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Appendix N: Draft  
Inter-Municipal  
Agreement and  
Milford Township  
Withdrawal Letter



## AGREEMENT

**THIS AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and among the **WESTFALL MUNICIPAL AUTHORITY**, Pike County, Pennsylvania, a municipal corporation organized and operating under the laws of the Commonwealth of Pennsylvania with its municipal office at 155 Westfall Town Drive, Matamoras, Pennsylvania 18336 (hereinafter referred to as the “**WMA**”); the **MUNICIPAL AUTHORITY OF THE BOROUGH OF MILFORD**, a municipal corporation incorporated under the laws of the Commonwealth of Pennsylvania with its offices at 151 Old Owego Turnpike, Milford, 18337 Pennsylvania (hereinafter referred to as “**MWA**”); **the MATAMORAS MUNICIPAL AUTHORITY** a municipal corporation incorporated under the laws of the Commonwealth of Pennsylvania with its offices at 304 Pennsylvania Avenue, Matamoras, Pennsylvania 18336(hereinafter referred to as “**MMA**”); the **BOROUGH OF MATAMORAS**, Pike County, Pennsylvania, a municipal corporation organized and operating under the laws of the Commonwealth of Pennsylvania with its municipal office at 10 Avenue I, Matamoras, Pennsylvania 18336 (hereinafter referred to as “**MATAMORAS**”); the **TOWNSHIP OF WESTFALL** Pike County, Pennsylvania, a municipal corporation organized and operating under the laws of the Commonwealth of Pennsylvania with its municipal office at P.O. Box 247, Matamoras, PA 18336, Pennsylvania (hereinafter referred to as “**WESTFALL**”; and the **BOROUGH OF MILFORD**, Pike County, Pennsylvania, a municipal corporation organized and operating under the laws of the Commonwealth of Pennsylvania with its municipal office at 500 Broad Street, Milford, Pennsylvania 18337 (hereinafter referred to as “**MILFORD**”).

### **BACKGROUND:**

MATAMORAS and WESTFALL, are directly adjoining municipalities with Milford Borough connecting to them through Milford Township along the Delaware River in Northeastern Pike County, Pennsylvania.

The WMA presently owns and operates a wastewater treatment plant in Westfall in which WESTFALL previously acquired capacity. Agreements and understandings between WESTFALL and WMA were set forth in prior agreements. WMA has also entered into agreements with private entities, under which the WMA provides wastewater treatment services.

In 20\_\_, MWA’s Articles of Incorporation were amended to create an authority for both water and sewage services.

**In 20\_\_, MMA’s Articles of Incorporation were amended to create an authority for both water and sewage services.**

After years of informal discussion MILFORD, MATAMORAS, WESTFALL entered into a joint effort with the assistance of grant funds to amend the ACT 537 Sewage Plans of those municipalities to provide for central sewage for certain portions of each municipality. **Given the change in the status of the parties relative to central sewage MATAMORAS,**

WESTFALL, MILFORD, WMA, MWA and MMA each desire to enter into a new, single, comprehensive agreement to address all wastewater issues and to supersede all existing agreements relating to wastewater conveyance and treatment capacity and the allocation of construction, operation, maintenance and administrative costs.

NOW, THEREFORE, the parties hereto, each intending to be legally bound, respectively and severally agree as follows:

## **ARTICLE 1**

### **Definitions and Word Usage**

Section 1.01. Specific Terms. The following terms, whether capitalized or not, shall have the following meaning unless a different meaning clearly appears from the context:

“Allocation” shall mean the designation of portions of the permitted design capacity of the Intermunicipal Facilities and specified segments of the Joint Use Conveyance Facilities set aside for a Participant.

“Allocated Flow” shall mean an Allocation set aside for a Participant.

“Authorities Act” shall mean the Municipality Authorities Act, 53 Pa. C.S. §5601 et seq.

“Base Rate” shall mean the Net Operating and Maintenance Expense per gallon of Flow, calculated by dividing the actual annual Net Operating and Maintenance Expense of the Plant for the prior calendar year calculated in accordance with Article 4 by the number of gallons of Flow representing the total actual annual Flow to the Plant for the prior calendar year.

“WMA” shall mean the *WESTFALL MUNICIPAL AUTHORITY*, Pike County, Pennsylvania.

“Sewer System” shall mean the wastewater collection, conveyance, treatment, and disposal system owned by the WMA or MWA, including the Intermunicipal Facilities.

“Capital Additions” shall mean new and additional property chargeable to plant or equipment accounts, or real estate account, of the **WMA, MWA or MMA**, under generally accepted accounting principles for municipal enterprise funds and sound accounting and/or engineering practice, for the joint use of the Parties, whether or not they are physically connected to, or are replacements for, the Intermunicipal Facilities, including, without intending to limit the generality of the foregoing:

1. Land;
2. Rights-of-Way and/or Easements;
3. Licenses, permits, engineering studies and designs;
4. Rights or similar interest in real property;
5. Additions, extensions, alterations and improvements of, or replacements of, any

of the Intermunicipal Facilities including, without intending to limit the generality of the foregoing, buildings, basins, machinery, interceptor lines, outfall sewers, sewer plants and systems, sludge treatment and removal facilities, tanks, shops, treatment plants and systems, pumping stations, ejector stations, force mains, fixtures, engines, boilers, pumps, meters, vehicles and other equipment and personal property; and

6. Extraordinary Repairs;

in each case which are necessary for the proper operation of the Intermunicipal Facilities.

“Collection System” individually shall mean all of the wastewater collection and conveyance facilities constructed or to be constructed which are or which may be owned by one of the Participants to serve such Participant and any facilities which may be owned by Private Parties to which the Participant provides wastewater conveyance and treatment services by means of a Private Party Agreement and includes, but is not limited to, sewers, interceptors, force mains, metering devices, pumping stations and other appurtenances, but excludes any of such facilities of any Participant which are outside the Participant’s Service Area.

“Connection Point” shall mean the location where a portion of a Collection System is connected to and directs Flow into either a Joint Use Conveyance Facility or the Intermunicipal Facilities.

“Consulting Engineer” in respect of any Participant shall mean an engineer or engineering firm having experience and a favorable repute in the field of public sanitary wastewater engineering, appropriately licensed by the Commonwealth of Pennsylvania, and engaged by the Participant with whom the engineer consults.

“Control Agency” shall mean EPA, and any and all governmental entities, other than the Participants, who have a right to control or regulate the transportation, treatment and disposal of wastewater.

“Daily Flow” shall mean the total Flow for a calendar day measured directly and continuously, or as the average of a minimum of 48 equal time interval flow measurements taken over a calendar day, expressed in MGD.

“Daily Allocated Flow” shall mean the Daily Flow allocated to that Participant as set forth in Article 2.

“DEP” shall mean the Department of Environmental Protection of the Commonwealth of Pennsylvania or any agency successor thereto.

“Domestic Waste” shall mean normal water-carried waste from kitchens, water closets, lavatories, laundries and bathrooms, including but not limited to waste typical to households, from sanitary conveniences wherever located or existing.

“EDU” shall mean an equivalent dwelling unit; the amount of wastewater discharged by

an average dwelling in a day. For capacity and allocation purposes, a EDU is defined as contributing 200 gallons per day. WMA, MWA and MMA shall assign nonresidential uses a number of EDUs based upon the estimated or actual wastewater discharged and 200 gallons per day. This EDU gallon per day value may be revised from time to time when identified in a report with supporting documentation acceptable to the WMA, MWA or MMA. Notwithstanding the foregoing, each dwelling unit used solely as a residence for a single family shall be considered one EDU; any residence which is used for any purpose in addition to a residence for a single family, shall be considered more than one EDU.

“EPA” shall mean the United States Environmental Protection Agency or any agency successor thereto.

“Extraordinary Repairs” shall mean alterations, repairs, renewals, improvements, or replacements, including costs incidental thereto, with respect to the Intermunicipal Facilities that are necessary or desirable for proper operation and maintenance thereof, the costs of which cannot be reasonably paid out of current receipts and revenue from the Sewer System as a current operating expense as determined by the WMA, MWA or MMA’s Consulting Engineer. Extraordinary repairs do not include ordinary or routine repairs included as Net Operating Expenses. Any single repair with a cost greater than \$10,000 shall be deemed an extraordinary repair under this agreement.

“Excess Flow” shall mean that portion of the Daily Flow or Hourly Flow in excess of the Participant’s Allocated Flow.

“Flow” shall mean the wastewater which moves through a Participant’s Collection System, through a Connection Point and into a Joint Use Conveyance Facility and/or directly into the Intermunicipal Facilities.

“gpd” shall mean gallons per day.

“Hourly Flow” shall mean the total Flow for an hour measured directly and continuously, or as the average of a minimum of two equal time interval Flow measurements taken over an hour, expressed in MGD.

“I/I” shall mean inflow and infiltration; the introduction of ground water, storm water or surface water into the Collection System of any Participant.

“Industrial User” shall mean a user of a Collection System which is subject to the provisions of an Industrial Waste ordinance or resolution as described in Article 5.

