

JENNIFER FOSTER

vs.

THE BOARD OF SUPERVISORS TOWAMENCIN
TOWNSHIP

NO. 2023-18907

NOTICE TO DEFEND - CIVIL

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE
MONTGOMERY BAR ASSOCIATION
100 West Airy Street (REAR)
NORRISTOWN, PA 19404-0268

(610) 279-9660, EXTENSION 201

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

JENNIFER FOSTER

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CIVIL COVER SHEET

State Rule 205.5 requires this form be attached to any document commencing an action in the Montgomery County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: LAUREN GALLAGHER, Esq., ID: 206113

Self-Represented (Pro Se) Litigant

Class Action Suit Yes No

MDJ Appeal Yes No

Money Damages Requested

Commencement of Action:

Amount in Controversy:

Complaint

Case Type and Code

Miscellaneous:

Mandamus

Other: _____

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Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Montgomery County

<i>For Prothonotary Use Only:</i>	
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

S E C T I O N A

Commencement of Action: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking	
Lead Plaintiff's Name: Jennifer Foster	Lead Defendant's Name: The Board of Supervisors Towamencin Township
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Dollar Amount Requested: (check one) <input type="checkbox"/> within arbitration limits <input type="checkbox"/> outside arbitration limits
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: <u>Lauren A. Gallagher, Esq., Gregory R. Heleniak, Esq., & Samantha L. Newell, Esq.</u> <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

S E C T I O N B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	CIVIL APPEALS Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input checked="" type="checkbox"/> Declaratory Judgment <input checked="" type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input checked="" type="checkbox"/> Other: Sunshine Act _____
PROFESSIONAL LIABILITY <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____		

NOTICE

Pennsylvania Rule of Civil Procedure 205.5. (Cover Sheet) provides, in part:

Rule 205.5. Cover Sheet

(a)(1) This rule shall apply to all actions governed by the rules of civil procedure except the following:

- (i) actions pursuant to the Protection from Abuse Act, Rules 1901 et seq.
- (ii) actions for support, Rules 1910.1 et seq.
- (iii) actions for custody, partial custody and visitation of minor children, Rules 1915.1 et seq.
- (iv) actions for divorce or annulment of marriage, Rules 1920.1 et seq.
- (v) actions in domestic relations generally, including paternity actions, Rules 1930.1 et seq.
- (vi) voluntary mediation in custody actions, Rules 1940.1 et seq.

(2) At the commencement of any action, the party initiating the action shall complete the cover sheet set forth in subdivision (e) and file it with the prothonotary.

(b) The prothonotary shall not accept a filing commencing an action without a completed cover sheet.

(c) The prothonotary shall assist a party appearing pro se in the completion of the form.

(d) A judicial district which has implemented an electronic filing system pursuant to Rule 205.4 and has promulgated those procedures pursuant to Rule 239.9 shall be exempt from the provisions of this rule.

(e) The Court Administrator of Pennsylvania, in conjunction with the Civil Procedural Rules Committee, shall design and publish the cover sheet. The latest version of the form shall be published on the website of the Administrative Office of Pennsylvania Courts at www.pacourts.us.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY,
PENNSYLVANIA

Jennifer Foster and

Kofi Osei

VS.

NO.

The Board of Supervisors

Towamencin Township

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NORRISTOWN, PA 19401
(610) 279-9660. EXTENSION 201

PARTIES

1. Plaintiff, Kofi Osei, is an adult individual residing [REDACTED]
[REDACTED].
2. Plaintiff, Jennifer Foster, is an adult individual residing at [REDACTED] (collectively, "Plaintiffs").
2. The Township of Towamencin, is a municipality, previously classified as a township of the second class and now operating under a Home Rule Charter in the Commonwealth of Pennsylvania, with administrative offices of 1090 Troxel Road, Lansdale, PA 19466 (the "Township").
3. The Board of Supervisors is the governing body of the Township and is comprised of five (5) residents of the Township, elected at-large, as set forth in the Second Class Township Code, 53 P.S. § 65101, *et seq.*

BACKGROUND

4. On or about September 3, 2020, Public Financial Management ("PFM") approached the Township about possible monetization of the Sewer System. On September 3, 2020, the Township also approved a Phase 1 contract with PFM to explore monetization of the public sanitary sewer system.
5. On or about January 13, 2021, the Township approved Phase 2 and Phase 3 contracts with PFM to further explore the monetization of the sewer assets.
6. On February 24, 2021, the Township retained Dilworth Paxson, LLP as special counsel for legal services pertaining to the monetization of the sewers.

7. On February 12, 2021, the Township issued a Request for Qualifications, soliciting responses from prospective bidders for the purchase or lease of the public sanitary sewer system owned and operated by the Towamencin Municipal Authority (“Sewer System”).¹
8. On March 12, 2021, the Township received Responses to its Request for Qualifications for the sale or lease of the Sewer System. On March 17, 2021, the Township decided to prequalify all interested bidders: Aqua Pennsylvania, Inc. (“Aqua”), Pennsylvania American Water, Inc. (“PA American” or “PAAW”), NextEra Energy, Inc. (“NextEra”), Franconia Sewer Authority (“Franconia”), and Vico.
9. On or about May 21, 2021, the Township held pre-bid meetings and tours of the assets with all pre-qualified bidders.
10. On December 12, 2022, the Board of Supervisors authorized a Request for Bids for the purchase or lease of the Sewer System, with bids due on or before February 11, 2022.
11. The Township received five (5) bids, as follows:
 - NextEra: \$115,300,000.00 (with a two-year rate freeze offered);
 - PAAW: \$92,400,000.00 (no rate freeze offered);
 - Aqua: \$54,100,000.00 (no rate freeze offered);
 - Franconia: \$23,500,000.00 (regardless of rate freeze); and
 - Vico:
 - With rate freeze for 2 years: \$45,000,000.00
 - Without rate freeze for 2 years: \$55,000,000.00
12. Throughout this process, members of the public have been consistently appearing at public meetings of the Board of Supervisors to voice their objection to the proposed sale and demanding increased transparency from the Board. Ultimately, the Board held two

¹ The Towamencin Municipal Authority is a municipal authority organized and existing pursuant to the Municipalities Authorities Act, 53 Pa.C.S. § 5601, *et seq.* The Authority was established by the Township in 1964, and is not a party to this litigation. If the proposed sale of the public sanitary sewer system were to be completed, the Authority would be dissolved and cease its existence.

- (2) town hall meetings, sent out mailers, and pledged to listen to their constituents throughout the process.
13. On or about April 6, 2022 and April 22, 2022, the Board of Supervisors held two (2) town hall meetings at Dock Academy for public presentation and comments on the proposed sale of the Sewer System. Each town hall had approximately 300 residents and other interested persons in attendance. Only two (2) members of the public voiced support of the sale, while many members of the public spoke in opposition to the sale.
 14. On or about May 25, 2022, the Board of Supervisors held a public meeting to decide whether to approve a sale to NextEra. At the meeting, approximately 70 residents attended, almost unanimously speaking in opposition to the proposed sale.
 15. Nevertheless, the Board of Supervisors voted four-to-one (4-1) to approve a sale of the Township's municipal sewer system to NextEra for One Hundred Fifteen Million Three Hundred Thousand Dollars (\$115,300,000.00).
 16. On or about June 14, 2022, the Township entered into an Asset Purchase Agreement ("APA") with the highest bidder, NextEra.

THE SEWER COMMITTEE

17. As the public meetings progressed, members of the public began to discover that the Township had formed a Sewer Committee which had taken on responsibilities that would normally be undertaken by the Board of Supervisors as a whole. The Township was not, however, forthright about the membership or functions of the Sewer Committee, unless asked specific questions through the Right-to-Know process, despite the Township's promises and assurances regarding transparency.

18. Through these efforts, Plaintiffs have been able to piece together limited information regarding the membership and function of the Sewer Committee. Plaintiffs continue to attempt to access information regarding same.
19. For the process related to the proposed Sewer Sale, upon information and belief, the members of the Sewer Committee were H. Charles Wilson III (Chairman of the Board of Supervisors), Daniel M. Littley Jr., Robert Ford (former Township Manager), Brooke Neve, William Dingman, and Solicitor John T. Dooley.
20. Plaintiffs believe, and therefore aver, that membership of the Sewer Committee has changed over the years, but as there are no minutes of meetings or proper records of the Sewer Committee, Plaintiffs are unable to aver which members served on the Sewer Committee at which times, other than as stated herein. At some point, Supervisor Richard Marino became a part of the Sewer Committee, and was part of the Sewer Committee that recommended the proposed sale to NextEra.
21. With respect to the proposed sale, the Sewer Committee was tasked with “examin[ing] whether it is in the Township’s best interest, or not, to monetize the sanitary sewer system.” The Sewer Committee “recommended that an ‘Analysis & Valuation’ study of the sanitary sewer system be conducted to collect the needed information to make an informed decision on monetization.” *See* Towamencin Sewer Sale Informational Webpage, <https://www.towamencin.org/information/sewer-system-sale/> (last visited August 9, 2023).
22. Upon information and belief, the Plaintiffs believe, and therefore aver, that the Sewer Committee was intimately involved with the process related to the Sewer Sale, including reviewing the aforementioned Analysis and Valuation study, interviewing prospective

bidders, reviewing and analyzing bid submissions for the specific purpose of making a recommendation to the Board of Supervisors, and ultimately making a recommendation to the Board of Supervisors, which was accepted and approved by four (4) of the five (5) supervisors.

23. As the Sewer Committee was so incredibly influential regarding the decision to monetize the sewer assets, the interview and bid process, and the eventual persuasive recommendation to the full Board of Supervisors, the Sewer Committee, acting as an established committee of the Township, must comply with the Pennsylvania Sunshine Act, related to public meetings.
24. The Pennsylvania Sunshine Act, 65 Pa.C.S.A. § 701, *et seq.*, (the “Sunshine Act”), governs the conduct of meetings of governmental agencies. Specifically, the Sunshine Act mandates that “[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public...” 65 Pa.C.S.A. § 704.
25. Official action is defined to include:
 - (1) Recommendations made by an agency pursuant to statute, ordinance or executive order.
 - (2) The establishment of policy by an agency.
 - (3) The decisions on agency business made by an agency.
 - (4) The vote taken by an agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

65 Pa.C.S.A. § 703.

26. An agency is defined to include “[t]he body, and all committees thereof authorized by the body to take official action or render advise on matters of agency business ... of any political subdivision of the Commonwealth or any ...township...” 65 Pa.C.S.A. § 703.

27. A political subdivision is defined as “[a]ny county, city, borough, incorporated town, township, school district, intermediate unit, vocational school district or county institution district.” Id.
28. Towamencin Township is unquestionably a political subdivision and township that is subject to the provisions of the Sunshine Act, such that official actions and deliberations of Township agencies must comply with the open meeting requirements.
29. The Sewer Committee is a committee of the Township.
30. The Sewer Committee did not comply with the mandates of the Sunshine Act.
31. There were numerous Right-to-Know requests that were submitted in order to find out basic information about the Sewer Committee, its membership, and its function. *See* Exhibit “A,” multiple Right-to-Know requests and responses from the Township.
32. Requests were required to be submitted to find out:
- Sewer Committee membership
 - Sewer Committee minutes or notes
 - Any information regarding the formation of the Sewer Committee
 - Advertisements regarding Sewer Committee meetings
33. As a result of these numerous requests, it was determined that there are not complete records of who served on the Sewer Committee, there are no meeting minutes or records of discussion (including no record of any handwritten notes), there were no advertisements of the meetings, the meeting agendas were not posted. Of great concern, the full extent of the function of the Sewer Committee remains unknown as of this filing due to the flagrant disregard of the basic tenants of the Sunshine Act. *See* Exhibit “A,” pgs. 2, 4.
34. Further, as the meetings were not advertised and no agendas were posted, there could be no public involvement or input.

35. Plaintiffs believe, and therefore aver, that the purpose of conducting the meetings of the Sewer Committee in such a fashion was to purposely exclude public input and to shield the Township's deliberations regarding a major asset from public scrutiny, despite the requirements of the Sunshine Act and the significant public interest in the proposed sale.

THE HOME RULE CHARTER

36. There were many citizens that viewed the Township's lack of transparency regarding this proposed sale troublesome, at best. There was a clear lack of transparency on behalf of the Township, including private meetings, insufficient information, and violations of the Sunshine Act.
37. Due to these plentiful concerns regarding the lack of transparency of the Board of Supervisors and a strong objection to the proposed sale of the Sewer System, residents of the Township organized to utilize the options of the Home Rule Charter and Optional Plans Law to petition for a government study commission and election to establish a Home Rule Charter for the Township. 53 Pa.C.S.A. § 2901, *et seq.*
38. On November 8, 2022, the following question was posed to the voters of Township on the general election ballot, "Shall a government study commission of seven members be elected to study the existing form of government of Towamencin Township, to consider the advisability of the adoption of a home rule charter; and if advisable, to draft and to recommend a home rule charter?"
39. Also on the ballot was a separate voting measure, which was reliant on the formation of the government study commission being approved: "If the question of forming a government study commission is approved by the voters, seven people are required to be elected to serve on the commission. Regardless of how you voted on the question of

appointing a government study commission, you can vote to elect candidates to the commission. You may vote for no more than seven candidates to serve on the study commission.”

40. There were a total of fourteen (14) candidates for the government study commission. Leading up to the November 8, 2022 election, there were two (2) separate and distinct candidate slates.
41. Seven (7) of the candidates openly proclaimed their opposition to the Sewer Sale and proposed the use of the Home Rule Charter and Optional Plans law to block the proposed Sewer Sale. These candidates identified as the Neighbors Opposing Privatization Efforts, or “NOPE” slate, and were Plaintiffs, Gisela Koch, Mark Warren, Christina Gallagher, Don Lepp and Martin Cohen.
42. The remaining seven (7) candidates identified as the Township Residents United Serving Towamencin, or “TRUST” slate, and were Douglas Kile, Connie Brown, Jeffrey Baer, Nancy Becker, Richard Fisher, Amy Tarlo and Michael Main. The TRUST slate was in favor of the proposed sale, and was open in its intent to maintain the Township’s form of government to allow the proposed Sewer Sale to proceed.
43. The express primary goal of the NOPE candidates was to stop the sale of the Sewer System, with secondary goals of increased transparency from the Township and the addition of a referendum function for the voters of Towamencin Township.
44. A government study commission was approved by the voters in the November 2022 election (the “Government Study Commission” or “GSC”).
45. As the formation of the GSC was approved, the seven (7) persons with the most votes that were elected to serve on the Government Study Commission were the seven

members of the NOPE slate, including Plaintiffs in this action, who became the Chair and Vice Chair of the Government Study Commission.²

46. On December 6, 2022, the Government Study Commission members took their oaths of office and held an organizational meeting.
47. The GSC published numerous drafts of a Home Rule Charter, held several public meetings where various elected and appointed officials were interviewed, toured the Towamencin Municipal Authority sewage treatment plant, held a public hearing, and held a town hall thereafter in pursuit of fulfilling its statutory responsibilities.
48. The GSC undertook a review of how a Home Rule Charter could change the outcome of the Sewer Sale, in addition to adding citizen participation through referenda and transparency to Township operations.
49. The GSC was clear from the beginning: its primary goal was to explore the ways in which a Home Rule Charter could stop the sewer sale. This goal, along with adding citizen referenda and transparency in Township operations, was repeated at the beginning of each GSC meeting and published on the GSC website.
50. On March 1, 2023, the GSC approved the required report of its findings, its proposed Home Rule Charter (the “Charter”), and the Ballot question.
51. The Sunshine Act mandates that for each of its public meetings “the [Township] shall post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, on the website no later than 24 hours in advance of the time of the convening of the meeting.” 65 Pa.C.S.A. § 709(c.1)(1)(i).

² Don Lepp was unable to take office, and was thereafter replaced with Joseph Rumsey.

52. The Sunshine Act prohibits the Township from taking any action on items not included in agenda: “an agency may not take official action on a matter of agency business at a meeting if the matter was not included in the notification required under section 709(c.1).” 65 Pa.C.S.A. § 712.1(a).
53. The Sunshine Act allows exceptions to this mandate for emergencies and for matters that are brought to the agency’s attention during the 24-hour period between the posting of the agenda, so long as they are of a *de minimis* nature. 65 Pa.C.S.A. §§ 712.1(b) & (c). However, the agency must announce the reason for the change in the agenda at the public meeting. 65 Pa.C.S.A. § 712.1(e).
54. On March 8, 2023, at the start of its public meeting, the Board of Supervisors alerted the public to both the proposed withdrawal of NextEra and that NextEra had proposed to assign its contractual rights to PA American.
55. The Board Chairman, Charles Wilson, announced that the reason for the change in the agenda was “due to certain information recently received by the Board.” See Exhibit “B,” Minutes of the March 8, 2023 and March 22, 2023 Board of Supervisors meetings.
56. There was no statement that the information had arisen within the 24 hours prior to the meeting. Plaintiffs believe, and therefore aver, that the Township was aware of the “certain information” well prior to the 24 hours in advance of the meeting.
57. Despite having no motion on the agenda for such an action, no updated financial analysis, and in clear and flagrant violation of the Sunshine Act, the Township Supervisors voted to amend the meeting’s agenda to 1) amend the existing Asset Purchase Agreement, 2) draft an Assignment Agreement, and 3) draft an amendment to the Sewer Sale Ordinance.

All of these items were approved by a vote of four-to-one (4-1), with Supervisor Joyce Snyder as the lone dissenting vote. See Exhibit “B.”

58. On March 22, 2023, the Board of Supervisors then approved the amendment to the Asset Purchase Agreement, the Assignment Agreement, and the amendment to the Sewer Sale Ordinance. At this same meeting, the Township adopted a 3-minute time limit on public comment and actively enforced this policy prior to the official adoption.
59. On March 9, 2023, the day after the Board of Supervisors announced and voted to begin the process of transferring the sale from NextEra to PAAW, the GSC released its final report, in which the adoption of a Home Rule Charter was recommended. The report was revised slightly to account for the proposed change from NextEra to PAAW. A true and correct copy of the March 9, 2023 Report is attached hereto, incorporated herein and labeled Exhibit “C.”
60. The proposed Charter did not alter elected offices, change any financial procedure, change limitations to taxation rates, or make any change to the general operating procedures of the Township. Rather, as was clearly discussed at each meeting of the GSC, the proposed Charter, *inter alia*, prohibited, “the sale or long-term lease of potable water, wastewater, and stormwater systems to nongovernmental entities.” See Exhibit “C,” pg. 2.
61. As part of the March 9, 2023 GSC report, four major concerns were addressed: “(1) The sewer sale is neither necessary nor popular, (2) There is little wrong with the current structure of government, (3) There isn’t enough direct democracy in Towamencin, and (4) There isn’t enough transparency in Towamencin.” See Exhibit “C,” pg. 5.

62. The GSC continued to move forward as commissioned. On March 10, 2023, the final report, proposed Charter and ballot question were transmitted to the Montgomery County Board of Elections for inclusion on the May 16, 2023 ballot.
63. As a result of the in-depth study and findings thereof, the required referendum was placed on the Tuesday, May 16, 2023 primary election ballot. As required by the Home Rule Charter Law, the ballot question read: “Should the Home Rule Charter contained in the report dated March 9, 2023, of the Government Study Commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by the Second Class Township of Towamencin?”
64. The Home Rule Charter referendum was passed by the eligible voters of Towamencin Township on Tuesday, May 16, 2023 with a vote of 2,728 to 2,418, and certified on June 5, 2023.
65. The Home Rule Charter went into effect on July 1, 2023.
66. On May 15, 2023 the Township filed a Petition *Nunc Pro Tunc* with the Pennsylvania Public Utility Commission (the “PUC”), seeking a Certificate of Public Convince, *Nunc Pro Tunc*, seeking approval from the PUC to offer, furnish, render, and supply wastewater service, yet at the same time seeking a Certificate to Abandon Service upon the closing of a proposed sale by the Township of substantially all of the assets comprising its wastewater system to PAAW.
67. On May 16, 2023, PAAW filed an Application to Acquire the Towamencin Wastewater System with the PUC, seeking approval of the transfer of assets to PAAW and the rights of PAAW to begin to offer or furnish wastewater service.

THE FOSTER RIGHT-TO-KNOW REQUEST

68. Also on March 9, 2023, Plaintiff Foster submitted a Right-to-Know request to the Township asking for records relating to communications regarding PAAW. On March 16, 2023, the Township invoked a 30-day extension. A true and correct copy of the Right-to-Know Request is attached hereto, incorporated herein and labeled Exhibit “D.”
69. On April 13, 2023, the Township requested an additional 15 days to respond to the March 9, 2023 Right-to-Know request.
70. On May 8, 2023, the Township provided a partial response to the March 9, 2023 Right-to-Know request, and denying the request in part, citing the attorney-client privilege and internal pre-decisional records exceptions in the Pennsylvania Right-to-Know Law. A true and correct copy of the Township’s response and responsive records is attached hereto, incorporated herein, and labeled Exhibit “E.”
71. At the Township meeting on May 10, 2023, Township President Charles Wilson seemingly attempted to cure the text messages as provided in response Plaintiff Foster’s request, by openly amending his previously identified timeline, stating that: (1) he informed the public on March 8, 2023 that the Township was notified by NextEra of their intent to exit on or around November 28, 2022, (2) that PAAW had reached out to the Township in early December 2022 to inform the Township of NextEra’s intent to assign and see if the Township was open to this change, and (3) that NextEra told the Township the Thursday or Friday before March 8th that they came to an agreement with PAAW to assume the APA.

72. On May 25, 2023, Plaintiff Foster filed an appeal of the partial denial. The Township and the Plaintiff Foster thereafter engaged in mediation, including the Township providing a supplemental affidavit.
73. The appeal is now before an Office of Open Records hearing officer, who is conducting an *in camera* review of the records the Township has failed to disclose.
74. The records received in the Township's partial response revealed that, contrary to the Township's assertion on March 8, 2023 that it had only recently learned of the transfer of the APA from NextEra to PAAW, text messages exchanged between two (2) Board members in early December 2022 revealed that such discussions had begun months before the Board's last minute agenda modification, which was in clear violation of the Sunshine Act.
75. At all times material hereto, the Board has continued to move forward with the proposed sale, despite lengthy public comment in opposition of the agreement, lack of public support, and an overwhelming lack of transparency.

