



June 11, 2021

VIA E-FILING

David P. Zambito

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of Upper Pottsgrove Township's assets, properties and rights related to its wastewater collection and conveyance system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in Upper Pottsgrove Township, Montgomery County and a portion of Douglass Township, Berks County, Pennsylvania; Docket No. A-2020-3021460 et al.

Electronic Copies of Admitted Testimony and Exhibits

Dear Secretary Chiavetta:

Pursuant to Ordering Paragraph 2 of Administrative Law Judge Jeffrey A. Watson's Order Granting Joint Stipulation for Admission of Evidence and Cancelling the Evidentiary Hearings Scheduled for June 10-11, 2021 (attached), 52 Pa. Code § 5.412a, and the Pennsylvania Public Utility Commission's Implementation Order regarding Electronic Access to Pre-Served Testimony, entered on January 10, 2013 in Docket No. M-2012-2331973, attached please find the following testimony and exhibits, which were not previously filed with the Secretary's Bureau:

- A. Pennsylvania-American Water Company ("PAWC") Statements and Exhibits
PAWC Statement No. 1-R – Rebuttal Testimony of Scott D. Fogelsanger.
- B. Upper Pottsgrove Township ("Upper Pottsgrove") Statements and Exhibits
Upper Pottsgrove Statement No. 1-R – Rebuttal Testimony of Trace Slinkerd.
- C. Pottstown Borough Authority/Borough of Pottstown ("PBA"BP")
PBA/BP St. No. 1 – Direct Testimony of Justin M. Keller, with Exhibits A through F.
- D. Shadeland Development Corporation ("Shadeland")
Direct Testimony of Richard Mingey, with Exhibits A through C.

Copies previously have been served on all active parties and were admitted into the record by the above-referenced order of Judge Watson.

A copy of this filing (without enclosure) is being served in accordance with the attached Certificate of Service.

Thank you for your attention to this filing. Please contact me if you have any question or concern.

Sincerely,

COZEN O'CONNOR



By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

DPZ/kmg
Enclosure

cc: Honorable Jeffrey A. Watson
Nicholas Miskanic, Legal Assistant
Per Certificate of Service
Elizabeth Rose Triscari, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the :
Pennsylvania Public Utility Code, 66 Pa. C.S. § :
1102(a), for approval of (1) the transfer, by sale, of :
substantially all of Upper Pottsgrove Township's :
assets, properties and rights related to its : Docket No. A-2020-3021460, *et*
wastewater collection and conveyance system to : *al.*
Pennsylvania-American Water Company, and (2) :
the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of June 2021 served a true copy of the foregoing **Correspondence filing Electronic Copies of Admitted Testimony and Exhibits** on the parties, listed below in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Due to the COVID-19 Pandemic, Service is Being Made by E-Mail Only

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**Administrative Law Judge
Jeffrey A. Watson's
Order Granting Joint Stipulation for
Admission of Evidence and Cancelling
the Evidentiary Hearings
Scheduled for June 10-11, 2021**

Via electronic service only due to Emergency Order at M-2020-3019262

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water	:	A 2020 3021460
Company – Wastewater Division (PAWC-WD),	:	
under Sections 1102 and 1329 of the Pennsylvania	:	
Public Utility Code, 66 Pa C.S. §§ 1102(a) and	:	
1329 (relating to enumeration of acts requiring	:	
certificate and valuation of acquired water and	:	
wastewater systems), for approval of: (1) the transfer,	:	
by sale, of substantially all of the wastewater	:	
system assets, properties and rights of Upper	:	
Pottsgrove Township related to its wastewater	:	
collection and conveyance system; (2) the right	:	
of PAWC-WD to begin to offer or furnish wastewater	:	
service to the public in Upper Providence	:	
Township, Montgomery County, and a portion of	:	
Douglass Township, Berks County, Pennsylvania;	:	
and (3) the use for ratemaking purposes of the lesser	:	
fair market value or the negotiated purchase price of	:	
the Upper Pottsgrove Township assets related to its	:	
wastewater collection and treatment system.	:	

**ORDER GRANTING JOINT STIPULATION
FOR ADMISSION OF EVIDENCE AND CANCELLING THE EVIDENTIARY
HEARINGS SCHEDULED FOR JUNE 10-11, 2021**

On June 9, 2021, Pennsylvania-American Water Company, the Office of Consumer Advocate, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, the Office of Small Business Advocate, Upper Pottsgrove Township, Shadeland Development Corporation, Pottstown Borough Authority and the Borough of Pottstown (collectively, the “Stipulating Parties”) filed a “Joint Stipulation for the Admission of Evidence” (“Stipulation”) in the above-captioned proceeding. Each of the Stipulating Parties stipulated to the authenticity of the statements and exhibits listed in the Stipulation and requested that they be admitted into the record of this proceeding on the terms and conditions set forth in the Stipulation. Certain filings contain information marked as “Confidential.” The Stipulating

Parties requested that such materials be placed in non-public folders by the Secretary's Bureau. The Stipulation is attached to this Order.

As this request is reasonable, it will be granted.

THEREFORE,

IT IS ORDERED:

1. That the Stipulation, filed on June 9, 2021 and the filings, statements, and exhibits listed therein are admitted into the record of this proceeding on the terms and conditions set forth in the Stipulation; and,
2. That one electronic copy of each filing, statement and exhibit listed in the Stipulation, together with accompanying verifications and a copy of this Order, be filed with the Secretary's Bureau of the Commission, unless previously filed; and,
3. That all filings designated as "Confidential" be placed in non-public folders by the Secretary's Bureau of the Commission.
4. That the evidentiary hearings scheduled for June 10-11, 2021 are cancelled.

Date: June 10, 2021

_____/s/
Jeffrey A. Watson
Administrative Law Judge

APPENDIX A
FORM OF ORDER GRANTING
JOINT STIPULATION FOR THE ADMISSION OF EVIDENCE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
Jeffrey A. Watson

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the :
Pennsylvania Public Utility Code, 66 Pa. C.S. § :
1102(a), for approval of (1) the transfer, by sale, of :
substantially all of Upper Pottsgrove Township’s :
assets, properties and rights related to its : Docket No. A-2020-3021460, *et al.*
wastewater collection and conveyance system to :
Pennsylvania-American Water Company, and (2) :
the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania :

JOINT STIPULATION FOR THE ADMISSION OF EVIDENCE

AND NOW COME Pennsylvania-American Water Company (“PAWC”), the Office of Consumer Advocate (“OCA”), the Pennsylvania Public Utility Commission’s Bureau of Investigation & Enforcement (“I&E”), the Office of Small Business Advocate (“OSBA”), Upper Pottsgrove Township (“Upper Pottsgrove”), Shadeland Development Corporation (“Shadeland”), and the Pottstown Borough Authority and the Borough of Pottstown (together, “PBA/BP”), being all the active parties to the above-captioned proceeding (hereinafter, collectively referred to as the

“Stipulating Parties”), to file this “Joint Stipulation for the Admission of Evidence” (“Stipulation”). In support of the Stipulation, the Stipulating Parties represent as follows:

I. Background

Hearings were scheduled in this matter for June 10 and 11, 2021.

There is no dispute in this matter regarding the authenticity of and admission into the evidentiary record of the testimony and exhibits previously served by the Stipulating Parties.

The Stipulating Parties have agreed to waive cross-examination of all witnesses.

In lieu of a hearing, the Stipulating Parties have agreed to submit this Stipulation.

II. Stipulation of Evidence

5. The Stipulating Parties hereby jointly stipulate to the authenticity of and admission into the evidentiary record in this matter of the filings, statements, and exhibits listed below. All such filings, statements, and exhibits are authenticated by verifications from each supporting witness.

A. PAWC Statements and Exhibits

1. a. PAWC Statement No. 1 – Direct Testimony of Scott D. Fogelsanger, PAWC Statement No. 1, with PAWC Exhibit SDF-1 and PAWC Exhibit SDF-2 (this Exhibit is the Application, as amended, which was previously filed with the Secretary of the Pennsylvania Public Utility Commission).

b. PAWC Statement No. 1-R – Rebuttal Testimony of Scott D. Fogelsanger, PAWC Statement No. 1-R.

2. PAWC Statement No. 2 – Direct Testimony of Michael J. Guntrum, P.E. and PAWC Exhibits MJG-1 through MJG-3.

3. PAWC Statement No. 3 – Direct Testimony of Rod P. Nevirauskas, with PAWC Exhibit RPN-1.

4. PAWC Statement No. 4 – Direct Testimony of Jerome C. Weinert, PE, ASA, CDP, with PAWC Exhibit JCW-1.

B. Upper Pottsgrove Statements and Exhibits

1. a. Upper Pottsgrove Statement No. 1 – Direct Testimony of Trace Slinkerd, with UPT Exhibit TS-1.

b. Upper Pottsgrove Statement No. 1-R – Rebuttal Testimony of Trace Slinkerd.

2. Upper Pottsgrove Statement No. 2.0 – Direct Testimony of Harold Walker, III, with Appendix A.

C. PBA/BP

1. PBA/BP St. No. 1 – Direct Testimony of Justin M. Keller, with Exhibits A through F.

D. Shadeland

1. a. Direct Testimony of Richard Mingey, with Exhibits A through C.

6. This Stipulation is being presented only to move for the admission of evidence in the above-captioned proceeding. Regardless of whether this Stipulation is approved, no adverse inference shall be drawn, nor shall prejudice result to any Stipulating Party in this or any future proceeding as a consequence of this Stipulation, or any of its terms or conditions.

7. Verified Direct Statements and Exhibits of PAWC and Upper Pottsgrove were previously filed with the Commission’s Secretary’s Bureau. “Confidential” materials filed with

the Secretary's Bureau of the Commission by the Stipulating Parties have been so marked and should be placed in non-public folders by the Secretary's Bureau. One electronic copy of the remaining statements and exhibits listed in Paragraph 5 above, together with verifications from the supporting witnesses and the Presiding Officer's order granting this Stipulation, will be filed with the Secretary's Bureau for inclusion in the official case record upon approval of this Stipulation. Additionally, the Stipulating Parties shall ensure that electronic copies of statements and exhibits are filed with the Commission's Secretary as required by 52 Pa. Code § 5.412a (regarding "Electronic submission of pre-served testimony").

8. Attached hereto as **Appendix A** is a proposed "Order Granting Joint Stipulation for the Admission of Evidence" for consideration by the Presiding Officer.

III. Request for Relief

WHEREFORE, the Stipulating Parties, by their respective counsel, respectfully request that the Honorable Administrative Law Judge Jeffrey A. Watson admit the foregoing statements and exhibits into the record in this proceeding on the terms and conditions set forth in this Stipulation.

[Signatures appear on next page.]

Respectfully submitted,



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Counsel for *Shadeland Development
Corporation*

A-2020-3021460 Application of Pennsylvania-American Water Company Pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Upper Pottsgrove Township

Updated 6/1/21

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PAWC
Statement No. 1-R
Rebuttal Testimony of Scott D.
Fogelsanger



June 3, 2021

VIA E-MAIL

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Honorable Jeffrey A. Watson
Pennsylvania Public Utility Commission
301 Fifth Avenue
Piatt Place, Suite 220
Pittsburgh, PA 15222

Re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, of substantially all of Upper Pottsgrove Township's assets, properties and rights related to its wastewater collection and conveyance system to Pennsylvania-American Water Company, and (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in Upper Pottsgrove Township, Montgomery County and a portion of Douglass Township, Berks County, Pennsylvania; Docket No. A-2020-3021460 et al.

Rebuttal Testimony of Pennsylvania-American Water Company

Dear Administrative Law Judge Watson:

Enclosed please find copies of the following testimony, submitted on behalf of Pennsylvania-American Water Company in the above-referenced matter:

1. Rebuttal Testimony of Scott D. Fogelsanger, PAWC Statement No. 1-R.

Copies have been served on all parties, as indicated on the enclosed Certificate of Service. Should you have any questions or concerns, please contact me. Thank you.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

DPZ/kmg
Enclosure

cc: Rosemary Chiavetta, Secretary (*Cover Letter and Certificate of Service Only*)
Nicholas Miskanic, Legal Assistant to ALJ Watson
Per Certificate of Service
Elizabeth Rose Triscari, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the :
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Pennsylvania-American Water Company, and (2) :
the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of June 2021 served a true copy of the foregoing **Rebuttal Testimony of Pennsylvania-American Water Company** on the parties, listed below in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Due to the COVID-19 Pandemic, Service is Being Made by E-Mail Only

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Respectfully submitted,

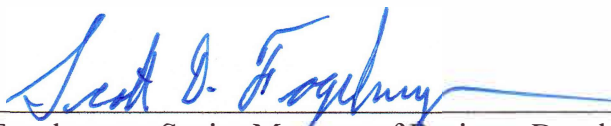


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VERIFICATION

I, Scott Fogelsanger hereby state that the facts above set forth above are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. Cons. Stat. §4904 (relating to unsworn falsification to authorities).



Scott Fogelsanger, Senior Manager of Business Development
Pennsylvania-American Water Company

Dated: 6/3/2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water :
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa C.S. § 1102(a), for approval :
of (1) the transfer, by sale, of substantially all of Upper :
Pottsgrove Township’s assets, properties and rights : Docket No. A-2020-3021460 *et al.*
related to its wastewater collection and conveyance :
system to Pennsylvania-American Water Company, and :
(2) the rights of Pennsylvania-American Water Company :
to begin to offer or furnish wastewater service to the :
public in Upper Pottsgrove Township, Montgomery :
County and a portion of Douglass Township, Berks :
County, Pennsylvania. :

**REBUTTAL TESTIMONY OF
SCOTT D. FOGELSANGER
ON BEHALF OF
PENNSYLVANIA-AMERICAN WATER COMPANY**

Date: June 3, 2021

PAWC Statement No. 1-R

**REBUTTAL TESTIMONY OF
SCOTT D. FOGELSANGER**

INTRODUCTION

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is Scott D. Fogelsanger and my business address is 852 Wesley Drive, Mechanicsburg, PA 17011.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by PAWC¹ as Senior Manager of Business Development.

Q. HAVE YOU SUBMITTED ANY OTHER TESTIMONY IN THIS PROCEEDING?

A. Yes. I submitted direct testimony identified as PAWC Statement No. 1.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to the direct testimony of (a) Richard Mingey on behalf of Shadeland Development Corporation (“Shadeland”), (b) Justin M. Keller on behalf of Pottstown Borough Authority (“PBA”) and Borough of Pottstown (“BP”) (collectively, “PBA/BP”), and (c) Joan E. London, Esq., who testified at the public input hearing on behalf of her client, Artisan Construction, LLC (“Artisan”).

¹ Unless otherwise noted, the acronyms and capitalized terms used in this testimony have the same meanings as set forth in my Direct Testimony.

