



Erin K. Fure  
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January 16, 2025

**PUBLIC VERSION**

**VIA ELECTRONIC FILING**

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

**In re: Request for Approval of an Assumption and  
Extension of Transfer of Capacity Rights Agreement  
between Pennsylvania-American Water Company, Pottstown  
Borough Authority and the Borough of Pottstown  
Docket No. U-2024-3052618**

Dear Secretary Chiavetta:

In response to your letter dated December 31, 2024 attached for filing is Pennsylvania-American Water Company's responses to Data Request Set I, regarding the above referenced docket number. Please note that **TUS-A-7\_Attachment** is **CONFIDENTIAL** and should be treated as such. This attachment will be filed on the PUC's SharePoint system.

Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Erin K. Fure".

Erin K. Fure

cc: All Parties on the attached Certificate of Service *(via electronic mail)*(Public Version)  
Paul Zander *(via electronic mail)* (Confidential Version)  
Vincent Pompo, Esquire *(via electronic mail)* (Confidential Version)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>In re: Request for Approval of a Purchase of Additional Capacity Rights Pursuant to the Transfer of Capacity Rights Agreement between Pennsylvania-American Water Company, Pottstown Borough Authority and the Borough of Pottstown</b>	<b>: : Docket No. U-2024-3052618 : : : : : : :</b>
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**CERTIFICATE OF SERVICE**

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I hereby certify that I am this day serving the above-referenced Responses upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code §1.54 (relating to service by a party).

**SERVICE VIA ELECTRONIC MAIL ON JANUARY 16, 2025**

Patrick Cicero, Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923

NazAarah Sabree, Small Business Advocate  
Office of Small Business Advocate  
555 Walnut Street  
1<sup>st</sup> Floor, Forum Place  
Harrisburg, PA 17101

Alison Kaster, Director  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
400 North Street  
PO Box 3265  
Harrisburg, PA 17105

Respectfully Submitted,



Erin K. Fure, Esquire (PA ID #312245)  
Pennsylvania-American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
Phone: (717) 550-1574  
Email: [erin.fure@amwater.com](mailto:erin.fure@amwater.com)

**Attorney for Pennsylvania-American  
Water Company**

**Public Utility Municipal Contract – Pennsylvania-American Water Company –  
Wastewater Division, Pottstown Borough Authority, and Borough of Pottstown**

**Docket No. U-2024-3052618**

**U-1.** The Assumption and Extension of Transfer of Capacity Rights Agreement dated December 19, 2024 (December 2024 Assumption Agreement), Background Paragraph C referenced transactions to purchase additional capacity pursuant to the Transfer of Capacity Rights Agreement dated March 26, 2009 (March 2009 Transfer Agreement) in June 2010 and May 2011, both memorialized by invoices and payments. However, the December 2024 Assumption Agreement did not include copies of the purchase agreements and/or memorialized invoices and payments for the June 2010 or May 2011 transactions. Please provide a copy of the purchase agreements and/or memorialized invoices and payments for the June 2010 and May 2011 transactions.

**Response:**

Attached are copies of the invoices for these purchases that Gerry Keszczyk was able to re-print from the PBA system. Unfortunately he could not find copies of checks received, and any Accounts Receivable hard copy files from 2010 and 2011 have been purged. Looking at Upper Pottsgrove's account history, invoice 40357 for \$234,082 for 53,700 gallons was paid by check 24267 and posted 7/27/2010. Invoice 42596 for \$19,755 for 4,500 gallons was paid 5/24/2011 on check 25085. Please see verified statement from Gerry Keszczyk regarding these invoices and invoices attached as **TUS-U-1\_Attachment**.

**Responsible Witness:** **Gerald Keszczyk, Authority Bookkeeper  
Pottstown Borough Authority**

**Date:** **January 16, 2025**



**Borough of Pottstown**  
 Attn: Finance Dept  
 100 East High Street  
 Pottstown, PA 19464  
 610-970-6533

# Invoice

Invoice Number	40357
Invoice Date	06/14/2010
Customer #	706

**Payment Terms Net 30**

17350100

Upper Pottsgrove Twp

<u>Description</u>	<u>Amount</u>
Sewer Capital Upper-Purchase extra capacity in PBA Sewer Plant of 53,700 gal.	\$234,082.00