COUNT I: MANDAMUS

76. All paragraphs above are hereby incorporated by reference.
77. Plaintiffs seek an order of mandamus in this action compelling the Board of Supervisors of Towamencin Township and Towamencin Township to terminate the Asset Purchase Agreement with Pennsylvania American Water, as the Board of Supervisors and the Township are refusing to abide by, and are blatantly violating, requirements under the Home Rule Charter.
78. A "[m]andamus is the proper remedy only where the plaintiff demonstrates (1) a clear legal right in the petitioner, (2) a corresponding duty in the respondent, and (3) absence

of any other appropriate or adequate remedy.” Equitable Gas Co. v. City of Pittsburgh, 488 A.2d 270, 272 (Pa. 1985). Plaintiffs clearly satisfy each prong of this test, as the Plaintiffs have a clear right to relief, the Township and the Board of Supervisors have an unequivocal duty, and there is a clear lack of other appropriate remedies.

79. Despite the Home Rule Charter going into effect, the Board of Supervisors and Township are intent on proceeding with a proposed sale that is in direct violation of the clear language of the Charter as well as the obvious intent of the voters of Towamencin Township.
80. The Home Rule Charter states that, “The Township, municipal authorities incorporated by the Township, or any other governmental entity that owns and/or operates a Potable Water System, a Wastewater System, or a Storm Water System in the Township, shall not permanently sell, transfer, assign, or deliver ownership or operation of the Potable Water System, the Wastewater System, or the Storm Water System to a non-governmental entity.” See Exhibit “F,” at Article 6, § 601.
81. Plaintiffs seek a mandamus action as a, “[m]andamus is an extraordinary remedy designed to compel official performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant and want of any other adequate remedy at law.” Allegheny County v. Com., 490 A.2d 402, 408 (Pa. 1985). Moreover, “[t]o succeed in an action of mandamus, the plaintiff must show an immediate, specific, well defined and complete legal right to the thing demanded.” Equitable Gas Co. v. City of Pittsburgh, 488 A.2d 270, 273 (Pa. 1985).
82. The Charter creates a clear right to relief for Plaintiffs, as residents of the Township are entitled to see the provisions of the Charter followed. Further, due to a recently issued

Commonwealth Court opinion, it has become abundantly clear that the proposed sale of the Sewer System must fail. *See generally Cicero v. Penna. Public Utility Comm'n*, Docket No. 910 C.D. 2022 (Pa. Commw. Ct., July 31, 2023).

83. There can be no question regarding the duties of the Board of Supervisors in this action, as the Charter is explicit, unambiguous and does not give the Board of Supervisors or the Township any discretion in complying with its terms. The Charter creates an unequivocal duty for the Township and the Board of Supervisors to terminate the APA, as the Township cannot proceed with the proposed sale.
84. Despite this, the Board of Supervisors openly and confidently continues to promote, encourage, and advance the illegal proposed sale.
85. Indeed, four (4) of the Supervisors issued a joint statement advising of their intent to disregard the Charter, which stated: "As have we previously stated, and as we have shared with the opponents of the sewer system sale, the Township legal team does not believe the passage of the Home Rule Charter negates the sewer sale under current Pennsylvania law and the Pennsylvania Constitution. There is strong legal precedent against overturning pre-existing contracts based on the passage of new laws. As such, we do not intend to seek to terminate the contract." *See* Towamencin Board of Supervisors' Statement: Home Rule Charter, May 25, 2023, https://www.towamencin.org/media/2607/bos-statement-home-rule-charter_sewer-sale.pdf. (Last visited August 14, 2023).
86. The duty of the Board of Supervisors and the Township is to comply with the Charter. The Home Rule Charter created a final governmental order or decision that prohibits the Township from consummating the transaction.

87. The present situation is expressly contemplated by the clear and unambiguous terms of the APA.
88. The APA, Section 14.01(b)(ii), states that, “This agreement may...be terminated and abandoned at any time before completion of the Closing...by the Seller or the Buyer if...any Governmental Authority shall have issued an order, decree or ruling or **taken any other action**, in each case permanently **restraining, enjoining, or otherwise prohibiting the material transactions contemplated by this agreement.**” See Exhibit “G,” at 52 (emphasis added).
89. A “Governmental Authority” is defined in the APA to mean “**any** court, department, commission, board, bureau, municipality, municipal authority (established pursuant to the Pennsylvania Municipal Authorities Act of the Commonwealth of Pennsylvania), **agency** or instrumentality of the United States, **any state, county, city or political subdivision thereof**, or any foreign governmental body, including without limitation, the PaPUC, the EPA, PaDEP, **the Municipal Board** and the Authority Board.” See Exhibit “G,” at 6 (emphasis added).
90. The Township is, by this definition, a Governmental Authority.
91. As noted above, the voters of the Township voted in favor of adopting a Home Rule Charter.
92. The newly adopted Charter specifically prohibits the transactions contemplated by the APA. Specifically, because of the clear and unambiguous terms of the Home Rule Charter, the Township may not execute any of the final asset transfer agreements that are necessary to complete the proposed sale.

93. The APA is, by its terms, an agreement to agree at a later date if certain conditions precedent are met. Because of the Charter, the conditions precedent, the execution of the final transfer documents, can no longer be met and the APA is, therefore, no longer performable.
94. “If performance on one side or another of a contract becomes excusably impossible while the transaction is wholly executory on both sides, not only is the contract discharged, but neither party is subject to obligation of any kind.” Davis-Haas v. Exeter Twp. Zoning Hearing Bd., 166 A.3d 527, 538 (Pa. Commw. Ct. 2017).
95. Black’s Law Dictionary defines an executory contract as, “A contract that remains wholly unperformed or **for which there remains something still to be done on both sides, often as a component of a larger transaction** and sometimes memorialized by an informal letter agreement, by a memorandum, or by oral agreement.” Black’s Law Dictionary (11th ed. 2019).
96. Here, the Township must transfer the assets to PAAW and PAAW must obtain approval from the Pennsylvania Public Utility Commission. There can be no doubt that the current APA with PAAW is entirely and wholly executory. Therefore, this contract may be discharged and the Township is under no obligation to consummate the transaction.
97. This Home Rule Charter is now in effect and binding upon the Township, constituting a new form of government that the Board of Supervisors and the Township must abide by, including their inability to consummate this transaction.
98. At various times, four (4) of the five (5) members of the Board of Supervisors have stated their belief that the Charter cannot interfere with the APA, which they have opined is a legally binding contract.

99. As outlined above, however, the Charter does exactly what is specifically contemplated by the APA: it prevents the Township from being able to sign the final transfer documents. The APA is, by its terms, an agreement to agree at a later date, assuming that all agencies having jurisdiction have otherwise approved the proposed sale and that the Township is able to sign the final transfer agreements.
100. The only decision the Board of Supervisors can make is to comply with the legal requirements of the Charter. A majority of the Board of Supervisors has publicly declared their intent to ignore the Charter and attempt to proceed with the proposed sale.
101. In doing so, the Township will continue to incur substantial costs in the form of legal expenses related to petitions before the PUC, and will continue to frustrate the clear intent of the electorate.
102. No other remedy is sufficient to protect the Plaintiffs' interests. If the Township is permitted to proceed with the process of attempting to sell the Sewer System, the Township will continue to incur costs in the form of legal fees and consultant fees that are incurred through the prosecution of the Township's PUC petition and other associated matters.
103. As such, "[m]andamus is proper to compel the performance of legal duties, even where the existence and scope of such duties must be found and defined in the course of the mandamus action itself." Delaware River Port Auth. v. Thornburgh, 493 A.2d 1351, 1355 (Pa. 1985) (citing Volunteer Firemen's Relief Assoc. v. Minehart, 203 A.2d 476 (Pa. 1964)).
104. Plaintiffs are, therefore, entitled to the relief sought.

WHEREFORE, Plaintiffs respectfully requests this Honorable Court enter an order of Mandamus, directing the Township to comply with the Home Rule Charter and terminate the Agreement, as the Home Rule Charter is a final governmental order, prohibiting the material transaction from occurring.

COUNT II: DECLARATORY JUDGMENT

105. All preceding paragraphs are hereby incorporated by reference.
106. A Declaratory Judgment, “declares the rights, status, and other legal relations whether or not further relief is or could be claimed. It has been observed that declaratory judgments are nothing more than judicial searchlights, switched on at the behest of a litigant to illuminate an existing legal right, status or other relation. **Stated otherwise, the purpose of awarding declaratory relief is to finally settle and make certain the rights or legal status of parties.**” J.B. v. Pennsylvania State Police, 288 A.3d 946, 951 (Pa. Commw. Ct. 2023) (emphasis added).
107. “[T]he Declaratory Judgments Act is remedial in nature and **intended to provide relief from uncertainty and establish various legal relationships.**” Curtis v. Cleland, 552 A.2d 316, (Pa. Commw. Ct. 1988) (emphasis added).
108. Moreover, “the Declaratory Judgments Act provides that it should be used to ‘settle and to afford relief from uncertainty and insecurity with respect to the rights, status and other legal relations and should be liberally construed ...” National Solid Wastes Mgmt. Assoc. v. Casey, 580 A.2d 893, 898 (Pa. Commw. Ct. 1990) (internal citations omitted.).
109. As noted at length above, a substantial portion of the Home Rule Charter is the prohibition on the sale of wastewater assets to non-governmental entities. The Plaintiffs

in this action are the former Chair and Vice Chair of the GSC, originally tasked with drafting the now-adopted Charter.

110. Despite the adoption of the Charter, the Township continues to actively pursue completion of this transaction. Four (4) of the five (5) elected Supervisors stated in their May 25, 2023 press release that, “the Township legal team does not believe the passage of the Home Rule Charter negates the sewer sale under current Pennsylvania law and the Pennsylvania Constitution. There is strong legal precedent against overturning pre-existing contracts based on the passage of new laws. As such, we do not intend to seek to terminate the contract.” A true and correct copy of the Township’s May 25, 2023 press release is attached hereto, incorporated herein and labeled as Exhibit “H.”
111. However, Defendants fail to acknowledge, or blatantly disregard, their duty and powers as established under the Home Rule Charter.
112. **“A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter.** All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.” Wecht v. Roddey, 815 A.2d 1146, 1150–51 (Pa. Commw. Ct. 2002) (emphasis added).
113. The Township has retained Dilworth Paxson, LLP to represent it in front of the PUC regarding the Application *Nunc Pro Tunc* to furnish wastewater services – a clear action taken so that the Township may sell its sewer assets, as it has provided wastewater services for decades without such necessary certificates. In addition, the Township seeks a certificate to Abandon Wastewater Services after the sale to PAAW is finalized. This

application directly cites to the PAAW application to acquire the Towamencin Wastewater Service System on numerous occasions. *See* Exhibit “I.”

114. An action brought under the Declaratory Judgments Act must allege an interest by the party seeking relief which is direct, substantial and present, and must demonstrate the existence of an actual controversy related to the invasion or threatened invasion of one's legal rights. Bowen v. Mount Joy Twp., 644 A.2d 818, 821 (Pa. Commw. Ct. 1994).
115. The Plaintiffs have an interest which is direct, substantial and present. Plaintiffs are residents and voters of the Township and are entitled to see the Township and the Board of Supervisors comply with the Home Rule Charter.
116. There is an ongoing controversy: the requirements under the Charter are clear and unambiguous, but Defendants continue to intentionally ignore the mandate of the Charter and mischaracterize its implications. Defendants willfully turn a blind eye to the mandate given to them by the electorate, falsely claiming that their hands are tied and attempting to proceed with the sale of a public asset. As they proceed, the Defendants are wasting thousands of taxpayer dollars to continue with a process that cannot ultimately be concluded, for the reasons outlined herein.
117. As outlined above, the instant situation is expressly contemplated by the APA, and the Township is prohibited from executing the final transfer documents.
118. The frivolous expenditure of public tax dollars in pursuit of a futile and illegal sale is most certainly a direct, substantial, and present controversy, which is entirely related to the invasion of the rights of the voters of Towamencin, who are vehemently opposed to this sale and are having their tax dollars squandered in pursuit thereof.

119. The residents of Towamencin cannot and will not ever recover these poorly spent funds, and a majority the Board of Supervisors refuses to listen to the will and concern of the voters of the Township. The longer the Township continues to erroneously assert that the transaction is legal and operate under such misrepresentations, the longer residents and taxpayers continue to suffer.
120. In further demonstration of the futility and frivolousness of this attempt to sell the Sewer System, in a case with nearly identical facts to the instant matter, a recent Commonwealth Court decision overturned the PUC approval of a sewer sale finding there to be no financial benefit. *See Cicero v. Penna. Public Utility Comm'n*, Docket No. 910 C.D. 2022, Opinion Issued July 31, 2023.
121. In *Cicero*, the court held that “financial, technical, and managerial ‘benefits’ the Commission concluded could result from [a] transaction relate to and/or are not benefits that ‘affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.’” *Id.* at 18-19.
122. The *Cicero* court further reasoned that there was no public benefit regarding the sale of a public sewer system to a private entity because, “the System is already providing and is capable of providing the same or similar benefits without the acknowledged rate increase that will occur as a result of the acquisition.” *Id.* The court also stated that, “[h]olding that a transaction will result in substantial affirmative public benefits because it will provide the same services as already being provided is not a benefit, let alone a substantial affirmative public one as required by statute and our caselaw. Nor is it a benefit to provide for upgrades that Township is equally capable of providing...This is particularly true when the existing system is already operating safely and reliably.” *Id.*

123. The Sewer System here is in perfect functioning order. Even on the Township flyer titled, “Why The Sewer Sale Is Good For Towamencin Families,” the Township is only able to point to monetary benefits that will “eliminate township debt” or “enhance existing township pension plan trust” or “eliminate need for future borrowings.” *See* Exhibit “J.”
124. Moreover, the President of the Board, Charles Wilson, noted that, “The system has been well maintained with annual inspection and repair activities. The plant is in good condition.” *See* Exhibit “K.”
125. It is obvious based on the representations of the Township, there is no actual public benefit to the sale of the Sewer System, except for an enormous financial windfall to the Township. This financial motivation is further diminished when, faced with the prospect of increased sewer rental fees and taxes or the sale of the Sewer System, the voters of Towamencin Township voted for increased fees and taxes. Residents spoke at public meetings encouraging the Board to raise taxes rather than sell the Sewer System.
126. The Township is also fruitlessly, frivolously, and wastefully spending taxpayer funds to push a sale forward that provides no public benefits, which is a losing argument as evidence by the holding in Cicero.
127. However, this proposed sale fails on its own without reliance on the Cicero decision. The Township is not permitted to sell the Sewer System under the Home Rule Charter. The Township is specifically blocked from consummating the transaction.
128. This declaratory action is necessary to stop the Township from continuing to try to consummate the transaction they are so obviously and legally barred from, to stop the Township from continuing to litigate a sale that should never get approved under current

caselaw, and from wasting hard earned taxpayer funds in pursuit of an incredibly short sighted and lackluster financial proposition, the sale to PAAW.

129. Therefore, this Honorable Court should issue an Order prohibiting the Township from executing the final transfer documents and finalizing the sale to PAAW.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter an order that the Township of Towamencin cannot finalize this Transaction and may not execute the necessary documents to complete the transfer of the sewer system assets.

COUNT III: VIOLATION OF THE SUNSHINE ACT

130. The preceding paragraphs are hereby incorporated by reference.
131. The Township has glaringly been committing Sunshine Act violations for some time, though the extent of those violations is still unknown.
132. This sale was precipitated by PFM approaching the Township regarding the potential monetization of the Sewer System.
133. The Sewer Committee, as noted *infra*, was fully entrusted with 1) deciding whether to monetize the sewer assets, 2) to review bids and interview bidders, and 3) make a recommendation regarding bid acceptance and monetization to the Board of Township Supervisors for final approval.
134. The Sewer Committee most certainly meets the definition of “Agency” under the Sunshine Act: “the body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business...” See 65 Pa.C.S.A. § 70
135. The Sewer Committee also performed “Agency Business”, which is defined by the Act as: “**the framing, preparation**, making or enactment of laws, policy or regulations, **the**

creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.” Id.

136. As the Sewer Committee so clearly meet the definitions of “Agency” and “Agency Business,” it is entirely unclear to Plaintiffs why not a single meeting was advertised, nor a single agenda provided, nor a roster of members kept, nor at the very least, why there are no records of what occurred in those meetings.
137. While the Sewer Committee did not take the final vote entering the Township into the APA, the Sewer Committee handled the entire deliberative process that typically would be the responsibility of the Board of Supervisors. The purpose of such actions can only have been to avoid public deliberations surrounding a deeply unpopular proposed sale of a Township asset.
138. The Township, once again operating in secrecy to cover up actions that were detrimental to the residents of the Township, hid behind a Committee to block the public’s view and input regarding these important decisions, discussions, and processes.
139. Sewer Committee meetings and the results of such illegal meetings, including the recommendation to the Township that NextEra bids be accepted and the sewer assets monetized, are in violation and the recommendations that resulted from such meetings be overturned.
140. The Township cannot be rewarded for attempting, and succeeding, to conceal its actions through a Committee that willfully disregarded the requirements of the Sunshine Act.
141. Moreover, the Township openly violated the Sunshine Act by amending the agenda on March 9, 2023 to include considerations of amendments of agreements and the assignment of NextEra contractual rights to PAAW.

142. Based on the Township's website Sewer Sale Update, dated April 11, 2023, the Township asserted that right before its March 8th meeting, the Board was advised of NextEra's intent to withdraw and PAAW's intent to assume the NextEra contract.
143. The Township, however, was well aware of the intended change in advance of the March 8th meeting, with plenty of time to properly post the agenda and the motions, for adequate public notice and comment. Furthermore, the Township has offered no reason, emergency or otherwise, as to why the vote could not be postponed to the next regularly-scheduled or special meeting of the Board of Supervisors. Plaintiffs believe and therefore aver that the rushed and illegal vote was to intimidate and influence the work of the GSC and the adoption of the Charter in advance of its submission for the ballot and the May 16, 2023 election and to prevent the public from having adequate notice of a major Township decision.
144. The Sunshine Act both requires that agencies, "post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, on the website no later than 24 hours in advance of the time of the convening of the meeting... [and] shall post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, at the location of the meeting and at the principal office of the agency." *See* 65 Pa. C.S.A. § 709(c.1)(i-ii).
145. Again, operating under the cover of darkness, and knowing full well that this information had been available well prior to 24 hours before the meeting, the Board of Supervisors hid these facts from the residents and failed to comply with the Sunshine Act, despite their self-serving assertions on their website that they fully complied.

146. The Township, anticipating push back from their cloak and dagger approach, asserted on their own website that they amended the agenda, “in accordance with the PA Sunshine Law Section 712.1(c).” Towamencin Township, Sewer Sale Update, <https://www.towamencin.org/resources/news/article/?id=5621> (last visited August 18, 2023).
147. Section 712.1(c) allows for items to be added to an agency agenda, without having been properly noticed if, “An agency may take official action on a matter of agency business that is not listed on a meeting agenda if: (1) the matter arises or is brought to the attention of the agency within the 24-hour period prior to the meeting; and (2) the matter is *de minimis* in nature and does not involve the expenditure of funds or entering into a contract or agreement by the agency.” 65 Pa C.S.A. § 712.1(c).
148. It remains unclear why the Township felt the need to so publicly proclaim compliance with the Act, when it does not actively post regarding its compliance with any other vote, agenda, or agency decision.
149. Further, it is unfathomable that the Township both believed that by authorizing the Township Solicitor to move forward with all the required paperwork was not indicative of entering into a new contract or agreement and that the authorization of the solicitor and special counsel to proceed with this work in a short amount of time did not involve the expenditure of funds.
150. The Plaintiffs find it further noteworthy that this glaring violation of an Act meant to increase transparency was only discovered upon the filing of several Right-to-Know requests which revealed that these conversations had happened months before the March 8, 2023 meeting and prior to the GSC members even being sworn into their roles. *See Generally*, Exhibit “A.”

151. The Plaintiffs further note that the Foster Right-to-Know request that brought the violation to light is still the subject of an appeal with the Office of Open Records. Despite mediation, the Township refused to provide certain responsive records under the guise of Attorney-Client privilege and pre-decisional deliberations. The Office of Open Records hearing officer is currently conducting an in camera review of the records in question.
152. Even more egregious is the fact that several Supervisors have spoken at meetings of the GSC and their own public meetings, to admonish both the public and the GSC of the potential for NextEra to pursue legal action related to a potential termination of the APA, despite knowing full well that NextEra had already declared its intent to remove itself from the industry entirely and terminate or transfer the APA.
153. Further, the Township's claims that the Home Rule Charter can have no effect upon the APA are diluted by their dishonest, illegal and unethical behavior and comments surrounding the change from NextEra to PAAW. Several members of the Board of Supervisors spoke at GSC meetings regarding their belief that the Home Rule Charter could expose the Township to liability under the APA with NextEra, despite knowing that NextEra had already communicated its intent to terminate or assign the APA.
154. The Township cannot be rewarded for the underhandedness with which it has operated to sell an asset that the voters of Towamencin have clearly and unambiguously, through two separate elections, declared that they do not wish to sell.
155. As this was a willful violation of the Sunshine Act, the business transacted at that meeting should be void, "[a] legal challenge under this chapter shall be filed within 30 days from the date of a meeting which is open, or within **30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was**

violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting...Should the court determine that the meeting did not meet the requirements of this chapter, it may in its discretion find that any or all official action taken at the meeting shall be invalid.” 65 Pa.C.S.A. § 713 (emphasis added).

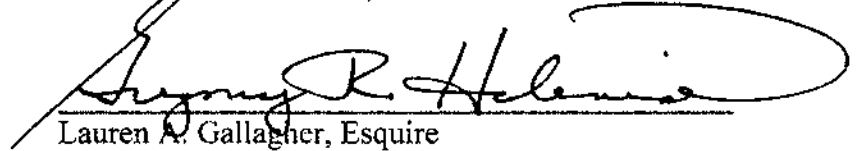
156. This assertion of a Sunshine Act violation involves complex facts. The Plaintiffs do not dispute the proper advertising of the March 8, 2023 meeting date and that the meeting was open to the public. However, the Sunshine Act was clearly violated and the actual discovery of many of the violations did not occur until much later and, indeed, continues to be revealed.
157. Therefore, as the Plaintiffs are still actively fighting in Office of Open Records for documents that would reveal the true extent of the violations, the willfulness thereof, and the blatant disregard of the law, the time for filing a claim for the clear violations has not yet begun to run.
158. The Plaintiffs are now bringing this Action, with no ability to reasonably discern how intensive or how rampant such violations are, as the Township continues to hide the full extent and deceit under the guise of false exemptions.
159. The Sunshine Act challenges are, therefore, timely.
160. This Honorable Court is empowered to issue an Order that will provide the public with a reasonable means of participating in the process.
161. Plaintiffs believe, and therefore aver, that the only appropriate remedy is to strike the votes taken at the March 8, 2023 and March 22, 2023 meetings related to the proposed

Sewer System sale, invalidate the APA with PAAW and invalidate Ordinance Number 23-03 due to the violations of the Sunshine Act.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order, declaring that the action taken by the Board on March 8, 2023 and March 22, 2023 are in violation of the Sunshine Act and declare their actions null and void, invalidating the APA with PAAW and voiding Ordinance No. 23-03.