1 **REBUTTAL TO RICHARD MINGEY**

2 **Q. PLEASE SUMMARIZE MR. MINGEY’S TESTIMONY.**

3 **A.** Mr. Mingey discusses a sewer line that Shadeland constructed and has not dedicated to
4 Upper Pottsgrove, allegedly because the conditions precedent for conveyance have not
5 occurred. It is my understanding that Upper Pottsgrove will introduce evidence rebutting
6 Mr. Mingey’s version of the facts regarding the ownership of the sewer line and discussing
7 whether the Commission has jurisdiction to determine the ownership of the sewer line.

8 I will address what Mr. Mingey failed to discuss in his testimony: Mr. Mingey
9 never explains why his testimony is relevant to this Application proceeding. In fact, he
10 never even mentions the Application or the Transaction it describes.

11
12 **Q. PLEASE EXPLAIN WHAT PAWC IS REQUESTING IN ITS APPLICATION.**

13 **A.** PAWC is asking the Commission to approve its acquisition of Upper Pottsgrove’s
14 wastewater system (“System”), pursuant to the APA dated April 28, 2020 between Upper
15 Pottsgrove and PAWC.

16
17 **Q. WHY DID SHADELAND INTERVENE IN THIS APPLICATION PROCEEDING?**

18 **A.** Shadeland’s Petition to Intervene claimed that it owns the disputed sewer line and argued
19 that Shadeland has an interest in ensuring that Upper Pottsgrove does not convey property
20 it does not own as part of the Transaction. PAWC and Upper Pottsgrove filed Joint
21 Preliminary Objections contending that the Commission lacks jurisdiction to resolve the
22 dispute over ownership of the sewer line and that Shadeland fails to meet the standard for

1 intervention because it does not have an interest that would be bound by the Commission's
2 decision in this proceeding.

3
4 **Q. DID SHADELAND EXPLAIN WHY IT BELIEVES THE COMMISSION HAS**
5 **JURISDICTION OVER ITS CLAIMS IN THE INTERVENTION?**

6 **A.** In its Answer to the Joint Preliminary Objections, Shadeland argued that the Commission
7 has jurisdiction over its claims because the Commission can determine whether PAWC's
8 acquisition of the System is in the public interest while the dispute over ownership of the
9 sewer line is pending.

10
11 **Q. DOES MR. MINGEY'S TESTIMONY ADDRESS WHETHER PAWC'S**
12 **ACQUISITION OF THE SYSTEM IS IN THE PUBLIC INTEREST WHILE THE**
13 **PARTIES' DISPUTE OVER OWNERSHIP OF THE SEWER LINE IS PENDING?**

14 **A.** No.

15
16 **Q. IS PAWC'S ACQUISITION OF THE SYSTEM IN THE PUBLIC INTEREST**
17 **WHILE THE PARTIES' DISPUTE OVER OWNERSHIP OF THE SEWER LINE**
18 **IS PENDING?**

19 **A.** Yes. As I stated in my Direct Testimony, the Transaction is in the public interest, provides
20 affirmative benefits of a substantial nature and should be promptly approved by the
21 Commission. The dispute between Shadeland and Upper Pottsgrove over ownership of the
22 sewer line does not change that conclusion in any way.

1 The Commission is being asked to approve PAWC's acquisition of the System
2 pursuant to the APA. The APA states that PAWC's obligation to Close on the Transaction
3 is conditioned on the representations and warranties of Upper Pottsgrove being true and
4 correct on the Closing Date. One such representation and warranty is that Upper Pottsgrove
5 has title to the acquired assets. Even if the Commission approves the Transaction as
6 described in the Application, PAWC has the contractual right to refuse to Close until Upper
7 Pottsgrove has established that it has clear title to the sewer line. Moreover, the APA states
8 that Upper Pottsgrove has the contractual duty to obtain clear title to the assets before they
9 are transferred to PAWC.

10 PAWC believes that the Commission would be setting very bad precedent for future
11 Section 1329 application proceedings if it allows developers to use Commission process in
12 this manner. Rather than resolving the sewer line dispute in a civil court where it belongs,
13 Shadeland is using Commission process to pressure a concession from Upper Pottsgrove,
14 and possibly PAWC, on a monetary dispute that is not properly before the Commission.

15
16 **Q. DOES THE APA GIVE PAWC THE RIGHT TO WAIVE THIS CONDITION OF**
17 **CLOSING?**

18 **A.** Yes, but, by this rebuttal testimony, PAWC commits that it will require that Upper
19 Pottsgrove obtain clear title to the sewer line by dedication to Upper Pottsgrove,
20 determination of a court of competent jurisdiction that dedication is not necessary, or other
21 evidence reasonably satisfactory to PAWC. If PAWC seeks to waive this condition of
22 Closing, PAWC will file a petition with the Commission setting forth the proposed waiver
23 and permitting Parties and the Commission an opportunity to evaluate whether the waiver

1 would materially alter PAWC's Application as approved by the Commission. In the event
2 that such a petition is filed, PAWC agrees that Closing cannot occur until the Commission
3 has finally resolved the petition. Consequently, the public interest will not be adversely
4 affected by the pending dispute over ownership of the sewer line.

5
6 **Q. WOULD PAWC BE ABLE TO PROVIDE ADEQUATE SERVICE TO ITS**
7 **CUSTOMERS AFTER CLOSING IF UPPER POTTS GROVE WOULD FAIL TO**
8 **OBTAIN CLEAR TITLE TO THE SEWER LINE BEFORE CLOSING?**

9 **A.** Yes. It is my understanding that Upper Pottsgrove currently uses the sewer line to provide
10 service to its customers. I do not believe that Shadeland has the ability to shut off the pipes
11 to prevent PAWC from using them to provide service to customers after Closing.
12 Likewise, I cannot envision any circumstance in which Shadeland would or could terminate
13 service to occupied houses or to lots in the development that Shadeland is trying to sell.
14 The alleged dispute is over money; which is a separate issue than continuity of service and
15 can be resolved later. In fact, Shadeland has made no threat that it will attempt to shut
16 down the line if the Transaction closes.

17 In any event, this question becomes irrelevant because PAWC is committing to the
18 Commission that Upper Pottsgrove must have clear title to the sewer line prior to Closing
19 (unless PAWC files a Petition asking the Commission to allow it to waive the condition
20 that Upper Pottsgrove obtain clear title to the sewer line prior to closing).

21

1 **Q. WOULD PAWC OVERPAY FOR THE ASSETS OF THE SYSTEM IF UPPER**
2 **POTTSGROVE WOULD FAIL TO OBTAIN CLEAR TITLE TO THE SEWER**
3 **LINE PRIOR TO CLOSING?**

4 **A.** No. I understand that the sewer line was installed during the last five years at an original
5 cost of approximately \$283,000. PAWC’s requested fair market value rate base is the
6 negotiated purchase price of \$13,750,000, which is substantially less than the average of
7 the Utility Valuation Experts’ appraisals (an average of \$17,320,346). The Utility
8 Valuation Experts’ appraisals included the sewer line. Even if excluded from the assets to
9 be acquired, the sewer line would not impact the use of the negotiated purchase price as
10 the fair market value rate base pursuant to 66 Pa. C.S. § 1329.

11 In any event, PAWC is committing to the Commission that Upper Pottsgrove will
12 have clear title to the sewer line prior to Closing (unless PAWC files a Petition asking the
13 Commission to allow it to waive the condition that Upper Pottsgrove obtain clear title to
14 the sewer line prior to closing). This commitment is consistent with the fact that, if PAWC
15 were to agree to lower the purchase price due to the lack of clear title to the sewer line,
16 such lower purchase price would require PUC reconsideration of the purchase price as the
17 fair market value ratemaking rate base under Section 1329.

18

19 **Q. ASIDE FROM THE DISPUTE REGARDING OWNERSHIP OF THE SEWER**
20 **LINE, HAS MR. MINGEY STATED ANY OTHER REASON WHY THE**
21 **TRANSACTION IS ALLEGEDLY NOT IN THE PUBLIC INTEREST?**

22 **A.** No, Shadeland’s sole basis for opposition is the dispute regarding ownership of the sewer
23 line. He raises no other issues. Shadeland’s sole issue is resolved by PAWC’s commitment

1 not to waive Upper Pottsgrove’s obligation under the APA to convey clear title to the sewer
2 line.

3
4 **REBUTTAL TO JUSTIN M. KELLER**

5 **Q. DOES MR. KELLER STATE THE POSITION OF PBA/BP ON WHETHER THE**
6 **COMMISSION SHOULD APPROVE THE APPLICATION?**

7 **A.** Yes. Mr. Keller states on page 2 of his Direct Testimony that PBA/BP oppose the
8 Application because their financial interest “as delineated in a July 2, 2013 Settlement
9 Agreement and Release executed between the Authority and Upper Pottsgrove Township
10 will be adversely affected by the proposed sale of Upper Pottsgrove Township’s waste
11 water collection and conveyance system.” I understand that Upper Pottsgrove will be
12 introducing testimony concerning the Settlement Agreement and Release (“Settlement
13 Agreement”). However, I am advised by counsel that the Administrative Law Judge has
14 dismissed PBA/BP’s Protest to the extent that it concerns a claim for the award of money
15 damages from Upper Pottsgrove. Therefore, the claim that the Application should be
16 denied based on the alleged adverse financial impact to PBA/BP should not be considered
17 by the Administrative Law Judge or the Commission.

18
19 **Q. DID THE ADMINISTRATIVE LAW JUDGE DISMISS THE PROTEST OF**
20 **PBA/BP IN ITS ENTIRETY?**

21 **A.** No. I am advised by counsel that the Administrative Law Judge did not dismiss the portion
22 of PBA/BP’s protest relating to whether PAWC can demonstrate its ability to serve Upper
23 Pottsgrove’s customers, which depends on the assignment at Closing from Upper

1 Pottsgrove to PAWC of the Sewage Treatment Service Agreement (the “STSA”) dated
2 September 13, 2004, between Upper Pottsgrove, PBA and BP.

3
4 **Q. PLEASE DESCRIBE THE ASSIGNMENT PROVISION OF THE STSA.**

5 **A.** The STSA is attached to the Application at **Appendix A-25**. Section 10.10 states that
6 Upper Pottsgrove will not assign the agreement without the consent of PBA/BP, except to
7 a municipal authority incorporated by Upper Pottsgrove. Obviously, PAWC is not a
8 municipal authority incorporated by Upper Pottsgrove. Consequently, PBA/BP’s consent
9 to the assignment is required.

10
11 **Q. DOES MR. KELLER INDICATE WHETHER PBA/BP WILL CONSENT TO THE**
12 **ASSIGNMENT OF THE STSA?**

13 **A.** Mr. Keller states that PBA/BP have not yet consented to the assignment of the STSA. On
14 pages 6-7 of his Direct Testimony, however, Mr. Keller states that PBA/BP will consider
15 consenting to the assignment, and withdrawing its protest to the Application, if (a) PAWC
16 agrees to assume Upper Pottsgrove’s financial obligation to reimburse the Authority for
17 the outstanding unreimbursed funds, and (b) certain other unspecified conditions are
18 satisfied.

19
20 **Q. DO YOU HAVE A RESPONSE TO THIS PORTION OF MR. KELLER’S**
21 **TESTIMONY?**

1 A. Yes. First, PAWC is unwilling to assume any obligation to pay PBA/BP in order to obtain
2 assignment of the STSA. Obtaining assignment is an obligation of Upper Pottsgrove under
3 the APA and PAWC intends to hold Upper Pottsgrove to that obligation.

4 Second, it is important to note that Mr. Keller is not asking the Commission to order
5 PAWC to assume Upper Pottsgrove's financial obligation. Mr. Keller's Direct Testimony
6 certainly provides no basis for the Commission to find that such an order would be in the
7 public interest. In fact, such an order would be against the public interest; there is no reason
8 for PAWC's ratepayers or shareholders to assume the alleged obligation of Upper
9 Pottsgrove pursuant to an agreement that did not involve PAWC.

10 Third, PAWC believes it to be improper for PBA/BP to use Commission process
11 to attempt to get this type of concession from a Commission-regulated public utility. The
12 Commission should strongly denounce such tactics. The assignment is a contractual
13 dispute between Upper Pottsgrove and PBA/BP that does not belong before the
14 Commission. The Commission would be setting very bad precedent for future Section
15 1329 applications proceedings if it allows PBA/BP to use Commission process in this
16 manner.

17 In my view, PBA/BP is attempting to negotiate a settlement in its Direct Testimony.
18 PAWC is open to reaching a reasonable settlement of the instant Application proceeding,
19 but PAWC will not negotiate a settlement through the exchange of public testimony. I am
20 advised by counsel that Commission regulations state that settlement discussions are
21 confidential. If PAWC is going to negotiate a settlement, it will do so in confidential
22 discussions between the parties.

23

1 **Q. DOES PBA/BP HAVE UNBRIDLED DISCRETION OVER WHETHER TO**
2 **CONSENT TO THE ASSIGNMENT OF THE STSA?**

3 **A.** I suspect the lawyers will argue that point in their briefs. Nevertheless, I am advised by
4 counsel that Upper Pottsgrove has filed an action in the Court of Common Pleas of
5 Montgomery County, Pennsylvania, asking it to order PBA/BP to consent to the
6 assignment. I understand Upper Pottsgrove is introducing additional testimony regarding
7 this proceeding.

8

9 **Q. DOES MR. KELLER’S TESTIMONY ADDRESS WHETHER PAWC’S**
10 **ACQUISITION OF THE SYSTEM IS IN THE PUBLIC INTEREST IF PBA/BP DO**
11 **NOT CONSENT TO THE ASSIGNMENT OF THE STSA?**

12 **A.** Yes. On page 6 of his testimony, Mr. Keller notes that, until PBA/BP consent to the
13 assignment, PAWC will not be able to provide adequate wastewater collection, treatment
14 and disposal services to meet present and future customer demands.

15

16 **Q. DO YOU HAVE A RESPONSE TO THIS TESTIMONY?**

17 **A.** Yes. As I stated in my Direct Testimony, the Transaction is in the public interest, provides
18 affirmative benefits of a substantial nature and should be promptly approved by the
19 Commission. The fact that PBA/BP have not yet consented to the assignment does not
20 modify that conclusion in any way.