**Current Invoice Total      \$234,082.00**

Cut here and send invoice coupon with payment

Cut here and send invoice coupon with payment

**Invoice Coupon**

Invoice Number 40357  
 Invoice Date 06/14/2010  
 Customer # 706

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

**Total Customer Balance Due** \_\_\_\_\_  
**Check #** \_\_\_\_\_  
**Amt. Enclosed** \_\_\_\_\_



Borough of Pottstown  
 100 East High St  
 Pottstown, PA 19464

**Upper Pottsgrove Twp**  
**1409 Farmington Ave.**  
**Pottstown PA 19464**



# Invoice

TUS-U-1 Attachment

Invoice Number	42596
Invoice Date	09/21/2010
Customer Number	706

**Borough of Pottstown**  
**Attn: Finance Dept.**  
**100 East High Street**  
**Pottstown, PA 19464**  
**610-970-6532**

**Payment Terms Open Terms**

08364601

**Upper Pottsgrove Twp**  
**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>
Upper Pottsgrove WW Contributi-15 EDU x 300 GALS./EDU x \$4.39/gal.= \$19,755	\$19,755.00

**Current Invoice Total :** \$19,755.00

**Less Deposit Applied :**

**Balance Due:** \$19,755.00

Cut here and send invoice coupon with payment

Cut here and send invoice coupon with payment

### **Invoice Coupon**

Invoice Number 42596  
 Invoice Date 09/21/2010  
 Customer # 706

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

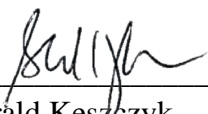
**Balance Due** \$19,755.00  
**Check #** \_\_\_\_\_  
**Amount Enclosed** \_\_\_\_\_

VERIFICATION

I, Gerald Keszczyk, Authority Bookkeeper for the Pottstown Borough Authority and an employee of the Finance Department of the Borough of Pottstown, hereby state the following in response to the request for copies of memorialized invoices and payments for the June 2010 and May 2011 transactions set forth in TUS Data Request U-1:

1. In preparing my response I personally researched available financial records and documents of the Pottstown Borough Authority and the Borough of Pottstown.
2. Attached as true and correct copies of Borough of Pottstown Invoice No. 40357 dated June 14, 2010 to Upper Pottsgrove Township in the amount of \$234,082.00 for the purchase of 53,700 gallons of additional capacity, and Invoice No. 42596 dated September 21, 2010 to Upper Pottsgrove Township in the amount of \$19,755.00 for the purchase of 4,500 gallons of additional capacity.
3. The account history for Upper Pottsgrove Township maintained by the Borough of Pottstown shows that Invoice No. 40357 was paid by check no. 24267 posted July 27, 2010, and that Invoice No. 42596 was paid by check no. 25085 posted May 24, 2011.
4. The Finance Department of the Borough of Pottstown has not maintained copies of check no. 24267 and check no. 25085, and any accounts receivable hard copy files from 2010 and 2011 have been disposed of in accordance with the Municipal Records Act.

I make this verification subject to the penalties of 18 Pa. Cons. Stat. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
Gerald Keszczyk  
Authority Bookkeeper

Dated: January \_15\_, 2025

**Public Utility Municipal Contract – Pennsylvania-American Water Company –  
Wastewater Division, Pottstown Borough Authority, and Borough of Pottstown**

**Docket No. U-2024-3052618**

**U-2.** The December 2024 Assumption Agreement, Background Paragraph C referenced a Purchase Agreement dated October 13, 2020 (October 2020 Purchase Agreement) attached as Exhibit C. However, the filing did not include a copy of the October 2020 Purchase Agreement. Please provide a copy of the October 2020 Purchase Agreement.

**Response:** Please see the October 2020 Purchase Agreement attached as **U-2\_Attachment**.

**Responsible Witness:** Gerald A. DeBalko, P.E. - Engineering Manager, Southeast PA  
Pennsylvania-American Water Company

**Date:** January 16, 2025

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

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

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

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

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

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

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

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

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

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

## TUS-U-2\_ATTACHMENT

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

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

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

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

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

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

[Signatures appear on following page.]