Respectfully Submitted,

RUDOLPH CLARKE, LLC

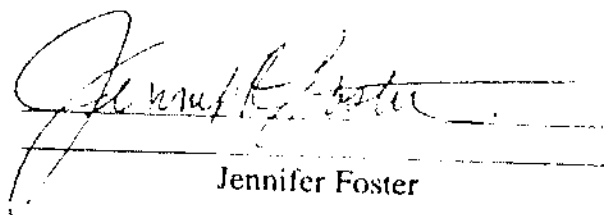


Lauren A. Gallagher, Esquire
Gregory R. Heleniak, Esquire
Samantha L. Newell, Esquire
Attorneys for Plaintiffs

VERIFICATION

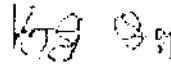
I, Jennifer Foster, certify and affirm that the statements contained in the Complaint In Mandamus and Declaratory Judgment, are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

Date: 8/21/2023


Jennifer Foster

VERIFICATION

I, Kofi Osei, certify and affirm that the statements contained in the Complaint In Mandamus and Declaratory Judgment, are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.



Kofi Osei

Date: 8/21/2023

EXHIBIT A

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.



July 1, 2022

RORY KELLEY



SENT BY EMAIL ONLY

**RE: TOWAMENCIN TOWNSHIP
RIGHT-TO-KNOW LAW
May 24, 2022 Kelley Request #2 - Agency Response**

Dear Mr. Kelley:

On May 24, 2022, you requested certain information ("Request") under Pennsylvania's Right-To-Know Law ("Law"). Your Request is attached for ease of reference. On June 1, 2022, the Township provided you a Section 902(a) Extension Notice¹ extending its response time to July 1, 2022. This letter serves as the Township's timely response.

Your Request is DENIED. Records responsive to your Request do not exist. Under the Law, the District is not required to create records that do not exist.²

You have a right to appeal this denial. If you wish to appeal, you may file with the Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101-2234. Appeals may also be filed online at the Office of Open Records website. If you choose to file an appeal you must do so within 15 business days from the mailing date of this response.³ More information about how to file an appeal under the Law is available at www.openrecords.pa.gov.

This correspondence will serve to close this record with our office as permitted by Law. Thank you.

Respectfully,

Colleen Ehrle
Right-To-Know Officer

¹ See 65 P.S. §67.902 [Extension of Time].

² See 65 P.S. §67.705 [Creation of a Record].

³ See 65 P.S. § 67.1101 [Filing of Appeal].



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Towamencin Township /Towamencin Municipal Authority_(Attn: AORO)

Date of Request: 5/24/2022 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name:Rory Kelley Company (if applicable): Mailing Address: [REDACTED] tate: PA

Zip: [REDACTED] Email: [REDACTED]

Telephone: [REDACTED] Fax: How do you prefer to be contacted if the agency has questions?

Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

-All emails, texts and voicemails on government furnished and personal devices exchanged after April 1st 2022 through the date this request is processed between Towamencin officials and representatives (Township Supervisors, Towamencin Township staff (including former employees), PFM employees, Township representatives (William Dingman, Glimore and Associates Staff, John Dooley, DBD Law employees and others) AND Towamencin Municipal Authority staff and Towamencin Municipal Authority Board Members regarding the monetization of the Towamencin Municipal Authority Sewer and the review and selection of submitted bids to purchase TMA.

DO YOU WANT COPIES? Yes, electronic copies preferred if available

Yes, printed copies preferred

No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No

RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more

details. Please notify me if fees associated with this request will be more than \$100 (or)

\$ _____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: 5/24/22 Response Due (5 bus. days): 6/1/22

30-Day Ext. Yes No (If Yes, Final Due Date: 7/1/22) Actual Response Date: 7/1/22

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$ 0

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record. Form updated Nov. 27, 2018 More information about the RTKL is available at <https://www.opencorecords.pa.gov>



July 1, 2022

RORY KELLEY
[REDACTED]

SENT BY EMAIL ONLY

**RE: TOWAMENCIN TOWNSHIP
RIGHT-TO-KNOW LAW
May 24, 2022 Kelley Request #1 - Agency Response**

Dear Mr. Kelley:

On May 24, 2022, you requested certain information ("Request") under Pennsylvania's Right-To-Know Law ("Law"). Your Request is attached for ease of reference. On June 1, 2022, the Township provided you a Section 902(a) Extension Notice¹ extending its response time to July 1, 2022. This letter serves as the Township's timely response.

Your Request is DENIED as follows:

ITEM 1: All emails, texts and voicemails on government furnished and personal devices exchanged between all members of the Sewer Committee (past and present) including the formation of the Sewer Committee and monetization Towamencin Municipal Authority.

Disposition: Denied.

Response: Records responsive to Item 1 do not exist. Under the Law, the District is not required to create records that do not exist.²

ITEM 2: All information regarding the formation of the Sewer Committee including all members past and present and minutes and notes from all meetings.

Disposition: Denied.

Response: Records responsive to Item 2 do not exist. Under the Law, the District is not required to create records that do not exist.³ Moreover, to the extent that notes did exist they are expressly exempt from access under the Law.⁴

¹ See 65 P.S. §67.902 [Extension of Time].

² See 65 P.S. §67.705 [Creation of a Record].

³ See 65 P.S. §67.705 [Creation of a Record].

⁴ See 65 P.S. §67.708(b)(12)[Notes/Working Papers Exemption](exempting from access notes and working papers prepared for personal use, including telephone message slips, routing slips and other materials that do not have an official purpose).

ITEM 3: All emails, texts and voicemails on government furnished and personal devices exchanged between the following people and groups (past and present): members of the Sewer Committee, Township Staff, Township Officials, Township Representatives, PFM regarding the decision to select the NextEra Bid.

Disposition: Denied.

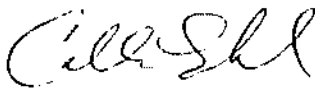
Response: Records responsive to Item 3 do not exist. Under the Law, the District is not required to create records that do not exist.⁵

By way of further response, I commend your attention to the NextEra Submission that was considered by the Township prior to selection, as well as other relevant records, that are located in the Township's Data Room at <https://www.towamencin.org/information/sewer-system-valuation/access-data-room/>.

You have a right to appeal the portion of the Request that the Township denied. If you wish to appeal, you may file with the Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101-2234. Appeals may also be filed online at the Office of Open Records [website](#). If you choose to file an appeal you must do so within 15 business days from the mailing date of this response.⁶ More information about how to file an appeal under the Law is available at www.openrecords.pa.gov.

This correspondence will serve to close this record with our office as permitted by Law. Thank you.

Respectfully,



Colleen Ehrle

Right-To-Know Officer

⁵ See 65 P.S. §67.705 [Creation of a Record].

⁶ See 65 P.S. § 67.1101 [Filing of Appeal].



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Towamencin Township (Attn: AORO) **Date of Request:** _5/24/2022

Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Rory Kelley Company (if applicable): [REDACTED]

Telephone: [REDACTED] Fax: How do you prefer to be contacted if the agency has questions?
Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

-All emails, texts and voicemails on government furnished and personal devices exchanged between all members of the Sewer Committee (past and present) including the formation of the Sewer Committee and monetization Towamencin Municipal Authority Sewer.

-All information regarding the formation of the sewer committee including all members past and present and minutes and notes from all meetings.

- All emails, texts and voicemails on government furnished and personal devices exchanged between the following people and groups (past and present); members of the Sewer Committee, township staff, township officials, township representatives, PFM regarding the decision to select the NextEra Bid

*NOTE the above are three separate requests

DO YOU WANT COPIES? Yes, electronic copies preferred if available
 Yes, printed copies preferred
 No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No
RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more

details. Please notify me if fees associated with this request will be more than \$100 (or)

\$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: 5/27/22 Response Due (5 bus. days): 6/1/22

30-Day Ext.? Yes No (If Yes, Final Due Date: 7/1/22) Actual Response Date: 7/1/22

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$ 0

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record. Form updated Nov. 27, 2018. More information about the RTKL is available at <https://www.openrecords.pa.gov>



June 1, 2022

Rory Kelley



SENT BY E-MAIL ONLY

RE: RIGHT-TO-KNOW 5/24/2022 Request - Agency Extension Notice

Dear Mr. Kelley:

On May 24, 2022, you made a record request to the Township ("Request") under Pennsylvania's Right-to-Know Law ("Law").¹ For ease of reference, your Request is attached. This letter shall serve as the Township's Section 902 Notice for a 30-day extension to respond to your Request relating to:

All emails, texts and voicemails on government furnished and personal devices exchanged after April 1, 2022 through the date this request is processed between Towamencin officials and representatives (Township Supervisors, Towamencin Township staff (including former employees), PFM employees, Township representatives (William Dingman, Glimore and Associates Staff, John Dooley, DBD Law employees and others) AND Towamencin Municipal Authority staff and Towamencin Municipal Authority Board Members regarding the monetization of the Towamencin Municipal Authority Sewer and the review and selection of submitted bids to purchase TMA.

This extension of time needed is required for several reasons: (1) a general review is necessary to determine whether such Requested records exist; (2) a legal review is necessary to determine whether the Requested records are subject to access and/or require redaction in accordance with Section 706 of the Law; and (3) a timely response to the Request for access cannot be accomplished due to legitimate staffing limitations.²

A response is expected within 30 calendar days from the date of this letter, with the benefit of the weekend, which will be no later than July 1, 2022.

Respectfully,

Colleen Ehrle
Open Records Officer

¹ See e.g., 65 P.S. §67.101 et seq.

² See 65 P.S. §67.902 [Extension of time].



Email copy sent to:
Robert J. Iannozzi Jr., Esquire

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Towamencin Township /Towamencin Municipal Authority_(Attn: AORO)

Date of Request: 5/24/2022 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name:Rory Kelley Company (if applicable): [Redacted]

Telephone: [Redacted] Fax: How do you prefer to be contacted if the agency has questions?

Telephone Email U.S. Mail

RECORDS REQUESTED: Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.

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DO YOU WANT COPIES? Yes, electronic copies preferred if available

Yes, printed copies preferred

No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No

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details. Please notify me if fees associated with this request will be more than \$100 (or)

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30-Day Ext. Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$_____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

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June 1, 2022

Rory Kelley
[REDACTED]
[REDACTED]

SENT BY E-MAIL ONLY

RE: RIGHT-TO-KNOW 5/24/2022 Request - Agency Extension Notice

Dear Mr. Kelley:

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This letter shall serve as the Township's Section 902 Notice for a 30-day extension to respond to your Request relating to:

1. All emails, texts and voicemails on government furnished and personal devices exchanged between all members of the Sewer Committee (past and present) including the formation of the Sewer Committee and monetization Towamencin Municipal Authority Sewer.
2. All information regarding the formation of the sewer committee including all members past and present and minutes and notes from all meetings.
3. All emails, texts and voicemails on government furnished and personal devices exchanged between the following people and groups (past and present); members of the Sewer Committee, township staff, township officials, township representatives, PFM regarding the decision to select the NextEra Bid

This extension of time needed is required for several reasons: (1) a general review is necessary to determine whether such Requested records exist; (2) a legal review is necessary to determine whether the Requested records are subject to access and/or require redaction in accordance with Section 706 of the Law; and (3) a timely response to the Request for access cannot be accomplished due to legitimate staffing limitations.²

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¹ See e.g., 65 P.S. §67.101 et seq.

² See 65 P.S. §67.902 [Extension of time].



Respectfully,

A handwritten signature in black ink, appearing to read "C. Ehrle", written over a light blue horizontal line.

Colleen Ehrle
Open Records Officer

Email copy sent to:
Robert J. Iannozzi Jr., Esquire



Standard Right-to-Know Law Request Form

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SUBMITTED TO AGENCY NAME: Towamencin Township (Attn: AORO) Date of Request: 5/24/2022

Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Rory Kelley Company (if applicable): [REDACTED]

Telephone: [REDACTED] Fax: How do you prefer to be contacted if the agency has questions?
Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

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- All emails, texts and voicemails on government furnished and personal devices exchanged between the following people and groups (past and present); members of the Sewer Committee, township staff, township officials, township representatives, PFM regarding the decision to select the NextEra Bid

*NOTE the above are three separate requests

DO YOU WANT COPIES? Yes, electronic copies preferred if available

Yes, printed copies preferred

No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No

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details. Please notify me if fees associated with this request will be more than \$100 (or)

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ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: 5/27/22 Response Due (5 bus. days): 6/1/22

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$ _____

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VIA e-mail Only – No hard copy will be mailed

February 4, 2022

Kofi Osei



RE: TOWAMENCIN TOWNSHIP - RIGHT TO KNOW REQUEST

Dear Mr. Osei:

On February 1, 2022, you requested the following:

- List of 2020 Sewer Committee members:
H. Charles Wilson III, Daniel M Littley Jr., Robert Ford, Brooke Neve, William Dingman, Solicitor John T. Dooley
- List of current Sewer Committee members:
H. Charles Wilson III, Richard Marino, Donald D. Delamater, Brooke Neve, William Dingman, Solicitor John T. Dooley
- Minutes and attendance list from SC meeting with PFM on 9/3/2020
No such files exist.
- Emails between PFM & Township officials about setting up above meeting
- Emails between PA DCED & Township officials about sewer monetization. *Dates 2016 to current*

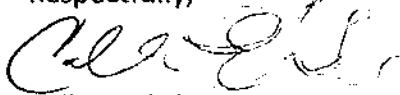
For ease of reference, your request is attached. Please find the answers below bullet points 1 through 3. For your email requests, please allow this correspondence to serve as a Section 902 Notice for a 30-day extension. This extension of time is required as a legal review is necessary to determine whether the requested records are subject to access and/or the request requires redaction in accordance with Section 706 of the Law, and a timely response to the request for access cannot be accomplished due to legitimate staffing limitations.¹

¹ See 65 P.S. §67.902 [Extension of time].

A response is expected within thirty (30) calendar days from the mail-date of this correspondence.

If you have any questions, please contact me.

Respectfully,

A handwritten signature in black ink, appearing to read 'Colleen Ehrle', written in a cursive style.

Colleen Ehrle
Open Records Officer

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Towamencin Township (Attn: AORO)

Date of Request: 1 February 2022 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Kofi Osei Company (if applicable): _____

Mailing Address: [REDACTED]

City: [REDACTED]

Telephone: [REDACTED] Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

- List of 2020 Sewer Committee members
- List of current Sewer Committee members
- Minutes and attendance list from Sewer Committee meeting with PFM on 3 September 2020
- Emails between PFM and Township officials about setting up above meeting
- Emails between PA DCED and Township officials about sewer monetization. Dates would be 2016 and after

DO YOU WANT COPIES? Yes, electronic copies preferred if available
 Yes, printed copies preferred
 No, in-person inspection of records preferred (*may request copies later*)

Do you want certified copies? Yes (*may be subject to additional costs*) No
RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than \$100 (or) \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$_____

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More information about the RTKL is available at <https://www.openrecords.pa.gov>

EXHIBIT B

**Towamencin Township
Board of Supervisors
Work Session
March 8, 2023
7:00 PM**

Present:

H. Charles Wilson III, Chairman
Richard Marino, Vice Chairman
Laura Smith, Secretary
Kristin Warner, Treasurer
Joyce F. Snyder, Asst. Treasurer/Asst. Secretary

Staff:

David G. Kraynik, Township Manager
Robert J. Iannozzi, Jr., Esq., Township Solicitor
Mary Stover, Township Engineer
Niral Modi, IT Staff
Timothy Troxel, Chief of Police

Present Remotely:

Colleen Ehrle, Director of Administration

Absent:

Chairman Wilson called the meeting to order at 7:01 PM and led the assemblage in the Pledge of Allegiance.

Awards & Recognition

Police Sergeant Promotion & Swearing-in – James Gibbs

James Gibbs was promoted to the rank of Sergeant, created by the retirement of Sergeant Wert in January. Chief Troxel introduced Mr. Gibbs, providing an overview of his police career at Towamencin.

Jim began his started with Towamencin’s Police Department in 2009, where he was assigned to the patrol division. Jim has served as a patrol officer since his hiring. In 2016, he was selected to become a Field Training Officer, or “FTO”, earning responsibility for the training of newly hired officers when they start in patrol. In 2019, Jim was named as an Officer-in-Charge (OIC), a supervisory assignment on a patrol squad in the absence of the squad’s assigned sergeant, and has served in the OIC capacity for his assigned squad since 2019. Jim continued his law enforcement training and professional skill development over the course of his career, earning both the respect and admiration of his peers, as well as, several awards of recognition for meritorious service to the department and the community.

Chairman Wilson administered the oath to James Gibbs, with his wife and children by his side. The Board congratulated James on his well-earned promotion. Sergeant Gibbs was thankful for the opportunity and said he looked forward to getting out there and living up to his new role.

Opening Comments

Chairman Wilson made the following announcements:

- The meeting is being held in person at the Township's Meeting Hall and also provided via Zoom for residents unable to attend in person. Public comments submitted by 4:30 pm on the meeting day would be read at the start of the meeting.
- The 2023 Sewer Bill and Township and County Taxes have been mailed. If you have not received them yet, please call the Township's tax line at 215-368-5357.
- The Board met in executive session on March 7th at 5 pm to discuss a potential litigation matter and prior to tonight's meeting to discuss personnel matters.
- The agenda would be modified to include a Sewer Sale Update for item 8.1 due to certain information recently received by the Board. In accordance with PA law, this amendment and associated vote will be reflected in the meeting minutes and the amended agenda will be posted tomorrow at the Township building and on its website.

On a motion by Supervisor Marino, seconded by Supervisor Smith, the Board approved amending the agenda to include 8.1 Sewer Sale Update due to new information received by the Board.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Public Comments

Resident Richard Costlow shared his concern when researching senior activity venues in the County. He found there were no Towamencin senior venues, besides existing trails. He implored the Board consider prioritizing senior activities and venues, such as bocce and pickleball courts.

Resident Pauline Braccia questioned why the Township was allowing NextEra to take their time to agree to the terms of the sewer sale contract. She referred to Kofi Osei, the Township's Government Study Commission Chair, as a socialist, then criticized the state of affairs at Montgomery County and North Penn School District.

Chairman Wilson provided clarification to Ms. Braccia with the next steps leading up to the settlement of the sewer system sale, noting that NextEra executed the agreement last year.

Resident Kofi Osei asked if the sewer sale agenda update would be a voting or information item.

Chairman Wilson responded that it would be both and that there would be an opportunity for public comment at that point in the agenda.

Mr. Osci stated he kept his campaign promises while serving on the Government Study Commission (GSC), adding the GSC approved a ballot question for residents to decide whether to accept their presented Home Rule Charter to prohibit the sewer sale, add referendum options, and minor digital transparency requirements. He thanked Supervisors Wilson, Marino, Warner and Snyder, for attending and participating in the GSC meetings. He then thanked Township staff, and thanked each Township citizen for their participation through the process.

Marsha Ehrhardt, a bocce player at Fischer's Park, advocated for new bocce courts that offer shade or a roof structure, as well as, adding pickleball courts in the Township.

Chairman Wilson replied that the Township is working on both items.

Approval of Minutes

On a motion by Supervisor Warner, seconded by Supervisor Smith, the Board approved the February 22, 2023 minutes.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Zoning, Subdivision and Land Development

Resolution 23-10: Approval of Wawa Land Development Design Conditions

On May 20, 2020, Towamencin Sunnycetown, LLC, received land development approval for their proposed redevelopment of a property at the intersection of Forty Foot Road and Sunnycetown Pike to provide a Wawa convenience store with gas pumps. The approval resolution was conditioned upon the applicant returning to the Board to provide supplemental architectural design of proposed site amenities and the proposed structures. The applicant presented the architectural design plans for the proposed site amenities and structures at the Board's November 22nd meeting. At this meeting, the Board authorized staff to prepare an approval resolution outlining the conditions and design plans, and also requested that staff work with the applicant on the discussed parking lot light fixture change. A revised lighting design has been provided for the Board's consideration.

Julie L. Von Spreckelsen, Esq. of Eastburn and Gray, and Shawn Muntz, of Bohler Engineering, representatives for the applicant, reviewed the revised lighting design and specifications. Chairman Wilson thanked the representatives for working with staff on the lighting compromise.

Supervisor Snyder asked if there were any plans for incorporating electric charging stations onsite. Mr. Muntz replied nothing was planned at this time, but they may be incorporated later in the process. Supervisor Marino asked about the construction timeframe. Ms. Spreckelsen said the developer is ready to move ahead and expected construction to begin later this year.

On a motion by Supervisor Smith, seconded by Supervisor Snyder, the Board approved Resolution 23-10, Approval of Wawa Land Development Design Conditions.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Old Business

Sewer Sale Update

NextEra Water Pennsylvania LLC (NextEra), the intended buyer of Towamencin's Sewer System, recently made the Township aware of its business decision to redirect efforts away from water and wastewater acquisitions to focus more on renewable energy projects. This decision, mainly due to the passage of the Inflation Reduction Act, affects all NextEra's water and wastewater assets, including its Asset Purchase Agreement (APA) with Towamencin Township. Toward this end, NextEra intends to assign its contractual rights and obligations under the APA to Pennsylvania American Water (PA American).

PA American is the largest water and wastewater utility in the Commonwealth. With nearby operations in Norristown, Royersford, Yardley, Coatesville, and Upper Pottsgrove, PA American can create efficiencies and synergies in its operations and create savings for residents. They have the ability to allocate costs across approximately 760,000 customers, thereby stabilizing the impact of the considerable capital investments made in their systems. In addition, PA American provides substantive financial assistance and hardship grants. In 2021, PA American provided customers \$4.5 million in bill discounts and \$770,000 in hardship grants.

This ownership change relative to the APA requires Board action, including: an amendment to the APA; preparation of an Assignment Agreement; and an amendment to the Sewer Sale Ordinance.

The APA Amendment will include:

A revised sale price of \$104 million (the average of the two utility valuation expert appraisals)

- Removal of the 2-year rate freeze
- Return of additional deposit and escrow monies to Next Era
- Change to "Outside Date" definition to accommodate for any unforeseen hurdles that may arise

The Assignment Agreement will assign NextEra's interests in the APA to PA American. The Sewer Sale Ordinance Amendment will include replacing NextEra with PA American as the successful bidder.