“Industrial Waste” shall mean any and all wastes, other than Domestic Waste, discharged from industrial establishments, certain commercial establishments including but not limited to hospitals and restaurants, and other similar businesses or institutional activities, and in other respects as such term is defined in The Clean Streams Law, Act of June 22, 1937, as amended and as may be amended, 35 P.S. §691.1 et seq.

“Intermunicipal Facilities” shall mean wastewater treatment and conveyance facilities owned by the **WMA, MWA or MMA** and jointly utilized by the **WMA, MWA, MMA** and Private Parties, capacity in each portion of the Intermunicipal Facilities is allocated among the Participants in Articles 2 and 7 of this Agreement.

“Joint Use Conveyance Facility” shall mean a conveyance facility, which is used by two or more Participants and in which Flow is Allocated between or among Participants.

“Meter” shall mean a device to measure the volume of the Flow of wastewater through a Connection Point, at a Metering Station, or at any Intermunicipal Facility.

“Metering Station” shall mean a facility for the accurate measurement of the volume of Flow from the Collection System of a Participant at a Connection Point.

“MGD” shall mean million gallons per day.

“Monthly Actual Flow” shall mean the sum total of the Daily Flow measured for such Participant for each day within a given calendar month.

“Monthly Allocated Flow” for any given calendar month shall mean the Daily Allocated Flow of a Participant times the number of days in such calendar month.

**“MMA” shall mean MMA or any successor thereto.**

**“MWA” shall mean MWA or any successor thereto.**

**“MMA Sewer System” shall mean the MMA Collection System and all other facilities MMA owns and/or leases capacity within which provide wastewater collection, conveyance and treatment services to properties within the MMA Service Area.**

**“MWA Sewer System” shall mean the MWA Collection System and all other facilities MWA owns and/or leases capacity within which provide wastewater collection, conveyance and treatment services to properties within the MWA Service Area.**

“Net Operating and Maintenance Expense” shall have the meaning specified in Section 4.01.

“Outfall Sewer” shall mean the 20 inch pipe from the Plant which carries treated effluent approximately five miles to a point of discharge into the Delaware River.

“Participant” individually shall mean the **WMA, MWA, MMA** or the successor in interest of the **WMA, MWA or MMA** and the agents and representatives of such entity including but not limited to members of the governing body, employees, engineers, accountants, and other consultants. **The Municipal signatories to this Agreement shall not be considered Participants by virtue of their execution of this Agreement.**

“Permit” shall mean a permit or approval which authorizes a new connection to a Participant’s Collection System or an expansion of the use of the Collection System whether or not new construction or a new connection is proposed and a zoning or building permit which authorizes construction which will result in the discharge of additional wastewater from an existing structure connected to a Participant’s Collection System.

“Plant” shall mean the WMA’s and MMA’s wastewater treatment and disposal facility which is referred to in the background recitals, located along the Delaware River, together with any additions or alterations thereto. The term “Plant” includes the WMA Sewer and the WMA Sewer.

“Private Party” shall mean any entity other than the WMA, MMA or MWA. **The Municipal signatories to this Agreement shall not be considered Private Parties by virtue of their execution of this Agreement.**

“Private Party Agreement” shall mean any agreement entered into by a Participant with a party other than the WMA, MMA or MWA under which such Participant provides wastewater collection, conveyance and/or treatment services. **The Municipal signatories to this Agreement shall not be considered Private Parties by virtue of their execution of this Agreement.**

“Project Costs” shall mean all costs incurred by the WMA, MWA or MMA in the design and construction of upgrades and/or expansions of the Intermunicipal Facilities, including engineering fees, legal fees, land acquisition costs, right-of-way acquisition costs, wastewater treatment facility related equipment purchases, and other costs directly related to the Intermunicipal Facilities being constructed. Operating and Maintenance Expense shall not be included.

“Requirement” shall mean case law, statutes, regulations, rules, guidelines, permits, approvals or other standards or requirements of a Control Agency.

“Service Area” shall mean for each Participant that portion of a municipality or municipalities for which wastewater treatment services is provided or is to be provided by the Plant, which Service Areas are identified on Exhibit A attached hereto and incorporated herein. A Participant may, upon notice to the other Participants, expand its Service Area. A Participant which expands its Service Area shall provide a map showing the revised Service Area which shall replace Exhibit A as it relates to such Participant.

“Slug” shall mean a significant quantity of wastewater which varies from normal discharge rate or volume.

“Wastewater” shall mean all Domestic Waste, Industrial Waste and I/I.

Section 1.02. Interpretation. The words “hereof”, “herein,” “hereto”, “hereby”, and “hereunder” refer to this entire Agreement. Words importing persons include firms, associations,

corporations, and all parties hereto and all words imparting the singular number include the plural number. To the extent matters of accounting are not covered by the specific provisions hereof, they shall be governed by generally accepted accounting principles for municipal utility projects, as interpreted by the Governmental Accounting Standard Board or any successor thereto.

**ARTICLE 2  
Allocation of Capacity**

Section 2.01. Allocated Capacity. The Plant has been designed to accept and treat a total average Daily Flow of \_\_\_\_\_ gallons per day ("design capacity"). The design capacity of the Plant shall be Allocated as follows:

WMA	_____	MGD
MMA	_____	MGD
MWA	_____	MGD
Total design capacity average Daily Flow:		_____ MGD

Each Participant shall have an Allocated Flow in the Outfall Sewer based upon average daily reserved capacity. The allocation in the Outfall Sewer shall be used solely for the allocation of future costs associated with the Outfall Sewer and shall not represent any limitation on the Flow contribution to the Outfall Sewer from any Participant. The Allocated Flow of the average design capacity of the Outfall Sewer and the associated distribution factor shall be as follows:

	<u>Average Daily Flow</u>	<u>Cost Distribution Factor (Percent)</u>
WMA	_____ MGD	0.0
MMA	_____ MGD	0.0
MWA	_____ MGD	0.0

Should it become necessary to operate the Plant or the Outfall Sewer at less than their respective design capacities due to actions or directives of a Control Agency or due to an act of God, each Participant's Allocated Flow shall be reduced proportionately.

**ARTICLE 3  
Capital Additions**

Section 3.01. Requirements of Control Agencies. If a Control Agency requires upgrading of the Plant, the **WMA, MWA or MMA** shall undertake such upgrades as a joint project. The WMA, as owner of the Plant, shall notify **MWA and/or MMA, as applicable**, as soon as the WMA becomes aware of any such Requirement of a Control Agency. The WMA shall prepare a report outlining the purpose, scope, cost and alternatives for complying with the Requirement of the Control Agency which mandates the upgrading of the Intermunicipal Facility. The WMA



shall present such report to MWA for review and evaluation of alternatives and associated costs. The Participants shall share the Project Costs for complying with the mandate of a Control Agency proportionately on the basis of the Allocated Flows of each Participant in the Intermunicipal Facility which is the subject of the Control Agency Requirement as set forth in Articles 2 and 7.

Section 3.02. WMA, MWA or MMA Identified Capital Additions. In addition to the Control Agency requirements, **WMA, MWA or MMA**, at their sole discretion, shall identify Capital Additions necessary for the proper operation of the Intermunicipal Facilities on a continual basis. The Participants shall share the Project Costs associated with all Capital Additions deemed necessary by the WMA for the Intermunicipal Facilities proportionally on the basis of the Allocated Flows, as identified in Articles 2 and 7 of this Agreement, of each Participant in the Intermunicipal Facility subject to the Capital Addition.

Section 3.03. Payment for Capital Additions. MWA shall be responsible to timely contribute its Proportionate Share of the cost of every Capital Addition **that directly benefits MWA and its ratepayers** and shall do so in compliance with the time schedules reasonably set for such contributions by WMA. MWA's failure to timely make such Proportionate Share contribution shall be a substantial breach of this Agreement. In such an event, in addition to every remedy available to it in law and equity, WMA shall be entitled to proceed with the Capital Addition and to charge MWA for its Proportionate Share, plus every cost or expense incurred by WMA on account of the breach, including but not limited to increased interest and financing costs, plus a penal sum equal to ten (10%) percent of MWA's Proportionate Share.

- A. In all Capital Additions in which MWA's Proportionate Share exceeds \$100,000, but is less than \$500,000, MWA shall be entitled to at least sixty (60) days prior written notice of the Capital Addition and the estimated amount of its Proportionate Share. In all Capital Additions in which MWA's estimated Proportionate Share exceeds \$500,000, MWA shall be entitled to at least 120 days prior written notice of the Capital Addition and the estimated amount of its Proportionate Share.
- B. In all other cases MWA shall be entitled to at least thirty (30) days prior written notice; but WMA shall employ good faith efforts to provide at least sixty (60) days prior written notice.
- C. Upon request by MWA and consent by WMA, WMA, in its sole discretion, may advance all or any portion of MWA's Proportionate Share of a particular Capital Addition, subject to the parties' prior written agreement on term, repayment schedule, interest rate, administrative fee and such other conditions as may apply.