# TUS-U-2\_ATTACHMENT

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

BOROUGH:

BOROUGH OF POTTSTOWN

By:

Don Weand

Attest:

Virginia L. Nabeck

Date:

OCTOBER 13, 2020

PBA:

POTTSTOWN BOROUGH AUTHORITY

By:

Michael

Attest:

Cham F. Ecker

Date:

SEPTEMBER 15, 2020

UPT:

UPPER POTTS GROVE TOWNSHIP

By:

[Signature]

Attest:

Jeanne DiSante

Date:

09-21-2020

**EXHIBIT A**

[Being the Upper Pottsgrove Township History of Purchased Flow]

# TUS-U-2\_ATTACHMENT

## Exhibit "A"

### Upper Pottsgrove Township

#### History of Purchased Flow

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

Remaining to be purchased as of 2020 under Transfer Agreement

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

**EXHIBIT B**

[Being the calculations to support the price]

**EXHIBIT B  
BOROUGH OF POTTSTOWN  
WASTEWATER TREATMENT PLANT EXPANSION AND UPGRADE  
ADJUSTMENT TO ALLOCATION OF CONSTRUCTION COSTS  
UPPER POTTS GROVE PURCHASE OF ADDITIONAL 43,500 GALLONS**

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

**Public Utility Municipal Contract – Pennsylvania-American Water Company –  
Wastewater Division, Pottstown Borough Authority, and Borough of Pottstown**

**Docket No. U-2024-3052618**

**U-3.** The March 2009 Transfer Agreement’s fifth recital referenced an Attachment A. However, the filing did not include a copy of the March 2009 Transfer Agreement’s Attachment A. Please provide a copy of the March 2009 Transfer Agreement’s Attachment A.

**Response:** The March 2009 Transfer Agreement should have referenced “Exhibit A” instead of “Attachment A”. All attachments are included in the March 2009 Transfer Agreement.

**Responsible Witness:** Gerald A. DeBalko, P.E. - Engineering Manager, Southeast PA  
Pennsylvania-American Water Company

**Date:** January 16, 2025

**TRANSFER OF CAPACITY RIGHTS AGREEMENT**

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

WITNESSETH:

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

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

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

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

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

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

**ARTICLE I – DEFINITIONS**

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

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

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

## ARTICLE II – TRANSFER OF REQUESTED CAPACITY

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

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

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

## ARTICLE III – AMENDMENT TO SERVICE AGREEMENT

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

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

# TUS-U-3\_ATTACHMENT

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

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

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

## ARTICLE IV – DEP APPROVAL

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

## ARTICLE V – MISCELLANEOUS

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

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

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

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

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

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

TUS-U-3\_ATTACHMENT

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

BOROUGH:

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

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

UPT:

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

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

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

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

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

**Public Utility Municipal Contract – Pennsylvania-American Water Company –  
Wastewater Division, Pottstown Borough Authority, and Borough of Pottstown**

**Docket No. U-2024-3052618**

**U-4.** The March 2009 Transfer Agreement, Section 1.01(d) referenced a Sewage Treatment Service Agreement dated September 13, 2004 (September 2004 Service Agreement). However, the filing did not include a copy of the September 2004 Service Agreement. Please provide a copy of the September 2004 Service Agreement.

**Response:** Please see the September 2004 Service Agreement as **U-4\_Attachment**.

**Responsible Witness:** Gerald A. DeBalko, P.E. - Engineering Manager, Southeast PA  
Pennsylvania-American Water Company

**Date:** January 16, 2025

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"** (NH<sub>3</sub>-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,

*Modified flow of Record - Anticipated flow based on repairs - It doesn't state what happens if no "actual reduction" is realized.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"GPD" shall mean gallons of Sewage per day.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Projected Flow" shall mean:

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

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

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

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

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

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

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

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

"Township" shall mean Upper Pottsgrove Township.

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

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

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

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

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

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

## ARTICLE II

### CONSTRUCTION AND OPERATION OF SEWAGE COLLECTION SYSTEMS

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

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

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

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

### ARTICLE III

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

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

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

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

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

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

**ARTICLE IV****REQUESTED CAPACITY**

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

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

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

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

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

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

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

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

LM = Lessee Municipality

Hypothetical Example:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ARTICLE V

#### DEBT SERVICE CHARGE, CAPITAL CONTRIBUTION AND CONSTRUCTION

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

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

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

Bonds.

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

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

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

SECTION 5.04. Payments From the Construction Fund.

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

- (1) The amount requested;

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

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

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

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

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

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

(a) The fact of such completion; and,

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

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

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

SECTION 5.06. Financing Deficiencies and Extraordinary Repairs or Improvements.

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

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

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

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

SECTION 5.08. Additions to Treatment Plant.

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

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

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

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

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

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

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

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

## ARTICLE VI

### **O&M CHARGE**

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

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

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

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

Municipalities, as applicable and appropriate.