If such action is taken by the Board, PA American will file with the PA PUC. The PUC approval process will then commence with PA American as the successor. As consideration for this ownership change and its associated costs, NextEra will pay Towamencin Township \$600,000, which includes the initial \$100,000 deposit and an additional \$500,000.

Supervisor Snyder commented that residents have been clear that this is not what they want, and felt this choice is the wrong one. She recommended, at a minimum, that the other Board members consider re-starting the bid process. She added several members of the community have voiced concerns about possible litigation at GSC meetings. She felt that if the Board postponed the proposed action by a few months it could potentially avoid litigation.

Public Comments:

Resident and Government Study Commission member Kofi Osci emphasized his rationale to move quickly with his GSC timeline in the event PA American became a factor. He stressed PA American is good at moving quickly through the PUC process and the lack of rate-freeze. He stated PFM's analysis is wrong and the Township will lose money.

He repeatedly asked that the Board vote no on the proposed sewer sale action, and send the system out to bid again, allowing the residents decide in May, to ultimately avoid litigation.

Resident and Government Study Commission member Jenn Foster asked that the Board wait until after the election to move forward with such a decision, allowing the people to decide. She suggested, if the Home Rule Charter does not pass in the election, then put it out to bid again, emphasizing the timeframe to wait is only two months.

Resident Rich Costlow stated the process for the GSC to propose a Home Rule Charter has been much faster than the normal timeframe and found it disingenuous that GSC members are requesting the Board of Supervisors to prolong their respective action.

Chairman Wilson added is not exactly a choice, as NextEra's intention would be to move forward with the sale, and then flip the system. He contended it was better position to know who the new buyer would be, rather than be at the mercy of NextEra. Supervisor Marino added NextEra stated they would not be assessed a \$10 million penalty should the sale not go through. Mr. Marino said he considers this decision in light of future expenses being much higher than revenues and the debt expected to double.

Resident Shannon Main suggested that if the Board would reconsider taking more time in making a decision on the sewer sale that the same be asked of the GSC in reconsidering the inclusion of the proposed Home Rule Charter on May's ballot.

Jenn Foster asked if NextEra is negotiating with PA American. Chairman Wilson replied that the negotiations have taken place between the two parties and that the Board just received a commitment letter to justify the agenda change.

She asked for clarification on the new purchase price. Chairman Wilson replied the purchase price is now \$104 million, based on valuation appraisals. Ms. Foster raised concerns about PA

American's existing high rates, no two-year rate freeze, and did not see the need to rush the Board action, asking that they wait to take action after the May election.

Resident Christian Fusco asked what is the evidence that NextEra will actually pull out if the Township does not go along with this new arrangement. Chairman Wilson replied that the evidence is the two parties have been in discussions and have provided a commitment letter.

Mr. Fusco emphasized that residents were both disenfranchised by the NextEra agreement, and the proposed PA American arrangement, emphasizing the lost of \$11 million in the future purchase price. He recommended the Township allow NextEra to back out of the contract.

Chairman Wilson noted there is an assignment provision in the APA allowing for the change in purchaser. Township Solicitor Robert Iannozzi added the assignment provision is mutually beneficial to both parties. The assignment now would allow a greater degree of control with the purchase price, and additional considerations. Mr. Fusco argued the agreement is not mutually beneficial to the residents.

Shannon Main added the GSC's February 15th slides emphasize their critiques about NextEra's Florida's footprint and no experience in Pennsylvania.

Resident Joanne Goebel asked for clarification as to who seek PUC approval for the sale. Chairman Wilson responded PA American if voted on.

Ms. Goebel added two weeks is too soon to alert the public, requesting more time for public notification of this change.

Resident Becky Curlett questioned if the Township would lose more later if the system was flipped by NextEra. Chairman Wilson interjected that any additional loss or gain is unknown, but rather the Board is concerned with controlling the outcome.

Ms. Gerlach added that while it may appear great for the Township, residents will bankroll the sale. She stated it is not a good strategy for attracting new residents.

Resident Kris Kazmar posed the scenario if the Board decides not to take action to reassign the purchase agreement - allowing NextEra to buy the system for \$115 million, then flipping the system to potentially PA American. He clarified that by agreeing to the modification now, the Township receives less, but are reassured it will be PA American as the buyer. He then questioned future rates considering PA American's lower purchase price.

Resident Holly Bechtel questioned if the Township has no negotiation power with PA American, asking if any negotiating took place. Supervisors Marino and Wilson replied no, that the negotiating was between NextEra and PA American. She suggested that the \$600,000 NextEra will pay Towamencin go to offset the sewer rate increases.

Chairman Wilson added that while there was no two-year rate freeze, PA American can not request another rate increase until mid-2025.

On a motion by Supervisor Smith, seconded by Supervisor Marino, the Board authorized the Township Solicitor and Special Counsel to take all needed steps to prepare the APA

Amendment; Assignment Agreement; and the Sewer Sale Ordinance Amendment for Board consideration at its March 22, 2023 meeting.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner

Voting No: Joyce F. Snyder

Abstaining: N/A

Absent: N/A

New Business

Finance Committee Report

The Township Finance Committee meets monthly throughout the year to monitor economic indicators and the pulse of the Township's revenues and expenditures. They also address various requests and concerns that may arise. The Committee met on February 15th. Chairman Wilson provided the report, with the following discussion items:

Township 2023 January Financials and 2022 Year-End Update - The Committee discussed January financials and progress on year-end 2022. All 2022 tax revenue categories exceeded 2022 budget estimates. The General Fund is still on track to end 2022 at roughly break-even and in close proximity to the ending fund balance projected during the 2023 budget cycle.

Update on TTIA Dissolution - No update since the January Finance Committee Meeting.

2023 Unencumbered Reserve - No update until March Finance Committee Meeting.

OPEB (Other Postemployment Benefits) Trust - Administration began researching the creation of an OPEB trust with contacts that have recently gone through the trust creation process, reviewing sample ordinances from other PA municipalities. The Finance Committee envisions the trust to work similar to the pension trusts once it is established and adequately funded. This Trust would hold investments to pay post-retirement police benefits.

StandGuard Contract - The Committee reviewed 2023 pool operation projections based on StandGuard's provided data. The latest estimate for 2022 is an operating loss of almost \$60,000. The Committee reviewed 2023 projections. The inflationary increase in costs to recruit and retain staffing compared to two years ago is the largest factor in the tighter financial outlook for the operation. It is believed that a successful 2023 season, coupled with the reimbursement of 2022 membership refunds (\$22,330), will set StandGuard on the path toward breaking even in 2023.

On a motion by Supervisor Warner, seconded by Supervisor Smith, the Board approved the StandGuard refund of \$22,330 for 2022 membership refunds, for the March warrant list.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

2023 Real Estate Taxes Duplicate for Mass Payments - Mr. Szumski appraised the Committee of their responsibilities to the elected Tax Collector regarding the municipal tax duplicate, with confusion in years' past relating to the provision of data to escrow companies to facilitate mass

payment of property taxes, and fees associated with this activity. A duplicate bill fee can be assessed for the provision of this tax data to escrow companies. The Finance Committee recommended that Township staff refer the Tax Collector to the township's duplicate bill fee listed on the township fee schedule.

MS4 Permitting Requirements Update

The Township Engineer will provide an update on the Township's MS4 Program, specifically 6 minimum control measures (MCMs) and pollution reduction plans for sediment and nutrient reduction. A MS4 Program addresses EPA & DEP requirements for municipal separate storm sewer systems. Township Engineer Mary Stover reviewed the MS4 Program details and requirements and citing examples of the Township's participation, involvement and public education activities. The current permit was issued on December 1, 2022 and due to expire on November 30, 2027.

Ms. Stover noted the recommended management committee should be initiated that will assist the municipalities to move forward with their respective best management practices. Supervisor Marino inquired into the make-up of the management committee. Ms. Stover responded it would include representatives from each municipality, with the Board designating appropriate members. Supervisor Marino suggested this be reviewed at the next Public Works Committee meeting.

Supervisor Marino asked if the future Central Drive stormwater project would count toward the requirements. Ms. Stover noted she would run the calculation, submitting it to DEP for consideration.

Review Bid Submission: Fischer's Park Bocce Court Improvements

Bids were due on February 28 for the bocce court renovations at Fischer's Park. Only one bid was received from Land Tech Enterprises, of Warrington, for a base bid of \$76,999 for drainage improvements and an added retaining wall with paver walkway. An add alternate for resurfacing the courts was bid at \$20,670. The bid documents were reviewed and found to be acceptable by the Township Engineer.

The bid received is significantly more than anticipated. Last fall, a preliminary cost estimate was provided for \$35,800. However, the contractor indicated their estimate did not account for prevailing wage rates or other costs associated with a publicly bid project. In addition, after quoting the work, dimension modifications were made that increased the cost, by increasing the width of the paver path from 1-foot to 4-feet, which increased the wall height. The Township Engineer analyzed the project to determine how the cost could be reduced and will review the prepared estimates for two alternate designs. Township Engineer Mary Stover noted her office was exploring ways to reduce the scope of the project and was seeking another proposal from a COSTARS contractor.

On a motion by Supervisor Smith, seconded by Supervisor Marino, the Board tabled the bid submission until the next meeting.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

Supervisor Marino spoke to the residents who came out explaining the Township is committed to upgrading and correcting the existing courts at Fischer's Park.

Authorization to Award Contract: Kriebel Road Trail II Project

On February 28, 2023, eight (8) bids were received by bidders, who had attended the mandatory pre-bid meeting for the subject project. A ninth bid was deemed unresponsive as they bid only on a limited scope versus the entire project, had not attended the mandatory pre-bid meeting, nor acknowledged the addendum. The lowest responsive bid was submitted by Richard E Pierson Construction Company, Inc., of Pilesgrove, NJ, in the amount of \$135,194.00.

Gilmore & Associates recommended the contract be awarded to Richard E. Pierson Construction Company, Inc. pending review and acceptance of the bid bond and surety documentation by the Township Solicitor. Joe Carlin, of Gilmore & Associates, questioned if the surety documentation review took place. Township Solicitor Robert Iannozzi noted he had not received the documents.

On a motion by Supervisor Snyder, seconded by Supervisor Marino, the Board awarded the contract for the Kriebel Road Trail II Project to Richard E Pierson Construction Company, Inc., pending review of the bid bond and surety documentation by the Township Solicitor.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

Authorization to Advertise: 2023 ADA Ramp Replacements

This bid is for a contract associated with the Township's annual curb ramps upgrades. The bid specifications are through a standard PennDOT form and per PennDOT and Federal regulations, whenever projects such as resurfacing are undertaken, the municipality must upgrade existing pedestrian curb ramps to the latest ADA standards. The curb ramps scheduled for this year will be for roads scheduled to be paved in 2024. There are 30 ramp locations included as part of this project within the Valley View Way, Creek Way and Spring Valley Road neighborhoods, located off Morris Road.

On a motion by Supervisor Smith, seconded by Supervisor Warner, the Board authorized the advertising of the 2023 ADA Ramp Replacements.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A
Abstaining: N/A
Absent: N/A

Resolution 23-11: Clean Air Resolution

Towamencin's EAC has submitted a resolution to establish and advance Towamencin Township's renewable energy goals for consideration this evening. In 2022, the EAC drafted the resolution in partnership with Montgomery County's Ready for 100 (RF 100). RF100 encourages municipalities to adopt an equitable transition to 100% clean, renewable energy. This resolution discusses the motivation for approving the resolution, provides background information about the municipalities that have adopted a similar resolution, outlines Towamencin's existing commitment to reduce energy usage, and recommended goals and actions in the future.

Chairman Wilson noted the Board did not have much time to review this resolution and Township staff, specifically Department heads, had not seen the resolution. He recommended that staff review the resolution and provide their input for the goals referenced within, so it was unlikely the Board would take action at this meeting.

Mr. Kelley introduced the EAC members in attendance (Amy Mawby, Joe Meehan and Donna Hegge) and reviewed the background and motivations of the resolution, along with Ms. Mawby. 18 municipalities in the County have approved similar resolutions. Ready for 100 is an organization that works with works with municipalities to adopt and commit to energy emissions reduction targets and helps establish measurable plans and near-term actions. Mr. Kelley outlined the anticipated timeframe for a task force, in conjunction with the Township Supervisors and the community, to assist with implementing an Energy Transition Plan.

Supervisor Marino asked if the EAC members were aware of how other municipalities handled public safety department, such as vehicle and equipment use in Police and Public Works Departments. Ms. Mawby emphasized the goals and year deadlines are aspirational. Chairman Wilson asked for clarification with the reference to "100% clean renewable energy adoption by the community by 2050. Supervisor Marino asked for clarification to the reference the "100% clean renewable energy adoption by the community for transportation and heating by 2050."

Joe Meehan added the goals are aspirational with the intention to encourage the community, and that the timeline goals are not too much of a stretch, noting the Township has implemented several energy efficiency initiatives to date.

Supervisor Warner asked where the year deadlines came from. Mr. Kelley noted they were referenced in the draft resolution. Supervisor Marino recommended that the EAC consider staff and the Board's comments prior to revising the resolution and to consider the language so it can be easily explained to residents. The Board commended the EAC's work and effort going into the resolution and presentation. Chairman Wilson recommended a staff liaison to assist the EAC in communicating with staff with the proposed resolution.

On a motion by Supervisor Snyder, seconded by Supervisor Smith, the Board authorized staff to review and provide input on the proposed clear air resolution.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

Intergovernmental Agreement: (North Penn School District & Police Department) Bus Patrol

The North Penn School District has proposed an Intergovernmental Agreement between the District and Towamencin Township's Police Department regarding the implementation of their bus patrol program/contract with their bus patrol company, BusPatrol America, LLC. This is a camera/video system that will be installed on all school district owned and/or contracted busses for the enforcement of school bus red light violations. This information was reviewed last summer with the Police Chiefs from the police departments serving the school district. The program is now advancing to installing the camera equipment on buses and initiating the program. The Township Solicitor has reviewed the "intergovernmental agreement."

Chief Troxel provided an overview of the enforcement service provided by BusPatrol America, LLC to the North Penn District school busses, who would be the contracted company to enforce the fines for violations picked up by the video equipment installed on each bus. The agreement involves the six police departments serving the school district.

Supervisor Smith asked who gets the fine income. Chief Troxel replied that BusPatrol America would get the bulk of each \$300 fine, where the local police department would receive \$25. Chief Troxel emphasized the program is not intended to be a money maker for the municipalities involved, but to serve as a deterrent. Supervisor Marino asked Chief Troxel if he endorsed the agreement. Chief Troxel said he did.

Chief Troxel added the program timeline would likely begin in the 2023-2024 school year, considering each municipality is now executing the agreement and the time involved to install the new equipment on the buses. He added there would be a media push to prepare and educate the community in advance of the school district's intention to go live with the program.

On a motion by Supervisor Warner, seconded by Supervisor Smith, the Board approved Intergovernmental Agreement: (North Penn School District & Towamencin Police Department) Bus Patrol.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

Bustard Road Field Use Request - Special Olympics Softball Tournament

TYA's Softball President reported that their 14U travel team is volunteering to help with the Special Olympics Montgomery County Softball Tournament. The Special Olympics is having

trouble finding two available softball fields for their Tournament and asked if they could use two of softball fields at Bustard Park for their tournament scheduled for Saturday, May 13th. The Special Olympics will provide appropriate evidence of insurance, listing Towamencin as additionally insured.

On a motion by Supervisor Warner, seconded by Supervisor Smith, the Board approved of the Field Use Request for the Special Olympics Montgomery County Softball Tournament.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Volunteer Committee Appointments

Residents have submitted applications expressing their interest to serve on the Township's various volunteer committees. The Board considered the following volunteer committee appointments:

- Holly Bechtel -Agricultural Security Area Advisory Committee, term expires December 31, 2023
- Richard Pieper - UCC Board of Appeals, term expires December 31, 2024

On a motion by Supervisor Smith, seconded by Supervisor Snyder, the Board made the noted appointments.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Additional Business

Supervisor Smith suggested a public comment policy be established providing time limits to initial public comments and follow-ups. Solicitor Iannozzi was asked to draft a policy for consideration at the next meeting.

Chairman Wilson recommended the lighting specifications be incorporated into Village Overlay District Manual

There being no additional business, the meeting adjourned at 9:04 pm.

Respectfully submitted,



Colleen Ehrle

Director of Administration

**Towamencin Township
Board of Supervisors
Monthly Meeting
March 22, 2023
7:00 PM**

Present:

H. Charles Wilson III, Chairman
Richard Marino, Vice Chairman
Laura Smith, Secretary
Kristin Warner, Treasurer
Joyce F. Snyder, Asst. Treasurer/Asst. Secretary

Staff:

David G. Kraynik, Township Manager
Robert J. Iannozzi, Jr., Esq., Township Solicitor
Mary Stover, Township Engineer
Niral Modi, IT Staff
Timothy Troxel, Chief of Police

Present Remotely:

Colleen Ehrle, Director of Administration

Absent:

Chairman Wilson called the meeting to order at 7:05 PM and led the assemblage in the Pledge of Allegiance.

Opening Comments

Chairman Wilson made the following announcements:

- The meeting is being held in person at the Township's Meeting Hall and also provided via Zoom for residents unable to attend in person. Public comments submitted by 4:30 pm on the meeting day would be read at the start of the meeting.
- The Board met in executive session prior to tonight's meeting to discuss personnel matters.

Chairman Wilson reviewed guidance ahead for Public Comment period for the meeting:

- setting a 3-minute time limit for each individual making a public comment;
- the Township Manager would be the timekeeper and would advise of 30 seconds left;
- the goal is to allow all who wish to make a comment with that opportunity;
- asked not to repeat previous comments;
- refraining from personal attacks of Board, staff and other members of the public.

Chairman Wilson provided an update from the March 8th Meeting related to NextEra's intentions to assign Pennsylvania American Water as the new purchaser of the Towamencin sewer system and expanded context for the associated voting agenda items.

NextEra noted their plans to withdraw from water and wastewater acquisitions, and to assign its contractual rights and obligations under the APA to Pennsylvania American Water. To effectuate this ownership change to the APA, Board action is required including: an amendment to the APA; preparation of an Assignment Agreement; and an amendment to the Sewer Sale Ordinance. At the March 8th Meeting, the majority of the Board authorized the Township Solicitor and Special Counsel to take all needed steps to prepare the APA Amendment; Assignment Agreement; and the Sewer Sale Ordinance Amendment for consideration at this meeting.

The APA Amendment will include:

- A revised sale price of \$104 million (the average of the two utility valuation expert appraisals)
- Removal of the 2-year rate freeze
- Return of additional deposit and escrow monies to NextEra
- Change to "Outside Date" definition, accommodating any unforeseen hurdles that may arise.

The Assignment Agreement will assign NextEra's interests in the APA to PA American. The Sewer Sale Ordinance Amendment will include replacing NextEra with PA American as the Successful Bidder. If such action is taken by the Board, PA American will file with the PA PUC. The PUC approval process will then commence with PA American as the successor. As consideration for this ownership change and its associated costs, NextEra will pay Towamencin Township \$600,000 which includes the initial \$100,000 deposit and an additional \$500,000.

Chairman Wilson continued, given the results of the Township's competitive bid process, PA American, as Next Era's successor, makes the most sense. Aside from being viewed as the 2nd best overall bid at the time, PA American is the largest water and wastewater utility in the Commonwealth. Given its significant market share, PA American is able to create efficiencies and synergies in its nearby operations and allocate costs across approximately 760,000 customers, thereby stabilizing the impact of considerable capital investments, resulting in resident savings. In addition, they provide substantive financial assistance and hardship grants.

Whether the Township keeps the system or sells it, sewer rates will likely increase. He urged residents to consider the entire picture when considering the sewer sale. In addition to PA American paying \$11,600,000 more than its originally bid, there are substantial benefits to the Township and residents alike. Based upon the Township's financial analysis, the decrease in real estate taxes and the foregone additional borrowing costs to fund the Township's various other initiatives discussed last April, offset the expected sewer rate increase. To conclude, when reviewing the total picture, he asserts there is a significant benefit with resulting savings, over ten years, that are expected to be more than \$2,500 per resident/rate payer.

Public Comments

Resident and Government Study Commissioner Kofi Osei noted he did not see the \$10 million penalty for termination referenced at the previous meeting. He did not believe the Township Solicitor had given an opinion on the proposed Home Rule Charter's effect on the APA, taking stock of what lawyers don't say. He shared his personal interest in the sale's consequences, as he may live in the Township another 50 years. He stated this decision is bad, this backdoor tax will be worse than the equivalent tax hike for the vast majority of Towamencin households and hopes voters vote yes to the Home Rule Charter in May.

Resident Pauline Braccia stated the proposed Home Rule Charter has no data in it. She is concerned how the Charter would affect the Township and is opposed to it, claiming the Charter could allow the municipality to raise taxes as high as they want.

Resident and Government Study Commissioner member Tina Gallagher noted her research in exploring the issue of water and wastewater privatization efforts. From all she's read and heard is that privatization is not a good deal to consumers. She added privatization of the sewer system is going to be expensive, emphasizing this loan has no end date.

Resident Joanne Andrews stated she opposes the asset transfer to PA American Water and opposed the sale to NextEra, stating it is not in the best interest of residents in the long term. She spoke on behalf of those who can't afford future rate increases and those living outside of Towamencin, but are connected to the sewer system, yet cannot vote on the matter. She asked that the Board vote no to the sale and retain the sewer system.

Resident and Government Study Commission member Martin Cohen stated the US was built on a thriving middle class, with accumulation of wealth from home ownership. Making an association that the sewer sale will impact home ownership in the Township. He questioned how the proceeds will be spent and stressed the amount residents will save in taxes will be minute compared to the 10 million a year, they will pay in extra sewer bills.

Resident and Government Study Commission member Jenn Foster thanked Supervisor Snyder for being open-minded during this process. Ms. Foster has no confidence in the Board spending the proceeds with no current plans in place last Comprehensive Plan update 1989, Strategic Plan update in 2007. She continued it is a slap in the face to voters in not waiting to vote on the agenda items until after May's election. PA American Water will triple our rates and recoup their purchase price. She suggested a potential Sunshine Act violation with March 8th agenda update.

Resident James Collins asked the Board why they would not take more time with this process with an opportunity presented from NextEra backing out. He emphasized rate payors will not receive a direct benefit from a sale in comparison to Township's anticipated improved financial status. He asked the Board to delay voting on the action items until after the May election.