21 The Commission is being asked to approve PAWC’s acquisition of the System
22 pursuant to the APA. The APA states that PAWC’s obligation to Close on the Transaction
23 is conditioned on Upper Pottsgrove obtaining all necessary consents prior to Closing. I

1 direct your attention to Section 12.01(a) of the APA. Even if the Commission approves
2 the Transaction as described in the Application, PAWC has the contractual right to refuse
3 to Close until Upper Pottsgrove has received PBA/BP's consent to the assignment of the
4 STSA. Moreover, the APA states that Upper Pottsgrove has the contractual duty to obtain
5 all necessary consents prior to Closing. Please see Section 13.02(d) of the APA.
6

7 **Q. DOES THE APA GIVE PAWC THE RIGHT TO WAIVE THIS CONDITION OF**
8 **CLOSING?**

9 **A.** Yes, but, by this rebuttal testimony, PAWC commits that it will not close the Transaction
10 without assignment of the STSA. At the current time, PAWC will need bulk treatment
11 services from PBA/BP for the Upper Pottsgrove System. If PAWC seeks to waive this
12 condition of Closing, PAWC will file a petition with the Commission setting forth the
13 proposed waiver and permitting Parties and the Commission an opportunity to evaluate
14 whether the waiver would materially alter PAWC's Application as approved by the
15 Commission. In the event that such a petition is filed, PAWC agrees that Closing cannot
16 occur until the Commission has finally resolved the petition. Consequently, the public
17 interest will not be adversely affected by the fact that PBA/BP have not yet consented to
18 the assignment of the STSA.
19

20 **Q. ASIDE FROM THE DISPUTE REGARDING ASSIGNMENT OF THE STSA, HAS**
21 **MR. KELLER STATED ANY OTHER REASON WHY THE TRANSACTION IS**
22 **ALLEGEDLY NOT IN THE PUBLIC INTEREST?**

1 A. No, PBA/BP’s sole basis for opposition is the dispute regarding assignment of the STSA.
2 They raise no other issues. PBA/BP’s sole issue is resolved by PAWC’s commitment not
3 to waive the APA condition precedent to Closing that Upper Pottsgrove must obtain
4 assignment of the STSA.

5
6 **REBUTTAL TO JOAN E. LONDON, ESQ.**

7 **Q. PLEASE SUMMARIZE THE TESTIMONY OF ATTORNEY LONDON.**

8 A. Ms. London testified regarding several topics, including concerns as to: the condition of
9 the System and delays in maintenance; potential rate increases and project delays as a result
10 of the sale of the System; PAWC’s knowledge of and ability to honor a Corrective Action
11 Plan (“CAP”) with the Borough of Pottstown, which is needed for connection of the
12 Kummerer Tract development to the System; and concerns about the status of an Act 537
13 plan amendment and the need for its completion prior to the sale. I understand that Upper
14 Pottsgrove will be addressing at least some of these topics in its rebuttal testimony, but I
15 want to address them as well.

16
17 **Q. PLEASE ADDRESS ATTORNEY LONDON’S CONCERNS ABOUT THE**
18 **CONDITION OF THE COLLECTION SYSTEM AND DELAYS IN**
19 **MAINTENANCE.**

20 A. Attorney London noted that some owners of water/wastewater systems decrease
21 maintenance activities once they decide to sell their system. She did not allege that Upper
22 Pottsgrove had done so, but simply expressed concern and urged the Commission to
23 consider the issue during its review of the Application.

1 PAWC has no reason to believe that Upper Pottsgrove has ceased to maintain the
2 System since the execution of the APA. In fact, Upper Pottsgrove is obligated pursuant to
3 Section 9.01 of the APA to continue to manage and operate the System in the ordinary
4 course of business in accordance with past practices and procedures and to maintain and
5 preserve intact the business and assets of the System.

6 Nevertheless, Attorney London points out one reason why the Transaction is in the
7 public interest. In my Direct Testimony, I stated that PAWC has the expertise, the record
8 of environmental compliance, the commitment to invest in necessary capital improvements
9 and resources, and the experienced managerial and operating personnel necessary to
10 provide safe and reliable wastewater services to the residents of Upper Pottsgrove. PAWC
11 St. No. 1 p. 12. I also stated that PAWC can draw upon a much broader range of
12 engineering and operational experience, as well as deeper financial resources, to address
13 operational challenges and support growth and redevelopment. *Id.* p. 13.

14 My colleague, Mr. Michael J. Guntrum, P.E., testified that, in his opinion, PAWC
15 is better equipped than Upper Pottsgrove to maintain the System's environmental
16 compliance. In addition to the reasons I discussed, Mr. Guntrum stated that, given
17 PAWC's existing platform in relation to the operation of water and wastewater systems in
18 neighboring communities, PAWC is better positioned to provide wastewater services on a
19 cost-effective basis. PAWC St. No. 2 p. 7. He noted that PAWC is a recognized leader in
20 providing communities in the Commonwealth with well-maintained and reliable water and
21 wastewater service and has extensive local knowledge due to our decades of experience
22 providing water service to neighboring communities. He noted the extensive resources
23 available to PAWC, on its own and as a subsidiary of American Water. *Id.* Finally, he

1 discussed the five-year capital improvement plan, by which PAWC expects to invest over
2 \$4,000,000 in the System in the first five years after Closing.

3
4 **Q. DO YOU BELIEVE THERE IS ANY REASON TO EXPECT THAT PROJECTS**
5 **WILL BE DELAYED DUE TO THE SALE OF THE SYSTEM?**

6 **A.** No. PAWC has extensive experience in acquiring municipal and other water and
7 wastewater systems, so the Closing should not cause any material delays to projects. In
8 addition, as Mr. Guntrum discussed in his Direct Testimony, Upper Pottsgrove and PAWC
9 are committed to completing the five remaining line extension projects under Upper
10 Pottsgrove's latest Act 537 Plan. PAWC St. No. 2 p. 3.

11
12 **Q. PLEASE RESPOND TO ATTORNEY LONDON'S CONCERNS ABOUT**
13 **POSSIBLE RATE INCREASES.**

14 **A.** My colleague, Ms. Ashley E. Everette, discusses this topic in detail in her Direct
15 Testimony, PAWC St. No. 3 pp. 9 -13, 16-17. She notes that the Township will adopt an
16 ordinance decreasing rates prior to Closing and PAWC will adopt those rates at Closing,
17 but System customers will be subject to PAWC's prevailing wastewater tariff on file with
18 the PUC regarding all rates other than the customer charge and consumption charge. Future
19 rates charged to former Upper Pottsgrove customers will be determined by the Commission
20 in future base rate proceedings and they will depend on many factors, including the amount
21 of the wastewater revenue requirement that is allocated to water customers pursuant to 66
22 Pa. C.S. § 1311(c). As a result, it is impossible to accurately predict rates for former Upper
23 Pottsgrove customers ten or twenty years from now. Nevertheless, absent a fundamental

1 change to Section 1301 of the Code (which is unlikely), the Commission will continue to
2 have a statutory obligation to ensure that all rates are “just and reasonable.”
3

4 **Q. IS PAWC AWARE OF, AND ABLE TO COMPLY WITH, THE CAP THAT MS.**
5 **LONDON MENTIONED?**

6 **A.** PAWC is aware of the CAP described in the October 15, 2019 letter of LTL Consultants,
7 Ltd., which Ms. London discussed at the public input hearing. It is an agreement between
8 PBA and Upper Pottsgrove. Significantly, PBA has not expressed concern about this
9 agreement. It is my understanding that the CAP is essentially complete. Consequently,
10 the CAP presents no reason for disapproving the Application.
11

12 **Q. ATTORNEY LONDON ALSO EXPRESSED CONCERN ABOUT THE STATUS**
13 **OF UPPER POTTS GROVE’S ACT 537 PLAN AMENDMENT AND THE NEED**
14 **FOR ITS COMPLETION PRIOR TO THE SALE. PLEASE ADDRESS THESE**
15 **CONCERNS.**

16 **A.** The APA addresses the Act 537 Plan. *See, e.g.,* Sections 7.11, 9.06, and 12.08.
17 Pennsylvania Department of Environmental Protection (“DEP”) approval of the updated
18 Act 537 plan is a condition of Closing. Schedules 4.05 and 5.04. I understand that DEP
19 approval is expected in August, 2021.
20

21 **CONCLUSION**

22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

1 **A.** Yes. However, I reserve the right to supplement my testimony as additional issues and
2 facts arise during the course of the proceeding. Thank you.

UPPER POTTSGROVE
Statement No. 1-R
Rebuttal Testimony of Trace Slinkerd



DIRECT DIAL NUMBER:
(215) 575-7143

James J. Rodgers
jrodgers@dilworthlaw.com

June 3, 2021

VIA E-FILING

The Honorable Jeffrey A. Watson
Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place
301 5th Avenue, Suite 220
Harrisburg, PA 15222

**Re: Pennsylvania-American Water Company – Wastewater Division Upper
Pottsgrove Township Wastewater System Section 1329 Application / Docket
No. A-2020-3021460**

Dear Judge Watson:

I represent Petitioner Upper Pottsgrove Township in the above-listed matter, and I attach for filing the Rebuttal Testimony of Trace Slinkerd in response to the Direct Testimony of Non-Settling Protestants/Intervenors and Participant Joan London, Esquire in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, all known parties will be served, as indicated.

Respectfully,

/s/ James J. Rodgers

James J. Rodgers

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa. C.S. § 1102(a), for approval :
of (1) the transfer, by sale, of substantially all of Upper :
Pottsgrove Township’s assets, properties and rights :
related to its wastewater collection and conveyance : Docket No. A-2020-3021460, *et al.*
system to Pennsylvania-American Water Company, :
and (2) the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Cover Letter and Verified Rebuttal Testimony of Trace Slinkerd on Behalf of Upper Pottsgrove Township upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party).

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Participant

Dated: June 3, 2021

/s/ James J. Rodgers

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Pennsylvania-American Water :
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa C.S. § 1102(a), for approval :
of (1) the transfer, by sale, of substantially all of Upper :
Pottsgrove Township’s assets, properties and rights :
related to its wastewater collection and conveyance : Docket No. A-2020-3021460 *et al.*
system to Pennsylvania-American Water Company, and :
(2) the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania. :

**REBUTTAL TESTIMONY OF
TRACE SLINKERD
ON BEHALF OF
UPPER POTTS GROVE TOWNSHIP**

Date: June 3, 2021

Township Statement No. 1-R

1 **REBUTTAL TESTIMONY OF**
2 **TRACE SLINKERD**

3 **INTRODUCTION**

4 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE RECORD.**

5 **A.** My name is Trace Slinkerd and my business address is 1409 Farmington Avenue,
6 Pottstown, PA 19464.

7
8 **Q. IN WHAT CAPACITY ARE YOU AFFILIATED WITH THE TOWNSHIP OF**
9 **UPPER POTTS GROVE?**

10 **A.** I am the President of the Board of Commissioners (“Board”) for Upper Pottsgrove
11 Township (“Township” or “Upper Pottsgrove”).

12
13 **Q. HAVE YOU SUBMITTED ANY OTHER TESTIMONY IN THIS PROCEEDING?**

14 **A.** Yes. I submitted direct testimony identified as Township of Upper Pottsgrove Statement
15 No. 1.

16
17 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

18 **A.** My rebuttal testimony responds to the direct testimony of (a) Richard Mingey on behalf
19 of Shadeland Development Corporation (“Shadeland”), (b) Justin M. Keller on behalf of
20 Pottstown Borough Authority (“PBA”) and Borough of Pottstown (“BP”) (collectively,
21 “PBA/BP”); and (c) Joan London, Esquire on behalf of Artisan Construction, LLC.

22
23 **REBUTTAL TO RICHARD MINGEY**

1 **Q. PLEASE SUMMARIZE MR. MINGEY’S TESTIMONY.**

2 **A.** Mr. Mingey discusses a sewer line that Shadeland constructed and has not dedicated to
3 Upper Pottsgrove, allegedly because the conditions precedent for conveyance have not
4 occurred. The Township disputes Shadeland’s ownership claim of the sewer line. Both
5 Shadeland and the Township agree that the Commission lacks jurisdiction to decide
6 private contractual disputes and that the Commission does not have jurisdiction to
7 determine the ownership of the sewer line.

8 It is important to note that Mr. Mingey’s testimony does not include an
9 explanation as to why his testimony is relevant to this Application. In fact, he never even
10 mentions the Application or the Proposed Transaction (defined below) it describes.

11
12 **Q. PLEASE EXPLAIN WHAT PAWC IS REQUESTING IN ITS APPLICATION**
13 **AND WHY THE TOWNSHIP PETITIONED TO INTERVENE.**

14 **A.** PAWC is asking the Commission to approve its acquisition of Upper Pottsgrove’s
15 wastewater system (“System”), pursuant to the APA dated April 28, 2020 between Upper
16 Pottsgrove and PAWC (the “Proposed Transaction”). The Township filed a Petition to
17 Intervene on April 26, 2021 because PAWC’s Application directly affects the interests of
18 the Township, which are not adequately represented by any existing party. The
19 Township’s Petition to Intervene was granted at the Prehearing Conference. The
20 Township fully supports PAWC’s Application.

21
22 **Q. WHY DID SHADELAND INTERVENE IN THIS APPLICATION**
23 **PROCEEDING?**

1 A. Shadeland’s Petition to Intervene claimed that it owns the disputed sewer line and argued
2 that Shadeland has an interest in ensuring that Upper Pottsgrove does not convey
3 property it does not own as part of the Proposed Transaction. PAWC and Upper
4 Pottsgrove filed Joint Preliminary Objections contending that the Commission lacks
5 jurisdiction to resolve the dispute over ownership of the sewer line and that Shadeland
6 fails to meet the standard for intervention because it does not have an interest that would
7 be bound by the Commission’s decision in this proceeding.

8
9 **Q. DID SHADELAND EXPLAIN WHY IT BELIEVES THE COMMISSION HAS**
10 **JURISDICTION OVER ITS CLAIMS IN THE INTERVENTION?**

11 A. In its Answer to the Joint Preliminary Objections, Shadeland argued that the Commission
12 has jurisdiction over its claims because the Commission can determine whether PAWC’s
13 acquisition of the System is in the public interest while the dispute over ownership of the
14 sewer line is pending.

15
16 **Q. DOES MR. MINGEY’S TESTIMONY ADDRESS WHETHER THE PROPOSED**
17 **TRANSACTION IS IN THE PUBLIC INTEREST WHILE THE PARTIES’**
18 **DISPUTE OVER OWNERSHIP OF THE SEWER LINE IS PENDING?**

19 A. No.

20
21 **Q. IS THE PROPOSED TRANSACTION IN THE PUBLIC INTEREST WHILE THE**
22 **PARTIES’ DISPUTE OVER OWNERSHIP OF THE SEWER LINE IS PENDING?**

1 A. Yes. As I detailed in my Direct Testimony, the Proposed Transaction is in the public
2 interest, provides affirmative benefits of a substantial nature and should be promptly
3 approved by the Commission. The dispute between Shadeland and the Township over
4 ownership of the sewer line does not change that conclusion in any way.

5 Shadeland is using the Commission process to pressure a monetary concession
6 from the Township, and possibly PAWC, on a dispute that is not properly before the
7 Commission rather than resolving the sewer line dispute in a civil court where it belongs.
8 Upper Pottsgrove believes that the Commission would be setting very bad precedent for
9 future Section 1329 applications proceedings if it allows developers to use Commission
10 process in this manner.