Section 3.03.1. Payment for Capital Additions. **MMA shall be responsible to timely contribute its Proportionate Share of the cost of every Capital Addition that directly benefits MMA and its ratepayers and shall do so in compliance with the time schedules reasonably set for such contributions by WMA. MMA's failure to timely make such Proportionate Share contribution shall be a substantial breach of this Agreement. In such an event, in addition to every remedy**

available to it in law and equity, WMA shall be entitled to proceed with the Capital Addition and to charge MMA for its Proportionate Share, plus every cost or expense incurred by WMA on account of the breach, including but not limited to increased interest and financing costs, plus a penal sum equal to ten (10%) percent of MMA's Proportionate Share.

- A. In all Capital Additions in which MMA's Proportionate Share exceeds \$100,000, but is less than \$500,000, MMA shall be entitled to at least sixty (60) days prior written notice of the Capital Addition and the estimated amount of its Proportionate Share. In all Capital Additions in which MMA's estimated Proportionate Share exceeds \$500,000, MMA shall be entitled to at least 120 days prior written notice of the Capital Addition and the estimated amount of its Proportionate Share.
- B. In all other cases MMA shall be entitled to at least thirty (30) days prior written notice; but WMA shall employ good faith efforts to provide at least sixty (60) days prior written notice.
- C. Upon request by MMA and consent by WMA, WMA, in its sole discretion, may advance all or any portion of MMA's Proportionate Share of a particular Capital Addition, subject to the parties' prior written agreement on term, repayment schedule, interest rate, administrative fee and such other conditions as may apply.

Section 3.04. Emergency Capital Additions. In the case of any Capital Addition undertaken by WMA on an emergency basis, or any other basis which does not permit the notices described above, WMA, upon request by MWA and/or MMA, shall advance MWA's and/or MMA's Proportionate Share in the Capital Addition upon terms no less favorable to MWA and/or MMA than the terms incurred by WMA with respect to its share of the project cost, including administrative expenses.

Section 3.05. Preliminary Cost Determination. Upon WMA's completion and approval of any design for Capital Additions of any Intermunicipal Facilities, if applicable, WMA shall advise MWA and/or MMA of the updated anticipated total cost of the Capital Addition, MWA's and/or MMA's Proportionate Share, and the scheduling and financial arrangements applicable to such Capital Addition.

Section 3.06. Actual Construction Cost. Upon the completion of construction of the Capital Addition, WMA will certify to MWA and/or MMA that construction has been completed and will further provide a full report of Actual Construction Cost. In the event that Actual Construction Cost exceeds the Preliminary Construction Cost as defined herein, MWA and/or MMA shall, within sixty (60) days after receipt of the Actual Construction Cost report, pay to WMA that portion of the Actual Construction Cost owed by MWA and/or MMA that has not yet been paid.

Section 3.07. Expansions at the Request of MWA. Should MWA subsequently request additional Allocated Flows in the Intermunicipal Facilities which will require an expansion of the Intermunicipal Facilities, MWA shall bear the Project Costs of such expansion together with

the increased administrative costs which the WMA incurs in the design, review, contracting, supervision of contracts and other administrative costs associated with the expansion of the Intermunicipal Facilities, which administrative costs shall be agreed to by MWA and the WMA. MWA's Allocated Flows shall be increased by the amount of capacity generated by such expansion. Notwithstanding the foregoing, the WMA shall not be obligated to construct any additions or improvements to the Intermunicipal Facilities if such construction is prohibited by or violates Requirements of any Control Agency.

Section 3.07.1 Expansions at the Request of MMA. Should MMA subsequently request additional Allocated Flows in the Intermunicipal Facilities which will require an expansion of the Intermunicipal Facilities, MMA shall bear the Project Costs of such expansion together with the increased administrative costs which the WMA incurs in the design, review, contracting, supervision of contracts and other administrative costs associated with the expansion of the Intermunicipal Facilities, which administrative costs shall be agreed to by MMA and the WMA. MMA's Allocated Flows shall be increased by the amount of capacity generated by such expansion. Notwithstanding the foregoing, the WMA shall not be obligated to construct any additions or improvements to the Intermunicipal Facilities if such construction is prohibited by or violates Requirements of any Control Agency.

#### **ARTICLE 4 Service Charges**

Section 4.01. Treatment Service Charges. MWA and MMA shall pay to WMA, in consideration of the wastewater treatment and disposal services WMA shall provide, a proportionate share (calculated as hereinafter provided) of the Net Operating and Maintenance Expense in respect of the Intermunicipal Facilities. Net Operating and Maintenance Expense shall mean the total for the fiscal period in question, of the costs and expenses of operating and maintaining the Intermunicipal Facilities, necessarily incurred by WMA in connection with the operation, administration and maintenance of the Intermunicipal Facilities and properly chargeable thereto under sound accounting practice (including ordinary or routine repairs and replacements but not Capital Additions which shall be treated in the manner provided for in Article 3), less any income or receipts (including governmental grants and payments by Pike County Solid Waste Management Authority actually received) properly applicable to offsetting or paying such costs and expenses (other than the direct payments to be made by MWA and/or MMA pursuant to this Agreement or user charges collected by WMA). Such costs and expenses shall include, but shall not be limited to, salaries and wages of administrative, operating and supervisory personnel allocable to wastewater operations, chemicals, power, taxes, insurance premiums, supplies, ordinary or routine repairs and fees and expenses for engineering, legal and accounting services (but, in the case of any of the same, only to the extent that the same relates to the treatment and disposal facilities).

Each Participant's share of Net Operating and Maintenance Expense shall be an amount which is in the same ratio to the total of such expense as the volume of Flow from the Participant's Collection System is to the total volume of Flow received at the Plant. Flow from each Collection System shall be determined as set forth in Article 6.

In the event WMA decides to treat Industrial Wastes requiring expenses for operation and maintenance in addition to those normally incurred for operation and maintenance, the WMA will provide for separate accounting of said expenses relating to treatment of Industrial Waste from that used to determine the Net Operating and Maintenance Expense.

Section 4.02. Calculation of Treatment Service Charges. The service charges provided for in Section 4.01 shall be determined for each fiscal year ending December 31, but shall be paid quarterly in accordance with the following provisions:

A. The WMA shall prepare and submit to **MWA and MMA**, by no later than November 1 of each year, an estimated budget for the ensuing fiscal year. Such budget shall be in writing, shall be in reasonable detail, shall show, on an estimated basis, (i) all costs and expenses and receipts necessary to calculate quarterly Net Operating and Maintenance Expense, (ii) quarterly Flows of each Participant, (iii) quarterly total Flow; and (iv) quarterly payment by each Participant. A formula representation of the quarterly service fee is as follows:

$$\text{Quarterly Service Fee} = (A/B) \times (C/4)$$

Where:      A =    Total Actual Quarterly Flow of Participant  
              B =    Total Actual Quarterly Flow to Plant  
              C =    Estimated Annual Budget for Plant Net Operating and Maintenance Expense.

**MWA and MMA shall each** calculate its flow through unmetered Connection Points by multiplying 200 gpd times the number of EDUs served by such unmetered Connection Point.

B. **MWA and MMA shall each** provide the WMA with the actual flows from its Collection System as soon as practical after the end of each calendar quarter. The WMA shall compute the quarterly fee for **MWA and MMA** and shall invoice **MWA and MMA for their individual** quarterly fee. **MWA and MMA shall each** pay the WMA within 45 days after receipt of the invoice for the quarterly fee.

C. At the close of each calendar year, WMA shall compute from its accounting and Flow records the actual Net Operating and Maintenance Expense (as defined in Section 4.01) and the actual Flows into the Plant for the calendar year. **MWA and MMA shall each** provide the WMA with the actual flows from its Collection System for the fourth quarter and for the calendar year as soon as practical after December 31. From these figures, WMA shall calculate the share properly attributable to **MWA and MMA** for treatment and disposal services for the entire calendar year. The WMA shall subtract the amount of each quarterly fee which **MWA and MMA have each** paid for the first three quarters of that calendar year from the total annual cost of MWA and then shall bill the amount remaining of the annual treatment cost to **MWA and MMA**. The formula for computing the actual annual service fee shall be as follows:

$$\text{Actual Annual Service Fee} = (A/B) \times C$$

Where: A = Total Actual Annual Flow of Participant  
B = Total Actual Annual Flow to Plant  
C = Actual Annual Net Operating and Maintenance Expense for Plant

The fourth quarter payment shall be the Actual Annual Service Fee - (First Quarter Service Fee + Second Quarter Service Fee + Third Quarter Service Fee).

**MWA and MMA shall each** calculate its flow through unmetered Connection Points by multiplying 200 gpd times the number of EDUs served by such unmetered Connection Point.

The fee for the fourth quarter of each calendar year shall be due and payable 45 days after the WMA issues its invoice to **MWA and MMA for their individual** fourth quarter fee.

D. The WMA shall permit inspection by **MWA and/or MMA** of all WMA records relating to the subject matter of this Agreement at all reasonable times and places and shall provide such reasonable information as **MWA and/or MMA** may request.

E. **MWA and/or MMA** shall make the payments required of it as above provided, but its obligation to do so shall be without prejudice to its rights to contest the reasonableness or accuracy of the WMA's calculations, books of account or other relevant records in any appropriate proceeding.

