

AGREEMENT FOR WASTEWATER SERVICES

Between

LEWES BOARD OF PUBLIC WORKS

and

SUSSEX COUNTY

for and on behalf of

SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT

In Connection with

the Transmission and Treatment of Sewage Discharge to/from

the West Rehoboth Sanitary Sewer District Area

This Agreement for Services is made and entered into this 28 day of January, 2019 (the "Effective Date"), by and between Lewes Board of Public Works, a chartered utilities board for the Lewes area (hereinafter referred to as the "BPW"), and Sussex County, a political subdivision of the State of Delaware (hereinafter referred to as the "County"), in connection with the West Rehoboth Sanitary Sewer District Area.

WITNESSETH:

WHEREAS, the BPW and the County entered into an agreement dated September 28, 2016 to allow the County to transmit sanitary sewage from the West Rehoboth Sanitary Sewer District Area to the BPW Wastewater Treatment Facility, as defined in Article II below, for treatment and disposal, which was later terminated and replaced in its entirety by an agreement between the parties dated March 28, 2018; and

WHEREAS, the agreement between the parties dated March 28, 2018 allowed the County to transmit sanitary sewage from the West Rehoboth Sanitary Sewer District Area to the BPW Wastewater Treatment Facility, and the BPW to transmit sanitary sewage from the phases of the Showfield Subdivision to the County's Wastewater Treatment Facility for treatment and disposal; and

WHEREAS, the parties are interested in expanding their mutual cooperation and support, such that the County proposes to transmit sanitary sewage from the West Rehoboth Sanitary Sewer District Area to the BPW Wastewater Treatment Facility for treatment and disposal, and the BPW proposes to transmit sanitary sewage from the areas set forth in Article IV herein to the County's Wastewater Treatment Facility for treatment and disposal; and

WHEREAS, the BPW wishes to provide such wastewater services to the County, and the County wishes to provide such wastewater services to the BPW consistent with the terms herein.

NOW THEREFORE, for and in consideration of the mutual covenants, promises, agreements, and stipulations contained herein, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I - TERM OF AGREEMENT

Upon the Effective Date of this Agreement, the March 28, 2018 Agreement is hereby terminated and replaced in its entirety by this Agreement. The term of this Agreement shall be ten (10) years, commencing upon the Effective Date of this Agreement and terminating ten (10) years thereafter. The County and BPW shall each have an option to renew this Agreement for an additional term of ten (10) years if, at the expiration of the term of this Agreement, the renewing party is not in default of any of the terms or conditions of this Agreement.

The renewing party must notify the other party in writing via first class U.S. mail of its intent to renew or terminate this Agreement no later than ninety (90) days prior to this Agreement's expiration. If neither party indicates its intention to renew or terminate the Agreement, then this Agreement will be automatically renewed on a year-to-year basis.

ARTICLE II - DEFINITION OF TERMS

The following terms, as used herein, shall have the following meanings:

A. "Add Alternate" shall mean an additional item of work that is priced separately in bid documents for a construction project and that may be awarded as a part of the construction contract for the relevant project.

B. "Base Flow Volume" shall mean a permitted discharge throughout the calendar year, pro-rated as applicable.

C. "Biological Treatment" shall mean the handling of either party's sewage by means of biological processes performed within the applicable Wastewater Treatment Facility.

D. "Collection System" shall mean local gravity pipelines and pump station(s) with pressurized pipelines used to convey each party's respective sewage to the designated Connection Point.

E. "Connection Point" shall mean the mutually agreed upon point of transfer shifting conveyance responsibilities from the County to the BPW or the BPW to the County as appropriate.

F. "Equivalent Dwelling Unit or EDU" shall mean one average sized residential dwelling unit.

G. "Sewage" shall mean water-carried waste from residences, businesses and institutions.

H. "Transmission System" shall mean collector gravity pipelines and pump station(s) with pressurized pipelines used to convey both BPW and County sewage from the applicable Connection Point to the applicable Wastewater Treatment Facility.