11
12 **Q. HAS THE TOWNSHIP AGREED TO OBTAIN CLEAR TITLE TO THE SEWER
13 LINE PRIOR TO THE CLOSING OF THE PROPOSED TRANSACTION?**

14 A. Yes. The Commission is being asked to approve the Proposed Transaction pursuant to the
15 APA. PAWC's obligation to Close on the Proposed Transaction is conditioned upon the
16 representations and warranties of the Township in the APA being true and correct on the
17 Closing Date, including but not limited to a representation and warranty that the
18 Township has title to the acquired assets. The disputed sewer line is an acquired asset
19 under the APA. PAWC, therefore, has the contractual right not to Close until the
20 Township has established clear title to that sewer line. It is my understanding that PAWC
21 has committed that it will require that the Township obtain clear title to the sewer line by
22 dedication from Shadeland to Upper Pottsgrove, determination of a court of competent
23 jurisdiction that dedication is not necessary, or other evidence reasonably satisfactory to

1 PAWC. It is also my understanding that if PAWC seeks to waive this condition of
2 Closing, PAWC will file a petition with the Commission setting forth the proposed
3 waiver and permitting Parties and the Commission an opportunity to evaluate whether the
4 waiver would materially alter PAWC's Application as approved by the Commission. In
5 the event that such a petition is filed, PAWC has made it clear to the Township that
6 Closing cannot occur until the Commission has finally resolved the petition.
7 Consequently, the public interest will not be adversely affected by the pending dispute
8 over ownership of the sewer line.

9
10 **Q. WHAT STEPS DOES UPPER POTTS GROVE INTEND TO TAKE TO OBTAIN**
11 **CLEAR TITLE TO THE SEWER LINE PRIOR TO THE CLOSING OF THE**
12 **PROPOSED TRANSACTION?**

13 **A.** Shadeland is obligated to dedicate the sewer line to the Township pursuant to prior
14 agreements between the parties. Shadeland has provided the Township with a proposed
15 agreement to settle the outstanding issues. The Township is open to settlement
16 discussions. If an agreement is not reached regarding the ownership of the sewer line in
17 the very near future, the Township will file an action in the Court of Common Pleas of
18 Montgomery County for immediate relief.

19
20 **Q. WOULD PAWC BE ABLE TO PROVIDE ADEQUATE SERVICE TO ITS**
21 **CUSTOMERS AFTER CLOSING IF UPPER POTTS GROVE WOULD FAIL TO**
22 **OBTAIN CLEAR TITLE TO THE SEWER LINE BEFORE CLOSING?**

1 A. Yes. Upper Pottsgrove currently uses the sewer line to provide service to its customers. I
2 believe that it would be unlawful for Shadeland to shut off the pipes to prevent PAWC
3 from using them to provide service to customers after Closing. Likewise, I cannot
4 envision any circumstance in which Shadeland would or could terminate service to
5 occupied houses or to lots in the development that Shadeland is trying to sell. The
6 alleged dispute is over money; which is a separate issue than continuity of service and
7 can be resolved later. In fact, Shadeland has made no threat that it will attempt to shut
8 down the line if the Proposed Transaction closes.

9 In any event, this question becomes irrelevant because Upper Pottsgrove is
10 contractually bound to provide clear title to the sewer line prior to Closing and PAWC is
11 committing to the Commission that it will not waive that contractual right unless PAWC
12 is granted by the Commission the ability to waive the right.

13
14 **Q. ASIDE FROM THE DISPUTE REGARDING OWNERSHIP OF THE SEWER**
15 **LINE, HAS MR. MINGEY STATED ANY OTHER REASON WHY THE**
16 **PROPOSED TRANSACTION IS ALLEGEDLY NOT IN THE PUBLIC**
17 **INTEREST?**

18 A. No, Shadeland's sole basis for opposition is the dispute regarding ownership of the sewer
19 line. The Township held multiple public meetings to receive input from the community
20 and to review the advantages and disadvantages of the Proposed Transaction. During
21 those meetings and in Shadeland's filings with the Commission, Shadeland did not
22 dispute the reasons the Township determined the Proposed Transaction is in the public

1 interest. Furthermore, Shadeland’s issue is resolved by PAWC’s commitment not to
2 waive the Township’s obligation under the APA to convey clear title to the sewer line.
3

4 **REBUTTAL TO JUSTIN M. KELLER**

5 **Q. DOES MR. KELLER STATE THE POSITION OF PBA/BP ON WHETHER THE**
6 **COMMISSION SHOULD APPROVE THE APPLICATION?**

7 **A.** Yes. Mr. Keller states on page 2 of his Direct Testimony that PBA/BP oppose the
8 Application because their financial interest “as delineated in a July 2, 2013 Settlement
9 Agreement and Release executed between the Authority and Upper Pottsgrove Township
10 will be adversely affected by the proposed sale of Upper Pottsgrove Township’s waste
11 water collection and conveyance system.”
12

13 **Q. DID THE ADMINISTRATIVE LAW JUDGE DISMISS THE PROTEST OF**
14 **PBA/BP IN ITS ENTIRETY?**

15 **A.** No. I am advised by counsel that the Administrative Law Judge has dismissed
16 PBA/BP’s Protest to the extent that it concerns a claim for the award of money damages
17 from Upper Pottsgrove; but that the Administrative Law Judge did not dismiss the
18 portion of PBA/BP’s protest relating to whether PAWC can demonstrate its ability to
19 serve Upper Pottsgrove’s customers, which depends on the assignment at Closing from
20 Upper Pottsgrove to PAWC of the Sewage Treatment Service Agreement (the “STSA”)
21 dated September 13, 2004, between Upper Pottsgrove, PBA and BP.
22

23 **Q. DOES THE ASSIGNMENT OF THE STSA REQUIRE PBA/BP’S CONSENT?**

1 A. Yes. Section 10.10 of the STSA states that Upper Pottsgrove will not assign the
2 agreement without the consent of PBA/BP, except to a municipal authority incorporated
3 by Upper Pottsgrove. PAWC is not a municipal authority incorporated by Upper
4 Pottsgrove. Consequently, PBA/BP's consent to the assignment is required.

5
6 **Q. DOES MR. KELLER INDICATE WHETHER PBA/BP WILL CONSENT TO**
7 **THE ASSIGNMENT OF THE STSA?**

8 A. Mr. Keller states that PBA/BP have not yet consented to the assignment of the STSA. On
9 pages 6-7 of his Direct Testimony, however, Mr. Keller states that PBA/BP will consider
10 consenting to the assignment, and withdrawing its protest to the Application, if PAWC
11 agrees to assume Upper Pottsgrove's financial obligation to reimburse the Authority for
12 the outstanding unreimbursed funds, and certain other unspecified conditions are
13 satisfied. PAWC has indicated to the Township that this request by PBA/BP is
14 unacceptable.

15
16 **Q. HAS THE TOWNSHIP TAKEN ANY ACTION TO OBTAIN THE CONSENT OF**
17 **PBA/BP?**

18 A. Yes. The Township requested PBA/BP's consent to the assignment of the STSA and in
19 response PBA/BP for the first time in January 2021 demanded immediate and full
20 payment of purported obligations with interest. The demand was not supported by an
21 agreement among the parties and in fact is contrary to the past conduct of the parties.
22 After PBA/BP refused all reasonable and good faith attempts by the Township to address
23 the concerns of PBA/BP regarding the Proposed Transaction, the Township filed a

1 Complaint for an Injunction in the Court of Common Pleas of Montgomery County,
2 Pennsylvania, asking the Court to order PBA/BP to consent to the assignment.

3
4 **Q. DOES MR. KELLER’S TESTIMONY ADDRESS WHETHER THE PROPOSED**
5 **TRANSACTION IS IN THE PUBLIC INTEREST IF PBA/BP DO NOT CONSENT**
6 **TO THE ASSIGNMENT OF THE STSA?**

7 **A.** Yes. On page 6 of his testimony, Mr. Keller notes that, until PBA/BP consent to the
8 assignment, PAWC will not be able to provide adequate wastewater collection, treatment
9 and disposal services to meet present and future customer demands.

10
11 **Q. DO YOU HAVE A RESPONSE TO THIS TESTIMONY?**

12 **A.** Yes. As I stated in my Direct Testimony, the Proposed Transaction is in the public
13 interest, provides affirmative benefits of a substantial nature and should be promptly
14 approved by the Commission. The fact that PBA/BP have not yet consented to the
15 assignment does not modify that conclusion in any way. PBA/BP is using the
16 Commission process to pressure a monetary concession from the Township on a dispute
17 that is not properly before the Commission rather than resolving the dispute in a civil
18 court where it belongs.

19 The Commission is being asked to approve the Proposed Transaction pursuant to
20 the APA. The APA states that PAWC’s obligation to Close on the Proposed Transaction
21 is conditioned on Upper Pottsgrove obtaining all necessary consents prior to Closing. I
22 direct your attention to Section 12.01(a) of the APA. Even if the Commission approves
23 the Transaction as described in the Application, PAWC has the contractual right to refuse

1 to Close until Upper Pottsgrove has received PBA/BP's consent to the assignment of the
2 STSA. Moreover, the APA states that Upper Pottsgrove has the contractual duty to
3 obtain all necessary consents prior to Closing. Please see Section 13.02(d) of the APA.
4

5 **Q. DOES THE APA GIVE PAWC THE RIGHT TO WAIVE THIS CONDITION OF**
6 **CLOSING?**

7 **A.** Yes, but, it is my understanding that PAWC has committed that it will not close the
8 Proposed Transaction without assignment of the STSA. At the current time, PAWC will
9 need bulk treatment services from PBA/BP for the Upper Pottsgrove system. If PAWC
10 seeks to waive this condition of Closing, PAWC has agreed to file a petition with the
11 Commission setting forth the proposed waiver and permitting Parties and the
12 Commission an opportunity to evaluate whether the waiver would materially alter
13 PAWC's Application as approved by the Commission. In the event that such a petition is
14 filed, it is my understanding PAWC agrees that Closing cannot occur until the
15 Commission has finally resolved the petition. Consequently, the public interest will not
16 be adversely affected by the fact that PBA/BP have not yet consented to the assignment
17 of the STSA.
18

19 **Q. ASIDE FROM THE DISPUTE REGARDING ASSIGNMENT OF THE STSA,**
20 **HAS MR. KELLER STATED ANY OTHER REASON WHY THE PROPOSED**
21 **TRANSACTION IS ALLEGEDLY NOT IN THE PUBLIC INTEREST?**

22 **A.** No, PBA/BP's sole basis for opposition is the dispute regarding assignment of the STSA.
23 They raise no other issues. PBA/BP's sole issue is resolved by PAWC's commitment not

1 to waive the APA condition precedent to Closing that Upper Pottsgrove must obtain
2 assignment of the STSA.

3
4 **REBUTTAL TO JOAN LONDON, ESQUIRE**

5 **Q. WERE MS. LONDON’S TESTIMONY AND EXHIBITS ACCURATE?**

6 **A.** No. Her testimony and exhibits were inaccurate in three respects: (1) she failed to
7 recognize that parts of Phase 2A and all of Phase 2B of the Kummerer Tract
8 Development project are outside of the sewage treatment service area; (2) she incorrectly
9 stated that Phase 2A has been approved by the Township when it has not (Phase 2B has
10 also not been approved); and (3) she failed to recognize that the Corrective Action Plan
11 has been essentially completed.

12
13 **Q. ARE THE ISSUES RAISED BY MS. LONDON IN HER TESTIMONY**
14 **PROPERLY CONSIDERED BY THE COMMISSION IN THE APPROVAL OF**
15 **THE APPLICATION?**

16 **A.** No. The issues she raised are primarily zoning and land development issues and I have
17 been advised by counsel that they are outside the scope of the Commission’s jurisdiction.

18 Ms. London’s concerns about the maintenance of the system are also not relevant
19 to the consideration of the Application. The Township continues to properly maintain the
20 system. Upon Closing of the Proposed Transaction, future maintenance will be handled in
21 the ordinary course of business by PAWC.

22 Ms. London’s concern about potential rate increases is also not relevant to the
23 approval of the Application. I have been advised by counsel that the Commission will

1 deal with rate increases by PAWC in the ordinary course if and after the Proposed
2 Transaction has been approved.

3 Finally, Ms. London's concern about the 537 Plan is also outside the scope of
4 these proceedings. The Township will continue to do what is required of it under Act 537
5 and make appropriate submissions to DEP including, but not limited to, any
6 amendment(s) that may be required in relation to the Proposed Transaction.

7

8

CONCLUSION

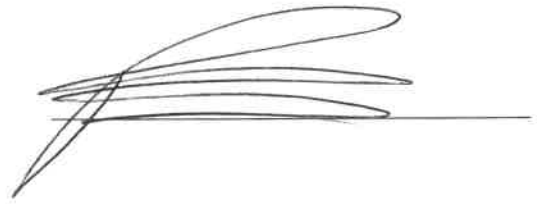
9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 **A.** Yes. However, I reserve the right to supplement my testimony as additional issues and
11 facts arise during the course of the proceeding. Thank you.

VERIFICATION

I, Trace Slinkerd, hereby state that the facts set forth in my Rebuttal Testimony are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 3 Jun 21

A handwritten signature in black ink, consisting of several overlapping, fluid strokes, positioned above a horizontal line.

**PBA/BP Statement No. 1-R
Direct Testimony of Justin M. Keller,
with Exhibits A through F**

Vincent M. Pompo
West Chester Office
Direct: 610-701-4411
General: 610-430-8000
Fax: (610) 692-6210
vpompo@lambmcerlane.com

May 26, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: In Re: Application of PA-American Water Company
Docket Numbers: A-2020-3021460

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission please find the Direct Testimony of Justin M. Keller on Behalf of Pottstown Borough Authority and the Borough of Pottstown in regard to the above-referenced proceeding.

All parties of record have been served pursuant the attached Certificate of Service. If you have any questions or concerns, please do not hesitate to contact this office.

Thank you very much for your cooperation and assistance.