Resident Joe Silverman criticized the mechanism (Senate Bill 554) to revise the March 8th agenda at the beginning of the meeting. While the Board followed the letter of the law, he felt they did not follow the spirit of the law.

Resident Vanessa Gaynor stated her shock when the sewer sale update was added last minute to the March 8th agenda. This decision did not foster goodwill, considering the significance of the topic. She was concerned a financial analysis will be added to the website after the associated agenda items are voted on tonight. She questioned what rationale is behind rushing the process, and that the transparency through this process has felt non-existent.

Resident Andrew Phipps questioned the Board's respect for all Township's residents, not just those who vote for them.

Resident Jim Freed, stated he enjoys living in Towamencin, but is against what the Supervisors are trying to do. He lives on a fixed income and may need to consider moving in the future due to the proposed sewer sale.

Resident Rory Kelley referenced the referendum abilities with the Home Rule Charter. He then compared the solicitation for public input for park projects and sidewalks, but no input, other than public comment with time limitation for this decision. He stated, post-sale, he hopes the Supervisors will solicit public input on how this money is spent, instead of just those who support the sale. He hoped the Supervisors read the APA thoroughly.

Emailed Comments

Resident Paul Andrews, referenced the current sewer bill is \$450. PFM's 10 year estimated sewer bill was \$1061. The actual PA American sewer rate for next year will be \$1270 (with no rate freeze in the new agreement). PFM's estimates - used to suggest residents would save money in the long run - are wrong. That's an \$820 difference from the current sewer bill to next year's rate. Our property taxes are \$870; unless the property tax bill is eliminated, we'll lose over \$800 next year, and every year after, with no change in sewer service. That's before any rate increases for improvements or recouped purchase costs. We understand that selling the system will provide a Township project fund, but citizens will end up paying much more, forever. Release NextEra from the contract, keep our system locally-owned and operated.

Resident Marsha Edwards commented the Board is now in a position to correct a terrible mistake and listen to residents. At tonight's meeting it would be in everyone's best interest to pull out of the contract with NextEra and look for another way to address money issues.

Resident Pamela Quatraro shared she is against the intention to sell our Municipal Sewer System to whomever the Board decides this time to roll over the APA with NextEra.

Resident David Edwards requested the Supervisors not approve the APA changes, as most still don't want to sell our sewer system and this is a good off-ramp for our Supervisors.

Resident Maureen McGowan opposed the sale of our sewer system and questioned why the Supervisors continue to not listen to the homeowners of Towamencin.

Resident Scott Francik, commented on the failed sewer sale to NextEra, pleading to the Board not to move forward with the PAWC sale. This is not something the majority of the community wants to happen, and this should be voted on by residents at the very least. I would much rather pay TMA increased rates that can be defined instead of relying on the whim of the PAWC's rates which are already almost 3 times what we are paying now.

Resident Michael Miller commented that while a majority of Towamencin residents oppose the sewer system sale, it appears the Township is determined to proceed anyway. Residents were told multiple times by both PFM and NextEra the two-year rate freeze was a key benefit to the citizens of Towamencin. The proposed transfer to American Water does not include a rate freeze. If you insist on selling our sewer system, at least protect the citizens of Towamencin from significant rate increases for the next two years.

Resident Bob Kurnik defined the word "fidelity" as the quality of being loyal to someone

or something, then questioned the Supervisors' loyalty to the welfare and interests of the people they represent. He stressed the opportunity to stop this madness and get back to being the people's representatives for which you were elected.

Residents Joe and Tina Rumsey asked for the expected sewer rates 5 years after the sale?

Resident Doug Bower stated having checked with the Township and County, Towamencin has never placed a lien on a homeowner's property. They have placed liens on commercial customers and on property management companies. How does the current bidder plan to handle late payments from citizens and liens?

Resident JoAnn Goble commented last year, a few hundred people showed up at two town hall meetings, where dozens of attendees spoke out against the sale. In November, 5410 residents voted to consider home rule as a way to stop the sewer sale. Here is a second chance not to sell this Township asset.

Resident Bryan Gaynor opposes the latest efforts to transfer the APA to American Water. This proposed transfer is not in the public interest and will cost the residents of our Township for decades to come. Please do not be tempted by shiny promises from a big business. Their interests are not aligned with the interests of residents and in many ways are directly opposed.

Zoning, Subdivision and Land Development

ZIIB 2023-01: 1640 Heebner Way (Garage Height)

The property owner at 1640 Heebner Way submitted an application to the Zoning Hearing Board requesting the installation of an accessory structure (garage) with a proposed height of 17 feet, when the maximum permitted is 14 feet high. The applicant is seeking relief to install a 2-car garage with loft with a height that exceeds one story to one and a half stories. The intention of the proposed space is for storage and a workshop.

On a motion by Supervisor Marino, seconded by Supervisor Smith, the Board agreed not to send the Township Solicitor to appear before the Zoning Hearing Board for this application.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

ZIIB 2023-02: 1600 Delp Drive Special Exception Extension Request

The Applicant is seeking a 6-month extension of the current April 7, 2023 expiration date having received a previous 6-month extension ahead of an October 19, 2022 expiration date - for special exception relief granted from section 153-616.B(4)(b) of the Township's Zoning Ordinance to construct a road within a 50-foot-wide stream margin. Since the initial relief was granted, the applicant's predecessor pursued and obtained conditional use and conditional preliminary/final land development approval for the project. The applicant acquired the property last year and continues pursuing the necessary permits and is requesting another time extension to do so.

On a motion by Supervisor Smith, seconded by Supervisor Marino, the Board was in agreement not to send the Township Solicitor to appear before the Zoning Hearing Board for this application.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Belfair Square - Land Development Review Time Extension Request

The applicant, Comerstone Premier Homes, is proposing to consolidate nine separate parcels into a single 3.94-acre development site, located along Welsh Road, between Vernon Court and Grist Mill Road, within the MRC Mixed Residential Cluster and RBP Residential Business Professional Overlay Zoning Districts. The applicant proposes developing the property into 16 townhouses with associated public and site improvements. On January 12, 2022, the proposed development received Conditional Use approval. The applicant has requested and granted a time extension for the review of the revised Land Development Plans until May 31, 2023.

Mary Stover, the Township Engineer, noted that while the Planning Commission recommended the preliminary and final land development review go before the Board, the developer still needs to resolve several of the Township Engineer's comments prior to the Board's review.

On a motion by Supervisor Warner, seconded by Supervisor Smith, the Board approved the applicant's time extension for the review of the revised land development plans.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Waiver of Damages - 552 Candlemaker Way Fence Installation/Permit

The Township has prepared a Waiver of Damages Agreement that would allow the owners of 552 Candlemaker Way to install a fence within a Township sanitary sewer easement.

On a motion by Supervisor Smith, seconded by Supervisor Marino, the Board approved the Waiver Agreement for 552 Candlemaker Way.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Waiver of Land Development - Salt Storage Building Construction

The bid information for the construction of the future Salt Storage Building is being prepared for release. Staff has requested a waiver from the formal land development submission process. The project will be compliant with stormwater management and zoning requirements.

On a motion by Supervisor Marino, seconded by Supervisor Smith, the Board approved of the waiver of land development for the future salt storage building.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Old Business

Public Comment Time Limit Policy

When preparing the format for last year's Town Hall meetings, it was noted there was no existing public comment policy in place. The Board discussed establishing a public comment time limit policy to facilitate meetings with large attendance as other municipalities have adopted similar policies limiting public comments to 3 minutes. At the Board's April 13, 2022 meeting, the Board authorized the Township Solicitor to draft a public comment time limit policy for review. The Solicitor has prepared a draft policy for the Board's approval consideration.

Solicitor Iannozzi noted the policy is a commonsense measure and is compliant with Pennsylvania's Sunshine Law. The Policy will ensure a reasonable opportunity for all to comment on matters that are before or come before the Board. The Policy sets a 3-minute time limit for each individual making an initial public comment, and a 1-minute follow-up. The policy offers additional guidance for when and how to offer comments, not making repetitive comments, and being respectful of others when making comments.

On a motion by Supervisor Snyder, seconded by Supervisor Smith, the Board approved the prepared Public Comment Policy.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

New Business

Warrant List

The March warrant list was presented for approval. Chairman Wilson noted the top costs for the Township as reflected in the March warrant list.

On a motion by Supervisor Warner, seconded by Supervisor Smith, the Board approved the warrant list in the amount of \$1,033,251.51.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder

Voting No: N/A

Abstaining: N/A

Absent: N/A

Public Works Committee Report

The Public Works Committee meets monthly to review projects and identify deficiencies related to Township infrastructure, properties, and equipment. The Committee met on March 16th. Supervisor Marino provided the Committee's report with the following topics reviewed:

- Kriebel Road/Orchard Lane/Eagle & Valley View Way Storm Sewer Project Underway
- Weikel Road Drainage /Pedestrian Walkway Update
- Central Drive Storm Sewer Repair Project
- Bocci Courts Update - Bid Review
- 2023 Road Paving Project – Out to Bid
- 2022 ADA Ramp Replacement Project – remaining work includes restoring lawn areas
- 2023 ADA Ramp Replacement Project – bid documents being finalized
- Crosswalk at Allentown Road/Walton Farm School – pavement markings being scheduled
- Allentown Road/Thorndale/Reinert Road – PennDOT did not recommend reducing speed, proposed advance warning signs.
- Old Forty Foot/Rittenhouse Road Intersection – PennDOT pavement markings completed
- Kerr Road Analysis
- Forty Foot Road Pedestrian Bridge – PW to investigate leak via excavating planting beds
- Towamencin Swimming Pool Repairs - Public Works performing maintenance work
- Salt & Equipment Storage Building Update
- Green Lane Park Soccer Field – CKS provided proposal for survey information
- Drinnon Park Improvements – location of walking path proposed with PW cost estimate
- Welsh/Orvilla Intersection Project Update – updated schedules provided to property owners
- Route 309 Connector/Sumneytown Pike Improvements – proposed slip ramp/left turn lane
- Forty Foot Road/Newbury Way/PSDC Traffic Signal – PennDOT approved grant extension to November 2024
- Traffic Signal at Allentown Road & Derstine/Fretz Roads - McMahon performed analysis.
- Fischer's Park Parking – considering southern side of existing parking lot to expand
- Electric Vehicle Charging Stations – NE Extension listed as high priority for EV stations.
- MS4 Permit Requirements – establish management committee with 5 municipalities.
- Comprehensive Plan

Supervisor Smith asked if the crosswalk work at Allentown Road/Walton Farm School would include painting the crosswalk at Woodlawn Drive at Columbia Avenue at the same time. Supervisor Marino responded that it is supposed to be.

Chairman Wilson noted that Weikel Road, from the Township pool to Allentown Road, may warrant some base repair, in the interim of full resurfacing, as it is in rough shape.

Fischer's Park Bocce Court Reject Bid Submission

At the Board's March 8th meeting, the singular bid submission from Land Tech Enterprises was reviewed. The base bid of \$76,999.00 included drainage improvements, and the addition of a retaining wall with a paver walkway, with an add alternate for resurfacing the courts for \$20,670. The bid is significantly more than anticipated with a preliminary cost estimate of \$35,800 budget for the project. The Township Engineer has been reviewing alternatives to reduce overall costs, including a plan to complete the project in-house by the Township's Public Works department.

On a motion by Supervisor Warner, seconded by Supervisor Snyder, the Board rejected the bid by Land Tech Enterprises for improvements to the Fischer's Park bocce court.

Voting Yes: II. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

Green Lane Park Proposal for Professional Services

The Township Engineer has submitted a proposal to obtain topographic and existing feature data Green Lane Park for the area being considered for potential development of a soccer field. The proposal is for a lump sum of \$5,300 to include all costs to obtain survey information and prepare the base plan.

On a motion by Supervisor Smith, seconded by Supervisor Marino, the Board approved the Green Lane Park Proposal for surveying services by CKS Engineers.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

Geotechnical Investigation Proposal Salt Storage Building Construction

The bid information for the construction of a future salt storage building is being prepared for release. In preparation for future construction, Township staff sought a proposal for geotechnical analysis services to analyze the integrity and soil composition of the ground that would be situated under the proposed building. The proposal submitted is for \$7,425 and would include costs associated with project management and coordination, geotechnical investigation, laboratory testing and geotechnical engineering analysis and report. The proposal also includes additional options for private utility location service and investigation/reporting work for the future garage.

On a motion by Supervisor Marino, seconded by Supervisor Smith, the Board approved the geotechnical investigation proposal (tasks 1-4) in conjunction with the salt storage building.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

Release Request for Proposals (RFP) - Update to Comprehensive Plan

In February, a draft document of the Request for Proposals (RFP) - Update to Comprehensive Plan was circulated to Township staff for feedback, then reviewed by the Township's Planning Commission at their March 6 meeting. The Commission recommended the draft RFP be reviewed by the Board of Supervisors and if acceptable authorize the bid release.

On a motion by Supervisor Warner, seconded by Supervisor Marino, the Board authorized releasing the request for proposals to update the Comprehensive Plan.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

Towamencin Municipal Sewer System - Consider Approval of Assignment (PA American Water) Agreement

At the Board's March 8th meeting, an update of the pending sewer sale was provided announcing NextEra's plans to redirect efforts away from water and wastewater acquisitions. Toward that end, NextEra intends to assign its contractual rights and obligations under the Asset Purchase Agreement (APA) to Pennsylvania American Water (PA American).

On a motion by Supervisor Marino, seconded by Supervisor Smith, the Board approved the assignment of the Asset Purchase Agreement to Pennsylvania American Water.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner
Voting No: Joyce F. Snyder
Abstaining: N/A
Absent: N/A

Towamencin Municipal Sewer System - Consider Approval of Asset Purchase Agreement Amendment

In order for NextEra to assign its contractual rights and obligations under the Asset Purchase Agreement (APA) to Pennsylvania American Water (PA American), an amendment to the Asset Purchase Agreement must be approved.

On a motion by Supervisor Marino, seconded by Supervisor Smith, the Board approved the Asset Purchase Agreement Amendment.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner
Voting No: Joyce F. Snyder
Abstaining: N/A
Absent: N/A

Towamencin Municipal Sewer - Consider Adoption of Ordinance 23-03 (amending Sewer Sale Ordinance 22-04)

To complete this assignment process, an amendment to the Sewer Sale Ordinance must be adopted to include replacing NextEra with PA American as the successful bidder where applicable within the adopted ordinance.

On a motion by Supervisor Marino, seconded by Supervisor Smith, the Board adopted Ordinance 23-03.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner
Voting No: Joyce F. Snyder
Abstaining: N/A
Absent: N/A

Volunteer Committee Appointments

Residents have submitted applications expressing their interest to serve on the Township's various volunteer committees. The Board considered the following volunteer committee appointments:

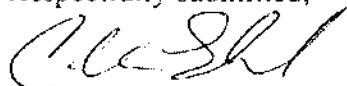
- Vanessa Gaynor - Environmental Advisory Council, term expires December 31, 2025
- Kris Kazmar - Strategic Planning Committee, term expires December 31, 2023

On a motion by Supervisor Snyder, seconded by Supervisor Smith, the Board made the noted appointments.

Voting Yes: H. Charles Wilson, III, Richard Marino, Laura Smith, Kristin Warner, Joyce F. Snyder
Voting No: N/A
Abstaining: N/A
Absent: N/A

There being no additional business, the meeting adjourned at 8:37 pm.

Respectfully submitted,



Colleen Ehrle
Director of Administration

EXHIBIT C

GOVERNMENT STUDY COMMISSION

TOWAMENCIN TOWNSHIP

Towamencin Township Government Study Commission Report



GOVERNMENT STUDY COMMISSION

TOWAMENCIN TOWNSHIP

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MAR 10 2023

TOWAMENCIN TOWNSHIP

Towamencin Township Government Study Commission Report

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Letter from the Towamencin Government Study Commission

March 9th, 2023

Dear Towamencin Resident,

For the reasons set forth herein, the Towamencin Township Government Study Commission recommends adoption of a Home Rule Charter, in the form attached as the Proposed Towamencin Township Home Rule Charter, and submission to the electors of Towamencin Township at the Municipal Primary Election to be held on Tuesday, May 16, 2023. The commission outlined the below statement of purpose for residents:

The purpose of our commission is to explore the ways home rule could change the outcome of the pending sewer sale, add citizen participation through referenda, and add transparency to Towamencin's operations.

As such, the proposed Home Rule Charter defaults its provisions to Class 2 Township code; that is to say there will be no changes in elected offices, no changes to financial procedures, no changes to the limitations on the rates of taxation, and no changes in general operating procedures. The Charter **does**:

- Prohibit the sale or long-term lease of potable water, wastewater, and stormwater systems to nongovernmental entities
- Adds initiative and referendum procedures
- Add a referendum requirement for asset monetization that is above 25% of the township annual budgeted revenue
- Adds minor digital transparency requirements.

On **Tuesday, May 16th**, Towamencin Township voters will be asked the following question on the ballot:

Shall the Home Rule Charter contained in the report, dated March 9th, 2023, of the government study commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by the Second Class Township of Towamencin?

If the majority of voters choose “Yes”, a new Home Rule Charter would be adopted by Towamencin Township on July 1, 2023. Should the majority of voters choose “No”, the existing second class township code and all its existing provisions will remain in effect. More information on how to register to vote can be found here: <https://www.montcopa.org/761/Voter-Registration>

Residents are encouraged to attend the scheduled **Town Hall on Monday, April 24th at 7pm at the North Penn High School Audion at 1340 S Valley Forge Road, Lansdale, PA 19446**. During the Town Hall, we expect to discuss the Charter in detail, as well as address any questions from residents, taxpayers, or sewer ratepayers. To save on printing cost, we ask attendees to bring a copy of the included report to the Town Hall.

Attached to this report is the full proposed Home Rule Charter for your review and consideration.

Organization

The purpose of the government study commission was to study the existing structure of Towamencin Township, identify areas of improvement, and determine if a Home Rule Charter could address the emerging needs of the community.

Title 53 outlines the legal requirements of a government study, with the only requirement being at least one (1) Public Hearing. Because the law is purposely vague in order for municipalities to conduct a study based on its individual requirements, we tailored our process to focus on three (3) emerging needs we felt a Home Rule Charter could potentially address:

- Stopping the pending sale of our sewer to NextEra or any other private entity
- Allowing for greater citizen participation through referendum
- Providing for greater transparency in local government

On December 6, 2022, six (6) elected commissioners took their oaths of office and organized as follows:

- *Kofi Osei – Chairperson*
- *Jenn Foster – Vice Chairperson*
- *Tina Gallgher – Chair pro-tempore*
- *Gisela Koch – Secretary*
- *Martin Cohen – Treasurer/Vice Secretary*
- *Mark Warren – Vice Treasurer*

The seventh member of our elected commission chose not to be sworn in due to personal health issues, and this was addressed at the commission's January 4th Public Meeting.

In addition, we named an alternate to serve as a non-voting member of the commission.

Finally, we created a volunteer committee, whose purpose was to spearhead the creation of the commission's website, develop community mailings, and compile and publish FAQs.

At the commission's January 4th Public Meeting, our alternate, Joe Rumsey, was appointed by the commission to serve as the seventh member and given the role of Vice Secretary. According to page thirteen (13) of the PA Home Rule Handbook, vacancies have occurred in one out of five government study commissions, and it is very common for alternates to be named in order to fill vacancies.

The commission held public meetings on the following dates:

January 4, 2023

January 18, 2023

February 1, 2023

February 15, 2023

March 1, 2023 - Public Hearing

March 15, 2023

All public meetings were held at 7pm at the Municipal Meeting Hall at 1090 Troxel Road, Lansdale, PA 19446. A public Town Hall is scheduled for 7pm on April 24, 2023 at the North Penn High School Audion at 1340m S, Valley Forge Road, Lansdale, PA 19446.

Activities

The government study included a variety of activities. A list of some of the things we've done to come up with our recommendations are below.

- Attended Board of Supervisor and advisory committee meetings
- Hosted interviews and presentations at public meetings
- Reviewed Class 2 Township Code and other state laws
- Reviewed other municipalities' Charters
- Reviewed how other states approach municipal issues
- Monitored feedback on the commission's work
- Talked with solicitors about legal feasibility of Charter provisions
- Toured the sewer plant

In the first half of our meeting schedule, we hosted individuals with experience with home rule municipalities.

At our January 4th meeting, we interviewed Chris Manero. Mr. Manero grew up in Towamencin and is the chairman of the Plymouth Township Council. Plymouth is a Township of the First Class governed by a Home Rule Charter that was adopted in 1976. The subject of our interview was about Mr. Manero's experience with home rule and Plymouth Township's experience rejecting a sewer system sale. We learned from the interview that Plymouth did not sell their sewer system because they felt that the sewer rate increases oustriped any benefit of the one time cash infusion. We also learned that Plymouth did not employ any home rule powers such as referendum during Mr. Manero's time on council.

At our January 18th meeting, we interviewed David McMahon. Mr. McMahon is a Norristown resident. Norristown is a Borough governed by a Home Rule Charter that was adopted in 2004 which replaced a Home Rule Charter adopted in 1986. The subject of the interview was about how Mr. McMahon and his neighbors were able to use Norristown's Home Rule Charter to overturn a council decision to sell their sewer system. We learned from the interview that Norristown's Home Rule Charter allowed citizens to have a direct say in local decisions and that Norristown residents did not like the idea of selling their sewer system despite promises from their local government. Similar to Plymouth, the referendum procedures seen in Norristown's Charter had not been used for anything else during Mr. McMahon's time living in Norristown.

At our February 1st meeting, we received a presentation from Fred Chapman, the policy specialist for the PA Department of Community & Economic Development, Governor's Center for Local Government Services. During his presentation Mr. Chapman explained the concept of home rule, answered a handful of pre-submitted questions, and made a number of recommendations to the government study commission.

As of writing this report, we have scheduled an interview with the Warminster Municipal Authority General Manager Tim Hagey for the March 15th meeting. We also anticipate receiving written

responses to questions submitted to the North Penn Water Authority¹. We anticipate learning about the history of the North Penn Water Authority and about how municipal authorities can provide essential services in a fiscally responsible way.

Through our study, the commission made the determination that a Home Rule Charter could address four community concerns:

1. The sewer sale is neither necessary nor popular
2. There is little wrong with the current structure of government
3. There isn't enough direct democracy in Towamencin
4. There isn't enough transparency in Towamencin.