I. "Wastewater Treatment Facility" shall mean the applicable treatment plant and any disposal facilities used to treat Sewage, including any future additions, modifications, or improvements thereto.

ARTICLE III - SERVICES TO BE RENDERED

A. Transmission of Sewage

The BPW and the County each agree to transmit the other party's Sewage through their applicable Transmission Systems to their applicable Wastewater Treatment Facility downstream of the designated Connection Point. This obligation extends only to construction and operation of the applicable Transmission System and does not include their respective Collection Systems upstream of the Connection Point.

B. Treatment of Sewage

The BPW and the County agree to treat their respective sewage to a degree sufficient to enable the final effluent to comply with their respective Wastewater Treatment Facility National Pollutant Discharge Elimination System ("NPDES") Permit.

ARTICLE IV - CHARACTERISTICS AND QUANTITY OF SEWAGE

The BPW's and the County's obligations herein to transmit and treat the respective Sewage is and shall be subject to the following conditions:

A. Quality of Sewage

Sewage will not be acceptable if: (1) upon the addition of said Sewage to the sewage flow entering the applicable Wastewater Treatment Facility, the resulting combined sewage flow is not amenable to Biological Treatment; or (2) the contribution directly and solely results in a violation of standards set in the respective Wastewater Treatment Facility's NPDES Permit.

B. The County's Quantity of Flow

The County's Sewage contributions (with net adjustments as defined in Article V, Section C.) shall be limited to a Base Flow Volume of 100,000 gallons per day and a seasonal (December 1st through March 31st) volume of 400,000 gallons per day (the "Seasonal Flow Volume") for the initial two (2) year period of the Agreement. The County may request a twenty-five percent (25%) volume increase of both the Base Flow Volume and Seasonal Flow Volume after the initial (2) year period and the BPW may grant such request so long as the BPW's Transmission System and

Wastewater Treatment Facility operates at less than seventy-five percent (75%) capacity, respectively, at the time of request. Notwithstanding anything herein to the contrary, at any time, the County may request to exceed the Seasonal Flow Volume, and the BPW, in its sole and absolute discretion, may grant such request so long as the County is solely responsible for the costs of any improvements to the BPW's Transmission Systems and Wastewater Treatment Facilities necessary, in the BPW's sole and absolute discretion, to accommodate the additional flow volume.

C. The BPW's Quantity of Flow

The BPW's flow contribution shall be limited to the phases of the Showfield Subdivision situated within the corporate limits of the City of Lewes and any tax parcels located off Old Orchard Road and New Road as may be agreed upon between the General Manager of the BPW and County Engineer and approved by the BPW.

ARTICLE V - PAYMENT FOR SERVICES

A. Manner of Payment

The County shall pay monthly for any and all transmission and/or treatment services rendered by the BPW in the previous month hereunder within thirty (30) days after County's receipt of an invoice from the BPW. Upon the County's failure to pay any invoice so generated, the outstanding balance due upon such invoice shall accrue a financing charge in the amount of one percent (1.0%) per month.

B. Rate

The County agrees to pay the BPW for all of the County's Sewage transmitted and treated by the BPW at an initial rate of \$2.40 per 1,000 gallons of Sewage flow, as calculated pursuant to Article VI. The rate shall be adjusted annually on January 1st based on the Philadelphia Region Consumer Price Index as published by the US Census Bureau.

C. Adjustments

The BPW agrees to adjust the monthly invoice by deducting the flow volume for any and all transmission and/or treatment services rendered by the County under this Agreement in the

previous month. Unless metered data of actual sewage flow volume is available, in which case the actual sewage flow volume data shall be used to calculate deductions under this Section, deductions shall be calculated by multiplying the number of EDUs connected to the County's sewer system by 250 gallons per day. An EDU is considered connected after receiving a Certificate of Occupancy from the appropriate government entity having jurisdiction over land use.