Very truly yours,

LAMB MCERLANE PC

By: */s/ Vincent M. Pompo*

Vincent M. Pompo

/sg

Enclosures served via E-mail

cc: Honorable Jeffrey A. Watson (jeffwatson@pa.gov)
Nick Miskanic (nmiskanic@pa.gov)

All Counsel and parties of record per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re:	:	Application Docket
	:	
APPLICATION OF PENNSYLVANIA-AMERICAN	:	No. A-2020-3021460
WATER COMPANY UNDER SECTION 1102(a) OF	:	
THE PENNSYLVANIA PUBLIC UTILITY CODE,	:	
66 Pa C.S. § 1102(a), FOR APPROVAL OF (1) THE	:	
TRANSFER, BY SALE, OF SUBSTANTIALLY ALL	:	
OF UPPER POTTS GROVE TOWNSHIP'S ASSETS,	:	
PROPERTIES AND RIGHTS RELATED TO ITS	:	
WASTE WATER COLLECTION AND CONVEYANCE	:	
SYSTEM TO PENNSYLVANIA-AMERICAN WATER	:	
COMPANY AND (2) THE RIGHTS OF PAWC TO	:	
BEGIN TO OFFER TO FURNISH WASTEWATER	:	
SERVICE TO THE PUBLIC IN UPPER POTTS GROVE	:	
TOWNSHIP, MONTGOMERY COUNTY AND	:	
PORTIONS OF DOUGLASS TOWNSHIP, BERKS	:	
COUNTY, PENNSYLVANIA.	:	

**DIRECT TESTIMONY OF
JUSTIN M. KELLER**

On the Behalf of

Pottstown Borough Authority

and

Borough of Pottstown

*Pottstown Borough Authority and
Borough of Pottstown Statement No. 1*

Direct Testimony of Justin M. Keller

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Q. Please state your name and business address.

A. Justin M. Keller. 100 E High St, Pottstown, PA 19464.

Q. What is your occupation and employer?

A. I am the current Borough Manager for the Borough of Pottstown. I am also the appointed Manager of the Pottstown Borough Authority.

Q. How long have you served in the role as Borough Manger?

A. January 1, 2019 to present.

Q. What are your responsibilities as Borough Manager?

A. As Borough Manager, I serve at the will of the Borough Council and am responsible for the direction and coordination of all Borough departments and programs, except police, and the Borough's administrative management. I am also responsible for overseeing the operation of the Pottstown Area Rapid Transit System and the Pottstown Municipal Airport.

Q. How long have you served in the role as Manager of the Pottstown Borough Authority?

A. January 1, 2018 to present.

Q. What are your responsibilities as Manager of the Pottstown Borough Authority?

A. As Authority Manager, I serve at the will of the Pottstown Borough Authority and am responsible for the direction and coordination of all authority projects and programs and its administrative management.

Q. Please describe your educational background and professional experience.

A. I received a Bachelor's of Science degree, *Cum Laude* in Landscape Architecture from Temple University in 2005. From 2005-2006, I was employed as a project technician at Bohler Engineering - providing civil engineering and land development services to commercial clients. From 2006-2014, I was employed as a project manager at Simone Collins Landscape Architecture where I provided professional design services for parks, trails, open space, planning and zoning to public sector clients. I worked two years as the Pottstown Area Regional Recreation Coordinator from 2014-2016 where I assisted 6 municipalities in the Pottstown region with meeting their parks, trails, open space and grant needs. From 2016-2018 I was employed as the Assistant Pottstown Borough Manager. I served as the Interim Pottstown Borough Manager from 2018-2019.

1 **Q. Can you briefly describe the relationship between the Pottstown Borough Authority**
2 **and the Borough of Pottstown?**

3
4 **A.** The Pottstown Borough Authority and the Borough of Pottstown are parties to a Lease and
5 Sewer System Agreement. The Pottstown Borough Authority owns a wastewater treatment facility
6 and the Borough of Pottstown leases and operates the wastewater treatment facility.
7

8 **Q. On whose behalf are you testifying in this case?**

9
10 **A.** The Borough of Pottstown and the Pottstown Borough Authority.

11
12 **Q. What is the subject of your testimony?**

13
14 **A.** My testimony will address the Borough of Pottstown (“the Borough”) and the Pottstown
15 Borough Authority’s (“the Authority”) interest in and opposition to the Application of
16 Pennsylvania-American Water Company for approval of (1) the transfer, by sale, of substantially
17 all of Upper Pottsgrove Township’s assets, properties and rights related to its wastewater collection
18 and conveyance system to Pennsylvania-American Water Company and (2) the rights of
19 Pennsylvania-American Water Company to begin furnishing wastewater service to the public in
20 Upper Pottsgrove Township, Montgomery County, Pennsylvania and portions of Douglass
21 Township, Berks County, Pennsylvania. Specifically, my testimony will discuss the how the
22 Authority’s and the Borough’s financial interest, as delineated in a July 2, 2013 Settlement
23 Agreement and Release executed between the Authority and Upper Pottsgrove Township will be
24 adversely affected by the proposed sale of Upper Pottsgrove Township’s waste water collection
25 and conveyance system.
26

27 **Q. Can you provide some background regarding the relationship between Upper**
28 **Pottsgrove Township and the Authority?**

29
30 **A.** Upper Pottsgrove Township operates a sanitary sewer collection system. Its system does
31 not treat or dispose of the wastewater collected from its customers. On or about September 13,
32 2004, Upper Pottsgrove Township and the Authority entered into a Sewage Treatment Service
33 Agreement whereby all wastewater generated within Upper Pottsgrove Township is conveyed to
34 the Authority for treatment at the Authority’s treatment plant. Please see **Exhibit A** attached
35 hereto. As part of the 2004 Sewage Treatment Service Agreement and subsequent
36 negotiations/agreements between the parties, Upper Pottsgrove Township purchases bulk
37 wastewater treatment capacity from the Authority. After Upper Pottsgrove Township’s
38 wastewater is treated at the Authority’s plant, it is disposed of.
39

40 **Q. Did there come a time when a dispute arose between the Authority and Upper**
41 **Pottsgrove Township related to sewer meter overflows?**

42
43 **A.** Yes, in 2010-2011.

44
45 **Q. Can you describe the dispute and explain how the parties resolved the dispute?**
46

1 A. Back in November of 2010 and August 2011, the Authority and Upper Pottsgrove
2 Township had a dispute regarding alleged sanitary sewer flow meter readings which exceeded the
3 amount of sanitary sewer capacity purchased by Upper Pottsgrove Township pursuant to the 2004
4 Sewage Treatment Service Agreement (“the Overflow Dispute”). As a result of the Overflow
5 Dispute, Upper Pottsgrove Township and the Authority entered into a Settlement Agreement and
6 Release dated July 2, 2013. Please see **Exhibit B** attached hereto. As a condition of the 2013
7 Settlement Agreement and Release, the Authority and Upper Pottsgrove Township agreed to
8 upgrade the sewer conveyance system, replace existing pipe and install new siphon boxes and pipe
9 located in the Borough of Pottstown on Hanover Street (“The Project”). The Project, while located
10 within the Borough of Pottstown, was necessary to increase the conveyancing capacity of the
11 Upper Pottsgrove Township wastewater system to the Authority’s treatment plant for a new
12 residential development, built by Arcadia at Coddington View, LP (“Arcadia”) located within
13 Upper Pottsgrove Township and known as Coddington View.

14
15 **Q. Was the Authority or the Borough required to contribute any financial capital**
16 **towards The Project?**

17
18 A. No. The 2013 Settlement Agreement and Release states, at paragraph 5, that the Authority
19 “shall not be required to contribute any additional funds to and/or for The Project.” Paragraph 6
20 further reads “The parties agree that [the Authority] will be entitled to reimbursement, as permitted
21 by the Authority’s Act, for any funds expended by [the Authority] to construct The Project...”
22

23 **Q. Was The Project completed?**

24
25 A. Yes.

26
27 **Q. What was the total cost of The Project?**

28
29 A. Pursuant to the 2013 Settlement Agreement and Release, Upper Pottsgrove Township paid
30 \$259,000.00 to the Authority for costs to expended on The Project. The total cost of The Project
31 was \$1,073,537.00. Arcadia contributed \$345,000.00 towards The Project. The Authority, which
32 provided advance funding for The Project, has paid a total of \$473,539.00.
33

34 **Q. Pursuant to the 2013 Settlement Agreement and Release, who was responsible for**
35 **reimbursing the Authority for the \$473,539 advance?**

36
37 A. Upper Pottsgrove Township.

38
39 **Q. Did the Authority and/or the Borough invoice Upper Pottsgrove Township for these**
40 **advanced costs?**

41
42 A. Yes. The Borough sent Upper Pottsgrove Township an invoice on March 4, 2015 in the
43 amount of \$473,407.00. Please see **Exhibit C** attached hereto.

44
45 **Q. Did Upper Pottsgrove Township pay the amount of the invoice?**

46

1 A. Not in full. Two payments were made by Upper Pottsgrove Township following the
2 March 4, 2015 invoice.

3
4 **Q. Do you know how Upper Pottsgrove Township calculated the amount of those two**
5 **payments?**

6
7 A. Upper Pottsgrove Township enacted Resolution No. 656 on February 17, 2015 to amend
8 its sewer tapping fees relating to sewer and sewage disposal to include a reimbursement part.
9 Please see **Exhibit D** attached hereto. Resolution No. 656 amended the EDU (equivalent dwelling
10 unit) tapping fee to a rate of \$4,247.52 to include the following components:

- 11
12 Capacity Part - \$1,562.52
13 Distribution or Collection Part - \$2,392.02
14 Special Purpose Part - \$0.00
15 Reimbursement Part - \$292.98
16

17 **Q. Was it your understanding that the Reimbursement Part outlined in Resolution No.**
18 **656 was to repay the Authority for the advanced costs for The Project?**

19
20 A. Yes. Upper Pottsgrove Township's Solicitor, Charles D. Garner, Jr., Esquire, sent a letter
21 dated February 26, 2015 confirming that the Township's Board of Commissioners enacted a
22 resolution consistent with The Project. Mr. Garner stated that the Township believed "the
23 appropriate method to calculate the tapping fee resulted in a reimbursement component of
24 approximately \$292.00 per connection." Mr. Garner also explained that the Township intended to
25 divide the \$292.00 based upon the proportionate share of the Authority and Arcadia for the
26 construction of The Project. Please see **Exhibit E** attached hereto.

27
28 **Q. What is a Reimbursement Part?**

29
30 A. According to the Municipality Authorities Act, a Reimbursement Part is an optional
31 reimbursement through written agreement to users of certain specific facilities when a fee required
32 to be collected from such users will be reimbursed to the person at whose expense the facilities
33 were constructed.
34

35 **Q. Does the Borough and the Authority have a written agreement for reimbursement of**
36 **the costs of The Project with Upper Pottsgrove Township?**

37
38 A. Yes. The 2013 Settlement Agreement and Release is the written agreement.
39

40 **Q. Is the Reimbursement Part the same as the mandatory reimbursement afforded to**
41 **sewer extensions constructed by developers under a separate provision of the Municipality**
42 **Authorities Act?**

43
44 A. Absolutely not. Mandatory reimbursement is only applicable when the owner of another
45 property not in the development for which a sewer extension was constructed connects a service
46 line directly to the extension within ten years of dedication of the extension. The Project is not a

1 sewer extension and, therefore, Upper Pottsgrove’s reimbursement as stated in its Resolution 656
2 is a Reimbursement Part and not subject to the mandatory reimbursement.

3
4 **Q. Can you identify the two payments (i.e. the amounts and dates paid), that you**
5 **previously testified about, which were made by Upper Pottsgrove Township to the**
6 **Authority?**

7
8 **A.** On September 22, 2017 the Authority received a payment of \$3,222.78 to apply to The
9 Project balance advanced by the Authority. An additional payment of \$25,350.05 was made to the
10 Authority by Upper Pottsgrove Township by check on November 20, 2020, but the Borough has
11 not cashed that check.

12
13 **Q. Why has the \$25,350.05 check not been cashed?**

14
15 **A.** Enclosed with the check was a letter dated November 20, 2020 from Upper Pottsgrove
16 Township’s Solicitor, Charles D. Garner, Jr., Esquire, which stated, in part, “moving forward, once
17 the system is sold to PA American, the Township no longer has the legal ability to charge a tapping
18 fee and therefore will not be receiving any funds from new customers to pay reimbursement to the
19 Authority.” Please see **Exhibit F** attached hereto. After receiving that letter, the Borough and
20 Authority were concerned that if they cashed the check, they would be consenting to Upper
21 Pottsgrove Township’s position that, after the sewer system was sold to Pennsylvania-American
22 Water Company, the Township had no further obligation to reimburse the Authority for the
23 advanced funding for The Project.

24
25 **Q. Has Upper Pottsgrove Township approved the sale of the sewer system to**
26 **Pennsylvania-American Water Company?**

27
28 **A.** Yes. On April 20, 2020 Upper Pottsgrove Township enacted Ordinance No. 508 which
29 authorized and approved the execution, delivery and performance of an Asset Purchase Agreement
30 with Pennsylvania-American Water Company and the assignment of the 2004 Sewage Treatment
31 Services Agreement to Pennsylvania-American Water Company.

32
33 **Q. Does the 2004 Sewage Treatment Services Agreement between the Authority and**
34 **Upper Pottsgrove Township allow the Township to assign its rights to Pennsylvania-**
35 **American Water Company?**

36
37 **A.** No, not without the consent of the Authority and the Borough. Section 10.10 of the 2004
38 Sewage Treatment Services Agreement provides, “The Township will not voluntarily assign this
39 Service Agreement without the consent of [the Authority] and the Borough, except to a
40 municipality authority incorporated by the Township, pursuant to applicable law.”

41
42 **Q. Pennsylvania-American Water Company is not a municipal authority incorporated**
43 **by Upper Pottsgrove Township, correct?**

44
45 **A.** Correct.

1 **Q. Has the Authority and the Borough consented to the assignment of the 2004 Sewage**
2 **Treatment Services Agreement to Pennsylvania-American Water Company?**

3
4 **A.** No.

5
6 **Q. If the Authority and the Borough do not consent to the assignment to Pennsylvania-**
7 **American Water Company, will Pennsylvania-American Water Company be able to close**
8 **on its purchase of Upper Pottsgrove’s wastewater system?**

9
10 **A.** No. Pennsylvania-American Water Company will not have an agreement with the
11 Authority or Borough to treat its collected wastewater and thus, Pennsylvania-American Water
12 Company will not be able to provide adequate wastewater collection, treatment, and disposal
13 services to meet present and future customer demands.

14
15 **Q. Do you agree with Upper Pottsgrove Township’s position that after the closing of the**
16 **sale of its wastewater system to Pennsylvania-American Water Company, Upper Pottsgrove**
17 **Township will be absolved of its obligation to reimburse the Authority for the advance costs**
18 **paid for The Project?**

19
20 **A.** Absolutely not. That would be a breach of the 2013 Settlement Agreement and Release.
21 Additionally, Upper Pottsgrove Township, as a governmental entity, is not permitted to unilaterally
22 enact Ordinance No. 508 and enter into an agreement with Pennsylvania-American Water
23 Company in a manner that would impair or eliminate Upper Pottsgrove Township’s contractual
24 obligation to the Authority. Such an act would violate the United States Constitution and the
25 Pennsylvania Constitution.

