THE POTTSTOWN BOROUGH AUTHORITY** (collectively referred to as "Borough") and **UPPER POTTS GROVE TOWNSHIP** ("UPT").

WHEREAS, the parties entered into a Transfer of Capacity Rights Agreement dated March 26, 2009 ("Transfer Agreement").

WHEREAS, consistent with the provisions of the Transfer Agreement, UPT has purchased Additional Capacity on four different dates (2010, 2011, 2013 and 2018).

WHEREAS, the parties entered into an Extension to the Transfer Agreement dated October 21, 2019 extending UPT's ability to purchase Additional Treatment Capacity to April 6, 2022.

WHEREAS, UPT has requested to purchase the Additional Treatment Capacity which is available under the Transfer Agreement.

WHEREAS, the Borough will allow UPT to purchase the amount of Additional Treatment Capacity desired by UPT as set forth herein notwithstanding the limitations otherwise applicable under the terms of the Sewage Treatment Service Agreement between the parties, dated September 13, 2004, as amended ("Service Agreement").

WHEREAS, the parties agree that this Purchase Agreement shall reflect the agreement of the parties on the issues herein.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, it being further understood and agreed that the within Agreement is and shall incorporate and be subject to the laws of the Commonwealth of Pennsylvania, and intending to be legally bound hereby, it is agreed and covenanted to as follows:

1. The Transfer Agreement and the Service Agreement are incorporated herein by reference. Definitions of terms as used in the Service Agreement shall control unless superseded or redefined in the Transfer Agreement or in this Purchase Agreement.
2. Pursuant to the provisions of the Transfer Agreement, UPT had the right to purchase up to 238,000 gallons per day of Max Three Month Capacity ("Additional Treatment Capacity").

3. As of the date of this Purchase Agreement, UPT has purchased a total of 70,200 gallons per day of Max Three Month Capacity under the Transfer Agreement by purchasing 53,700 gallons per day in June 2010 ("First Purchase"), 4,500 gallons per day in May 2011 ("Second Purchase"), 6,000 gallons per day in June 2013 ("Third Purchase") and 6,000 gallons per day in 2015 ("Fourth Purchase").

4. As of the date of this Purchase Agreement, UPT has 167,800 gallons per day of Additional Capacity potentially available for purchase under the Transfer Agreement.

5. UPT has requested to purchase 18,000 gallons per day of Max Three Month Capacity (60 EDUs) from the Additional Capacity potentially available for purchase under the Transfer Agreement ("Fifth Purchase"). The record of all sewer capacity purchased by UPT since 1990, including the amount of the Fifth Purchase, is shown on Exhibit A which is attached to and incorporated herein.

6. The price for the Fifth Purchase is based on \$5.72/gallon and totals \$102,960.00. The calculations to support the price are shown on Exhibit B which is attached to and incorporated herein. UPT shall pay this full amount to the Borough within 30 days of the date of this Purchase Agreement. Failure to make full payment shall result in the forfeiture of the right to proceed with the Fifth Purchase on the terms set forth herein without any further action required on the part of the Borough.

7. The 60 EDUs obtained by UPT in the Fifth Purchase are subject to the following conditions: 1) UPT shall disclose to the Borough in advance all properties and/or projects presently known which could seek to tie into the public sewer; and 2) UPT will disclose to the Borough in writing the address of each property, the date of connection and the number of EDUs allocated to each property as properties are tied in to the public sewer within 15 days of connection. Failure of UPT to abide by these conditions shall lead to a forfeiture of all capacity acquired in the Fifth Purchase. UPT's right to utilize the capacity from the Fifth Purchase shall continue, indefinitely, until the 60 EDUs have been consumed or exhausted by connection to the sanitary sewer system, provided UPT fulfills all of the conditions and obligations under this Agreement.


8. The foregoing represents the entire agreement and understanding of the parties on the subject matter and may only be modified or amended in writing signed by the parties. The effective date of this agreement shall be the date signed by the last party.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their respective duly authorized officers.

