

AGREEMENT FOR WASTEWATER SERVICES

Between

LEWES BOARD OF PUBLIC WORKS

and

SUSSEX COUNTY COUNCIL

for and on behalf of

UNIFIED SANITARY SEWER DISTRICT

In Connection with

the Transmission and Treatment of Sewage Discharge from

the West Rehoboth Sanitary Sewer District Area

The Agreement for Services is made and entered into this __ day of _____, 2018 (“Effective Date”), by and between Lewes Board of Public Works, the governing body of Lewes Area Utility (hereinafter referred to as “Owner”), and Sussex County Council (hereinafter referred to as “Contract User”), in connection with the West Rehoboth Sanitary Sewer District Area.

WITNESSETH:

For and in consideration of the mutual promises and covenants herein contained, the parties hereto do hereby agree as follows:

ARTICLE I - TERM OF AGREEMENT

Upon the Effective Date of this Agreement, the September 28, 2016 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. If, at the expiration of the term of this Agreement, Contract User shall not be in default upon any of the terms or conditions of this Agreement, then Contract User shall have an option to renew this Agreement for an additional term of ten (10) years.

The Contract User must notify the Owner in writing, via first class U.S. mail, no later than ninety (90) days prior to this Agreement's expiration, in order to indicate the Contract User's intentions to either renew or terminate this Agreement. If the Contract User does not indicate their intentions in writing to the Owner, as described above, 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 "Collection System" shall mean local gravity pipelines and pump station(s) with pressurized pipelines used to convey ~~Contract User's~~ sewer discharge to the ~~Owner's~~ designated connection point.

B. "Biological Treatment" shall mean the handling of constituent's sewage by means of biological processes performed within the ~~Owner's~~ applicable Wastewater Treatment Facility.

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

D. "Transmission System" shall mean collector gravity pipelines and pump station(s) with pressurized pipelines used to convey sewage to the ~~Owner's~~ applicable Wastewater Treatment Facility.

E. "Base Flow Volume" shall mean a permitted discharge throughout the entire year.

F. "Connection Points" shall mean the mutually agreed upon point of transfer shifting conveyance responsibilities from Contract User to Owner or vice versa on a case by case basis.

G. “Equivalent Dwelling Unit” shall be ~~an arbitrary term~~ used to express the load-producing effects on the sewer system, where actual metered flows are not available, caused by one average sized residential dwelling equivalent to a discharge of 250 gallons per day.

ARTICLE III - SERVICES TO BE RENDERED

The services to be rendered to Contract User by Owner and to Owner by Contract User shall be sufficient to carry out and perform the functions contemplated by terms of this Agreement, including but not limited to the following:

A. Transmission of Sewage

Owner and Contract User agree to transmit sewage through their respective applicable Transmission Systems to their respective applicable Wastewater Treatment Facility downstream of the applicable designated Connection Point. This obligation extends only to construction and operation of the respective Transmission System and does not include their respective Collection Systems upstream of the applicable Connection Point.

B. Treatment of Sewage

Owner and Contract User 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 CONTRACT USER’S SEWAGE

Owner’s and Contract User’s obligation to transmit and treat the respective sewage, as required hereunder, 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 Owner’s 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. Contract User's Quantity of Flow

Contract User's flow contributions shall be limited to a net adjusted Base Flow Volume of 75,000 gallons per day and a seasonal (December 1st through March 31st) net adjusted volume of 300,000 gallons per day for the initial five (5) year period of the Agreement. Contract User may request a thirty-three percent (33%) volume increase of both the Base Flow and seasonal flow volumes after the initial period and Owner may grant such request if Owner's Transmission System and Wastewater Treatment Facility will operate at less than seventy-five percent (75%) capacity, respectively at the time of request.

C. Owner's Quantity of Flow

Owner's flow contribution shall be limited to the phases of the Showfield Subdivision situated in the corporate limits of the City of Lewes and the following tax parcels located off Old Orchard Road 335-8.00-25.0, 25.01 & 29.00 formerly known as Oyster Cove.