26
27 **Q. If the sale of Upper Pottsgrove Township’s wastewater collection system is approved**
28 **and Upper Pottsgrove Township’s financial obligation to reimburse the Authority for The**
29 **Project advances is eliminated, what impact would the citizens of Pottstown Borough face?**

30
31 **A.** Taxpayers and ratepayers of Pottstown Borough will be forced to assume the unreimbursed
32 advanced costs for The Project. The ratepayers of Upper Pottsgrove Township, who will continue
33 to receive the benefit of The Project, should continue to assume the unreimbursed costs advanced
34 by the Authority pursuant to the terms of the 2013 Settlement Agreement and Release and Upper
35 Pottsgrove Township Resolution No. 656.

36
37 **Q. What is the current amount of the unreimbursed advance owed to the Authority?**

38
39 **A.** Not including the \$25,350.05 payment which is being held in escrow pending a resolution
40 of this dispute, the total owed to the Authority is \$470,184.22.

41
42 **Q. If Pennsylvania-American Water Company agrees to assume Upper Pottsgrove**
43 **Township’s financial obligation to reimburse the Authority for the outstanding**
44 **unreimbursed funds, would the Authority and the Borough consider consenting to Upper**
45 **Pottsgrove Township’s assignment of the 2004 Sewage Treatment Services Agreement to**

1 **Pennsylvania-American Water Company and potentially withdrawal the Protest filed in**
2 **these PUC proceedings?**

3
4 **A.** Yes, with the understanding there are other outstanding items regarding the terms of the
5 consent and assignment to Pennsylvania-American Water Company and the terms of a support
6 agreement with Upper Pottsgrove Township.

7
8 **Q. Does this conclude your direct testimony at this time?**

9
10 **A.** Yes. However, I reserve the right to supplement my testimony on behalf of Pottstown
11 Borough Authority and Borough of Pottstown, as additional issues and facts arise during the course
12 of these proceedings.

VERIFICATION

I, Justin M. Keller, hereby verifies that the statements made in my direct testimony are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 5-26-21

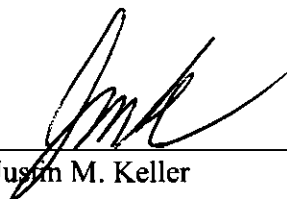

Justin M. Keller

EXHIBIT A

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 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,

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.

“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	<u>Hypothetical Example:</u>
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 D. May

President of Council

ATTEST:

Jack L. Zup...

Secretary

POTTSTOWN BOROUGH AUTHORITY

BY:

Ernie P. Smor...

Chairman

ATTEST:

Joseph A. P. ...

Secretary

TOWNSHIP OF UPPER POTTS GROVE

BY:

Milena G. Reeves

President of the Board of Commissioners

ATTEST:

Cynthia M. Saylor

Secretary

EXHIBIT B

pm

SETTLEMENT AGREEMENT & RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE made this 2nd day of ~~June~~ ^{JULY}, A.D., 2013, by and between **POTTSTOWN BOROUGH AUTHORITY**, a municipal authority organized and existing under the Pennsylvania Municipal Authority's Act (hereinafter referred to as "PBA") and **UPPER POTTS GROVE TOWNSHIP**, a municipal corporation, organized and existing under the First Class Township Code (hereinafter referred to as "UPT"). At times in this Agreement, PBA and UPT are collectively referred to as "the Parties").

BACKGROUND

A. The Parties hereto previously entered into a Sewage Treatment Service Agreement dated September 13, 2004, as amended, (hereinafter referred to as "Service Agreement").

B. Based upon sanitary sewer flow meter readings between November, 2010, and August, 2011, PBA asserted that UPT sanitary sewer flows exceeded the amount of sanitary sewer capacity purchased by UPT resulting in an obligation of UPT to pay additional monies to PBA as sewer rentals, pursuant to said Service Agreement.

C. UPT has disputed the accuracy of the meter readings and the resulting obligation to pay additional charges as sewer rentals.

D. UPT and PBA now desire to settle, finally and fully, the dispute involving the alleged sanitary sewer flow overage between November, 2010, through August, 2011 (hereinafter referred to as "The Overflow Event") and any other claims and causes of action that they might have against each other by reason of The Overflow Event.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND, the parties agree as follows:

1. The Background paragraphs A through D set forth above are incorporated herein and are made part of this Agreement.

2. On or before December 31, 2013, UPT shall pay to PBA Two Hundred Fifty Nine Thousand Dollars (\$259,000.00) (the "Payment"), which will satisfy any and all claims (including interest and penalty) of PBA against UPT arising from or relating to The Overflow Event or any corresponding rental obligations.

3. In the event UPT fails to timely make the payment, PBA shall be under no obligation to honor the remaining provisions contained in this Agreement.

4. The Payment would be ultimately expended for sewer conveyance upgrades within the Borough of Pottstown in Hanover Street, as more specifically described in Exhibit "A", which is attached hereto, incorporated herein (hereinafter referred to as "The Project").

5. Although PBA shall not be required to contribute any additional funds to and/or for The Project, PBA shall make best efforts to undertake and have The Project completed within 48 months from the date of this Agreement. In the event The Project is not undertaken and completed within 48 months, PBA agrees to set aside the Payment toward The Project when construction of The Project is undertaken in the future.

6. The parties agree that PBA will be entitled to reimbursement, as permitted by the Authority's Act, for any funds expended by PBA to construct The Project for which the parties contemplate the execution of a mutually acceptable reimbursement agreement.

7. PBA agrees to grant UPT a one-time exemption under the terms of the Service Agreement, which would permit UPT to purchase a total of 20 EDUs (6,000 gallons) of additional sanitary sewer capacity (hereinafter referred to as "Additional Capacity"). The purchase of this Additional Capacity shall be pursuant to an Agreement substantially similar to the Purchase of Additional Capacity Agreement, which is attached hereto, incorporated herein, marked as Exhibit "B".

8. It is anticipated that the Additional Capacity will be purchased by UPT within thirty (30) days from the date of this Agreement. Once the Additional Capacity is purchased, UPT shall be permitted to hold, retain and utilize this Additional Capacity regardless of any actual metered flows of record. The use of this Additional Capacity shall be limited to minor subdivisions and/or individual on-lot connections, but in no event shall any of the Additional Capacity be utilized for the Coddington View Development. Use of this Additional Capacity shall require UPT to provide the following information to PBA:

a. UPT shall disclose to PBA in advance all properties or projects presently known which could seek to use the Additional Capacity. A list of those properties or projects have already been provided and are specifically identified in Exhibit "C", which is attached hereto and incorporated herein.

b. UPT will disclose and advise PBA of any future properties, within thirty (30) days upon the submission of a minor subdivision or a request for sanitary sewer capacity for existing lots. At that time, UPT will provide the addresses of properties to PBA, as well as, the proposed date of connection and number of EDUs that are required.

c. Provided that UPT complies with its obligations and responsibilities set forth in this Agreement, UPT's rights to utilize the Additional Capacity shall continue,

indefinitely, until the Additional Capacity (20 EDUs) has been consumed or exhausted through the connections to the sanitary sewer system.

9. So long as UPT is in compliance with its existing Corrective Action Plan, PBA, in its sole discretion, may consider the sale of additional sanitary sewer capacity to UPT for projects that do not presently have Planning Module approval or have allocated sanitary sewer treatment capacity.

10. Upon execution of this Settlement Agreement and Release by the parties, PBA agrees to release UPT from any and all claims, causes of actions, or damages it could assert by virtue of The Overflow Event, so long as UPT timely tenders the payment described in paragraph 2 above. In addition, upon execution of this Settlement Agreement and Release by both the parties, UPT agrees to release PBA from any and all claims, causes of action, or damages it could assert by virtue of The Overflow Event.

11. It is further understood and agreed that this is a settlement and compromise of a disputed claim and the payment described herein is not to be considered an admission of liability on the part of UPT.

IN WITNESS WHEREOF and intending to be legally bound, the parties execute the foregoing Settlement Agreement and Release the day and year first above written.

UPPER POTTS GROVE TOWNSHIP

BY: *[Signature]*

ATTEST: *Cynthia H. Taylor*

POTTSTOWN BOROUGH AUTHORITY

BY: *A. E. Carroll*

ATTEST: *[Signature]*

EXHIBIT "A"

**SCOPE OF SANITARY SEWER IMPROVEMENT PROJECT
WITHIN THE BOROUGH AS PREVIOUSLY DESCRIBED BY BCM**

Offsite Sewer Work

The following is a general description of the required offsite sewer work that will be required at Priority 3 and 4 on Hanover Street between Third Street and Farmington Avenue.

- Priority 3: Replace the existing 20" pipe between existing MH 579 and 578 with a new 21" PVC pipe.
- Priority 4: Remove the existing 21" pipe between existing MH 577 and 576 including MH 576 and portions of the 12" relief sewer. Install new siphon boxes and dual 20" pipes along with the associated MHs and pipe required to tie into the existing sewer system.

TLW/plk

tlw\potts\gencor\offsite sewer work 7-17-13

EXHIBIT "B"

PURCHASE OF ADDITIONAL CAPACITY AGREEMENT

**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").

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. Torrey

Attest: Virginia L. Takach

Date: July 2, 2013

PBA:

POTTSTOWN BOROUGH AUTHORITY

By: A. E. Carroll

Attest: Joan Lecker

Date: July 2, 2013

UPT:

UPPER POTTS GROVE TOWNSHIP

By: Edward Taylor

Attest: Cynthia A. Taylor

Date: June 17th 2013

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)

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	\$13,909,447	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	\$13,897,298	55.4%	\$7,729,874	30.8%	\$912,141	3.6%	\$2,535,687	10.1%
Increased Cost (1989 Dollars)	\$0	(\$12,149)		\$0		\$12,149		\$0	
Cost Escalated to Current Dollars	\$0	(\$25,051)		\$0		\$25,051		\$0	
Cost Escalated to Current Dollars - Price Per Gallon						\$4.175			
<u>Original Allocations</u> Sludge Drying Facilities	\$7,000,000	\$4,174,603	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	\$4,171,910	59.6%	\$1,839,744	26.3%	\$270,397	3.9%	\$717,949	10.3%
Increased Cost (2007 Dollars)	\$0	(\$2,692)		\$0		\$2,692		\$0	
Cost Escalated to Current Dollars	\$0	(\$5,216)		\$0		\$5,216		\$0	
Cost Escalated to Current Dollars - Price Per Gallon						\$0.536			
Total Cost of Purchased Capacity Price Per Gallon	\$0	(\$28,267)		\$0		\$28,267		\$0	
						\$4.71			

EXHIBIT "B" Cost for 6000 gallons

EXHIBIT B

EXHIBIT "C"

**LIST OF CURRENT PROPERTIES NEEDING
SANITARY SEWER CONNECTIONS**

- Henry Bealer Two Lot Subdivision – Farmington Avenue. This is an approved two lot subdivision that has created a new lot for purposes of a new single family dwelling.
- Makarevitz Two Lot Subdivision. The conditionally approved two-lot subdivision which creates an additional lot, which could house a single family home.
- Ralph Romig – An existing home at or near Farmington Avenue and the intersection of Mickletz Road and wishes to connect to the sanitary sewer system.
- Preschool at Route 100 and State Street presently in existence. Have not made formal request but believe they are on a holding tank.
- Winpenny Property – Unconnected home on Farmington Avenue, although it may have already been allotted an EDU previously.

EXHIBIT C



Invoice

Borough of Pottstown

Attn: Finance Dept.
100 East High Street
Pottstown, PA 19464
610-970-6530

Invoice Number	75074
Invoice Date	03/04/2015
Customer Number	706

Payment Terms Open Terms
17364601

*#Upper Pottsgrove Twp
WW Annual Contribution
1409 Farmington Ave.
Pottstown PA 19464*

Payable to: Borough of Pottstown, attn: Finance Dept., 100 E. High St., Pottstown, PA 19464

<u>Description</u>	<u>Amount</u>
Sewer Capital Upper (projects) Hanover st siphon additional costs	\$473,407.00

Current Invoice Total **\$473,407.00**

Cut here and send invoice coupon with payment

Cut here and send invoice coupon with payment

Invoice Coupon

Invoice Number 75074
Invoice Date 03/04/2015
Customer # 706

Remit to:
Borough of Pottstown
Attn: Finance Dept.
100 E. High St.
Pottstown, PA 19464

Balance Due	<u>\$473,407.00</u>
Check #	_____
Amount Enclosed	_____

EXHIBIT D

RESOLUTION NO. 656

A RESOLUTION OF THE UPPER POTTS GROVE TOWNSHIP BOARD OF COMMISSIONERS AMENDING ITS TAPPING FEE RELATING TO SANITARY SEWER AND SEWAGE DISPOSAL AS PERMITTED BY ARTICLE V, RATES AND CHARGES, OF CHAPTER 275, SEWERS AND SEWAGE DISPOSAL, OF THE CODE OF THE TOWNSHIP OF UPPER POTTS GROVE, AS AMENDED.

WHEREAS, by Resolution No. 486, adopted February 6, 2006, the Township of Upper Pottsgrove set forth a Comprehensive Fee Resolution; and

WHEREAS, the Township wishes to amend its Fee Schedule to amend and revise its existing tapping fees relating to sewer and sewage disposal to include a reimbursement part/component; and

WHEREAS, Section 275-23, Connection Charges, of Article V, Rates and Charges, of Chapter 275, Sewers and Sewage Disposal, of the Code of the Township of Upper Pottsgrove, as amended, permits changes in connection charges and tapping fees by and through Resolution of the Board of Commissioners.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the Upper Pottsgrove Township Board of Commissioners and it is hereby enacted and resolved by the authority of same as follows:

SECTION 1. As permitted by Section 275-23, the connection fee of One Thousand Two Hundred Dollars (\$1,200.00) per lateral is hereby confirmed.

SECTION 2. The tapping fee per EDU is hereby amended and established at a rate of Four Thousand Two Hundred Forty Seven Dollars and Fifty-Two Cents (\$4,247.52) per EDU (equivalent dwelling unit) and based upon the following fee components:

- A. Capacity Part - \$1,562.52
- B. Distribution or Collection Part - \$2,392.02
- C. Special Purpose Part - \$0.00
- D. Reimbursement Part - \$292.98

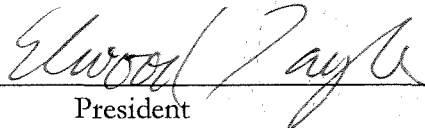
SECTION 3. In all other respects the Comprehensive Fee Schedule is hereby ratified, confirmed and readopted.

SECTION 4. All further modifications of fees established in this Resolution shall be made by Resolution duly adopted by the Board of Commissioners of Upper Pottsgrove from time to time as deemed necessary.

SECTION 5. The fees set forth in this Resolution shall become effective immediately upon approval of this Resolution.

ENACTED and **RESOLVED** this 17th day of February, 2015.