## ARTICLE VII

### PAYMENT OF CHARGES

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

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

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

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

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

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

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

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

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

including legal fees, of any such legal action.

## ARTICLE VIII

### EFFLUENT QUALITY RESTRICTIONS

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

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

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

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

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

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

#### ARTICLE IX

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

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

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

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

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

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

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

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

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

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

## ARTICLE X

### MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BOROUGH OF POTTSTOWN

BY: \_\_\_\_\_

*Jack D. May*  
President of Council

ATTEST: \_\_\_\_\_

*John P. Lopez*  
Secretary

POTTSTOWN BOROUGH AUTHORITY

BY: \_\_\_\_\_

*Thomas P. Pomeroy*  
Chairman

ATTEST: \_\_\_\_\_

*Douglas A. Phillipone*  
Secretary

TOWNSHIP OF UPPER POTTS GROVE

BY: \_\_\_\_\_

*Barbara J. Reeves*  
President of the Board of Commissioners

ATTEST: \_\_\_\_\_

*Cynthia M. Taylor*  
Secretary

**Public Utility Municipal Contract – Pennsylvania-American Water Company –  
Wastewater Division, Pottstown Borough Authority, and Borough of Pottstown**

**Docket No. U-2024-3052618**

**U-5.** The December 2024 Assumption Agreement’s Exhibit B included a copy of an Extension of Transfer of Capacity Rights Agreement dated March 26, 2015 (March 2015 Extension Agreement). The March 2015 Extension Agreement, Background Paragraph E referenced a motion duly adopted by the Pottstown Borough Authority on December 16, 2014 (2014 Motion) authorizing the extension of a Side Letter. However, the March 2015 Extension Agreement did not include a copy of the 2014 Motion. Please provide a copy of the 2014 Motion authorizing the extension of the Side Letter.

**Response:** Please see the 2024 Motion from Pottstown Borough Authority attached as **U-5\_Attachment**.

**Responsible Witness:** Gerald A. DeBalko, P.E. - Engineering Manager, Southeast PA  
Pennsylvania-American Water Company

**Date:** January 16, 2025

December 16, 2014

**POTTSTOWN BOROUGH AUTHORITY**

**CALL TO ORDER**

Chairman Carroll called the meeting to order at 7:00 p.m. Present were Tom Carroll, David Renn, Aram Ecker, Jeff Chomnuk and Mike Benner. Also in attendance were Authority Manager Mark Flanders, Public Works Director Doug Yerger, Bookkeeper Janice Lee, Utilities Administrator Robert Plenderleith, Utilities Director Brent Wagner, Tom Weld, Cardno/BCM Engineers, Authority Solicitor Vincent Pompo and Borough Secretary Virginia Takach.

**PUBLIC COMMENT**

Sal Cotteta, 555 Lincoln Avenue – spoke as the owner of 555 Lincoln Avenue and requested consideration on his utility bill in the amount of \$3,000 for one quarter. He advised that there was a leak in the hot water heater and a previous broken pipe for which he was not notified by the tenant.

Mr. Plenderleith advised that a policy exists to credit the sewer charges and if approved by the Board, a consideration could be made for the sewer charges.

Mr. Carroll recommended to Staff to work with Mr. Cotteta for a credit for the sewer charges for both events. There was no objection from the Board.

**CORRESPONDENCE**

Manager Flanders noted that information will be provided in the Solicitor's report.

**APPROVAL OF MINUTES**

Manager Flanders advised that the October minutes should reflect that both West Pottsgrove and Lower Pottsgrove Townships were represented by Chad Camburn, Bursich Associates for the Presentation by JMT for the Comprehensive Review of the Sanitary System.

With these notations, the October 21, 2014 minutes were approved.

**COMMITTEE REPORTS**

**PLANNING & CAPITAL PROJECTS**

Mr. Weld reviewed the progress on Contracts 147, noting that the meters should be installed at the Wastewater Treatment Plant, the Water Treatment Plant and the Circle of Progress. He added that Contract 146, the Water and Sewer replacement project is on schedule. Mr. Weld explained that the bullet hole in the New Hanover Square Tank will require an inspection by MBA. He requested authorization for \$3,000 expenditure for the inspection of the tank.

December 16, 2014

Mr. Benner moved to authorize the expenditure of \$3,000 to allow MBA to include the inspection of the New Hanover Square Tank for a dry test and possible repair of any damage from the bullet holes. Mr. Renn seconded the motion and it passed unanimously.