ARTICLE VI - MEASUREMENT OF SEWAGE FLOW

The County's Sewage flow shall be identified per a monitoring program agreed upon by the General Manager and County Engineer that is conducted and paid for by the County and supervised by the BPW. The results of all flow measurements shall be evaluated monthly and shall serve as the basis for the BPW's charges to the County.

The metering device utilized to measure the County's Sewage flow shall be calibrated annually by an independent testing agency. The results of calibrations shall be made available to the BPW. If the calibration reveals a discrepancy greater than 10-percent (10%), then the monthly sewer billing to the County shall be adjusted (up or down) for a three (3) month period immediately preceding the calibration. No action shall be taken for metering devices within 10% accuracy.

Billing or credit adjustments shall be made on the next billing period immediately following the discovery of the metering discrepancy.

ARTICLE VII – CAPITAL IMPROVEMENTS

A. Each party shall be responsible for all capital expenses associated with the construction of their respective Collection Systems, including all costs incurred in connecting to the other party's Transmission Systems and for all costs of operation and maintenance associated with said improvements. No sewer infrastructure of any type shall be connected to a Connection Point unless the BPW and the County each review and approve the design and inspect and approve the construction of any such proposed connection.

B. Except as provided in Article IV. B. herein, the BPW and the County shall be jointly responsible for all future capital expenses associated with the Transmission Systems and Wastewater Treatment Facilities downstream of the system Connection Points if said improvements are directly attributable to the addition of the County's flow volume to the BPW's Transmission System, or the BPW's flow volume to the County's Transmission System, or both the County's flow volume and the BPW's flow volume to the other party's Transmission System. Responsibility shall be allocated proportionally based on the amount of each party's sewage flow volume.

ARTICLE VIII – WASTEWATER IMPACT FEES

The County partially paid the "Treatment and Transmission" portion of the BPW's impact fees for the Base Flow Volume valued at **\$1,500.00** per EDU equaling 300 gallons per day, in the total amount of \$375,000.00. The remaining fees in the amount of \$125,000.00 shall due within thirty (30) days of the Effective Date of this Agreement.

Subsequent impact fee payments shall be made in full within thirty (30) days of the BPW's approval of increases in Base Flow Volume requested by the County, as provided in Article IV, Section B. In addition, calculations of future impact fees shall be made at the "Treatment and Transmission" portion of the BPW's impact fee rate in effect at the time.

ARTICLE IX – PROJECT COOPERATION

Prior to finalizing any construction bid documents for any future capital projects increasing treatment capacity, the BPW and the County shall jointly develop Add Alternates, if needed, and either party may require an Add Alternate that will be solely funded by the requesting party. Any Add Alternates benefitting both parties shall be awarded by mutual written consent, and the improvements made through Add Alternate(s) shall be paid proportionally by each party. Any Add Alternate benefitting only one party to this Agreement shall be awarded if requested by the benefitting party in writing, and such Add Alternate shall be solely funded by the benefitting party.

ARTICLE X – MAINTENANCE RESPONSIBILITIES

Each party shall properly operate and maintain its respective Collection Systems, Wastewater Treatment Facilities, and Transmission Systems in good and efficient operating condition and in compliance with all permits and applicable laws, regulations, orders, standards, and policies.

ARTICLE XI – TERMINATION OF SERVICES

Except as otherwise provided herein, either party may terminate this Agreement upon twenty-four (24) months' written notice to the other party; provided that, notwithstanding any such notice of termination, the County agrees to pay the BPW for any services rendered by the BPW hereunder; and further provided that, notwithstanding any such notice of termination, the County shall reimburse the BPW for the County's pro rata share of any costs incurred by the BPW (less depreciation) for any capital project which, during the term of this Agreement, was undertaken by the BPW for the specific benefit of the County. Notwithstanding the notification period, should the BPW's or the County's facilities experience operating limitations that are likely to result in violations of applicable permits, the acceptance, treatment and disposal of wastewater by the respective parties may be temporarily limited or discontinued.