F. In the event that the WMA is unable to compute the service charge based on actual Flow into the Plant, then the WMA shall compute the service charge on an estimated basis, using such system as shall be mutually agreed to by the Participants, and an appropriate adjustment on the basis of actual Flow shall be made if actual Flow data becomes available. The appropriate Participant shall use its best efforts to repair defective Meters in order that billing on actual metered basis may be resumed as soon as practicable.

Section 4.03. Annual Service Fee for Joint Use Conveyance Facilities. The WMA shall establish the annual budget for operation and maintenance of the Joint Use Conveyance Facilities and shall distribute a draft budget to **MWA and MMA** prior to November 1 of the preceding year to allow adequate time for review by **MWA and MMA**. The annual service fee due from **MWA and MMA** for wastewater conveyance shall be paid in four quarterly installments in accordance with the following formula:

$$\text{Quarterly Service Fee} = (A/B) \times (C/4) \times (D/E)$$

Where: A = Total Actual Quarterly Flow of **MWA or MMA** through Joint Use Conveyance Facilities  
B = Total Actual Quarterly Flow for the Joint Use Conveyance Facilities  
C = Estimated Annual Budget for operation of the Joint Use Conveyance Facilities.  
D = Total Length of Joint Use Conveyance Facilities  
E = Total Length of WMA Sewer System

MWA and MMA shall each calculate their flow through unmetered Connection Points by multiplying 200 gpd times the number of EDUs served by such unmetered Connection Point.

At the end of each year the Actual Annual Service Fee for MWA and for MMA shall be determined in the following manner:

$$\text{Actual Annual Service Fee} = (A/B) \times C \times (D/E)$$

Where: A = Total Actual Annual Flow of MWA or MMA through Joint Use Conveyance Facilities  
B = Total Actual Annual Flow for the Joint Use Conveyance Facilities  
C = Actual Annual Cost for Operation of the Joint Use Conveyance Facilities.  
D = Total Length of Joint Use Conveyance Facilities  
E = Total Length of WMA Sewer System

MWA and MMA shall calculate their flow through unmetered Connection Points by multiplying 200 gpd times the number of EDUs served by such unmetered Connection Point.

Adjustments based upon the calculation of the actual annual service fee shall be made as part of the fourth quarterly as set forth in Section 4.02.C. MWA and MMA shall each make payments to the WMA for use of the Joint Use Conveyance Facilities as set forth in Section 4.02.C.

Section 4.04 Administrative Overhead. MWA and MMA each agree that the WMA may include certain administrative expenses within the calculation of Net Operating and Maintenance Expense. These costs include a portion of the salaries of the employees presently serving as WMA Manager and WMA Public Works Director (and future employees who may perform the same functions under another job title), and WMA clerical staff and a portion of the expenses of the WMA attributable to office space related to the operation and maintenance of the Intermunicipal Facilities. A table showing the percentages of the salaries of such employees which are currently agreed to be allocated to administrative overhead is attached hereto as Exhibit B-1 and incorporated herein. A table showing the calculation of the costs to provide office space related to the personnel who perform services related to the operation and maintenance of the Intermunicipal Facilities is attached hereto as Exhibit B-2 and incorporated herein.

## ARTICLE 5 Wastewater Quality, Industrial Waste and Pretreatment Requirements

Section 5.01. Prohibited Discharges. No Participant shall allow any substance to be introduced, either directly or indirectly, into any Collection System or at the Intermunicipal Facilities which will violate any Requirements of Control Agencies applicable to either a Collection System or the Intermunicipal Facilities. In addition, MWA and MMA each agree to take action necessary for the WMA to comply with all Control Agency Requirements.

Section 5.02. Adoption of Similar Standards. All Participants shall maintain, implement, administer and enforce Industrial Waste and pretreatment requirements equal to or more stringent than those of the WMA, affording similar protection to the Plant and the waters of the Commonwealth. The WMA's current Industrial Waste and pretreatment requirements are set forth in WMA \_\_\_\_\_, Industrial Wastes, which is incorporated herein by reference. **MWA and MMA has each** adopted Industrial Waste and pretreatment requirements which are equal to or greater than those set forth in \_\_\_\_\_. If, due to changes in Requirements of a Control Agency, in order to protect the Plant or for other reasons, the WMA revises, amends, or replaces its ordinance relating to industrial waste discharges, **MWA and MMA** shall each revise, amend, or replace its requirements in kind. The WMA shall furnish **MWA and MMA** with drafts of all proposed Industrial Waste and pretreatment requirements and ordinances and all revisions, amendments and replacements thereto, and shall seek the review and comment of **MWA and MMA**. The WMA shall, unless prevented by a Requirement of a Control Agency, allow **MWA and MMA** at least 45 days to provide comments on any proposed revision, amendment or replacement to its Industrial Waste regulations. The WMA shall consider all comments and shall provide **MWA and MMA** with a revised draft of such proposed revision, amendment or replacement to its Industrial Waste regulations incorporating, to the maximum extent possible, the comments of **MWA and MMA**. **MWA and MMA shall each** adopt such revision, amendment or replacement within 60 days thereafter.

Section 5.03. Right to Sample and Monitor. The WMA may, from time to time, sample or monitor the quality and quantity of Industrial Waste discharges into the Collection System of **MWA and MMA**. The WMA will undertake no such sampling or monitoring without a minimum of 24 hours' prior written notice to **MWA's and/or MMA's** operational staff. **MWA and MMA shall each** establish an informal protocol to allow this monitoring and sampling to proceed unimpeded. From time to time, this protocol may be modified as mutually agreed upon by the Participants.

Section 5.04. Emergency Situations. In the event of an emergency situation where, in the opinion of WMA operational staff, a discharge from **MWA's or MMA's** Collection System is detrimental or potentially detrimental to the Plant process, the WMA can and will proceed with sampling, monitoring, and any other reasonable investigative measure to protect the Plant process integrity. During such an emergency, no 24-hour notice period is required but the WMA shall provide written or oral notification to **MWA and/or MMA** prior to taking any action. **MWA and MMA** shall each render any appropriate assistance to the WMA.

Section 5.05. Wastewater Quality and Quantity. The WMA may establish, from time to time, uniform (within all areas serviced by the Intermunicipal Facilities) acceptability standards for wastewater and other wastes to be discharged into the Intermunicipal Facilities. Such standards shall be reasonable and similar to the customary standards imposed with regard to similar facilities and service area conditions. The Plant is designed primarily for the treatment and disposal of sewage (which for the purposes hereof means household waste, liquids, human or animal excretion, and all substances commonly known as "sewage" but shall not include roof or surface waters, exhaust, steam, oils, tar, grease, gasoline, benzene, or other combustible gases and liquids and offal or insoluble solids or substances which would impede, affect, interfere with, or endanger the Plant or any part thereof in any manner whatsoever or the functioning of

the processes of sewage treatment).

If the WMA accepts for treatment and disposal wastes other than sewage as defined in this Section, then such acceptance shall be in accordance with, and subject to, current uniform standards established by the WMA and adopted by **MWA and MMA** for treatment and disposal of such waste in accordance with regulations of Control Agencies. In addition to the regular charges payable hereunder, a separate additional charge (an "Industrial Waste Surcharge") shall be imposed by the WMA for treating all wastes of greater strength or otherwise costing more to treat than normal domestic wastewater, which Industrial Waste Surcharge shall be sufficient to pay for the costs of treating such waste, as separately computed under Section 4.01 hereof.

Section 5.06. Administration and Enforcement. Each Participant shall administer and enforce its Industrial Waste and pretreatment regulations. Each Participant shall work with all other Participants to enable, to the maximum extent possible, consistent administration and enforcement of the Industrial Waste and pretreatment requirements throughout all areas for which the Plant provides wastewater treatment and disposal services.

A. Each Participant shall incorporate into its industrial waste ordinances or resolutions provisions relating to the enforcement, collection and disposition of Industrial Waste Surcharges (as defined in Section 5.05) and industrial penalties pursuant to the Publicly Owned Treatment Works Penalty Law (the "POTW Penalty Law") (35 P.S. §752.1 et seq.). Each Participant may adopt separate Industrial Waste Surcharges to provide compensation to such Participant for the cost of collecting and transporting Industrial Waste and Sewage having extra concentration to the Intermunicipal Facilities.

B. Each Participant will use its best efforts to uniformly impose, enforce and collect the Industrial Waste Surcharges imposed by the Industrial Waste ordinances or resolutions and any penalties imposed pursuant to the POTW Penalty Law. The proceeds of the penalties, to the extent permitted by the POTW Penalty Law, shall be used to repair or restore the Collection Systems and Intermunicipal Facilities, if any, damaged by the violation which resulted in the imposition of the penalty.

Section 5.07. Waste Samples.

A. Whenever requested by **WMA, MWA and/or MMA** shall each obtain samples of wastewater discharged into its Collection System for the purpose of analysis by the WMA. Should Industrial Wastes be found, the provisions of subsection (B) below shall apply henceforth at that location. In all events, no waste shall be permitted to enter any Collection System, the Joint Use Conveyance Facilities, or the Intermunicipal Facilities from truck tanks and other similar sources except upon specific permission of the WMA and compliance with all of the provisions of this Agreement, including but not limited to, the provisions of this Article.