Mr. Weld also reviewed Contract 148 and 149 advising that a pre-bid meeting is scheduled for December 18<sup>th</sup> with the opening on January 14<sup>th</sup>.

#### AUTHORITY MANAGER'S REPORT

Manager Flanders noted that several items are listed under New Business. He added that DEP has authorized the Water Allocation Permit to draw 8 million gallons per day and to expire December 31, 2039. Presently 4-5 million gallons are drawn per day.

Mr Flanders reported that the new digital sign is now installed and functional in front of Borough Hall with the Waste Management funds provided by the Borough and the Authority. He added that one requirement in the sign ordinance is to post all regional Amber Alerts.

#### SOLICITOR'S REPORT

Solicitor Pompo referred to the report distributed. He advised that he is working with PIRMA for an overall review of insurance requirements and correct certificates of insurance for Authority contracts.

Mr. Pompo also reported the lease with P3 Towers is complete and is working on the AT & T lease for the Jackson Street tank. He advised that he is also corresponding with the Upper Pottsgrove Township Solicitor on the Hanover Street syphon matter.

Mr. Pompo provided a brief explanation on a proposed Storm Water Authority and its responsibilities. He added that an imposed rate would have to correspondence with the services and projects and cannot be considered a tax.

Mr. Pompo also reviewed case law on Tort Liability and easements on private projects involving different types of utilities, including Stormwater easements. He also reviewed a Supreme Court case under the Sovereign Immunity Act and the limitations on monetary damaged regarding personal injury, with a cap on liability insurance being \$500,000.

#### ENGINEER'S REPORT

Mr. Weld referred to the report and noted that any discussion items are listed on the agenda.

#### UTILITIES DIRECTOR'S REPORT

Mr. Wagner reported on the damages to the Lower Pump House and the bar screen room, which was damaged through a vehicle accident early on Thanksgiving morning. He thanked Mr. Weld for his assistance in sustaining the building and its requirements. The building

December 16, 2014

should be repaired in early spring.

Mr. Wagner also informed the Board of the possibility of mine reclamation, an option for sludge treatment. He also reported the recent resignation of a lab technician at the Wastewater Treatment Plant. There was a brief discussion on third shift staffing issues and third shift employees working alone at the plant.

#### PUBLIC WORKS DIRECTOR'S REPORT

Mr. Yerger advised that there have been numerous leak detections and they are being addressed. He also reported on the remote metering project and its initial 180-day trial testing project.

#### FINANCE

Mr. Chomnuk questioned the monthly meetings with the Townships and their acceptance of the capital plan as addressed in the JMT report.

Mr. Flanders responded that there was no indication in the JMT report to address the Township's request to have a seat at Authority discussions and decisions.

Ms. Lee advised that as of December 12<sup>th</sup>, the sewer fund revenues are at 104% and expenses at 97% and the water fund at 92% revenues and 77% expenses.

Mr. Plenderleith reported on the number of properties in collection with Portnoff. He added that over 50% are vacant properties with no payments being made.

Mr. Flanders added that the course through the Sheriff's Department and Sheriff Sales is an ongoing processing cycle. He noted that the Borough is still the owner of one of the five properties obtained through the Sheriff Sale process.

#### OLD BUSINESS

#### THIRD PARTY REVIEW

Mr. Flanders referred to the JMT Presentation and noted that the bulk of the comments from the Townships was the lack of inclusion in decisions of the Authority. He added that JMT responded to the comments and the final report will be issued prior to the January meeting.

Mr. Renn thanked Staff for accomplishing this matter.

#### UPPER POTTS GROVE TOWNSHIP'S RESERVED CAPACITY

Mr. Weld provided a brief background on the Upper Pottsgrove Capacity situation. He noted that in its 2009 537 Plan Update, the Borough and Authority had to agree to transfer 238,000 gallon capacity to Upper Pottsgrove. He added that it was not paid for by the Township, but referred to in a side-letter indicating that there was 60 months to use that capacity or address

December 16, 2014

in a 537 Plan update.

Mr. Weld indicated that the time has expired for the Township to use this capacity and recommended an extension of the requirement be granted to the Township, as it is not needed at the present time by other municipalities.

Mr. Chomnuk moved to extend the Agreement with Upper Pottsgrove Township for a five (5) year period associated with the reserved capacity as per the 2009 terms and agreement. Mr. Benner seconded the motion and it passed unanimously.