ARTICLE V - PAYMENT FOR SERVICES

A. Manner of Payment

Contract User shall pay monthly for any and all transmission and/or treatment services rendered by Owner in the previous month hereunder within thirty (30) days after Contract User's receipt of the invoice from Owner. Upon Contract User'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

Contract User agrees to pay Owner for all of Contract User's sewage transmitted and treated by Owner at an initial **rate \$2.40 per 1,000 gallons** of net metered discharge. 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

Owner agrees to adjust the monthly invoice by deducting the flows for any and all transmission and/or treatment services rendered by Contract User under this Agreement in the previous month. Deductions shall be calculated by multiplying the number of EDUs connected to Contract User's sewer system as per Article IV, C. by 250 gallons per day times the days in the Owner's billing period, unless metered data of actual flows is available, in which case the actual flow data shall be used to calculate deductions under this Section. An EDU is considered connected after receiving a Certificate of Occupancy from the entity having land use jurisdiction.

ARTICLE VI - MEASUREMENT OF CONTRACT USER'S SEWAGE FLOW

Any and all measurements of Contract User's sewage flow, as required by Article V above, shall be performed under a monitoring program conducted and paid for by the Contract User and supervised by Owner. The results of all flow measurements shall be evaluated monthly, and shall serve as the basis for Owner's charges to Contract User.

The metering device utilized to measure Contract User's sewage flow shall be calibrated annually by an independent testing agency. The results of calibrations shall be made available to the Owner. If the calibration reveals a discrepancy greater than 10% the monthly sewer billing to the Contract User 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

Contract User shall be responsible for all capital expenses associated with the construction of the Contract User's transmission facilities, including all costs incurred in connecting to the Owner's collection system 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 respective party reviews and approves the design and inspects and approves the construction of any such proposed connection.

Owner and Contract User shall be jointly responsible on a flow proportional basis for all future capital expenses associated with the respective transmission systems downstream of the system Connection Points if said improvements are directly attributable to the addition of Contract User's or Owner's flow respectively.

ARTICLE VIII – WASTEWATER IMPACT FEES

Contract User paid the "Treatment and Transmission" portion of the Owner's impact fees valued at **\$1,500.00** per Equivalent Dwelling Unit (EDU) for the initial Base Flow Volume per EDU equal to 300 gallons per day. Payment of the initial impact fee in the total amount of \$375,000.00 on or before ninety (90) days after the Effective Date of the September 28, 2016 Agreement.

Subsequent impact fee payments shall be made in full within thirty (30) days of Owner's approval of increases in Base Flow requested by Contract User. In addition, calculations of future impact fees shall be made at the "Treatment and Transmission" portion of the Owner's impact fee rate in effect at the time.

ARTICLE IX – 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, Contract User agrees to pay Owner for any and all net adjusted

transmissions and/or treatment services rendered by Owner hereunder; and further provided that, notwithstanding any such notice of termination, Contract User shall reimburse Owner for Contract User's pro rata share of capital debt charges incurred by Owner (less depreciation) for any capital project which, during the term of this Agreement, was undertaken by Owner for the specific benefit of Contract User. Notwithstanding the notification period, the parties agree in the case of Owner's facilities experiencing operating limitations, likely to result in violations of applicable permits, the acceptance, treatment and disposal of wastewater by the Owner may be limited or discontinued for such period of time as agreed to by the parties.

ARTICLE X - ARBITRATION

Any controversy or claim arising out of or related to this Agreement, or any breach thereof, shall be settled by binding arbitration in accordance with the Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. If 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 XI – GOVERNMENTAL AUTHORITY

This Agreement shall be 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 Control. In addition, the parties agree to comply with all applicable laws, regulations and policies of the federal, state, county and local authorities in the performance of this Agreement.

ARTICLE XII – 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 XIII - 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, Owner's address shall be 107 Franklin Street, Lewes BPW Administration Building, Lewes, Delaware 19958, and Contract User's address shall be 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947.

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:

Print Name:

BY: _____ (Seal)
C. Wendell Alfred
President, Lewes BPW

Date

SUSSEX COUNTY

ATTEST:

Print Name:

BY: _____ (Seal)
Michael H. Vincent
President, Sussex County Council