Concern #1 The Sewer Sale is Neither Necessary nor Popular

Over the course of the sewer sale exploration, the Board of Supervisors consistently said that the sewer system is in good shape and the Township' finances were in good order. There are currently 7105 residential users of the sewer system and 337 residential septic users in Towamencin Township. There are also a few hundred households that are located outside of the township but are connected to the Towamencin Municipal Authority plant. During public comment at the Board of Supervisors meetings, hundreds of residents gave public comment against the sale while only a small handful gave comment in support. Despite these facts, the Towamencin Board of Supervisors voted 4-1 to sell the sewer system to NextEra energy. At 115.3 million dollars, this is probably the largest single decision the Board of Supervisors could ever make and they did so without public support or necessity.

Through our analysis, we've found that the sewer sale could cost Towamencin ratepayers about \$9 million or more every year in sewer rates in excess of operation and maintenance. The additional \$9M per year is unrelated to the profits, operation, maintenance, or capital projects of the sewer system. Servicing \$115M is similar to payments on a 20-year loan for \$115M at 4%, except that annual payments by sewer customers will continue in perpetuity. That would dwarf the stated \$3.5 million a year benefit of having a one time cash infusion. Investor owned wastewater utilities consistently charge double to triple rates as well as having more harsh rate hikes than municipally owned systems, at no extra operational benefit to service, as both types of systems are regulated by the Department of Environmental Protection. An in depth discussion of our analysis can be found by reviewing the 2/15/2023 meeting video at <https://www.youtube.com/@towamencinqsc>.

Section 14.01 of the asset purchase agreement allows the Township to exit the contract with no penalty if the sale is prohibited. Article 6 of the Charter prohibits the sale or long term lease of water, wastewater, and storm water systems to non-governmental entities. Residents in Pennsylvania have a right to adopt a Home Rule Charter given to us via Article 9 § 2 of our constitution and enabled by Title 53 § 2961 of state law. Therefore, it is the study commission's opinion that it is unlikely that adopting this Charter would cause a lengthy and expensive lawsuit that ends with the Township being ordered to sell the sewer system. We have confirmed this idea with the commission's solicitor and believe an expensive drawn out legal battle is unlikely, but

¹ The government study commission initially scheduled an interview with NPWA Tony Bellitto and he was no longer able to attend the March 15th meeting.

acknowledge that this use of home rule is legally untested. In the event that the township is forced to sell the sewer system despite this Charter, the commission found that the impact to individual households would be minimal as any legal cost would functionally be removed from the sewer sales price. The millions of dollars of excess sewer rates spent every year, forever would be much more significant than any one time legal fee.

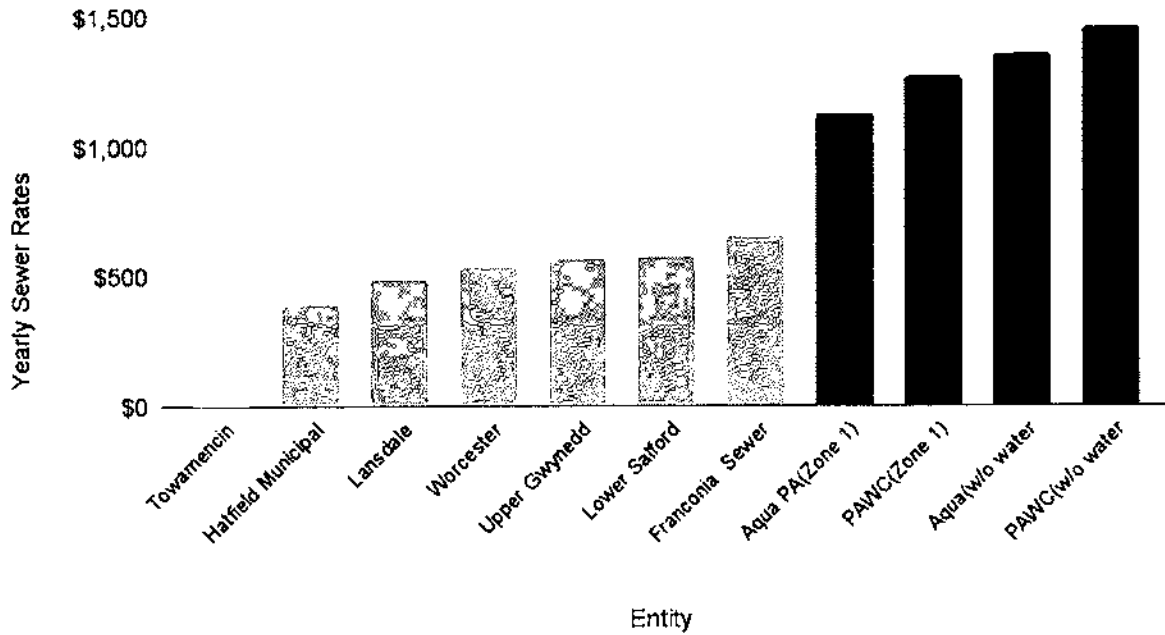
If the sewer sale is prohibited via the enclosed Charter or the sale is blocked by the standard Public Utility Commission proceedings, it is expected that the Board of Supervisors would levy taxes that are otherwise available to them currently². That is usually property tax hikes but they also have some other options such as a stormwater fee. They could also opt to sell the sewer system to a governmental entity. It would be a lower price, but the face value of the sewer system is enough to pay off all Township debt and would have a much lower impact on sewer rates.

² The Towamencin Township Government Study Commission held its public hearing on March 1, 2023. The hearing was duly advertised, and the advertisement indicated the Commission's intent to consider the draft of the Charter, the Report and the ballot question. After the public hearing, at its regular public meeting scheduled on March 8, 2023, the Board of Supervisors amended its agenda and revealed NextEra's intent to assign its interests in the Asset Purchase Agreement to Pennsylvania American Water. As of the date of this filing, formal action to change the ordinance authorizing the sale to NextEra has not occurred. Should Pennsylvania American Water become the prospective purchaser, the Commission's findings and recommendations remain unchanged as set forth herein.

Sewer Rate Survey

Entity	Yearly Sewer Rates	Utility Type
Towamencin Municipal Authority	\$450	Municipal
Hatfield Municipal Authority	\$396	Municipal
Lansdale	\$492	Municipal
Worcester	\$536	Municipal
Upper Gwynedd(2024)	\$569	Municipal
Lower Salford	\$580	Municipal
Franconia Sewer Authority	\$660	Municipal
Aqua PA(Zone 1)	\$1,125	Investor Owned
PAWC(Zone 1)	\$1,272	Investor Owned
Aqua(w/o water subsidy)	\$1,356	Investor Owned
PAWC(w/o water subsidy)	\$1,462	Investor Owned

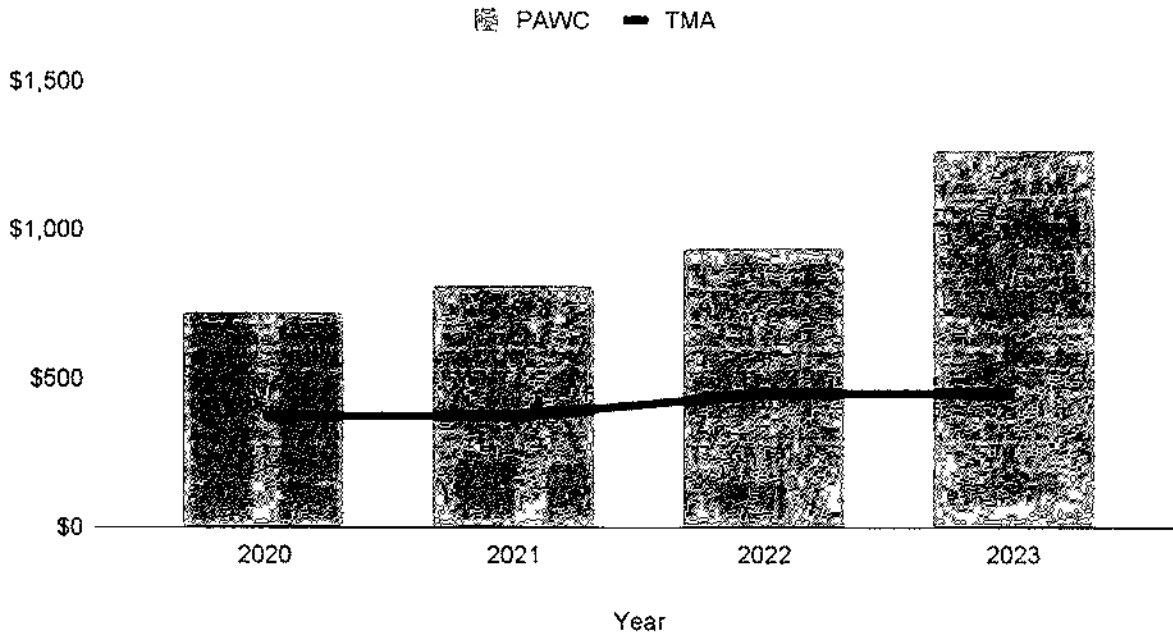
Rate Comparison



PA American Water Company and Towamencin Municipal Authority Rate Progression

Year	PAWC Yearly Rate	TMA Yearly Rate
2020	\$725	\$375
2021	\$815	\$375
2022	\$941	\$450
2023	\$1,272	\$450

PAWC and TMA Rate Progression



Concern #2 There is Little Wrong With the Current Structure of Government

The commission studied several different structures of local government by reviewing materials from the Pennsylvania Department of Community and Economic Development, as well as several existing PA Home Rule Charters.

Some suggested forms are as follows:

- **Council-Manager**
 - Elected council as legislative body and hired manager as executive body
 - Seen in class 1 and 2 township code
 - Towamencin's current structure as a Township of the second class
- **City-Manager**
 - Elected council as legislative body, hired manager as executive body, ceremonial elected mayor
 - Seen in borough code
- **Mayor-Council**
 - Elected council as legislative body, mayor with some executive power, optional hired manager
 - Seen in City codes and many Home Rule Charters
- **Town Hall**
 - Every citizen is a part of the legislative body
 - All decisions made by referendum
 - Seen in small municipalities in New England

As part of our review, and based upon resident feedback and concerns, the commission agrees that the existing Class 2 Township Council-Manager form of government is sufficient for the size and structure of Towamencin Township. The names, duties, and terms of the offices will remain unchanged:

- *Five (5) elected Supervisors, each at-large with a 6-year term*
- *One (1) elected Tax Collector at-large with a 4-year term*
- *Three(3) elected Auditors at-large with a 6-year term*
- *Hired Township Manager*

In Section 106, the Charter defaults Township provisions to the Class 2 Township code.

Concern #3 There isn't Enough Direct Democracy

Our current Board of Supervisors meets twice monthly for a work session and a monthly meeting. These meetings are held at the Township Building at 1090 Troxel Rd. These meetings are generally attended by a few residents, depending on the agenda items. In the past, the Township has faced financial challenges. One of these challenges concerned the development of a town center. A main thoroughfare was rebuilt, a pedestrian bridge added, and a new roadway with commercial buildings proposed and later developed. This town center plan was followed by many residents who raised concerns to the local government at the time. This background is included here as many long-term residents were affected by this challenging time as they interacted with their local government and the lingering financial effects are still with us today.

There were two town halls in April 2022 that concerned the sale of the sewer system. The town halls occurred after many residents attended Board of Supervisor meetings and requested more information. 200-300 people attended the town halls. Information was shared by the consultant firm PFM, the Board of Supervisors, and NextEra, followed by a public comment period.

During a public comment period, Supervisor Wilson explained that a combination of various individuals including two Board members came to a consensus to accept the bid of NextEra. Supervisor Marino further explained this occurred at a working committee. Clarification was made by Jack Dooley, the Township Solicitor, who stated that "the sewer committee is not a committee of the Board", thus the Sunshine Act was not applicable. Supervisor Snyder has shared that the Supervisors who were not on the committee were not notified of any committee decision or by another Board member to accept the bid from NextEra. Supervisor Snyder did not have any insight into what information the committee considered, and only became aware of the choice of NextEra when it was presented at the public town hall meeting. These interactions have not been helpful in engaging the public's understanding of the process to monetize the sewer system. Instead, frustration grew as residents, businesses, and wastewater customers outside of the township's boundaries did not feel they had access to their local government.

The terms 'initiative' and 'referendum' refer to processes that allow citizens to vote on particular pieces of legislation.

- The initiative process allows citizens to propose a new ordinance
- The referendum process allows citizens to refer an ordinance that passed by the Board of Supervisors to the ballot for voters to decide whether to uphold or repeal the ordinance.

If Towamencin had a Home Rule Charter with initiative and referendum during the sewer sale event or the town center discussions, it is possible residents would have used those provisions to change the outcome of either event. In order to strengthen and increase opportunities for citizen participation, the addition of both initiative and referendum will address the need for greater access to local government. Article IV includes provisions for ordinance initiative, reconsideration, and proposal by the Board of Supervisors, along with processes for petitioning and election procedures.

Concern #4 There is not enough Transparency

Towamencin Township, a Township of the Second Class, is governed by a five member board of supervisors. The term per elected board member is six years. Information concerning terms of all elected officials is currently not included on the township web site.

The Board of Supervisors appoints all members to the township's volunteer committees, boards, councils, and commissions. The process to apply for a consideration to a committee includes a completed application and an interview. The application is included on the Township website. Currently vacancies and terms are not publicly accessible. When a term ends there is no formal process to reinstate the member. Also, the current members of the volunteer groups are not publicly accessible. This is a hindrance to the residents that may be interested in applying and limits public participation.

Three committees, Planning Commission, Strategic Planning Commission, Open Space and Parks Advisory Committee, were also found to have seven members who served four or more terms.

The addition of elected officials' names with their terms to the Township website will benefit residents especially during elections. The names of Township appointed authorities, boards, and commission members along with their chairperson, their terms, and contact information will provide residents greater accessibility to their local government. It is important this information be updated in a timely manner.

The Article V of the Charter includes a requirement that term information for elected officials and appointed volunteer members of committees, boards, councils, and commissions be available on the publicly accessible website.

Survey of Board of Supervisors and Advisory Committee Membership

Board of Supervisors:

- Chairman 3 terms, 21 years currently served
- Vice Chairman 1 term, 5 years currently served
- Secretary 1 term, 9 years currently served
- Treasurer 1 term, 1 year currently served
- Assistant Secretary/Assistant Treasurer 1 term, 1 year currently served

The following committees, boards, councils, and commissions have multiple-term members:

- Zoning Hearing Board 3/3 multiple terms (3 year term)
- Planning Commission 7/8 multiple terms (4 year term)
- Environmental Advisory Council 5/5 multiple terms (3 year term)
- Agricultural Security Area Advisory 2/2 multiple terms (1 year term)
- Economic Development Commission 4/4 multiple terms (3 year term)
- Emergency Operations Commission 3/4 multiple terms (3 year term)
- Open Space and Parks Advisory Committee 7/9 multiple terms (3 year term)
- Recreation and Special Events Advisory Committee 5/6 multiple terms (3 year term)
- Strategic Planning Commission 2/2 multiple terms (1 year term)

- Technology Assessment and Innovation Committee 4/6 multiple terms (3 year term)
- Traffic Impact Fee Advisory Committee 3/3 multiple terms (1 year term)
- Veterans Committee 9/11 multiple terms (3 year term)

Non-Charter Recommendations

During our study, we've identified a few recommendations we would like to make that are not codified in the presented Charter.

To the Board of Supervisors: Our first recommendation to the Board of Supervisors is to be more proactive in taking public input. This government study was initiated via petition directly in response to the sewer sale decision. More public meetings and polling about the potential sale would have been a more cost effective way to decide on the sewer sale. Our second recommendation would be to invoke the no-liability termination language of the sewer asset purchase agreement, if the voters of Towamencin approve this Charter. The intent of this Charter is to prohibit the sewer sale and all other sewer sales and long term leases to non-governmental entities. It is the study commission's opinion that it would be best for the taxpayers of Towamencin if the Board of Supervisors were to initiate termination of the sewer asset purchase agreement. Our third and final recommendation is to update the comprehensive plan and the strategic plan more frequently. The comprehensive plan is supposed to be updated once a decade and the strategic plan is supposed to be updated every 5 years, but the last time the comprehensive plan was updated was 1989 and the last time the strategic plan was updated was 2007. Frequent updates to these plans may assist in grant applications and would better inform residents of any financial challenges the Township faces.

To the General Assembly: Pennsylvania has a very powerful version of home rule compared to other states, which means that citizens have the potential ability to have a lot of control over their local government. In spite of this, Pennsylvania laws do not allow citizens to have initiative or referendum by right, even if that ability is seen in many Home Rule Charters. Our first recommendation is to incorporate initiative and referendum options similar to the ones seen in the proposed Towamencin Charter into the various municipal codes. Our second recommendation is to incorporate the digital transparency provisions seen in the Towamencin Charter into the Sunshine Act. Various transparency provisions in Home Rule Charters predate the Sunshine Act and we believe these digital transparency requirements are appropriate for municipalities that opt to maintain a website. Our third and final recommendation is to fix our utility laws. We have found the use of Title 66, Section 1329(2016's Act 12) to be abusive to the intent of both municipal authorities and investor-owned utilities. Utilities should be about providing essential services in communities, and in the case of the investor-owned model, providing modest profit margins to the operators. Instead of that, municipalities seem to be nearly exclusively using Act 12 to shortcut any need for long term fiscal planning and gradual tax hikes. Ratepayers are then left with very expensive utility bills.

To Towamencin Residents: Participate! Whether it's running for office, volunteering for an advisory committee, or even just attending public meetings, getting involved in local dealings has a great return on time invested. A lot of the money spent at the federal and state level ultimately gives discretion to individual municipalities, so it is important to give input when the Board of Supervisors is making decisions.

Plain English Charter

The commission tailored its study and corresponding Home Rule Charter to both address the concerns of residents, as well as ensure the provisions within the Charter are clear and as least disruptive to the Township and its Elected Officials as possible.

The Charter explicitly states that, unless otherwise written in the Charter, Towamencin will retain the structure, privileges, rights, duties and limitations of its existing status of a Township of the Second Class. Articles Four (4), Five (5), and Six (6) are the only changes to the existing Second Class Township provisions.

- **Article 1: Construction of the Charter**
 - Maintains the name of Towamencin Township, all existing boundaries, and powers granted by the existing Class 2 Township Code, unless otherwise noted within the Home Rule Charter.
- **Article 2: Defines Elected Offices**
 - The Township maintains its current structure of government; Five (5) Elected Supervisors, Three (3) Elected Auditors, One (1) Elected Tax Collector, and a Hired Manager.
- **Article 3: Defines Financial Procedures**
 - Defaults township provisions to Class 2 township code. ***This Charter explicitly retains the current limitations on the rates of taxation.***
- **Article 4 (New): Initiative and Referendum Procedures**
 - Residents will have the power to initiate proposed ordinances or initiate reconsideration of ordinances within 30 days of enactment, and the Township is empowered to put ordinances directly on the ballot. Referenda initiated by Township residents must follow the below procedures:
 - Any five (5) qualified voters, designated as a Committee of the Petitioners, may commence initiative and referendum proceedings.
 - Initiative and referendum petitions must be signed by qualified voters of the Township equal to at least fifteen percent (15%) of those registered to vote at the last municipal election.
 - Petitions circulation is not limited to the 5 qualified voters who initiated the petition.
 - Referendums must be initiated for the asset sale or lease to non-governmental entities resulting in the Township receiving compensation ***exceeding 25%*** of annual budgeted revenue
 - Exemptions to this process include:
 - Ordinances related to the budget or capital programs
 - Ordinances related to the compensation of Township personnel
 - Emergency ordinances
 - Ordinances authorizing elections
 - Ordinances related to powers of the Township that are preempted from Home Rule
 - An initiative or referendum that would violate applicable laws of the Commonwealth of Pennsylvania

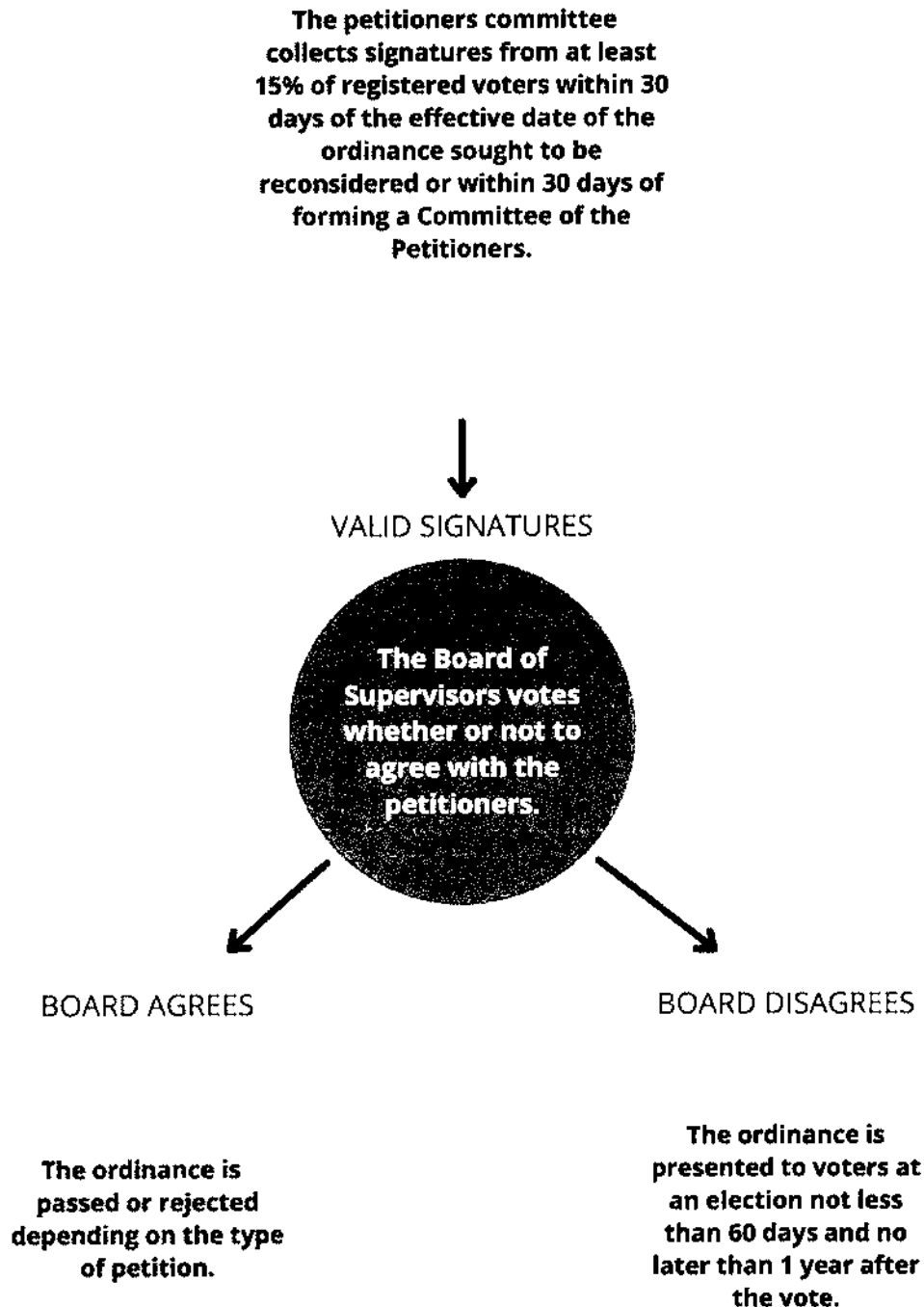
- **Article 5 (New): Transparency**
 - Provisions surrounding digital availability of certain information that is otherwise public
 - Member and term information of elected officials and those appointed to advisory boards, authorities, commissions and volunteer committees
 - Digital copies of documents that are available at the township building
 - If a Towamencin specific question, whether prompted by voters, the Township, or any other applicable state laws, is placed on a ballot, the Board of Supervisors must hold a public town hall meeting within 30 days of passage.
 - The meeting must be advertised.
 - The Township must send mailings to residents with information on the ballot question and time/location of town hall.
 - The petitioners, whether the Township or voters, will have ample time to speak about the initiative.
 - There must be at least one hour of public comment.