(Mr. Ecker was excused from the meeting.)

### NEW BUSINESS

#### BUCKS COUNTY WATER SYSTEM

Mr. Flanders referred to the proposal from Bucks County Water system to contract for repairs of water main breaks and sewer work without the requirement of the bidding process. The proposal has been reviewed by the Engineer and the Solicitor.

Mr. Weld commented that an agreement is being drafted with the Solicitor.

Mr. Yerger added that this agreement will be an asset in dealing with any union issues.

Mr. Renn moved to authorize Staff and the Solicitor to correspond with the Bucks County Water System to establish an agreement with the Authority, subject to approval of the Engineer and the Solicitor. Mr. Benner seconded the motion and it passed unanimously.

#### ADOPT 2015 BUDGET

Mr. Chomnuk moved to adopt the 2015 Budget as presented. Mr. Renn seconded the motion and it passed unanimously.

#### 2015 MEETING SCHEDULE

Mr. Renn moved to approve and advertise the 2015 meeting schedule as presented. Mr. Benner seconded the motion and it passed unanimously.

#### METERS

Mr. Weld provided a brief explanation of the problems with the North End and Glasgow/Quinter Street meters. He explained the options for resolving these issues using a third part with a cost of \$62,500 over a five year period. The cost of a new Telog system is \$32,000. The recommendation of Staff was to buy the new telog system and outsource the troubleshooting of the meters.

December 16, 2014

NEW PUBLIC WORKS FACILITY

Mr. Flanders provided statistics on the new Public Works Facility to be constructed at the 10 Rice Street location. The bid was awarded to E.R. Stuebner in the amount of \$4,074,000. He advised that 65% of the staffing is Authority related business and 60% of the vehicles used are associated with the Authority.

After a discussion among the members regarding a lump sum contribution of \$2 million from the Authority versus payments over a ten year period and the option of \$1million initially and \$1 million over the ten years, it was the consensus of the Board to take the options under consideration and address at the January meeting.

Solicitor Pompo commented that a review of Act 73 of 2012, which states an Authority cannot give away money, should be taken under consideration as well. Any compensation or contribution should be titled as the mission and purpose of the Authority.

LETTER OF SUPPORT

Mr. Chomnuk moved to authorize the Authority Manager to send a letter to Borough Council in support of reappointing Michael Benner to the Authority Board for a five-year term. Mr Renn seconded the motion. The motion carried: 3 ayes, 1 abstention. Mr. Benner abstained from voting.

ANNOUNCEMENT

Manager Flanders reminded all that the next meeting, January 20<sup>th</sup>, is also the reorganization meeting.

ADJOURNMENT

The meeting adjourned at 9:05 p.m. on motion by Mr. Chomnuk.

Submitted by,

Virginia Takach, Borough Secretary  
for Aram Ecker, Secretary

**Public Utility Municipal Contract – Pennsylvania-American Water Company –  
Wastewater Division, Pottstown Borough Authority, and Borough of Pottstown**

**Docket No. U-2024-3052618**

**U-6.** The December 2024 Assumption Agreement's Exhibit B included a copy of an Extension of Transfer of Capacity Rights Agreement dated October 21, 2019 (October 2019 Transfer Agreement). However, the October 2019 Transfer Agreement was not signed by all parties. Please provide a copy of the October 2019 Transfer Agreement that is signed by all parties.

**Response:** Please see fully-executed October 2019 Transfer Agreement attached as **U-6\_Attachment**.

**Responsible Witness:** **Gerald A. DeBalko, P.E. - Engineering Manager, Southeast PA  
Pennsylvania-American Water Company**

**Date:** **January 16, 2025**

**POTTSTOWN BOROUGH AUTHORITY  
BOROUGH OF POTTSTOWN  
AND  
UPPER POTTS GROVE TOWNSHIP**

**EXTENSION OF TRANSFER OF CAPACITY RIGHTS AGREEMENT**

**THIS AGREEMENT** (the "Agreement") is made this 21<sup>st</sup> day of October, 2019, by and between **POTTSTOWN BOROUGH AUTHORITY**, the **BOROUGH OF POTTSTOWN** (collectively the "Borough") and **UPPER POTTS GROVE TOWNSHIP**, (the "Township").