**UPPER POTTS GROVE TOWNSHIP
BOARD OF COMMISSIONERS**

BY: 
President

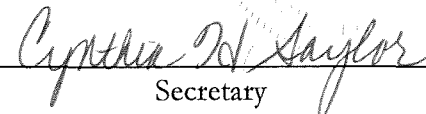
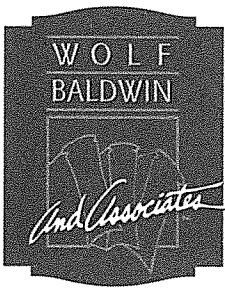
ATTEST: 
Secretary

EXHIBIT E



ATTORNEYS-AT-LAW

All Correspondence to Pottstown Office

800 E. High Street
P.O. Box 444
Pottstown, PA 19464
Phone: 610-323-7436
Fax: 610-970-1595

606 Court Street
Suite 203
Reading, PA 19601
Phone: 610-374-2400

17 Wilmont Mews
Suite 406
West Chester, PA 19382
Phone: 610-436-8300

www.wolfbaldwin.com

Jack F. Wolf
Bruce L. Baldwin
Levi S. Wolf
Charles D. Garner
Andrew J. Monastra
Daniel E. McCabe
Kristen Doleva-Lecher
Matthew T. Hovey

Of Counsel
Allan L. Sodomsky

February 26, 2015

VIA EMAIL ONLY

Vincent M. Pompo, Esquire
Lamb, McErlane, P.C.
24 E. Market Street
P.O. Box 565
West Chester, PA 19381

RE: Upper Pottsgrove Township - Authority Issues &
Recommendations - Tapping Fee Resolution
Our File No. 2012-0644

Dear Vince:

For your information, enclosed please find tapping fee resolution recently enacted by the Upper Pottsgrove Township Board of Commissioners. The tapping fee resolution was amended based upon the recently constructed project within the Borough that increased capacity. Based upon calculations of the Township Engineer, we believe that the appropriate method to calculate the tapping fee resulted in a reimbursement component of approximately \$292.00 per connection.

The Township intends to divide this based upon the proportionate contribution of the Borough Authority and Arcadia in the construction of increasing the size of the siphons.

Obviously, there has not been significant development or sewer connections in Upper Pottsgrove recently. At least at this point if new connections are made, there will be recovery of the monies that have been spent for this project, although we will require a significant amount of connections in order to fully reimburse. Please let me know if you have any questions or want to discuss. Thank you.

Very truly yours,
WOLF, BALDWIN & ASSOCIATES, P.C.

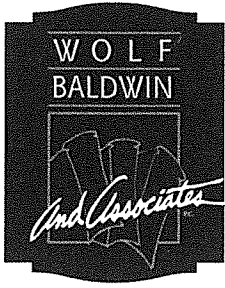
By:


Charles D. Garner, Jr.

CDG/pm
Enclosure

cc: Ms. Carol Lewis (via email only)
Mr. Chris Pelka (via email only)

EXHIBIT F



ATTORNEYS-AT-LAW

All Correspondence to Pottstown Office

800 E. High Street
P.O. Box 444
Pottstown, PA 19464
Phone: 610-323-7436
Fax: 610-970-1595

606 Court Street
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Phone: 610-374-2400

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Bruce L. Baldwin

Levi S. Wolf

Charles D. Garner

Daniel E. McCabe

Carolyn M. Marchesani

Matthew T. Hovey

Joshua D. Macel

Of Counsel

Allan L. Sodomsy

November 20, 2020

**VIA EMAIL & FIRST
CLASS MAIL**

Vincent M. Pompo, Esquire
Lamb, McErlane, P.C.
24 E. Market Street
P.O. Box 565
West Chester, PA 19381

RE: Tapping Fee Reimbursement
Our File No. 2019-0144

Dear Vince:

As a follow-up to my prior email and as a more specific response to your inquiries concerning tapping fee reimbursement for the siphon project, I am enclosing a check made payable to the Authority in the amount of \$25,350.05 which, by our calculations, reflects the total amount currently owed for existing sewer connections utilizing the siphon project.

I am enclosing a copy of an inventory/accounting of the current and future sewer connections that we believe will occur prior to the transaction with PA American. The four columns listed on the attached depict the total number of EDUs to be connected to the sewer system prior to the transaction, the total number of EDUs that have been paid to the Township to date, as well as, the total number of actual connections that have been made. We anticipate that another 57 connections will be made prior to the culmination of our transaction with PA American and as connection are made, we will forward to you, the tapping fee reimbursement on a quarterly basis with the appropriate documentation and accounting.

With regard to the tapping fee reimbursement component, our consulting engineer had previously worked with Tom Weld on this calculation. As you know, the siphon project totaled \$1,073,539.00, of which the Authority contributed \$732,539.00 or 68.2% of the additional capacity created. Arcadia Developers contributed \$341,000.00 to the project. Accordingly, pursuant to Act 57, the Authority is entitled to \$199.81 per connection.

Please note that prior payment had been made to the Authority in 2017, as noted on the second enclosure. At that point, the Township Manager, inadvertently paid to the Authority the full amount of the reimbursement, unaware of the percentage allocation, based upon contribution to the project.

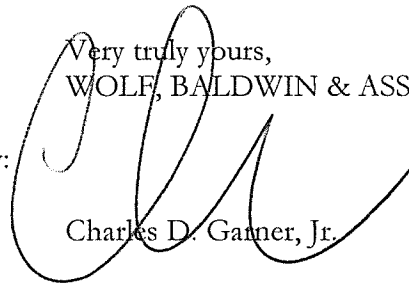
Vince M. Pompo, Esquire
November 20, 2020
Page 2 of 2

The enclosed check credits the excess payments and includes the correct calculation for each of the 125 EDUs that have been paid to the Township to date. After you have had a chance to review, please feel free to contact me if you have questions or want to discuss.

Finally, moving forward, once the system is sold to PA American, the Township no longer has the legal ability to charge a tapping fee and therefore will not be receiving any funds from new customers to pay reimbursement to the Authority. It is my understanding that the Township is presently working with PA American to attempt to address the other items you had raised in your initial email to PA American and the Township regarding terms and conditions of the Sewer Treatment Agreement. Thank you.

Very truly yours,
WOLF, BALDWIN & ASSOCIATES, P.C.

By:

A handwritten signature in black ink, appearing to read "Charles D. Garner, Jr.", written over the typed name below.

Charles D. Garner, Jr.

CDG/pm
Enclosures

cc: Ms. Michelle Reddick (via email only)
Mr. Chris Pelka (via email only)
Marc Feller, Esquire (via email only)
Mr. Trace Slinkerd (via email only)

CERTIFICATE OF SERVICE

I hereby certify that this day I have served a copy of the foregoing Direct Testimony of Justin M. Keller upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a party).

Via Electronic Mail Transmission:

Elizabeth Rose Triscari, Esquire
Pennsylvania American Water Company
elizabeth.triscari@amwater.com
Counsel for Applicant, PAWC-WD

David P. Zambito, Esquire
Jonathan Nase, Esquire
Cozen O'Connor
dzambito@cozen.com
jnase@cozen.com
Counsel for Applicant, PAWC-WD

Erin L. Gannon, Esquire
Christine M. Hoover, Esquire
Harrison W. Breitman, Esquire
Office of Consumer Advocate
egannon@paoca.org
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James J. Rodgers, Esquire
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Dilworth Paxson LLP
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*Counsel for Intervenor Upper Pottsgrove
Township*

Gina Miller, Esquire
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Enforcement
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Erin K. Fure
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efure@pa.gov

Gregg I. Adelman, Esquire
Kaplan Stewart Meloff Reiter & Stein, P.C.
gadelman@kaplaw.com
*Counsel for Petitioner
Shadeland Development Corp*

LAMB MCERLANE PC

Dated: May 26, 2021

/s/ Vincent M. Pompo
Vincent M. Pompo
24 E. Market Street
P.O. Box 565
West Chester, PA 19381-0565
(610) 430-8000
vpompo@lambmcerlane.com

**SHADELAND DEVELOPMENT
CORPORATION**

**Direct Testimony of Richard Mingey
with Exhibits A through C**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company under Section 1102(a) of the Pennsylvania :
Public Utility Code, 66 Pa.C.S. § 1102(a), for approval :
of (1) the transfer, by sale, of substantially all of Upper :
Pottsgrove Township’s assets, properties and rights :
related to its wastewater collection and conveyance :
system to Pennsylvania-American Water Company, : Docket No. A-2020-3021460
and (2) the rights of Pennsylvania-American Water :
Company to begin to offer or furnish wastewater :
service to the public in Upper Pottsgrove Township, :
Montgomery County and a portion of Douglass :
Township, Berks County, Pennsylvania :

**DIRECT TESTIMONY OF RICHARD MINGEY ON BEHALF OF
INTERVENOR SHADELAND DEVELOPMENT CORPORATION**

1 Q: Please state your name.

2 A: Richard Mingey.

3 Q: What is your occupation?

4 A: President of Shadeland Development Corporation.

5 Q: What is your background and experience with respect to the issues on which
6 you are providing testimony in this proceeding?

7 A: I am the President of Shadeland Development Corporation (“**Shadeland**”).
8 In that role, I executed the Construction and Access Agreement (“**Agreement**”)
9 between Shadeland, and Upper Pottsgrove Township dated August 5, 2016. A copy
10 of the Agreement is attached hereto as **Exhibit “A.”** Shadeland entered into a
11 Subdivision and Land Development Agreement dated April 28, 2017 with respect
12 to the Sprogel’s Run development (“**Sprogel’s Run**”).

13 Q: Why did Shadeland enter into the Agreement?

14 A: Shadeland is the owner of approximately 30 acres of land on the north side
15 of West Moyer Road, Tax Parcel No. 60-00-02254-01-7, a single family residential
16 development known as Sprogel’s Run. Shadeland sought to provide public sanitary
17 sewer to the Sprogel’s Run Project. This required permission from the Township
18 to access Township Parcel No. 60-00-02254-00-8 (“**Open Space Parcel**”) to install
19 the sanitary sewer line (“**Sewer Line**”). A plan depicting the Sewer Line is attached
20 hereto as **Exhibit “B.”**

21 Q: Did the Township approve Shadeland’s sanitary sewer construction plans?

22 A: Yes.

23 Q: Did Shadeland construct the sanitary sewer lines at its own expense?

24 A: Yes.

25

1 Q: Have there been any connections made to the Sewer Lines?

2 A: Yes. The Sewer Line services or will service 164 residential units, 73 of
3 which are related to Shadeland's developments.

4 Q: What was the cost to construct the Sewer Lines?

5 A: The total costs for construction of the Sewer Line is \$1,059,700. A
6 Certification of Sewer Construction Costs that provides a summary of the sewer
7 service area of the Sewer Line is attached as "**Exhibit C.**"

8 Q: Is Shadeland entitled to reimbursement for the costs of the Sewer Line.

9 A: Yes. Shadeland is entitled to reimbursement for 91 of the connections to the
10 Sewer Line.

11 Q: How should Shadeland be reimbursed?

12 A: Shadeland is required to be reimbursed by receipt of the tapping fees paid
13 by the 91 connections to the Sewer Line.

14 Q: Who owns the Sewer Line?

15 A: Shadeland.

16 Q: Does the Agreement require that the Sewer Line be dedicated to the
17 Township?

18 A: Yes.

19 Q: Has the Sewer Line been dedicated to the Township?

20 A: No.

21

1 Q: Why not?

2 A: While the Agreement at ¶ 11 provides that Shadeland shall offer, and the
3 Township shall accept, the Sewer Line for dedication, the conditions precedent to
4 the conveyance of ownership has not yet occurred. The Township has failed and
5 refused to execute a mutually acceptable Sewer Recapture Agreement as required
6 by the MAA and has refused to release the escrows held by the Township in
7 connection with the construction of the Sewer Line. As a result, Shadeland is still
8 the current owner of the Sewer Line, and responsible for all maintenance and
9 repairs to the Sewer Line.

10 Q: Has Shadeland otherwise satisfied all obligations of the Agreement?

11 A: Yes.

12 Q: Are you aware of existing township resident customers currently connected
13 to the private sanitary sewer pipe and current sewer customers of Upper Pottsgrove
14 Township?

15 A: Yes, approximately 91.

16 Q: Have you dedicated sewer lines to Upper Pottsgrove on other projects?

17 A: Yes. Multiple times.

18 Q: Did the Township require the property owner with land along Moyer Road
19 to dedicate the sewer pipe to the Township that was constructed?

20 A: Yes.

21 Q: Did you request that the Township not allow customers to connect to the
22 private Sewer Line?

23 A: Yes – multiple times. Nonetheless, the Township added additional
24 customers to the private Sewer Line.

25 Q: Does the Pennsylvania Department of Environmental Protection allow
26 public customers to connect to private sanitary sewer lines?

27 A: No.

1 Q: Did the owner of the Development of Cross Roads pay additional sewer
2 treatment capacity charges (above normal tapping fees) for the construction of the
3 51 townhomes at Cross Roads which has resulted in an additional 51 customers to
4 the township sewer system?

5 A: Yes.

6 Q: Has the Township paid any monies to you for the construction of the sewer
7 main that services this development?

8 A: No.

VERIFICATION

I, Richard G. Mingey, subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, aver that I am the President of Shadeland Development Corporation, that I am authorized to make this Verification on behalf of Shadeland Development Corporation, and that the information contained in the foregoing Direct Testimony is true and correct to the best of my knowledge, information and belief.

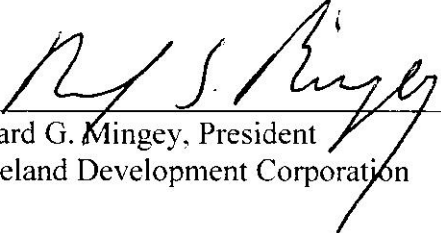

Richard G. Mingey, President
Shadeland Development Corporation

EXHIBIT A

CONSTRUCTION AND ACCESS AGREEMENT

CONSTRUCTION AND ACCESS AGREEMENT

THIS CONSTRUCTION AND ACCESS AGREEMENT is made this 5th day of AUGUST, 2016, by **SHADELAND DEVELOPMENT CORPORATION**, with an address of 1441 LANA LANE POTTSGROVE PA 19464, (hereinafter referred to as "Shadeland") and the **TOWNSHIP OF UPPER POTTSGROVE**, with its principal place of business at 1409 Farmington Avenue, Upper Pottsgrove Township, Montgomery County, Pennsylvania (hereinafter referred to as "Township").

BACKGROUND

- A. The Township is the owner of a certain parcel of land located on West Moyer Road, identified as Tax Parcel No. 60000 225 4008, which presently had been acquired by the Township for public open space (hereinafter referred to as "Open Space Parcel").

- B. Shadeland is the owner of approximately 30 acres of land on the north side of West Moyer Road, identified as Tax Parcel No. 60-00-02254-01-7 and has conditional final approval to develop a single family residential development known as Sprogel's Run (hereinafter referred to as "Sprogel's Run Project").