ARTICLE XII – LAW GOVERNING

This Agreement shall be governed, construed and interpreted by the Laws of the State of Delaware, and any action brought to enforce any right or obligation under this Agreement may only be brought in the courts of the State of Delaware. The parties to this Agreement further agree to waive their rights to demand a jury trial in any action that may be brought to enforce any portion of this Agreement. In any such controversy or claim, each party shall bear its own costs and neither party shall be responsible for payment of the other's legal, technical, or other costs of arbitration or litigation.

ARTICLE XIII – GOVERNMENTAL AUTHORITY

This Agreement shall be contingent upon, and subject to, all governmental and regulatory approvals required to enable either party to enter into and perform pursuant to this Agreement including but not limited to any approvals required from the Delaware Department of Natural Resources and Environmental Control. In addition, the parties agree to comply with all applicable laws, regulations, permits and policies of the federal, state, county and local authorities in the performance of this Agreement.

ARTICLE XIV – RECORDS AND TESTING

The parties shall maintain all financial and operational books, records, and supporting documentation related to their functions and services provided under this Agreement. Each party shall make such records available to the other party, upon ten (10) days' written request. In addition, upon written request, each party shall provide all metering or qualitative data collected in relation to the operations of their respective Wastewater Treatment Facilities. Without limitation of the foregoing, upon a party's written request, the other party shall produce any documents necessary to support the methodology, amounts, and other associated issues in connection with the other party's calculation of the fees charged or deducted under this Agreement. Either party may request to conduct, at its own expense, additional sampling, metering, or other tests of the wastewater at the other party's Wastewater Treatment Facility, and the other party's approval of such request shall not be unreasonably withheld.

ARTICLE XV – SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

ARTICLE XVI – MISCELLANEOUS

A. This Agreement supersedes any and all previous agreements and understandings, written or oral, between the parties hereto concerning the subject matter hereof.

B. This Agreement constitutes the entire understanding of the parties with regard to the subject matter hereof, and the parties acknowledge and agree that there is no other agreement or understanding, written or oral, between the parties hereto concerning the subject matter hereof.

C. No change, modification, revision, or amendment to this Agreement shall be made or enforceable unless such change, modification, revision, or amendment is reduced to a writing duly executed by both parties hereto.

D. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, and assigns. No third-party beneficiaries to this Agreement are intended.

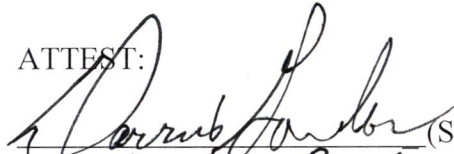
E. Any notice required to be delivered to or by either party under this Agreement shall be sent via first class US mail. For purposes of this provision, the BPW's address shall be: 107 Franklin Street, Lewes BPW Administration Building, Lewes, Delaware 19958, and the County's address shall be: Attn: Sussex County Engineer, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947.F. Assignment, subcontracting, or transfers of this Agreement or any part hereof, shall be prohibited, unless both parties sign a written consent.


[signature page follows]

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties to this Agreement have hereunto set their respective hands and seals the day and year first above written.

LEWES BOARD OF PUBLIC WORKS

ATTEST:

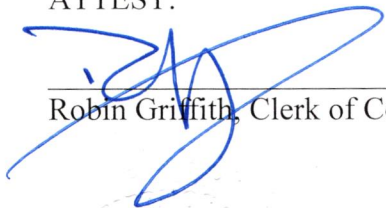
 (SEAL)
Name: Darrin Gordon
Title: General Manager

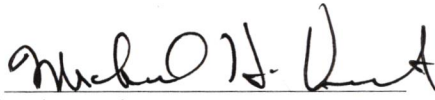
BY:  (Seal)
D. Preston Lee
President, Lewes BPW

Date: 1/28/19

SUSSEX COUNTY, DELAWARE

ATTEST:

 (SEAL)
Robin Griffith, Clerk of Council

BY: 
Michael H. Vincent
President, Sussex County Council

Date: 1/28/19