BOROUGH: BOROUGH OF POTTSTOWN

By: Justin M. Keller

Attest: 

Date: 6-10-20

PBA: POTTSTOWN BOROUGH AUTHORITY

By: Justin M. Keller

Attest: 

Date: 6-10-20

UPT: UPPER POTTS GROVE TOWNSHIP

By: 

Attest: Jeannie DiSante

Date: 05-29-2020

EXHIBIT A

[Being the Upper Pottsgrove Township History of Purchased Flow]

Exhibit "A"

Upper Pottsgrove Township

History of Purchased Flow

1990 Original purchase with WWTP	350,000 gallons (MTMF)
April 2005 purchase	188,400 gallons (MTMF)
June 2010 purchase	53,700 gallons (MTMF)
May 2011 purchase	4,500 gallons (MTMF)
June 2013 purchase	6,000 gallons (MTMF)
May 2018 purchase	6,000 gallons (MTMF)
April 2020 purchase	18,000 gallons (MTMF)
TOTAL PURCHASED	626,600 gallons

Remaining to be purchased as of 2019 under Transfer Agreement

776,400 gallons – 626,600 gallons = 149,800 gallons (MTMF)

EXHIBIT B

[Being the calculations to support the price]

EXHIBIT B
BOROUGH OF POTTSTOWN
WASTEWATER TREATMENT PLANT EXPANSION AND UPGRADE
ADJUSTMENT TO ALLOCATION OF CONSTRUCTION COSTS

UPPER POTTS GROVE PURCHASE OF ADDITIONAL 18,000 GALLONS

	Total Construction Costs	Pottstown Borough Costs	% Share	Lower Pottsgrove Costs	% Share	Upper Pottsgrove Costs	% Share	West Pottsgrove Costs	% Share
<u>Original Allocations</u>									
Total Project Costs	\$ 25,075,000	\$ 13,885,149	55.4%	\$ 7,729,874	30.8%	\$ 924,290	3.7%	\$ 2,535,687	10.1%
<u>Adjusted Allocations</u>									
Total Project Costs	\$ 25,075,000	\$ 13,848,702	55.2%	\$ 7,729,874	30.8%	\$ 960,737	3.8%	\$ 2,535,687	10.1%
Increased Cost (1989 Dollars)	\$ -	\$ (36,447)		\$ -		\$ 36,447		\$ -	
Cost Escalated to Current Dollars	\$ -	\$ (91,120)		\$ -		\$ 91,120		\$ -	
<u>Original Allocations</u>									
Sludge Drying Facilities	\$ 7,000,000	\$ 4,169,218	59.6%	\$ 1,839,744	26.3%	\$ 270,397	3.9%	\$ 717,949	10.3%
<u>Adjusted Allocations</u>									
Sludge Drying Facilities	\$ 7,000,000	\$ 4,161,141	59.4%	\$ 1,839,744	26.3%	\$ 278,475	4.0%	\$ 717,949	10.3%
Increased Cost (2007 Dollars)	\$ -	\$ (8,077)		\$ -		\$ 8,077		\$ -	
Cost Escalated to Current Dollars	\$ -	\$ (11,862)		\$ -		\$ 11,862		\$ -	
Total Cost of Purchased Capacity	\$ -	\$ (102,983)		\$ -		\$ 102,983		\$ -	
Price Per Gallon						\$ 5.72			

Ming Drive / Moyer Road Sewer Project 2020 Connections

OWN1	MAILINGADDRESS1	MAILINGADDRESS2
SHEPHERD THOMAS W & LAURA A	2333 MING DR	POTTSTOWN PA 19464
WEDEMEYER SHELDON F III	89 W MOYER RD	POTTSTOWN PA 19464
DWOJAK STANLEY JR	97 W MOYER RD	POTTSTOWN PA 19464
GREEN RAYMOND L REVOCABLE TRUST	199 SUNDEAN DR 1962 Kepler Road	MELBOURNE FL 32901 Pottstown, PA 19464
BULY LARRY & KAREN M	2318 MING DR	POTTSTOWN PA 19464
MILLMAN MICHAEL J & TINA M	2319 MING DR	POTTSTOWN PA 19464
HARMUT KATHLEEN E	163 W MOYER RD	POTTSTOWN PA 19464
DIETTERICK MARLIN L & NANCY C	761 GILBERTSVILLE RD	POTTSTOWN PA 19464
CLIGGETT JOHN M & KATHLEEN M	2306 MING DR	POTTSTOWN PA 19464
WAGNER EARL J & KATHLEEN TRACY	2340 MING DR	POTTSTOWN PA 19464
BOYD KRISTINA M	4100 PROSPECT HILL LN	POTTSTOWN PA 19464
RHOADS RICHARD W & MARY JACQUELYNE	2307 MING DR	POTTSTOWN PA 19464
EGGERT PAULA N	166 W MOYER RD	POTTSTOWN PA 19464-1422
MILLER GARY D & BARBARA E	2325 MING DR	POTTSTOWN PA 19464
CARR JENNIFER MICHELLE	2339 MING DR	POTTSTOWN PA 19464
TATTERSHALL MICHAEL G & LISA M	107 W MOYER RD	POTTSTOWN PA 19464