B. Any Participant operating a Collection System into which any Industrial Wastes are discharged shall require the collection and analysis of samples of Industrial Wastes pursuant to regulations which each Participant shall adopt. This collection shall be made under a method acceptable to WMA. The analysis of samples obtained shall be made in accordance with the latest



edition of the Standard Methods for the Examination of Water and Wastewater as published by the American Public Health Association or other applicable standards and shall be at the cost of the Industrial User. A report of such analysis shall be furnished to the WMA and/or **MWA or MMA**.

Section 5.08. Manholes and Metering Requirements. When required by the WMA, **MWA or MMA**, the Industrial User shall install a suitable control manhole and, if required, a flow meter in the building sewer to facilitate observation, sampling and measurement of the Industrial Wastes. Such manhole and meter, when required, shall be accessible and safely located and shall be constructed in accordance with the plans approved by the WMA and/or **MMA or MWA**. The Industrial User shall install the manhole and meter at its expense and shall maintain the manhole and meter so as to be safe and accessible at all times.

Section 5.09. Entry to Property. The WMA and, if applicable, **MWA and/or MMA shall each**, at all reasonable times, be permitted to enter upon all properties discharging such Industrial Wastes for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions and terms of this Agreement. All Participants shall take such action within their power to require and enforce the right of such access.

Section 5.10. Change in Wastes. **MWA and MMA** shall each notify the WMA in writing when it is contemplated by an Industrial User or other customer of **MWA and/or MMA** will be altered from that previously discharged into its Collection System or that such customer proposes to discharge a slug. Such notification shall be made ten days prior to such proposed discharge. The WMA shall determine whether such discharge is acceptable and, if so, shall inform the customer when and how it will allow the discharge.

Section 5.11. Prohibited Connections. **MWA and MMA shall each** prohibit, by appropriate ordinance, resolution and/or enforcement action, the connection or discharge to its Collection System by any user of any wastes prohibited under the regulations adopted in accordance with Section 5.02 above.

Section 5.12. Annual Reports. Each Participant shall prepare an annual report setting forth the Industrial Waste monitoring activity of such Participant. Each Participant shall distribute its annual report to the other Participant within 30 days after the Participant finalizes its report. In addition to the annual report, **MWA and MMA shall each** file with the WMA on or prior to February 15 of each year a list of all Industrial Users of its Collection System in the immediately previous calendar year. Each Participant shall have the right to request additional information from the other Participant relating to any aspect of such Participant's annual report, including but not limited to actual monitoring test results from a particular Industrial User.

## **ARTICLE 6**

### **Metering of Wastewater Flows**

Section 6.01. Installation of Meters. Each Participant shall install a Metering Station at each Connection Point where the Flow equals or exceeds 23,500 gpd or where 100 EDUs are connected to the Collection System served by such Connection Point. Where a Connection Point

is established for a Collection System which initially has a Flow of less than \_\_\_\_ gpd or to which less than 100 EDUs are connected and the Flows increase, **MWA and/or MMA shall each** install a Metering Station within six months after average annual Flows equal or exceed \_\_\_\_ gpd or 100 or more EDUs are connected to such Collection System.

Section 6.02. Non-Metered Connection Points. Where there is a Connection Point which serves a Collection System where daily Flows are less than \_\_\_\_ gpd and less than 100 EDUs are connected, the Connection Point shall be considered a non-metered Connection Point. Non-metered Connection Points are identified on the attached Exhibit A. The establishment of any additional non-metered Connection Points shall require the consent of all Parties.

Section 6.03. Specification for Meters. **MWA and MMA shall each** install a Meter in a permanent installation with a protected meter pit and a direct power supply. **MWA and/or MMA shall each** bear the initial cost for installation of a new Meter or upgrading an existing Meter to the standard required by this Agreement. All Meters shall be of the open channel, or other mutually agreed, type with the capability of down-loading data to a computer disk, CD or other media or a portable personal computer. Meters shall be designed to accommodate the full range of anticipated Flows for the design condition without the possibility of overflow or surcharge.

Design of new meter applications installed after the date of this Agreement shall be submitted to the WMA for review, and the WMA will determine the type, manufacturer and model of each meter required based on the specific application.

**MWA and MMA shall each** submit flow data for all meters to the WMA on a monthly basis. Flow data shall include flows for each meter at no greater than fifteen (15) minute increments to allow for monitoring of peak instantaneous flows for compliance with this Agreement. Flow data shall be in electronic format.

Section 6.04. Routine Maintenance of Meters. The owner of each Meter shall be responsible for routine maintenance (including calibration) and downloading of data from such Meter and submission of data in electronic format at no greater than fifteen (15) minute increments to the WMA.

Section 6.05. Calibration of Meters. All Meters shall be calibrated by a factory-certified service technician every six months. The individual performing calibration of the Meter shall provide copies of all certifications to the other Participant upon request.

## **ARTICLE 7**

### **Allocation of Capacity in Facilities and Penalties for Flows in Excess of Allocation**

Section 7.01. Allocation of Capacity in Intermunicipal Facilities. Each Participant shall have an Allocation of treatment capacity in the Intermunicipal Facilities as set forth in Section 2.01.

Section 7.02. Allocation of Capacity and Restrictions upon Flow in Joint Use Conveyance Facilities and Connection Points. All Participants recognize that elimination of I/I, to the maximum extent possible, is necessary. Each Participant shall install and maintain metering facilities at the Connection Points identified below, the locations of which are indicated in Exhibit A attached hereto and incorporated herein. In order to monitor and, to the extent possible, eliminate I/I from conveyance facilities upstream of each Connection Point, the identified Participant in each Paragraph of this Section shall limit the average Flows at each Connection Point as set forth below. Where the conveyance facilities downstream from the identified Connection Point are owned by a different Participant, the listed Participant shall have an Allocation in the downstream conveyances facilities of the other Participant in the amount established below:

A. WMA

- |                                      |           |
|--------------------------------------|-----------|
| 1. ____ Road Interceptor             | _____ MGD |
| 2. ____ Blvd. Interceptor            | _____ MGD |
| 3. ____ Metering Chamber             | _____ MGD |
| 4. ____ Interceptor Metering Chamber | _____ MGD |

B. MWA

- |                                    |           |
|------------------------------------|-----------|
| 1. ____ Road Metering Chamber      | _____ MGD |
| 2. ____ Road Metering Chamber      | _____ MGD |
| 3. ____ Blvd Metering Chamber      | _____ MGD |
| 4. ____ Road Pumping Station       | _____ MGD |
| 5. ____ Road No. 2 Pumping Station | _____ MGD |
| 6. ____ Road No. 2 Pumping Station | _____ MGD |

C. MMA

- |                                    |           |
|------------------------------------|-----------|
| 1. ____ Road Metering Chamber      | _____ MGD |
| 2. ____ Road Metering Chamber      | _____ MGD |
| 3. ____ Blvd Metering Chamber      | _____ MGD |
| 4. ____ Road Pumping Station       | _____ MGD |
| 5. ____ Road No. 2 Pumping Station | _____ MGD |
| 6. ____ Road No. 2 Pumping Station | _____ MGD |

Section 7.03. Private Party Agreements. All Flows generated by any Private Party which discharges wastewater into any Intermunicipal Facility under a Private Party Agreement shall be counted towards the Flows of the Participant entering into the Private Party Agreement and such Participant's Monthly Actual Flow.

Section 7.04. Flow Surcharge. Any Participant whose Monthly Actual Flow to the Plant exceeds such Participant's Monthly Allocated Flow shall be subject to a Flow Surcharge calculated as follows:

- A. For the first month in any six consecutive month period in which a Participant's

Monthly Actual Flow exceeds such Participant's Monthly Allocated Flow to the Plant, the Participant shall be subject to a Flow Surcharge in the amount of the Base Rate times the number of gallons by which such Participant has exceeded its Monthly Allocated Flow times five (5).

B. For the second consecutive and any subsequent month within a six consecutive month period in which a Participant's Monthly Actual Flow exceeds such Participant's Monthly Allocated Flow to the Plant, the Flow Surcharge shall be in the amount of the Base Rate times the number of gallons by which such Participant has exceeded its Monthly Allocated Flow times eight (8).

C. On the first day following the third calendar month in any six consecutive month period in which a Participant's Monthly Actual Flow has exceeded such Participant's Monthly Allocated Flow to the Plant, such Participant shall cease to issue Permits. The Participant shall not issue any new Permits until such Participant's Monthly Actual Flow to the Plant is less than such Participant's Monthly Allocated Flow for three consecutive months.

D. Notwithstanding Section 7.04.A through 7.04.C above, no Participant shall be required to pay a Flow Surcharge if the cause for such Participant's Monthly Actual Flow exceeding such Participant's Monthly Allocated Flow to the Plant is the result of a natural disaster or other event not within the control of such Participant and which affects all Participants.