- C. Shadeland, in order to provide public sanitary sewer to the Sprogel's Run Project requires permission from Township to access the Open Space Parcel for purposes of installing a sanitary sewer line.

(Scanned)

D. Township further wishes to ensure that any sanitary sewer infrastructure is adequate to serve other potential development projects or existing sanitary sewer needs in this portion of Upper Pottsgrove Township.

E. The Township and Shadeland have agreed to permit Shadeland access to the Open Space Parcel for the purpose of installing the sanitary sewer line prior to any formal construction activities associated with the Sprogel's Run Project.

F. Both Township and Shadeland agreed to execute this Construction and Access Agreement for purposes of confirming each party's obligation and duties relating to the installation and construction of the sanitary sewer line.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Shadeland and Township, intending to be legally bound, hereby agree as follows:

1. The Background to this Agreement is incorporated into the body of this Agreement as if fully set forth herein.
2. Township agrees to permit Shadeland access to its Open Space Parcel for a period of 120 days beginning August 15, 2016, for the sole and express purpose of excavation, construction, and installation of sanitary sewer line to be used, inter alia, to provide sanitary sewer to the Sprogel's Run Project.
3. The location of the sanitary sewer line and the area to access the Open Space Parcel are more specifically described in Exhibit "A" which is attached hereto and incorporated herein.

In addition to the access, Shadeland shall be granted additional areas designated to store materials and construction vehicles during the period of construction. Shadeland shall not be permitted to disturb or access any other portions of the open space property without express written consent by Township.

4. Prior to any construction activity, Shadeland shall submit sanitary sewer construction plans to the Township for review and approval by the Township Engineer. No construction activity shall commence until the Township Engineer has approved the sanitary sewer construction plans. The Township Engineer shall evaluate and determine the size of the sanitary sewer main necessary to service the Sprogel's Run Project and other areas of Upper Pottsgrove Township requiring public sanitary sewer service.
5. Shadeland shall be solely responsible for all costs associated with the installation and construction of the sanitary sewer line. In addition, Shadeland agrees to release, indemnify and hold harmless Township from any and all claims, causes of action, damages, suits, fines and penalties resulting from Shadeland's use of the open space parcel. Such indemnification shall apply to any and all fines or penalties that might be issued by DEP or the Montgomery County Conservation District.
6. Prior to the installation or any construction activities on the Open Space Parcel, Shadeland shall deposit with Township the sum of Fifteen Thousand Dollars (\$15,000.00) in cash to be held by Township for purposes of defraying costs associated with engineering fees, legal fees and inspection fees associated with this Agreement, as well as, the installation of the sanitary sewer line (hereinafter referred to as "Inspection Fee").

7. In addition to the Inspection Fee, Shadeland shall provide to Township an additional Three Thousand Dollars (\$3,000.00) which shall be held by Township in escrow (hereinafter referred to as "Restoration Escrow"), which fee shall be returned to Shadeland unless Shadeland fails to comply with paragraph 9 below of this Agreement.
8. It is contemplated that for purposes of the construction pursuant to this Agreement, Shadeland will utilize Joseph W. Davis, Inc., as the contractor (hereinafter referred to as "Contractor"). Contractor shall provide to Township appropriate levels of insurance as well as bonding prior to beginning any construction activities.
9. Shadeland agrees to restore the area of the sanitary sewer line to the same or similar condition prior to construction. In the event Shadeland fails to do so, Township, following five (5) days written notice, may utilize the Restoration Escrow for purposes of restoring the area to its prior condition.
10. Shadeland agrees to cooperate with Township and further agrees to comply with any and all Township rules, regulations, ordinances, as well as, any rules, regulations, or requirements of Montgomery County Conservation District, Pennsylvania DEP, or any other third party regulatory agency having jurisdiction over the sanitary sewer line installation.
11. Upon completion of the sanitary sewer line on the Open Space Parcel and the corresponding/connecting sanitary sewer line in the Sprogel's Run Project, Shadeland shall offer the sanitary sewer lines for dedication to the Township and the Township shall accept dedication of the sanitary sewer lines which shall become the sole property of the Township.

If necessary, Shadeland further agrees to execute any documents to convey ownership of the sanitary sewer line to Upper Pottsgrove Township.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.
13. This Agreement shall constitute the entire agreement among the parties and supersede all prior negotiations, understandings, and agreements whatsoever with respect to the subject matter hereof.
14. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Pennsylvania.
15. This Agreement may be executed in multiple counter-parts.

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

SHADELAND DEVELOPMENT CORPORATION

BY: [Signature]

ATTEST: [Signature]

UPPER POTTS GROVE TOWNSHIP

BY: [Signature]
Elwood Taylor, President

ATTEST: [Signature]
Secretary

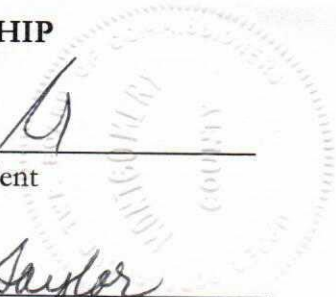
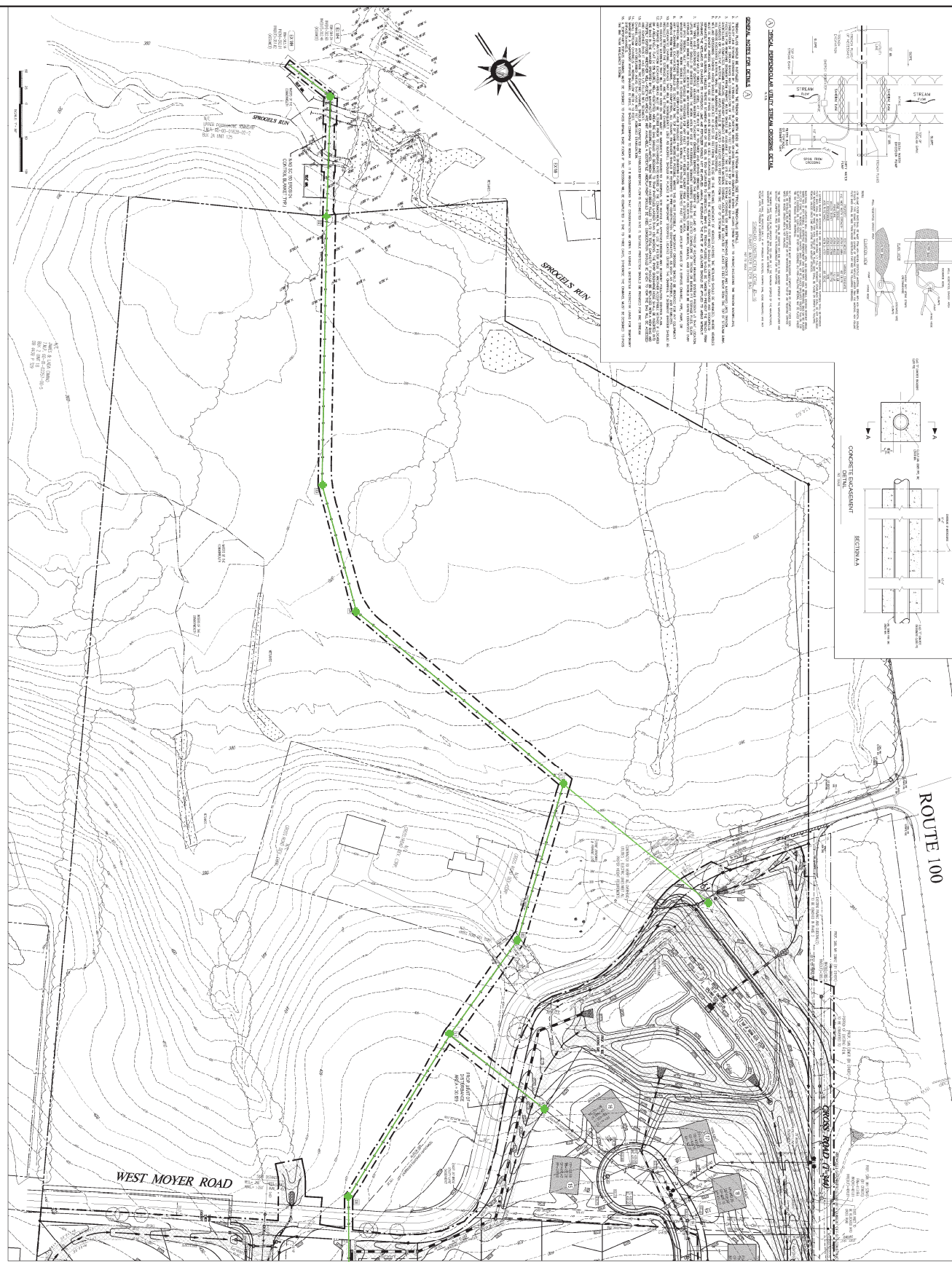


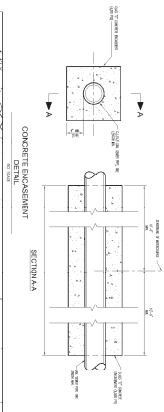
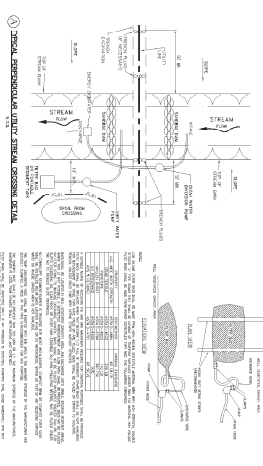
EXHIBIT B

PLAN DEPICTING THE SEWER LINE



GENERAL NOTES:

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION AND HIGHWAY CONSTRUCTION SPECIFICATIONS AND THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S (PA DEP) STANDARDS AND SPECIFICATIONS FOR SEWERAGE AND WASTEWATER TREATMENT PLANTS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE APPROPRIATE AGENCIES.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
4. ALL STRUCTURES SHALL BE CONSTRUCTED TO LAST AND SHALL BE PROTECTED FROM DAMAGE.
5. THE CONTRACTOR SHALL MAINTAIN RECORD DRAWINGS OF ALL CONSTRUCTION.
6. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ENGINEER.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE APPROPRIATE AGENCIES.
8. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
9. ALL STRUCTURES SHALL BE CONSTRUCTED TO LAST AND SHALL BE PROTECTED FROM DAMAGE.
10. THE CONTRACTOR SHALL MAINTAIN RECORD DRAWINGS OF ALL CONSTRUCTION.
11. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ENGINEER.



PROJECT NUMBER	DATE	SCALE
AND	06/06/2013	AS SHOWN
PROJECT NO.	DATE	REVISION
0011413	06/06/2013	1
DESIGNED BY	DRAWN BY	CHECKED BY
WILSON	WILSON	WILSON

FINAL LAND DEVELOPMENT PLAN - PHASE I

OFFSITE SANITARY SEWER PLAN

CONSTRUCTION & DEVELOPMENT SERVICES, INC.

PROPOSED RESIDENTIAL DEVELOPMENT

CROSSROAD RETIREMENT PARCEL

UNINCORPORATED TOWNSHIP

MONTGOMERY COUNTY

COMMONWEALTH OF PENNSYLVANIA

WILKINSON & ASSOCIATES, INC.

1150 GLENHET CR.

SUITE 111

ALLENTOWN, PA 18106

PHONE 610.251.7946

FAX 610.251.7959

NO.	DATE	DESCRIPTION
1	06/06/2013	ISSUED FOR PERMITTING
2	06/06/2013	ISSUED FOR CONSTRUCTION
3	06/06/2013	ISSUED FOR RECORD

CALL BEFORE YOU DIG!

800.452.4343

PA1

PA1

EXHIBIT C

CERTIFICATION OF SEWER CONSTRUCTION COSTS

UPPER POTTS GROVE TWP

SHADELAND DEVELOPMENT CORPORATION SEWER CERTIFICATION COSTS
MOYER ROAD SEWER MAIN EXTENSION

SEWER MAIN INSTALLATION	645,000.00
SEWER DESIGN COSTS AND PERMITTING	195,000.00
EROSION AND CONTROL / STREAM CROSSING	72,800.00
TOWNSHIP REVIEW AND INSPECTIONS	100,000.00
OWNER / DEVELOPER COSTS	46,900.00

TOTAL SEWER COSTS

1,059,700

Sewer Service Areas via Sprogels Run main sewer line

Sprogels Run	58 edu's* (DEVELOPER)
Cross Road Estates	51 edus (TOWNSHIP)
West Moyer Road/ Ming Drive	40 edu's (TOWNSHIP)
NW corner Moyer Road	15 Edu's* (DEVELOPER)

Total Sewer Service Area

164 edus

1,059,700/ 164 edu's = \$ 6,461 REIMBURSEMENT per edu

Developer is entitled for a reimbursement component for the Cross Road and West Moyer Road/ Ming Drive Projects not owned by Developer.
91 edu's x \$6,461 = \$587,951

* Properties are owned by Developer and not subject to a reimbursement component.

CERTIFICATE OF SERVICE

I, Gregg Adelman, hereby certify that on May 26, 2021, I caused a true and correct copy of the foregoing Direct Testimony of Richard Mingey to be sent by e-mail to the addresses stated below:

DAVID P. ZAMBITO ESQUIRE
JONATHAN NASE, ESQUIRE
COZEN O'CONNOR
17 NORTH SECOND ST SUITE 1410
HARRISBURG PA 17101
717-703-5892
717-773-4191

dzambito@cozen.com

jnase@cozen.com

Accepts EService

Representing Pennsylvania American Water Company

ELIZABETH ROSE TRISCARI, ESQUIRE
PENNSYLVANIA AMERICAN WATER COMPANY
852 WESLEY DRIVE
MECHANICSBURG PA 17055
717-550-1574

Elizabeth.Triscari@amwater.com

Accepts EService

GINA MILLER ESQUIRE
PA PUC BUREAU OF INVESTIGATION AND ENFORCEMENT
400 North Street
HARRISBURG PA 17120
717-783-8754

ginmiller@pa.gov

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OFFICE OF SMALL BUSINESS ADVOCATE
FORUM PLACE
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717-783-2525

efure@pa.gov

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CHRISTINE M. HOOVER, ESQUIRE
HARRISON W. BREITMAN, ESQUIRE
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Philadelphia, PA 19102
Tel: 215-575-7143
jroddgers@dilworthlaw.com
mfeller@dilworthlaw.com

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vpompo@lambmcerlane.com
accepts EService

Administrative Law Judge Jeffrey A. Watson (jeffwatson@pa.gov)
Nick Miskanic (nmiskanic@pa.gov)
Pennsylvania Public Utility Commission
301 Fifth Avenue, Suite 220
Pittsburgh, PA 15222

KAPLIN STEWART MELOFF REITER & STEIN, PC

By: /s/ Gregg I. Adelman
Gregg I. Adelman, Esquire
Robert M. Tucker, Esquire

Attorneys for Petitioner
Shadeland Development Corporation