Ming Drive / Moyer Road Sewer Project 2020 Connections

CHRISTMAN THOMAS R J & BARBARA L	2326 MING DR	POTTSTOWN PA 19464
CETRONE JOHN J & PATRICIA ANN	103 W MOYER RD	POTTSTOWN PA 19464
BRANAGH CHRISTOPHER J & PAULINE	2334 MING DR	POTTSTOWN PA 19464
MILLER JOSEPH C & BARBARA	2359 MING DR	POTTSTOWN PA 19464
ENDY DAVID B & HAROLD S	65 NORTHGATE PIKE	RINGWOOD NJ 07456
STETTLER LEROY & SALLY A	2345 MING DR	POTTSTOWN PA 19464
BROGLEY WILLIAM P	2348 MING DR	POTTSTOWN PA 19464
SOWELL JOHN N & DIANE B	2358 MING DR	POTTSTOWN PA 19464
MAST KENNETH & SHIRLEY	75 W MOYER RD	POTTSTOWN PA 19464
H KULP INC	1828 SWAMP PIKE	GILBERTSVILLE PA 19525
SHRUM MELODY I	144 W MOYER RD	POTTSTOWN PA 19469

REGAL OAKS PHASE II PROPERTY LISTING

CLEMMER AMBER N	176 ROSE VALLEY RD	SAME
COLLIUORI RYAN	224 ROSE VALLEY RD	SAME
CRONK RONALD A JR & WENDY S	2133 HOLLYBERRY CT	SAME
CURRY TIMOTHY S & PEARL M	203 ROSE VALLEY RD	1280 BUCK ROAD PENNSBURG, PA 18073
DAILEY MATTHEW D	215 ROSE VALLEY RD	SAME
DEKLEVA MICHAEL J & LYNN M	209 ROSE VALLEY RD	SAME
ERWIN MICHAEL B & MARIANNE T	2131 GILBERTSVILLE ROAD	SAME
HILL WILLIAM III & HUDOK PHYLICIA	2071 GILBERTSVILLE ROAD	SAME
KITCHEN RAMON B JR & KATHRYN	241 ROSE VALLEY RD	SAME
KRASLEY CHRISTOPHER & JULIE	212 ROSE VALLEY RD	SAME
LARRIVEE WYON G	221 ROSE VALLEY RD	46 S GRANGE AVENUE COLLEGEVILLE PA 19426
LENNOX EUGENE & KATHRYN	218 ROSE VALLEY RD	SAME
MADSEN JACQUELINE & BRADLEY	167 ROSE VALLEY RD	SAME
MARTIN JEFFREY THOMAS & AMMIE LEE	2063 GILBERTSVILLE ROAD	SAME
MAURER ROBERT E & SALLY D	236 ROSE VALLEY RD	SAME
MILLER GORDON R & KIMBERLY A	240 ROSE VALLEY RD	SAME
MOYER ASHLEY & JOSHUA	179 ROSE VALLEY RD	SAME
MULLEN JOHN J & MONTAGUE CINDY ANN	2161 HOLLYBERRY CT	SAME
POLLICK JASON & JENNIFER	2058 MIMOSA LN	SAME
RATH RON L & TIMA O	182 ROSE VALLEY RD	SAME
SANTANGELO MATTHEW F JR & RUTH A	156 ROSE VALLEY RD	SAME
SKUPSKI (MALONE) SHARON & MIKE	197 ROSE VALLEY RD	SAME
STRZELECKI WALTER & MELANIE	200 ROSE VALLEY RD	SAME
SUTTON-VITABILE TRACEY	80 MAPLELEAF LN	SAME
TOOTH STEVEN E & WILLA M	2101 GILBERTSVILLE ROAD	SAME
TOUCHTON SCOTT F & MARIA MANCINI	159 ROSE VALLEY RD	SAME