Section 7.05. Review of Monthly Flow Data and Imposition of Flow Surcharge. The WMA shall review the Flow data and shall immediately notify **MWA and/or MMA** at any time the WMA determines that a Participant's Monthly Actual Flow to the Plant exceeds such Participant's Monthly Allocated Flow to the Plant. If **MWA or MMA** dispute the WMA's determination that **MWA's or MMA's** Monthly Actual Flows to the Plant exceeds **MWA's or MMA's** Monthly Allocated Flows to the Plant, the WMA shall have its Consulting Engineer review the data. If the WMA is correct that **MWA's or MMA's** Monthly Actual Flows exceed such Participant's Monthly Allocated Flows to the Plant, the WMA may recover the costs of its Consulting Engineer from the Flow Surcharge Fund.

Section 7.06. Remediation of Excess Monthly Flows. Any Participant whose Monthly Actual Flows exceeds such Participant's Monthly Allocated Flows to the Plant or to a Connection Point shall, in addition to paying the Flow Surcharge established by Section 7.04 above if the Excess Flow is to the Plant, take all of the following actions:

A. If the WMA has not already done so, notify **MWA and/or MMA** that the Participant's Monthly Actual Flows have exceeded such Participant's Monthly Allocated Flows to the Plant. The Participant shall provide such notification in writing within 30 days after such Participant becomes aware of the Excess Flows. The notification will identify whether the excess Flows are to the Plant or a Connection Point and, if to a Connection Point shall identify the specific Connection Point. The notification shall also identify the month or months within which the Excess Flows occurred and the amount of Excess Flows.

B. The Participant shall undertake an investigation to determine the source of the Excess Flows. The Participant shall complete such investigation within 90 days of the date when the

Participant became aware of the Excess Flows.

C. Within 30 days after the completion of the study to determine the source of the Excess Flows, the Participant shall prepare a written report identifying the cause or causes of the Participant's Excess Flows and the action or actions necessary to eliminate such Excess Flows. The Participant shall distribute copies of the report to the other Participant within 15 days after the report is prepared.

D. The Participant shall promptly undertake the corrective actions set forth in the report. Any action which can be completed by a Participant's employees or which costs under the public bidding requirements shall be completed within 60 days after issuance of the report. Any work which cannot be completed by the Participant's employees or which requires public bidding shall be advertised for bids within such 60 day period and the contract documents shall require completion within 60 days after issuance of the notice to proceed.

E. The Participant shall monitor its Flows for a period of not less than 180 days following completion of the corrective action to verify that the corrective actions have been successful and the Flow to the Plant or to the Connection Point has been reduced to or below such Participant's Monthly Allocated Flow.

F. The Participant shall provide the other Participant with monthly progress reports of the actions to eliminate Excess Flows.

Section 7.07. Allocation of Hourly Flow Capacity and Hourly Flow Restrictions. As required by Section 7.02 above, each Participant shall maintain metering facilities at the Connection Points identified below. In order to monitor and, to the extent possible, eliminate I/I from conveyance facilities upstream of each Connection Point, the identified Participant in each Paragraph of this Section shall limit the hourly Flows at each Connection Point as set forth below. Where the conveyance facilities downstream from the identified Connection Point are owned by a different Participant, the listed Participant shall have an hourly Flow Allocation in the downstream conveyances facilities of the other Participant in the amount established below:

A. WMA

- |                                      |          |
|--------------------------------------|----------|
| 1. ____ Road Interceptor             | _____MGD |
| 2. ____ Road Interceptor             | _____MGD |
| 3. ____ Metering Chamber             | _____MGD |
| 4. ____ Interceptor Metering Chamber | _____MGD |

B. MWA

- |                                    |          |
|------------------------------------|----------|
| 1. ____ Road Metering Chamber      | _____MGD |
| 2. ____ Road Metering Chamber      | _____MGD |
| 3. ____ Road Metering Chamber      | _____MGD |
| 4. ____ Road Pumping Station       | _____MGD |
| 5. ____ Road No. 2 Pumping Station | _____MGD |

6. \_\_\_\_ Road No. 2 Pumping Station                      \_\_\_\_ MGD

C. MMA

- 1. \_\_\_\_ Road Metering Chamber                      \_\_\_\_ MGD
- 2. \_\_\_\_ Road Metering Chamber                      \_\_\_\_ MGD
- 3. \_\_\_\_ Road Metering Chamber                      \_\_\_\_ MGD
- 4. \_\_\_\_ Road Pumping Station                      \_\_\_\_ MGD
- 5. \_\_\_\_ Road No. 2 Pumping Station                      \_\_\_\_ MGD
- 6. \_\_\_\_ Road No. 2 Pumping Station                      \_\_\_\_ MGD

Section 7.08. Hourly Flow Restrictions. Wastewater Flows to Joint Use Conveyance Facilities or Connection Points resulting in an Hourly Flow which exceeds the Allocated Hourly Flow Allocation for the Participant for such Joint Use Conveyance Facility or Connection Point shall be subject to the following actions:

A. In the event that the Hourly Flow from a Participant’s Collection System exceeds the Participant’s Hourly Flow Allocation, as established for the Joint Use Conveyance Facility or Connection Point, for a total of four hours within a 24-hour period for any two consecutive days within a calendar month, such Participant shall immediately initiate a remediation program. The Participant shall complete the remediation program whether or not the Hourly Flows return to the at or below the Allocated Hourly Flow for the specific Joint Use Conveyance Facility or Connection Point during subsequent months.

B. Where the Hourly Flow from a Participant’s Collections System exceeds the Hourly Flow Allocation for such Joint Use Conveyance Facility or Connection Point as set forth in Section 7.07 in the immediately succeeding calendar month, such Participant shall not issue any new Permits to properties whose wastewater will travel through such Joint Use Conveyance Facility or Connection Point until Hourly Flows return to at or below the Hourly Flow Allocation for a period of three consecutive months.

C. Any remediation program required by this Section 7.08 shall comply with all requirements of Section 7.06 above.

Section 7.09. Permit Limitations. Whenever this Agreement requires a Participant to cease issuing Permits, the following rules shall apply:

A. The Participant shall not issue any new Permits until authorized to do so by this Article 7. Where the Participant is not the entity which issues zoning or building permits, the Participant shall notify the entity which issues such Permits in writing that wastewater conveyance and/or treatment capacity is not available to such Participant and that such entity shall not issue any Permits for construction which would result in increased Flows to the Participant’s Collection System. The Participant shall provide the entity with all information and documentation necessary to enable such entity to lawfully deny Permits for construction which would result in increased Flows to the Participant’s Collection System.

B. The Participant shall honor Permits which the Participant or the entity which issues zoning or building permits issued prior to the date such Participant became aware of the Excess Flow provided, however, that if the holder of such Permit does not make the connection or complete construction within the time authorized in the Permit, the Participant and the entity which issues zoning or building permits shall not renew or extend the Permit.

C. A Participant may issue a Permit if the applicant for such Permit meets the then-current guidelines for connections when there is a Control Agency connection limitation. The Participant shall make an initial determination whether such hardship exists. If the Participant determines that hardship exists warranting issuance of a Permit, such Participant shall notify the other Participant.

Section 7.10. Notification of Connections to a Participant's Collection System. Each Participant agrees to advise the other Participant, without further request and in writing, from time to time but not less than once every calendar quarter, commencing at the time that the Connection Point is physically connected to the Intermunicipal Facilities of (1) the number of actual user connections made to the Participant's Collection System and to any collection lines feeding into that Collection System during the period covered by such report (which period shall be measured from the last such report to the date of the report in question) and the total number of connections existing as of the last day covered by such report, (2) the nature of the use of the properties so connected and (3) if such use is other than for single family residential dwelling purposes, the Participant's Consulting Engineer's opinion as to such properties' expected volume discharge into the Collection System. Should the wastewater flows from the Participant's Collection Systems at any time reach the point that additional connections would result in the Flow from the Participant's Service Area into the Intermunicipal Facilities exceeding the volume limits applicable at that time under this Agreement, the Participant shall not permit any additional connections to be made.

Section 7.11. Sale of Allocation Between Parties. Each Participant shall have the right to sell all or any portion of its Allocated Flow to the other Participant. The Participant selling such Allocation shall continue to be subject to this Agreement to the extent such Participant retains any Allocation.

Section 7.12. Sale of Allocation to Non-Party. Each Participant shall have the right to sell all or any portion of its Allocated Flows to any entity (whether or not such entity is located in the same municipality as the Participant) which is not a Participant if such entity agrees to be bound by all terms and conditions of this Agreement. Any Participant who sells any portion of its Allocation to a non-Participant shall inform the remaining Participant that such Participant has sold a portion of its Allocated Flows to a non-Participant. The notification shall include, at a minimum, the identity of the non-Participant, the precise location of the expansion of the Participant's Service Area which will result from such Allocated Flows being used by the non-Participant, and the amount of the Allocated Flows sold to such non-Participant. It shall be the responsibility of the Participant which sells any portion of its Allocated Flows to a non-Participant to ensure that such non-Participant complies with all requirements of this Agreement. The WMA has the right, but not the obligation, to enforce any portion of this Agreement against such non-

Participant if the Participant which has sold a portion of its Allocated Flows to the non-Participant is unable or unwilling to enforce this Agreement. The non-Participant shall NOT be considered a Party to this Agreement or a Participant but shall only have the obligations of Participants as set forth in this Agreement.