**BACKGROUND**

- A. On or about March 26, 2009, the Borough and the Township entered into a certain Transfer of Rights Agreement wherein the Borough agreed to make up to 238,000 gpd of Additional Treatment Capacity available to the Township for purchase in accordance with its terms.
- B. By Side Letter dated April 6, 2009, the Borough and Township agreed to keep the Additional Treatment Capacity available for purchase by the Township for a period of sixty (60) months.
- C. Pursuant to the Transfer of Rights Agreement and the Side Letter, the Township has purchased 70,200 gpd of Capacity, with 167,800 gpd of Additional Treatment Capacity remaining.
- D. Township and Borough subsequently entered into an Agreement on March 26, 2015, to extend Township's ability to purchase Additional Treatment Capacity until April, 2019.
- E. Township has since requested and Borough has agreed to extend Township's ability to purchase Additional Treatment Capacity for an additional thirty-six (36) months.
- F. The aforementioned parties are desirous to enter into this Agreement to memorialize the extension of the time for purchase of the Additional Treatment Capacity for an additional thirty-six (36) months.

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

**SECTION 1. Background Paragraphs.** Background paragraphs A through F, as set forth above, are incorporated herein as if more fully set forth below.

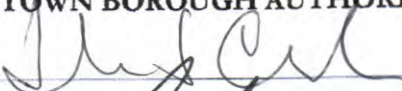
# TUS-U-6\_ATTACHMENT

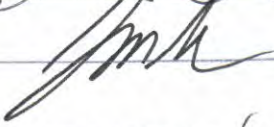
**SECTION 2. Extension of the Purchase of Additional Treatment Capacity.** The Side Letter is hereby extended for an additional thirty-six (36) months. The Borough agrees to make up to 167,800 gpd available to the Township for purchase on an "as-needed" basis until April 6, 2022.

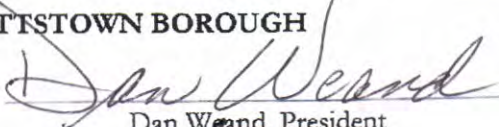
**SECTION 3. Miscellaneous.** Except as expressly set forth herein, all other terms and conditions of the Extension of Transfer of Capacity Rights Agreement, the Side Letter and the Transfer of Rights Agreement shall remain in full force and effect.

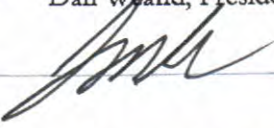
**IN WITNESS WHEREOF,** the parties have set their hands and seals the day and year first above written.

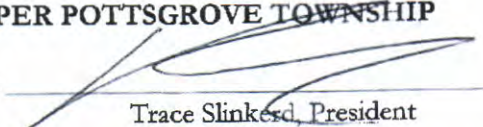
**POTTSTOWN BOROUGH AUTHORITY**

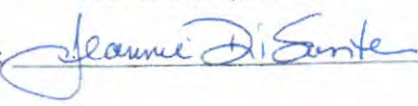
BY: 

ATTEST: 

**POTTSTOWN BOROUGH**  
BY:   
Dan Weand, President

ATTEST: 

**UPPER POTTSBORO TOWNSHIP**  
BY:   
Trace Slinkerd, President

ATTEST: 

**Public Utility Municipal Contract – Pennsylvania-American Water Company –  
Wastewater Division, Pottstown Borough Authority, and Borough of Pottstown**

**Docket No. U-2024-3052618**

**U-7.** The December 2024 Assumption Agreement's Exhibit C included a copy of a Purchase of Additional Capacity Agreement Pursuant to Transfer of Capacity Rights Agreement-March 26, 2009, dated July 2, 2013 (July 2013 Purchase Agreement). The July 2013 Purchase Agreement's third recital referenced a Corrective Action Plan dated October 17, 2011 (2011 CAP). However, the filing did not include a copy of the 2011 CAP. Please provide a copy of 2011 CAP.

**Response:** Please see **CONFIDENTIAL U-7\_Attachment**.

**Responsible Witness:** Gerald A. DeBalko, P.E. - Engineering Manager, Southeast PA  
Pennsylvania-American Water Company

**Date:** January 16, 2025

**TUS A-7\_ATTACHMENT**

**2011 CAP PLAN**

**CONFIDENTIAL**

## VERIFICATION

I, Gerald A. DeBalko, P.E., 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.

*Gerald De Balko*

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Gerald A. DeBalko, P.E., Engineering Manager  
Pennsylvania American Water Company

Dated: 1/16/2025