**PURCHASE OF ADDITIONAL CAPACITY AGREEMENT
PURSUANT TO TRANSFER OF CAPACITY RIGHTS AGREEMENT
DATED MARCH 26, 2009**

THIS PURCHASE OF ADDITIONAL CAPACITY AGREEMENT PURSUANT TO TRANSFER OF CAPACITY RIGHTS AGREEMENT DATED MARCH 26, 2009, AS AMENDED effective as provided herein, by and between the **BOROUGH OF POTTSTOWN** and **THE POTTSTOWN BOROUGH AUTHORITY** (collectively referred to as "Borough") and **UPPER POTTS GROVE TOWNSHIP** ("UPT").

WHEREAS, the parties entered into a Transfer of Capacity Rights Agreement dated March 26, 2009 ("Transfer Agreement").

WHEREAS, consistent with the provisions of the Transfer Agreement, UPT has purchased Additional Capacity on five different dates (2010, 2011, 2013, 2018, and 2020).

WHEREAS, the parties entered into an Extension to the Transfer Agreement dated October 21, 2019 extending UPT's ability to purchase Additional Treatment Capacity to April 6, 2022.

WHEREAS, UPT has requested to purchase the Additional Treatment Capacity which is available under the Transfer Agreement for the purpose of providing treatment capacity to the Kummerer residential development.

WHEREAS, the Borough will allow UPT to purchase the amount of Additional Treatment Capacity desired by UPT as set forth herein notwithstanding the limitations otherwise applicable under the terms of the Sewage Treatment Service Agreement between the parties, dated September 13, 2004, as amended ("Service Agreement").

WHEREAS, the parties agree that this Purchase Agreement shall reflect the agreement of the parties on the issues herein.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, it being further understood and agreed that the within Agreement is and shall incorporate and be subject to the laws of the Commonwealth of Pennsylvania, and intending to be legally bound hereby, it is agreed and covenanted to as follows:

1. The Transfer Agreement and the Service Agreement are incorporated herein by reference. Definitions of terms as used in the Service Agreement shall control unless superseded or redefined in the Transfer Agreement or in this Purchase Agreement.
2. Pursuant to the provisions of the Transfer Agreement, UPT had the right to purchase up to 238,000 gallons per day of Max Three Month Capacity ("Additional Treatment Capacity").

Amended Appendix A-25

3. As of the date of this Purchase Agreement, UPT has purchased a total of 88,200 gallons per day of Max Three Month Capacity under the Transfer Agreement by purchasing 53,700 gallons per day in June 2010 ("First Purchase"), 4,500 gallons per day in May 2011 ("Second Purchase"), 6,000 gallons per day in June 2013 ("Third Purchase"), 6,000 gallons per day in 2015 ("Fourth Purchase"), and 18,000 gallons per day in May 2020 ("Fifth Purchase").

4. As of the date of this Purchase Agreement, UPT has 149,800 gallons per day of Additional Capacity potentially available for purchase under the Transfer Agreement.

5. UPT has requested to purchase 43,500 gallons per day of Max Three Month Capacity (145 EDUs) from the Additional Capacity potentially available for purchase under the Transfer Agreement ("Sixth Purchase"). The record of all sewer capacity purchased by UPT since 1990, including the amount of the Sixth Purchase, is shown on Exhibit A which is attached to and incorporated herein.

6. The price for the Sixth Purchase is based on \$5.72/gallon and totals \$248,820.00. The calculations to support the price are shown on Exhibit B which is attached to and incorporated herein. UPT shall pay this full amount to the Borough within 30 days of the date of this Purchase Agreement. Failure to make full payment shall result in the forfeiture of the right to proceed with the Sixth Purchase on the terms set forth herein without any further action required on the part of the Borough.

7. The 145 EDUs obtained by UPT in the Sixth Purchase are subject to the following conditions: 1) UPT shall disclose to the Borough in advance all properties and/or projects presently known which could seek to tie into the public sewer; and 2) UPT will disclose to the Borough in writing the address of each property, the date of connection and the number of EDUs allocated to each property as properties are tied in to the public sewer within 15 days of connection. Failure of UPT to abide by these conditions shall lead to a forfeiture of all capacity acquired in the Sixth Purchase. UPT's right to utilize the capacity from the Sixth Purchase shall continue, indefinitely, until the 145 EDUs have been consumed or exhausted by connection to the sanitary sewer system, provided UPT fulfills all of the conditions and obligations under this Agreement.