## **ARTICLE 8 Covenants of the Participants**

Section 8.01. Mandatory Connection Ordinance. MWA and MMA shall each (to the extent that they or it has not done so prior thereto) take all such action as it has the legal power to take which may be necessary to request that MILFORD or MATAMORAS take necessary action to compel all properties located within its sewage service area limits and then capable, or thereafter becoming capable, of being served by MWA's or MMA's Collection System to be connected therewith.

Section 8.02. Imposition of Sewer Rates. MWA and MMA shall each establish, maintain, levy, impose and collect charges, rentals and fees in respect of the use of such Collection System sufficient to enable it to pay therefrom (except to the extent that other funds are legally available for the purpose) the annual service charges required under this Agreement to be paid to the WMA. All such rates and charges shall be in compliance with all governing Requirements of all Control Agencies and they shall include, inter alia, as applicable, provisions for industrial cost recovery as required by EPA Regulations. The Participants agree to enter into appropriate amendments or supplements to this Agreement when and if necessary to equitably apportion any charges required by such provisions.

Section 8.03. Regulations Prohibiting Introduction of I/I. Each Participant shall adopt or enact, as applicable, regulations which prohibit connection of down spouts, sump pumps, and other such facilities which introduce I/I into its Collection System. Each Participant shall enforce such regulations to the maximum extent practicable.

Section 8.04. Sewer System Maintenance. Each Participant shall continuously operate and keep and maintain its Sewer System at all times in good and efficient operating condition and to meet all Requirements applicable thereto including I/I measures.

Section 8.05. Sewer System Insurance. Each Participant shall insure, or shall cause to be insured, those parts of its Sewer System which customarily are insured with a responsible company or companies authorized and qualified to do business under the laws of the Commonwealth against loss or damage by fire and other risk and casualty in such amounts as are adequate in accordance with accepted standards. The Participants agree that the insurance coverage of each Participant in existence at the date of execution of the Agreement shall be considered in compliance with this Agreement.

Section 8.06. System Records. MWA, MMA and WMA agree to make available at all reasonable times to each other access to all records of MWA or MMA and WMA insofar as the same relate to matters covered in this Agreement. MWA and MMA each agrees that the WMA



shall have access to MMA's and MWA's Collection System at reasonable times in order to insure compliance with the terms and conditions of this Agreement. WMA agrees to provide similar access to MWA and/or MMA for portions of WMA's Collection System which are tributary to the MWA or MMA Collection System at reasonable times in order to insure compliance with the terms and conditions of this Agreement.

Section 8.07. Compliance with Requirements. Each Participant agrees to comply with all present and future Requirements lawfully made and applicable to such Participant with respect to its Collection System and use of any Joint Use Conveyance Facilities and the Intermunicipal Facilities; provided, however, that nothing contained herein shall be construed to require compliance with respect to a Requirement during any period when that Requirement is being diligently contested in good faith. Each Participant agrees to provide, promptly after receipt thereof, to all other Participants a copy of any order, notice, citation or other regulatory or enforcement communication which such Participant received from a Control Agency.

Section 8.08. Waiver of Rights. The failure of any Participant to insist upon strict performance of this Agreement or any terms or conditions thereof shall not be construed to be a waiver of any of its rights hereunder.

## **ARTICLE 9**

### **Miscellaneous Provisions**

Section 9.01. Sharing of Information. The Participants shall provide each other from time to time with all information relevant to the proper administration of their respective responsibilities under this Agreement, or in respect of the interpretation hereof, as, and in such form and detail as, may reasonably be requested and each shall at all reasonable times and from time to time permit the others or their representatives to examine and inspect its respective records and physical facilities relevant to the subject matter of this Agreement.

Section 9.02. Insurance Requirements for the Intermunicipal Facilities and Use of Insurance Proceeds.

A. The WMA MMA and MWA each shall maintain insurance coverage in accordance with Section 8.05 of this Agreement.

B. In the event of any damage to any of the Intermunicipal Facilities covered by such insurance, the Participant shall promptly repair or replace the damaged property unless its Consulting Engineer certifies that it would not be practical and advantageous to do so. The Participant shall promptly commence and diligently prosecute (or cause such to occur) the repair, replacement or reconstruction of the damaged or destroyed portion of said facilities.

C. In the event that it shall become necessary, in order to transport, treat and dispose of wastewater from the Collection Systems in accordance with the purport and intent of this

Agreement, to make an extraordinary repair or replacement of the Intermunicipal Facilities because of damage or destruction by casualty or otherwise, including floods, and there are insufficient funds available from insurance proceeds to pay the costs and expenses thereof, each Participant shall forthwith deposit in a special construction fund such amount as is required for the purpose, in the same respective proportions as applied to the construction pursuant to Article 2 hereof.

D. In the event that proceeds of insurance resulting from damage to the Intermunicipal Facilities are not applied to the repair or replacement of the damaged property, either because the same is determined to be impractical and not advantageous (pursuant to subsection C of this Section 9.02) or as a result of any agreement of all Participants not to apply the same to reconstruction, such proceeds shall be applied as follows: (1) so much thereof as is necessary to pay all outstanding expenses and charges properly attributable to the operation and maintenance of the Intermunicipal Facilities as provided in this Agreement and all expenses and charges incidental to the cessation of the operations of such facilities including any extraordinary charge incurred as a result of damage to said facilities; (2) the remaining proceeds, if any, shall then be divided on a proportionate basis based on the respective contributions of each Participant to the total cost of the Intermunicipal Facilities from its initial construction.

Section 9.03. Consulting Engineer. Each of the Participants agrees to employ a Consulting Engineer at all times to perform the functions of such engineer provided for by this Agreement.

Section 9.04. Grants. The WMA shall take every reasonable step to obtain from Federal, State and other agencies, such grants-in-aid of the construction of the Intermunicipal Facilities and the alterations and additions to the Intermunicipal Facilities as may from time to time be available and **MWA and MMA** each hereby authorizes the WMA to apply for and accept (and do all other things incidental thereto) such grants for the benefit of **MWA and/or MMA**. Any such grants received shall be applied in reduction of shares of construction costs of the WMA, on the one hand, and of **MWA or MMA**, on the other hand, in the respective proportions of such shares to each other as would be calculated hereunder without regard to such grants.

Section 9.05. Tapping Fees. Each Participant is entitled to assess, collect and retain tapping fees, connection fees, and customer facilities fees as authorized by the Authorities Act. The Participant in whose Service Area the property is located shall retain all tapping fees, connection fees, and customer facilities fees regardless of the actual point of connection of such property.

Section 9.06. Fairness to Participants and Private Party Agreements.

A. The WMA agrees that it will not, at any time during the term of this Agreement, accept, for transportation, treatment or disposal, wastewater or wastes originating in any municipality outside the WMA under terms and conditions more favorable than those applicable hereunder to **MWA or to MMA**, but this provision shall not preclude less favorable terms.

B. The WMA may maintain its existing Private Party Agreements for services rendered to existing Private Parties.

C. If any Participant enters into any new Private Party Agreements or renegotiates an existing Private Party Agreement, such Private Party Agreement shall include provisions relating to Flow metering, allocations, surcharges, I/I remediation, and cost sharing which shall be at least as stringent as those in this Agreement.

Section 9.07. Dispute Resolution. If a dispute arises between the Participants, the Participants will arrange for at least one mediation session. The governing bodies of the Participants involved in the dispute shall select a mediator acceptable to all of the parties to the dispute. The mediator may be a professional engineer if the dispute relates to technical matters, a certified public accountant if the dispute relates to financial matters, or a person with experience in wastewater system administration if the dispute relates to other matters. Each Participant involved in the dispute shall bear an equal percentage of the mediator's fees and costs. The Participants shall allow a minimum of 60 days for mediation.

A. If mediation does not resolve the dispute between the Participants, at the conclusion of the mediation period a Participant may proceed to the Pike County Court of Common Pleas.

B. Notwithstanding the foregoing provisions of this Section 9.07, any Participant may seek injunctive relief in the Pike County Court of Common Pleas if the other Participant has violated any provision of this Agreement and such violation constitutes a clear danger to public health or safety.

Section 9.08. Prior Agreements Among Participants or Predecessors. The Participants recognize the existence of numerous prior agreements relating to wastewater conveyance and treatment. The listed prior agreements shall be treated as set forth below:

A. This Agreement shall supersede the following agreements between the Participants or their predecessors:

1. Agreement among **WESTFALL MUNICIPAL AUTHORITY**, and \_\_\_\_\_ dated as of \_\_\_\_\_, as amended by the Amendment to 2000 Intermunicipal Agreement dated as of \_\_\_\_\_.

2. Agreement among **WESTFALL MUNICIPAL AUTHORITY**, and \_\_\_\_\_ dated as of \_\_\_\_\_, as amended by the Amendment to 2000 Intermunicipal Agreement dated as of \_\_\_\_\_.