- **Article 6 (New): Right to Public Ownership Of Potable Water Systems, Wastewater Systems, and Storm Sewer Systems**
 - Prohibits the sale or long term lease of water, wastewater or stormwater systems, but does allow for a lease with a non-governmental entity for a period of no longer than two (2) years

- **Article 7: General Provisions**
 - Maintains the existing rights and liabilities of the Township
 - Maintains the existing office names and terms of Elected Officials
 - Maintains the existing rights and privileges of Township employees
 - All ordinances, resolutions, rules and regulations in force when this Charter takes effect will continue in force, *provided* they do not conflict with any of the Home Rule Charter provisions
 - If portions of Charter can not take effect in its entirety because of the judgment of any court with jurisdiction, all other provisions within the Charter will still go into effect
 - Amendments to the Charter must conform to the laws of the Commonwealth of Pennsylvania
 - The Home Rule Charter would go into effect July 1, 2023

Petitioning Flow Chart

In order to change an ordinance, five registered voters must file an affidavit with the Township Manager to form a Committee of the Petitioners to initiate or force the reconsideration of an ordinance.



PROPOSED TOWAMENCIN TOWNSHIP HOME RULE CHARTER

PREAMBLE

We, the people of Towamencin Township in Montgomery County, under authority granted by the Constitution and the Laws of the Commonwealth of Pennsylvania to adopt Home Rule Charters do hereby ordain and adopt this Home Rule Charter to establish a council-manager form of government with full rights of local self-government. We do so primarily to reaffirm our right to public ownership of water, wastewater and storm sewer systems as given to us in Article I, § 27 of the Constitution of the Commonwealth of Pennsylvania.

ARTICLE I

NAME, BOUNDARIES, DEFINITIONS, AND POWERS

SECTION 101. NAME.

Towamencin Township is continued as a municipality in Montgomery County, Pennsylvania, and is hereby established as a municipal corporation under the name of Towamencin Township and shall herein be referred to as the "Township."

SECTION 102. BOUNDARIES.

The boundaries of Towamencin Township shall be the actual boundaries of the Township at the time this Charter takes effect and as they may be lawfully changed thereafter.

SECTION 103. DEFINITIONS.

Unless otherwise expressly stated in this Charter, the following words and phrases shall be construed to have the following meanings:

- a. The term "Charter" shall refer to the Home Rule Charter of Towamencin Township, Montgomery County, Pennsylvania.
- b. The term "Potable Water System" shall refer to all real property, appurtenant interests, and facilities necessary for diverting, developing, pumping, impounding, distributing or furnishing water to customers for compensation.
- c. The term "Wastewater System" shall refer to all real property, appurtenant interests, and facilities necessary for wastewater collection, conveyance, treatment or disposal to customers for compensation.
- d. The term "Storm Water System" shall refer to all real property, appurtenant interests, and facilities necessary for storm water collection, conveyance, treatment and disposal.

SECTION 104. POWERS.

The Township has, and may exercise, any powers, and may perform any function not denied by the Constitution of the United States or the Constitution of the Commonwealth of Pennsylvania, by this Charter, or by an act of the General Assembly at any time. It is the intent of this Charter that the Township shall have all powers possible under the Constitution and Laws of this Commonwealth, except as may be set forth herein, whether or not such powers and functions are being exercised at the time of the adoption of this Charter.

SECTION 105. RESIDUAL POWERS.

All powers of the Township, including any such power which may hereafter be conferred on the Township by an amendment of the Constitution of the United States or of the Constitution of Pennsylvania or of this Charter or by act of the General Assembly, unless otherwise specifically set forth in this Charter, shall be vested in the Township's governing body. The governing body shall be elected, shall organize, and shall function as provided in this Charter.

SECTION 106. MUNICIPAL CLASS RETENTION.

Unless otherwise expressly stated in this Charter, the Township will retain the structure, privileges, rights, and duties and limitations thereon of a Township of the Second Class, as provided by 53 P.S. §§ 65101, et seq., not subject to this Charter. The Township may change its underlying class in any way that is provided to Townships of the Second Class by the Laws of this Commonwealth. If the Township changes its underlying class, all references to the Second Class Township Code in this Charter will thereafter refer to the new class and all references to the Board of Supervisors in this Charter will refer to the new form of governing body.

SECTION 107. CONSTRUCTION.

The powers of the Township under this Charter shall be liberally construed in favor of the Township, and the specific mention of particular powers in this Charter shall not be construed as limiting in any way the general power stated in this article. All possible powers of the Township, except as limited in Section 104 and Section 106 above, are to be considered as if specifically and individually set forth in this article, whether such powers are presently available to the Township or may hereafter from time to time become available.

ARTICLE II

ELECTED OFFICES

SECTION 201. ELECTED OFFICE RETENTION.

Unless otherwise expressly stated in this Charter, the Township shall retain the elected offices of a Township of the Second Class. All privileges, election procedures, terms, rights and duties of said offices and limitations thereon shall be retained unless otherwise stated in this Charter.

SECTION 202. GOVERNING BODY.

The Township is a Township of the Second Class and its governing body is a Board of Supervisors consisting of five (5) at-large members elected to six-year terms.

ARTICLE III

FINANCIAL PROCEDURES

SECTION 301. FINANCIAL PROCEDURE RETENTION.

Unless otherwise expressly stated in this Charter, the Township shall retain the financial procedures of a Township of the Second Class.

SECTION 302. LIMITATIONS ON THE RATES OF TAXATION.

Until this Charter is amended or such time as the General Assembly shall provide uniform laws on rates of taxation which apply to a municipality with a Home Rule Charter that are stricter to such limitations of a Township of the Second Class, the Township shall continue to be subject to the limitations on the rates of taxation which apply to a Township of the Second Class.

ARTICLE IV

INITIATIVE AND REFERENDUM

SECTION 401. GENERAL AUTHORITY.

401.1. Ordinance Initiative: The qualified voters of the Township shall have the power to propose ordinances to the Board of Supervisors and, if the Board of Supervisors fails to adopt an ordinance so proposed, shall have the power to adopt or reject it at a Township election.

401.2. Ordinance Reconsideration: The qualified voters of the Township shall have the power to require reconsideration by the Board of Supervisors

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

of any adopted ordinance and, if the Board of Supervisors fails to repeal an ordinance so reconsidered, to approve or reject it at a Township election.

401.3. Board of Supervisors Proposal: The Township shall have the power to propose an ordinance directly on a ballot, allowing Township voters to adopt or reject the ordinance at a Township election.

SECTION 402. INITIATIVE.

Any five (5) qualified voters, designated as a Committee of the Petitioners, may commence initiative and referendum proceedings by filing with the Township Manager an affidavit stating their names and addresses and specifying the address to which all notices to the Petitioners' Committee are to be sent, and setting out in full the proposed ordinance or citing the ordinance sought to be reconsidered. Promptly, but no more than five (5) days after the submission of the petition, after the affidavit of the Petitioners' Committee is filed, the Township Manager shall issue the appropriate blank petitions to the Petitioners' Committee, at the committee's expense.

SECTION 403. PETITIONS.

403.1. Initiative and referendum petitions must be signed by qualified voters of the Township in number equal to at least fifteen (15%) per cent of the total number of qualified voters registered to vote at the last municipal election.

403.2. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Petitions may be executed in separate parts provided all executed versions contain all required information. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

403.3. Each petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that they personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in the circulators presence, that the circulator believes them to be the genuine signatures of those whose names they purport to be, and that

each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

403.4. Petitions for referendum must be filed within thirty (30) days after the effective date of the ordinance sought to be reconsidered. Petitions for initiative must be filed within thirty (30) days of filing a petitioners' committee.

SECTION 404. PROCEDURE AFTER FILING.

404.1. Township Manager Review. Within twenty (20) days after the petition is filed, the Township Manager shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, and shall promptly send a copy of the certificate to the Petitioners' Committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the Petitioners' Committee files a notice of intention to amend it with the Manager within two business (2) days after receiving the copy of their certificate, and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of Section 403 herein; and within five days after it is filed, the Township Manager shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the Petitioners' Committee by registered mail as in the case of an original petition. If a petition is certified insufficient and the Petitioners' Committee does not elect to amend or request Board of Supervisors review (under Section 404.2 to follow) within the time required, the Township Manager shall promptly present their certificate to the Board of Supervisors and the certificate shall then be a final determination as to the sufficiency of the petition.

404.2. Board of Supervisors Review. If a petition has been certified insufficient and the Petitioners' Committee does not file notice of intention to amend or if an amended petition has been certified insufficient, the Petitioners' Committee may, within two business (2) days after receiving a copy of the certificate, file a request that it be reviewed by the Board of Supervisors. The Board of Supervisors shall review the certificate at its next meeting following the such request. The Board of Supervisors shall provide an opportunity for the Petitioners' Committee to present the petition to the Board of Supervisors. Thereafter, the Board of Supervisors shall approve or

disapprove the petition. The Board of Supervisors' determination shall then be a final determination as to the sufficiency of the petition.

404.3. Court Review; New Petition. A final determination as to the insufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

SECTION 405. EFFECT OF REFERENDUM PETITION ON ORDINANCE.

When a referendum petition is filed with the Township Manager, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- a. There is a final determination of insufficiency of the petition, or
- b. The Petitioners' Committee withdraws the petition, or
- c. The Board of Supervisors repeals the ordinance, or
- d. Thirty (30) days have elapsed after a vote of the Township electorate on the ordinance.

SECTION 406. ACTION ON PETITIONS.

406.1. By the Board of Supervisors. When an initiative or referendum petition has been determined sufficient, the Board of Supervisors shall promptly consider the adoption of the proposed initiative ordinance, or reconsider the referred ordinance as requested and vote upon its repeal. If the Board of Supervisors fails to adopt a proposed ordinance without change in substance within sixty (60) days or fails to repeal a reconsidered ordinance within thirty (30) days after the date on which the petition was finally determined sufficient, the Board of Supervisors shall submit the proposed ordinance or the reconsidered ordinance to the voters of the Township.

406.2. Submission to Voters. Consideration of a proposed or referred ordinance by the qualified voters of the Township shall be held not less than sixty (60) days and not more than one year after the date of the final the Board of Supervisors vote thereon. If no regular election or primary is to be held within the period so prescribed, the Board of Supervisors shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Board of Supervisors may in its

discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

SECTION 407. BOARD OF SUPERVISORS PROPOSAL.

The Board of Supervisors may enact an ordinance that authorizes an election to be submitted to voters on an ordinance proposed by the Board of Supervisors. The election shall be held not less than sixty (60) days and not more than one year after authorization.

SECTION 408. ASSET MONETIZATION TRIGGER.

An ordinance authorizing the Township to enter an asset purchase agreement or an asset lease agreement of Township owned property to a non-governmental entity that would result in the Township receiving compensation that exceeds twenty-five (25%) percent of that year's budgeted revenue shall be required to be presented to voters in the manner described by Section 407 of this Charter.

SECTION 409. RESULTS OF ELECTION.

409.1. Initiative or Board of Supervisors Proposal. If a majority of the qualified electors voting on a proposed ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances adopted by the Board of Supervisors. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

409.2 Referendum. If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

SECTION 410. EXEMPTIONS.

The following types of ordinances shall be exempt from the processes described in this Article.

- a. Ordinances related to the budget or capital program
- b. Ordinances related to the compensation of Township personnel
- c. Emergency ordinances
- d. Ordinances authorizing elections
- e. Ordinances related to powers of the Township that are preempted from home rule
- f. An initiative or referendum that would violate applicable Laws of the Commonwealth of Pennsylvania

ARTICLE V

TRANSPARENCY

SECTION 501. AVAILABILITY OF DOCUMENTS.

After the effective date of this Charter, any ordinance or any other document that is required to be advertised and made available at the Township for public review must also be made available on the publicly accessible Township website. The Township shall make adopted ordinances available on the publicly accessible Township website by their effective date.

SECTION 502. TERM INFORMATION.

The Township shall make available on the publicly accessible Township website the names, any vacancies, and the dates of the end of terms of all Township elected officials and Township appointed members of authorities, boards, and commissions.

SECTION 503. CONTACT INFORMATION.

The Township shall make available on the publicly accessible Township website the contact information of all Township elected officials. The Township shall make available on the publicly accessible Township website

the contact information of the chairs of all Township appointed authorities, boards, and commissions.

SECTION 504. BALLOT QUESTION PUBLIC MEETING.

Any time there is at least one Township specific ballot question in pursuit of Article IV of this Charter or Applicable Laws of the Commonwealth of Pennsylvania, the Township shall hold at least one advertised public meeting, not more than thirty (30) days nor fewer than fourteen (14) days prior to the date of the election that the ballot question(s) shall appear. Prior to the date of the meeting the Township shall send mail that list the date and location of the meeting and the text of the ballot question(s) in full. The Board of Supervisors may provide an explanation of the ballot question(s) at this meeting. If a ballot question was commenced by Section 402, the Petitioner's Committee shall be allowed at least 10 minutes to motivate the ballot question. At least one (1) hour of public comment shall be made available if there are residents or taxpayers who would like to speak.

ARTICLE VI

RIGHT TO PUBLIC OWNERSHIP OF POTABLE WATER SYSTEMS, WASTEWATER SYSTEM, AND STORM SEWER SYSTEMS

SECTION 601. POTABLE WATER, WASTEWATER, AND STORM SEWER SYSTEM SALE PROHIBITION.

The Township, municipal authorities incorporated by the Township, or any other governmental entity that owns and/or operates a Potable Water System, a Wastewater system, or a Storm Water System in the Township, shall not permanently sell, transfer, assign, or deliver ownership or operation of the Potable Water System, the Wastewater System, or the Storm Water System to a non-governmental entity.

SECTION 602. POTABLE WATER, WASTEWATER, AND STORM SEWER SYSTEM LEASE RESTRICTION.

The Township, municipal authorities incorporated by the Township, or any other governmental entity that owns and/or operates a Potable Water System, a Wastewater system, or a Storm Water System in the Township, shall not lease, transfer, assign, or deliver ownership or operation of the Potable Water System, Wastewater system, or Storm Water System to a non-governmental entity for a period of longer than 2 years.

SECTION 603. MUNICIPAL AUTHORITY.

Any Municipal Authority that exists as of the date of adoption of this Home Rule Charter or that is hereafter created or modified pursuant to the 53 Pa.C.S. §§5601, et. seq., shall be created, renewed or modified in such a way that the Articles of Incorporation or other governing document(s) shall prohibit any activity of such Municipal Authority from acting or failing to act in a manner that is inconsistent with or frustrates the intent and/or terms of this Home Rule Charter. Any Municipal Authority that acts or fails to act in such a manner shall be dissolved and all assets owned by the Municipal Authority shall be deeded, conveyed and transferred to Towamencin Township.

SECTION 604. SALE OF ANY SYSTEM TO A GOVERNMENTAL ENTITY.

Any sale by the Township of its Potable Water System, Wastewater System or Storm Water System shall be predicated upon and include a covenant between Township as seller and the buyer that the purchasing governmental entity is prohibited from transferring ownership of the system to be sold to a non-governmental entity upon or after purchase. Furthermore, any creation, extension, renewal or modification of Article of Incorporation of a Municipal Authority on or after the date of adoption of this Home Rule Charter, in accordance with Section 603 of this Charter, shall include a similar prohibition against the sale of any assets of the Municipal Authority to a non-governmental entity.

SECTION 605. NORTH PENN WATER AUTHORITY.

The provisions of this Charter shall not apply to the North Penn Water Authority or any future proposed sale, transfer or lease of its assets except that, to the extent that the North Penn Water Authority's Articles of Incorporation, as they exist now or as they may be amended in the future, require the Township's approval for the sale, transfer or lease of the assets of the North Penn Water Authority, the Township shall be prohibited from approving or supporting the sale, transfer or lease of the assets of the North Penn Water Authority to a non-governmental entity as set forth herein. Nothing herein shall be construed to require the dissolution or re-incorporation of the North Penn Water Authority or the Township's withdrawal therefrom or from prohibiting the Township from satisfying its obligations with regard to the Articles of Incorporation. If the North Penn Water Authority is dissolved and any portion of its assets are transferred or sold to the Township, the provisions of this Charter shall apply.

ARTICLE VII

GENERAL PROVISIONS

SECTION 701. TRANSITION.

701.1. Rights and Liabilities of the Township. Except as provided in this Charter, the Township shall continue to own, possess, and control all rights and property of every kind and nature, owned, possessed or controlled by it when this Charter takes effect, and shall be subject to all its debts, obligations, liabilities, and duties.

701.2. Elected Officers. In accordance with Article 2 hereof, all persons elected as Supervisors under the provisions of the Second Class Township Code, 53 P.S. §§ 65101, et seq., shall continue to be called Supervisors on the effective date of this Charter. They shall have the responsibilities, duties, compensation, and authority only as set forth in and in pursuance of this Charter. All other elected officials of the Township in office at the time this Charter becomes effective shall remain in office for the full term for which they were elected and they shall continue to perform the duties and receive the same compensation which they received prior to the adoption of this Charter. Nothing herein shall be construed to prohibit the Board of Supervisors or the Township from adjusting the compensation of any elected or appointed official as permitted by all applicable laws, or adjusting

the salary or compensation of any employee or contractor as permitted by applicable law and/or any applicable contract.

701.3. Township Employees. Employees of the Township shall retain all rights and privileges held at the time this Charter becomes effective.

701.4. Continuation of Ordinances. All ordinances, resolutions, rules and regulations, or portions thereof, in force when this Charter takes effect and not in conflict herewith, are hereby continued in force and effect until amended, repealed, superseded, or expired by their own terms. All ordinances and resolutions in continued effect as of the effective date of this Charter shall be construed as if enacted under this Charter, but as of the date of their original enactment.

701.5. Members of Boards, Commissions, and Authorities. Members of boards, commissions, and authorities in office at the time this Charter takes effect shall remain in office for as long as their respective terms of appointment continue.

SECTION 702. SEVERABILITY.

It is the intention of the electors of the Township that if this Charter cannot take effect in its entirety because of the judgment of any court of competent jurisdiction holding invalid any part or parts hereof, the remaining provisions of the Charter shall be given full force and effect as completely as if the part or parts held invalid had not been included herein.

SECTION 703. AMENDMENTS TO THE CHARTER.

Amendments to this Charter shall be in conformity with the provisions of applicable Laws of this Commonwealth.

SECTION 704. EFFECTIVE DATE.

This Charter shall become effective and shall be deemed operative on July 1st, 2023.

Expense List

Statement of Funds, Materials and Services Used

The Government Study Commission was funded by the Township of Towamencin. The budget was estimated to be \$37,136.86 to finance the cost of the Government Study Commission. This budget was provided to Towamencin Township at the Board of Supervisors meeting on January 11, 2023.

Legal services were funded by the Township but not provided by the Towamencin Township Solicitor. The Government Study Commission Solicitor was Rudolph Clarke, LLC. The mailings were done at Minuteman Press. The website was hosted by Squarespace and maintained by volunteer residents Vanessa Gaynor and Lea Munjone. Printing was done at the UPS store.

The requested budget was:

<u>Legal Services</u>	<u>Original Budget</u>	<u>Current Invoiced</u>	<u>Deviation to Date</u>
Solicitor	\$21,525.	\$11,816.	
Court Reporter	\$1,100.	0	
Legal Notices	<u>\$612.</u>	<u>\$735.39</u>	-\$123.39 (1 Notice remains)
Sub-Total	\$23,237.	\$12,551.39	
<u>Communications</u>			
Mailings	\$12,912.77	\$3,146.39	
Website	\$165.04	\$67.52	0
Zoom (\$42.38/mo)	\$254.28	\$169.56 (4 months)	0
Town Hall meeting	\$10.	0	0
Printing	<u>\$558.</u>	<u>\$224.42</u>	0
Sub-Total	\$13,900.09	\$3,607.89	
Total	\$37,137.09	\$16,159.28	

Resource List

Home Rule Charter Handbook	https://dced.pa.gov/download/home-rule-pa-pdf/
Title 53 - Municipalities Generally	https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=53
Title 66 - Public Utilities	https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=66
Pennsylvania Constitution	https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.HTM
Towamencin Township Website	https://www.towamencin.org/
Hatfield Township Website	https://www.hatfield.org/
Worcester Township Website	https://www.worcestertwp.com/
Upper Gwynedd Township Website	https://www.uppergwynedd.org/
Lower Gwynedd Township Website	https://www.lowergwynedd.org/
Plymouth Township Website	https://www.plymouthtownship.org/
Plymouth Township Home Rule Charter	https://www.plymouthtownship.org/government/plymouth-township-charter/
Norristown Borough Home Rule Charter	https://ecode360.com/12078289
Horsham Township Home Rule Charter	https://ecode360.com/9949311
Baltimore Charter	https://legislative.reference.baltimorecity.gov/sites/default/files/01%20-%20Charter%20(rev%20%2008DEC22).pdf
Franconia Township Website	https://www.franconiatownship.org/
Lansdale Borough Website	https://www.lansdale.org/
Public Utility Commission Website	https://www.puc.pa.gov/
Act 537 plan and NextEra Asset Purchase Agreement	https://www.towamencin.org/media/2478/21-04016t_towamencin-act-537-special-study-report.zip
Towamencin Ordinances	https://ecode360.com/TO0773
1968 Act 247 - Pennsylvania Municipalities Planning Code	https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1968/0/0247.HTM
PA Department of Community and Economic Development	https://dced.pa.gov/
Second Class Township Code	https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1933/0/0069.HTM

Interviews/Requests

Colleen Ehrle, Director of Admin Towamencin Township	Materials and Guidance on Committee, Commission, and Supervisor terms and vacancies
Communication from David Kraynik, Twp Manager, Towamencin	Materials on current residents (non-commercial) connected to Sewer versus number of residents (non-commercial) not connected to Sewer
Communication from Joyce Snyder, Towamencin Supervisor	Materials on the process of committee and commission appointments
Fred Chapman, PA Department of Community and Economic Development (DCED)	Discussion on role of DCED and support available to the Commission
Chris Manero, Plymouth Township Council Chair	Discussion on Plymouth's existing Home Rule Charter, including benefits and challenges, as well as how it has been used
David McMahon, Norristown Resident and Activist	Discussion on Norristown's existing Home Rule Charter, including benefits and challenges, as well as how it was used to stop the sale of their sewer
Tony Bellito: North Penn Water Authority Executive Director and Past President of Pennsylvania Municipal Authorities Association	History and general information on the North Penn Water Authority
Tim Hagey: Warminster Municipal Authority General Manager	General information about Warminster Municipal Authority
Tour of the Towamencin Sewer Plant	Review the plant, including the history, function, and any challenges

Form of the Question

To be placed on the May 16th, 2023 Primary Ballot

Question: Shall the Home Rule Charter contained in the report, dated March 9th, 2023, of the government study commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by the Second Class Township of Towamencin?