8. The foregoing represents the entire agreement and understanding of the parties on the subject matter and may only be modified or amended in writing signed by the parties. The effective date of this agreement shall be the date signed by the last party.

[Signatures appear on following page.]

Amended Appendix A-25

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their respective duly authorized officers.

BOROUGH:

BOROUGH OF POTTSTOWN

By: Don Weand

Attest: Virginia L. Nalack

Date: OCTOBER 13, 2020

PBA:

POTTSTOWN BOROUGH AUTHORITY

By: [Signature]

Attest: Alan J. Ecker

Date: SEPTEMBER 15, 2020

UPT:

UPPER POTTS GROVE TOWNSHIP

By: [Signature]

Attest: Jeanne DiSante

Date: 09-21-2020

EXHIBIT A

[Being the Upper Pottsgrove Township History of Purchased Flow]

Exhibit "A"

Upper Pottsgrove Township

History of Purchased Flow

1990 Original purchase with WWTP	350,000 gallons (MTMF)
April 2005 purchase	188,400 gallons (MTMF)
June 2010 purchase	53,700 gallons (MTMF)
May 2011 purchase	4,500 gallons (MTMF)
June 2013 purchase	6,000 gallons (MTMF)
May 2018 purchase	6,000 gallons (MTMF)
April 2020 purchase	18,000 gallons (MTMF)
September 2020 purchase	43,500 gallons (MTMF)
TOTAL PURCHASED	670,100 gallons

Remaining to be purchased as of 2020 under Transfer Agreement

776,400 gallons – 670,100 gallons = 106,300 gallons (MTMF)

EXHIBIT B

[Being the calculations to support the price]

EXHIBIT B
BOROUGH OF POTTSTOWN
WASTEWATER TREATMENT PLANT EXPANSION AND UPGRADE
ADJUSTMENT TO ALLOCATION OF CONSTRUCTION COSTS

UPPER POTTS GROVE PURCHASE OF ADDITIONAL 43,500 GALLONS

	Total Construction Costs	Pottstown Borough Costs	% Share	Lower Pottsgrove Costs	% Share	Upper Pottsgrove Costs	% Share	West Pottsgrove Costs	% Share
<u>Original Allocations</u>									
Total Project Costs	\$ 25,075,000	\$ 13,885,149	55.4%	\$ 7,729,874	30.8%	\$ 924,290	3.7%	\$ 2,535,687	10.1%
<u>Previous Adjusted Allocations</u>									
Total Project Costs	\$ 25,075,000	\$ 13,848,702	55.2%	\$ 7,729,874	30.8%	\$ 960,737	3.8%	\$ 2,535,687	10.1%
<u>Current Adjusted Allocations</u>									
Total Project Costs	\$ 25,075,000	\$ 13,761,229	54.9%	\$ 7,729,874	30.8%	\$ 1,048,210	4.2%	\$ 2,535,687	10.1%
Increased Cost (1989 Dollars)	\$ -	\$ (87,473)		\$ -		\$ 87,473		\$ -	
Cost Escalated to Current Dollars	\$ -	\$ (218,689)		\$ -		\$ 218,689		\$ -	
<u>Original Allocations</u>									
Sludge Drying Facilities	\$ 7,000,000	\$ 4,169,218	59.6%	\$ 1,839,744	26.3%	\$ 270,397	3.9%	\$ 717,949	10.3%
<u>Previous Adjusted Allocations</u>									
Sludge Drying Facilities	\$ 7,000,000	\$ 4,161,141	59.4%	\$ 1,839,744	26.3%	\$ 278,475	4.0%	\$ 717,949	10.3%
<u>Current Adjusted Allocations</u>									
Sludge Drying Facilities	\$ 7,000,000	\$ 4,141,755	59.2%	\$ 1,839,744	26.3%	\$ 297,860	4.3%	\$ 717,949	10.3%
Increased Cost (2007 Dollars)	\$ -	\$ (19,386)		\$ -		\$ 19,386		\$ -	
Cost Escalated to Current Dollars	\$ -	\$ (28,469)		\$ -		\$ 28,469		\$ -	
Total Cost of Purchased Capacity	\$ -	\$ (248,820)		\$ -		\$ 248,820		\$ -	
Price Per Gallon						\$ 5.72			