B. This Agreement shall not supersede the following agreements between the Participants or their predecessors insofar as the following agreements relate to the payment of funds by any of the Participants. This Agreement shall supersede any provisions in the following agreements which relate to allocation of Flow.

1. \_\_\_\_\_.

Section 9.09. Ownership of Intermunicipal Facilities. The Participants agree that the purchase of an Allocation of Flow in the Plant and other Intermunicipal Facilities does not confer ownership in any form of such facility upon **MWA or MMA**. The WMA acknowledges that \_\_\_\_\_ paid sums to the WMA for reservation of capacity in the Plant and in the WMA conveyance system under Section 2.07 of the Agreement among the WMA, and \_\_\_\_\_ dated as of \_\_\_\_\_.

Section 9.10. Severability. Should any one or more of the provisions of this Agreement for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement and this Agreement shall in such circumstances be construed and enforced as if such illegal or invalid provisions had not been contained herein.

Section 9.11. Effective Date. This Agreement shall become effective upon its execution and delivery by the parties hereto and shall be perpetual.

IN WITNESS WHEREOF, the parties hereto have each caused the due execution and attestation hereof by its duly authorized officers as of the day and year aforesaid.

**WESTFALL MUNICIPAL AUTHORITY**  
Pike County, Pennsylvania

Attest: \_\_\_\_\_  
(Assistant) Secretary

By: \_\_\_\_\_  
(Vice) Chairman

[WMA SEAL]

**MUNICIPAL AUTHORITY OF THE  
BOROUGH OF MILFORD**

Attest: \_\_\_\_\_  
(Assistant) Secretary

By: \_\_\_\_\_  
(Vice) Chairman

[AUTHORITY SEAL]

**MATAMORAS MUNICIPAL AUTHORITY**  
Pike County, Pennsylvania

Attest: \_\_\_\_\_

By: \_\_\_\_\_

(Assistant) Secretary

(Vice) Chairman

[AUTHORITY SEAL]

**BOROUGH OF MILFORD**

Attest: \_\_\_\_\_  
(Assistant) Secretary

By: \_\_\_\_\_  
President

[BOROUGH SEAL]

**BOROUGH OF MATMORAS**

Attest: \_\_\_\_\_  
(Assistant) Secretary

By: \_\_\_\_\_  
President

[BOROUGH SEAL]

**TOWNSHIP OF WESTFALL**

Attest: \_\_\_\_\_  
(Assistant) Secretary

By: \_\_\_\_\_  
Chairman

[TOWNSHIP SEAL]

[TOWNSHIP SEAL]

**EXHIBITS**

ANTHONY J. MAGNOTTA, ESQUIRE  
ATTORNEY AT LAW

HISTORIC SILK MILL  
8 SILK MILL DRIVE, SUITE 215  
HAWLEY, PENNSYLVANIA 18428

TELEPHONE: 570-226-5700

FACSIMILE: 570-226-5654

EMAIL: [CONTACT@MAGNOTTALAW.COM](mailto:CONTACT@MAGNOTTALAW.COM)

July 16, 2024

Via Email & First-Class Mail:

- Krista Gromalski, Chief Clerk, [kromalski@pikepa.org](mailto:kromalski@pikepa.org)  
Pike County Commissioners  
506 Broad Street  
Milford, PA 18337
- Kaitlin Hildebrandt, Secretary, [westfallsec@optonline.net](mailto:westfallsec@optonline.net)  
Westfall Township Municipal Building  
Board of Supervisors  
102 La Barr Lane  
PO Box 247  
Matamoras, PA 18336
- Milford Borough Secretary, [secretary@milfordpa.org](mailto:secretary@milfordpa.org)  
Milford Borough Council  
500 Broad Street  
Milford, PA 18337
- Marianne Brown, Borough Secretary,  
[secretary@matamorasborough.com](mailto:secretary@matamorasborough.com)  
Matamoras Borough Council  
10 Ave I  
Matamoras, PA 18336
- [wma155@verizon.net](mailto:wma155@verizon.net)  
Westfall Municipal Authority  
155 Westfall Town Drive  
Matamoras, PA 18336

- Nick May, [waterofc@milfordpawater.com](mailto:waterofc@milfordpawater.com)  
Milford Water Authority  
151 Old Owego Tpke.  
PO Box 459  
Milford, PA 18337
- [Operator@MatamorasMunicipal.com](mailto:Operator@MatamorasMunicipal.com)  
Matamoras Municipal Authority  
304 Pennsylvania Avenue  
Matamoras PA 18336

RE: Intergovernmental Agreement between Westfall Township, Milford Township, Milford Borough, the County of Pike and the Municipal Authority of the Township of Westfall and Matamoras Borough

Dear Officials:

I am writing to you in my capacity as Solicitor for Milford Township, Pike County, Pennsylvania. As you are aware, in February 2019, an Intergovernmental Agreement was signed by Milford Township for purposes of the potential expansion of the Westfall Municipal Authority to service the areas of Milford Borough and additional areas of Westfall Township and all of Matamoras Borough.

At the outset, Milford Township was assured by the participants that participation would not include additional burden upon the taxpayers of Milford Township.

Throughout the history of the Intergovernmental Agreement, HRG, the Consulting Engineers for Westfall Municipal Authority was given the task of developing what has become known as the Eastern Pike Regional Act 537 Plan. On July 14, 2020, a draft of the Plan formulated by HRG was forwarded to DEP. On October 20, 2021, DEP issued an administrating incomplete notice. On October 26, 2021, HRG responded with a notification that said Plan may be deemed approved because of DEP's failure to review the Plan within the required one hundred twenty (120) day period. On August 2, 2022, DEP again issued an administratively incomplete notice regarding the Act 537 Plan. In

January of 2023, the Milford Township Board of Supervisors wrote to its neighboring municipalities indicating that the premise of the Plan was that Milford Township had no objection to a sewage line emanating through the Township to service Milford Borough, however, that Milford Township would not force by Mandatory Connection Ordinance any residents to connect to the system unless they voluntarily agreed to do so.

On March 3, 2023, HRG submitted the Eastern Pike County Act 537 Plan to DRBC. On October 23, 2023, the PADEP denied the Act 537 Plan and issued a letter to HRG and the municipalities indicating its disapproval of the Plan. Throughout this time, it has always been understood by Milford Township that the Intergovernmental Agreement would only require the parties to implement the Act 537 Plan if said Plan was financially feasible to all parties and that the allocation of costs would be done in an equitable manner satisfactory to all parties.

The Intergovernmental Agreement incorporates all Whereas clauses as though they were fully stated: “The parties are entering this Agreement for the purpose of agreeing on the procedures to evaluate the feasibility of the extension project and to go forward with the Plan, **if the parties determine that the project is feasible.**”

The cost feasibility study to evaluate the costs of implementing the extension project mentioned in paragraph 4 of the Agreement was to be allocated in an equitable manner satisfactory to all parties. Nowhere in the Agreement is there a formulation for how to determine the equitable nature.

It is my understanding that some of the participants believe that Milford Township should be responsible for twenty-five (25%) percent of the cost of implementation even though Milford Township is not equally benefited by the extension. Clearly, this is an inequitable and contrary to the intentions of the parties.

Paragraph 8, clearly indicates that grant monies will be used for the studies and the Pike County Scenic Rural Preservation did provide a grant for HRG’s initial work. On June 28, 2024, HRG submitted an additional request for \$55,400.00, plus reimbursable expenses and



consultant fees for work outside the scope of services in a twelve (12) page proposed Agreement.

The Milford Township Board of Supervisors has reviewed the proposal and the Intergovernmental Agreement and has concluded as follows:

1. Paragraph 3, of the Agreement causes a feasibility study to be conducted to determine the capacity needed to serve the areas of Milford Borough and Milford Township, that **they want to have served with sewage collection.**
2. Paragraph 4, indicates that costs will be allocated in an **equitable manner satisfactory to all parties.**
3. The Whereas clause indicates that in order to go forward with the plan the parties need to determine that the project is **feasible.**
4. Paragraph 8, indicates that additional grant sources may need to be found or the cost of the initial work needs to be equitably divided.

Based upon the above, in excess of five (5) years has passed from the time that Milford Township originally executed Agreement. During these five (5) years Milford Township has never waived in the position that the Authority may proceed with its sewage line through the Township, but, the Township will not mandate any resident to hook-up to that system unless they voluntarily agree to do so.

Based upon recent emails between the parties, and DEP it appears that DEP will not allow property owners to connect voluntarily. Rather, the Plan must include the delineation of the proposed sewer service area down to the parcel level, including all the properties in Milford Township that will be serviced by/or will be required to be connected to the proposed sewer system.

For all of the above reasons and the fact that after five (5) years there is no approved Task Activity Report, no approved Act 537 Plan and no Work Plan that the Supervisors believe is feasible, the Supervisors

voted unanimously to withdraw from the Intergovernmental Agreement for the Act 537 Plan.

Thank you for your anticipated cooperation.

Sincerely,



Anthony J. Magnotta, Esquire

AJM/crm

cc: Milford Township, Board of Supervisors  
PADEP, C/O Scott Navatnak  
HRG