(yes/no)

Interpretive Statement: If the majority of voters choose "Yes", a new Home Rule Charter would be adopted by Towamencin Township on July 1, 2023. Should the majority of voters choose "No", the existing second class township code and all its existing provisions will remain in effect.

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WE, the COMMISSIONERS of the TOWAMENCIN TOWNSHIP GOVERNMENT STUDY COMMISSION, duly-elected and appointed, by affixing our signatures below, hereby swear or affirm that the facts presented, statements made, and expenses and resources listed (including all funds, goods, materials and services, both public and private, used in the performance of the Commission's work and preparation and filing of all official documents of the Commission) in the foregoing TOWAMENCIN TOWNSHIP GOVERNMENT STUDY COMMISSION REPORT are true and correct. We understand that any false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4903.

Sworn to and subscribed this 9th day of March, 2023.



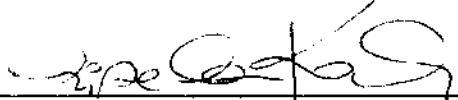
Kofi Osei, Chair



Jennifer Foster, Vice Chair



Christina Gallagher, Chair Pro Tempore



Gisela Koch, Secretary



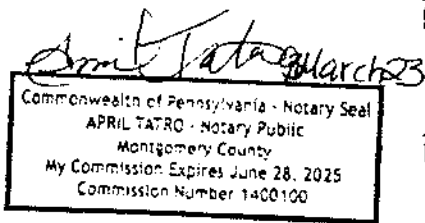
Joseph Rumsey, Vice Secretary



Martin Cohen, Treasurer



Mark Warren, Vice Treasurer



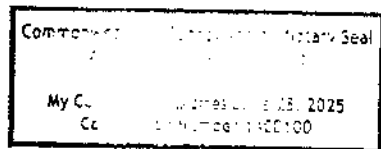


EXHIBIT D

RECEIVED

TOWAMENCIN TOWNSHIP



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it is required should an appeal be necessary. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Towamencin Township (Attn: AORO)

Date of Request: 3/9/2023 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Jennifer Foster Company (if applicable): _____

Mailing Address: _____

City: _____

Telephone: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. Use additional sheets if necessary. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law.*

All communications on Township issued and/or personal email addresses, as well as text messages between any Township Supervisor and another Supervisor or Supervisors, a Township Staff Member, and/or a Township resident or ratepayer with regard to Nextera, PA American Water, negotiations or agreements of transfers between parties, including the Township, and/ or any penalties with regard to the Asset Purchase Agreement between Nextera and the Township. Please provide all communications between 11/2022 and present.

DO YOU WANT COPIES? Yes, electronic copies preferred if available
 Yes, printed copies preferred
 No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No
RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.
Please notify me if fees associated with this request will be more than \$100 (or) \$_____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: 3/9/23 Response Due (5 bus. days): 3/16/23

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$ _____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record. More information about the RTKL is available at <https://www.openrecords.pa.gov> Form updated Nov. 27, 2018

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

EXHIBIT E

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.



May 8, 2023

SENT BY EMAIL ONLY

JENNIFER FOSTER



**RE: TOWAMENCIN TOWNSHIP
RIGHT-TO-KNOW
3/9/23 Foster Request #1
Agency Response**

Dear Ms. Foster:

On March 9, 2023, you made a record request to the Township (“Request”) under Pennsylvania’s Right-to-Know Law (“Law”).¹ On March 15, 2023, the Township forwarded a Section 902 Notice for a 30-day extension indicating a response, with the benefit of the weekend, would be Monday, April 17, 2023. On March 16, 2023, at the Township’s request you amended your Request clarifying/specifying who was to be included in your Request’s reference to “township staff”. For ease of reference, your Request, as amended, is attached. Thereafter, on April 14, 2023, you agreed to further extend the Township’s response to Monday, May 8, 2023. This letter shall serve as the Township’s timely response (“Response”).

Your Request is DENIED in part and GRANTED in part.

Specifically, to the extent that existing records deemed responsive to your Request are protected by attorney-client privilege, attorney work-product doctrine,² and/or constitute internal, pre-decisional records,³ access is denied because such records are expressly exempt from access under the Law. Otherwise, access is granted. Existing records deemed responsive to your Request are attached.

¹ 65 P.S. §67.101 *et seq.*

² See *Bousamra v. Excelsa Health*, 210 A.3d 967, 982-83 (Pa. 2019) (citing *Nationwide Mut. Ins. Co. v. Fleming*, 924 A.2d 1259, 1263-64 (Pa. Super. Ct. 2007), *aff’d* 992 A.2d 65 (2010)) and Pa.R.C.P. 4003.3.

³ See also §67.708(b)(10)[Pre-Decisional Exemption][exempting from access records that are internal, pre-decisional in nature relative to, among other things, a course of action].

1090 TROXEL ROAD LANSDALE, PA 19446

PHONE 215.368.7602 FAX 215.368.7650 E-MAIL info@towamencin.org WEB www.towamencin.org



You have a right to appeal from this Response to the Office of Open Records, at 333 Market St., 16th Floor, Harrisburg, PA 17101-2234 or online at the Office of Open Records [website](#). The appeal must be filed within 15 business days from the date of this Response.⁴ More information about how to file an appeal under the Law is available at www.openrecords.pa.gov.

This correspondence will serve to close this record with our office as permitted by Law. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Colleen Ehrle".

Colleen Ehrle

Director of Administration and Open Records Officer

Attachment

Email copy sent to:

Robert J. Iannozzi Jr, Esquire

⁴ See 65 P.S. § 67.1101 [Filing of Appeal].

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Robert J. Iannozzi, Jr

From: Jenn Foster
Sent: Thursday, March 16, 2023 12:58 PM
To: Colleen Ehrle
Cc: David Kraynik; Robert J. Iannozzi, Jr
Subject: Re: FW: RTKL Requests

Thanks, Colleen! For Request 1, Township Staff can be narrowed to include the following:

- Colleen Ehrle
- Dave Kraynik
- Dennis Carney (interim manager)
- Adam Szumski
- Carolyn Shisler and anyone within the engineer's office
- Diane Hickey
- Any member of PFM consulting staff

On Thu, Mar 16, 2023 at 11:44 AM Colleen Ehrle <cehrle@towamencin.org> wrote:

Good morning Jenn,

Please find the two responses to your right to know requests dated 3/9/23.


Request 1 warrants a 30-day extension due to the extent of review and time involved. Per our conversation, if you have specific Township staff members you could reference to help save time that would be appreciated. Request 2 is granted with attached documentation for your review.

Regards,

Colleen Ehrle
Director of Administration
Towamencin Township
(215) 368-7602
www.towamencin.org

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

From: Jenn Foster [REDACTED]
Sent: Thursday, March 9, 2023 1:47 PM
To: Info Towa <info@towamencin.org>
Subject: RTKL Requests

 This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon! Please see attached RTKL Requests.

Thank you!

Jenn Foster

This email has been scanned for spam and viruses. Click [here](#) to report this email as spam.

Robert J. Iannozzi, Jr

From: Richard Marino <rmarino@towamencin.org>
Sent: Tuesday, November 29, 2022 11:12 AM
To: Garrett Moore; Mooney, Eric; Donald Delamater; Chuck Wilson; H. Charles Wilson, III; llagrec@dbdlaw.com; epreatehavey; mfeller; 'John T. Dooley'; Scott Shearer; Comeaux, Ross; William Dingman; Dennis Carney
Cc: Williams, Aundrea; Flynn, Michael R; Patru, Simona; Chuck Wilson
Subject: Re: Towamencin/NextEra Chat

Good Morning:

With the Holiday last week it makes sense that there is nothing to report. I am OK cancelling for this week.

RM2

Richard M. Marino II
Supervisor
Towamencin Township
(215) 368-7602

From: Garrett Moore <mooreg@pfm.com>
Sent: Tuesday, November 29, 2022 10:04 AM
To: Mooney, Eric <Eric.Mooney@nexteraenergy.com>; Donald Delamater <ddelamater@towamencin.org>; Chuck Wilson <cwilson@lowergwynedd.org>; H. Charles Wilson, III <cwilson@towamencin.org>; Richard Marino <rmarino@towamencin.org>; llagrec@dbdlaw.com <riannozzi@dbdlaw.com>; epreatehavey <epreatehavey@dilworthlaw.com>; mfeller <mfeller@dilworthlaw.com>; 'John T. Dooley' <jdooley@dbdlaw.com>; Scott Shearer <shearers@pfm.com>; Comeaux, Ross <Ross.Comeaux@nexteraenergy.com>; William Dingman <wdingman@gilmore-assoc.com>; Dennis Carney <dcarney@towamencin.org>
Cc: Williams, Aundrea <Aundrea.Williams@nexteraenergy.com>; Flynn, Michael R <Michael.R.Flynn@NextEraWater.com>; Patru, Simona <Simona.Patru@nexteraenergy.com>; Chuck Wilson <hcw3@aol.com>
Subject: RE: Towamencin/NextEra Chat

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Eric,

That's fine with PFM. We did want to chat with you and your counsel at some point regarding some of the extraterritorial customers.

I don't think we need the whole group for that call.

Let us know your availability.

Thanks,

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Garrett F. Moore
Senior Analyst

****PLEASE NOTE OUR NEW MAILING ADDRESS ****

PFM Financial Advisors LLC
mooreg@pfm.com | 717.213.3812 **DIRECT DIAL**
100 Market Street | Harrisburg, PA 17101
pfm.com

From: Mooney, Eric <Eric.Mooney@nexteraenergy.com>
Sent: Tuesday, November 29, 2022 9:26 AM
To: Garrett Moore <mooreg@pfm.com>; Donald Delamater <dldelamater@towamencin.org>; Chuck Wilson <cwilson@lowergwynedd.org>; H. Charles Wilson, III <cwilson@towamencin.org>; rmarino@towamencin.org; llagrec@dbdlaw.com <riannozi@dbdlaw.com>; epreatehavey <epreatehavey@dilworthlaw.com>; mfeller <mfeller@dilworthlaw.com>; 'John T. Dooley' <jdooley@dbdlaw.com>; Scott Shearer <shearers@pfm.com>; Comeaux, Ross <Ross.Comeaux@nexteraenergy.com>; William Dingman <wdingman@gilmore-assoc.com>; dcarney@towamencin.org
Cc: Williams, Aundrea <Aundrea.Williams@nexteraenergy.com>; Flynn, Michael R <Michael.R.Flynn@NextEraWater.com>; Patru, Simona <Simona.Patru@nexteraenergy.com>; Chuck Wilson <hcw3@aol.com>
Subject: RE: Towamencin/NextEra Chat

ALERT: This message is from an external source. BE CAUTIOUS before clicking any link or attachment

I hope everybody had a great Thanksgiving.

Chuck / Rich: We don't have anything new to report today given the holiday week last week and were wondering if we should just cancel today's meeting and reconvene next Tuesday. Let us know if that is ok.

Eric Mooney
eric.mooney@nee.com
(w) 561-304-5315
(m) 561-797-1036

-----Original Appointment-----

From: Garrett Moore <mooreg@pfm.com>
Sent: Monday, September 19, 2022 8:45 AM
To: Garrett Moore; Donald Delamater; Chuck Wilson; H. Charles Wilson, III; rmarino@towamencin.org; llagrec@dbdlaw.com; epreatehavey; mfeller; 'John T. Dooley'; Scott Shearer; Comeaux, Ross; Mooney, Eric; William Dingman; dcarney@towamencin.org
Cc: Williams, Aundrea; Flynn, Michael R; Patru, Simona; Chuck Wilson
Subject: Towamencin/NextEra Chat
When: Tuesday, November 29, 2022 1:00 PM-1:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM, Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Join on your computer, mobile app or room device

[Join on your computer, mobile app or room device](#)

Meeting ID: 263 415 721 395

Passcode: CN625d

Or call in (audio only)

United States, Chicago

Phone Conference ID: 291 877 096#

Robert J. Iannozzi, Jr

From: H. Charles Wilson, III <cwilson@towamencin.org>
Sent: Tuesday, November 15, 2022 1:02 PM
To: Garrett Moore
Subject: Accepted: Towamencin/NextEra Chat

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Robert J. Iannozzi, Jr

From: H. Charles Wilson, III <cwilson@towamencin.org>
Sent: Monday, February 6, 2023 4:56 PM
To: David Kraynik; William Dingman
Cc: Chuck Wilson; Richard Marino; John T. Dooley Esquire (jdooley@discheilbartle.com); Robert J. Iannozzi, Jr
Subject: Re: 537 Plan

They bill all residents the same so they would need a single bill from NextEra to maintain their current practice.

Chuck Wilson, CPA
Chairman
Towamencin Township Board of Supervisors

Home (215) 362-7943
Cell (215) 527-7880

From: David Kraynik <dkraynik@towamencin.org>
Sent: Monday, February 6, 2023 11:43 AM
To: William Dingman <wdingman@gilmore-assoc.com>
Cc: H. Charles Wilson, III <cwilson@towamencin.org>; Chuck Wilson <hwc3@aol.com>; Richard Marino <rmarino@towamencin.org>; John T. Dooley Esquire (jdooley@discheilbartle.com) <jdooley@discheilbartle.com>; Robert J. Iannozzi, Jr <riannozzi@dbdlaw.com>
Subject: FW: 537 Plan

Bill:
Please find attached a letter from Upper Gwynedd Township regarding the 537 Special Study.
Please prepare an appropriate response.

Thank you.

Dave
David G. Kraynik
Township Manager
Towamencin Township
Dkraynik@towamencin.org

From: Sandra Zadell <szadell@uppergwynedd.org>
Sent: Monday, February 6, 2023 11:18 AM
To: David Kraynik <dkraynik@towamencin.org>
Subject: 537 Plan

WARNING: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Hi Dave,

I hope you had a lovely weekend. Please find attached a letter from me re your 537 plan. A hard copy will follow via certified mail.

If you have any questions please feel free to give me a call.

Thanks!
Sandra



Sandra Zadel (She, her, hers)

Township Manager
Upper Gwynedd Township

Phone: 215-699-7777

Mobile: 215-317-5882

Web: www.uppergwynedd.org

1 Parkside Place, North Wales PA 19454



Get the Gazette! Sign up for our [enews](#) and never be left wondering what is going on in this amazing community!

From: scanner@uppergwynedd.org <scanner@uppergwynedd.org>

Sent: Monday, February 6, 2023 11:08 AM

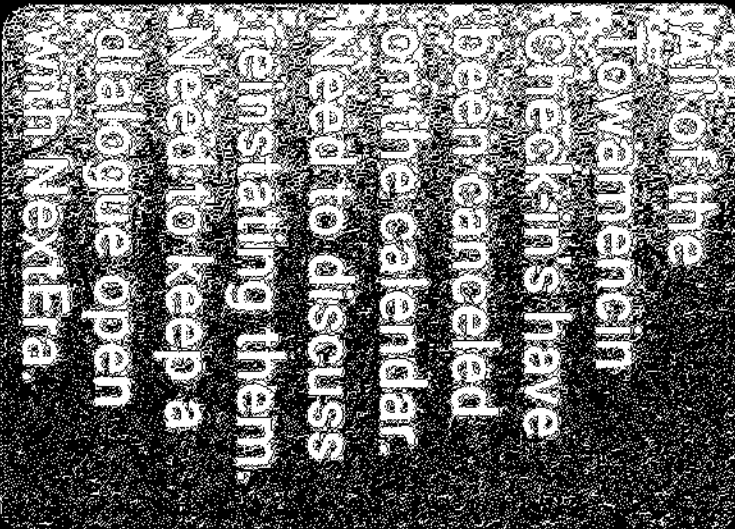
To: Sandra Zadel <szadel@uppergwynedd.org>

Subject: Attached Image

< 'Chuck Wilson' ⌵ ⋮

7:57 am

Tuesday, 3 January



11:18 am

Wednesday, 18 January

📧 + 📷 🌐 📶

☰ ○ <

< 'Chuck Wilson' > :

8:32 pm

Not sure how the PA American deal would go with the valuation. Could we accept something below market value??

I don't think it is the same as selling real estate.

8:35 pm

8:36 pm

Probably not thinking about the optics as well.

Have to learn more. Could be the answer and a quicker close.

8:36 pm

8:37 pm

Agreed on both counts.





'Chuck Wilson'



Wednesday, 7 December 2022

Rich can you meet for a TMA capital meeting with Mike on Friday at 3:00?

1:51 pm

Also what is your availability on Monday or Tuesday for team meeting on how to proceed to with Nextera?

1:56 pm

2:10 pm



< 'Chuck Wilson' :

Sunday, 27 November 2022

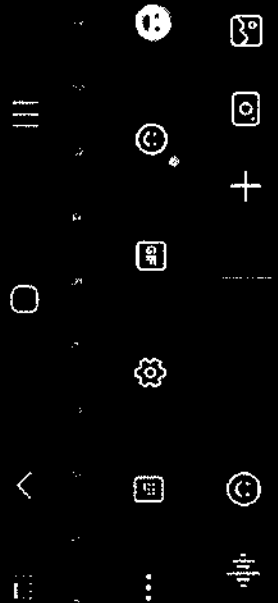
Hi Joe, you had a nice Thanksgiving. We have an invitation to dinner with NextEra for tomorrow evening. I have not responded but I am available. If you can't make it, I can go. Let me know what you think.

11:52 am

Monday, 28 November 2022

Are you OK meeting NextEra for breakfast tomorrow???

1:31 pm





Scott Shearer

Friday, 16 December 2022

the main business
guy at pa American
water would like to
chat this afternoon
after our 2:30 call.
was thinking just
you,me,him, and
chuck if available.
are you OK with
doing it?

11:12 am

11:13 am

I should be OK

great...thanks

11:14 am

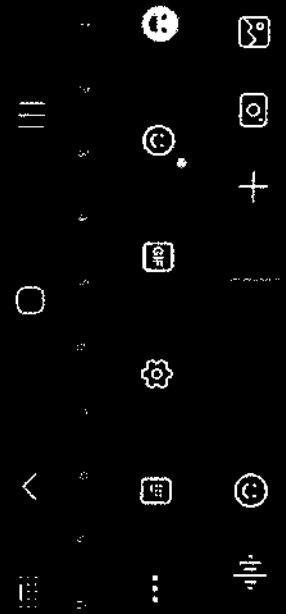


EXHIBIT F

PROPOSED TOWAMENCIN TOWNSHIP HOME RULE CHARTER

PREAMBLE

We, the people of Towamencin Township in Montgomery County, under authority granted by the Constitution and the Laws of the Commonwealth of Pennsylvania to adopt Home Rule Charters do hereby ordain and adopt this Home Rule Charter to establish a council-manager form of government with full rights of local self-government. We do so primarily to reaffirm our right to public ownership of water, wastewater and storm sewer systems as given to us in Article I, § 27 of the Constitution of the Commonwealth of Pennsylvania.

ARTICLE I

NAME, BOUNDARIES, DEFINITIONS, AND POWERS

SECTION 101. NAME.

Towamencin Township is continued as a municipality in Montgomery County, Pennsylvania, and is hereby established as a municipal corporation under the name of Towamencin Township and shall herein be referred to as the "Township."

SECTION 102. BOUNDARIES.

The boundaries of Towamencin Township shall be the actual boundaries of the Township at the time this Charter takes effect and as they may be lawfully changed thereafter.

SECTION 103. DEFINITIONS.

Unless otherwise expressly stated in this Charter, the following words and phrases shall be construed to have the following meanings:

- a. The term “Charter” shall refer to the Home Rule Charter of Towamencin Township, Montgomery County, Pennsylvania.
- b. The term “Potable Water System” shall refer to all real property, appurtenant interests, and facilities necessary for diverting, developing, pumping, impounding, distributing or furnishing water to customers for compensation.
- c. The term “Wastewater System” shall refer to all real property, appurtenant interests, and facilities necessary for wastewater collection, conveyance, treatment or disposal to customers for compensation.
- d. The term “Storm Water System” shall refer to all real property, appurtenant interests, and facilities necessary for storm water collection, conveyance, treatment and disposal.

SECTION 104. POWERS.

The Township has, and may exercise, any powers, and may perform any function not denied by the Constitution of the United States or the Constitution of the Commonwealth of Pennsylvania, by this Charter, or by an act of the General Assembly at any time. It is the intent of this Charter that the Township shall have all powers possible under the Constitution and Laws of this Commonwealth, except as may be set forth herein, whether or not such powers and functions are being exercised at the time of the adoption of this Charter.

SECTION 105. RESIDUAL POWERS.

All powers of the Township, including any such power which may hereafter be conferred on the Township by an amendment of the Constitution of the

United States or of the Constitution of Pennsylvania or of this Charter or by act of the General Assembly, unless otherwise specifically set forth in this Charter, shall be vested in the Township's governing body. The governing body shall be elected, shall organize, and shall function as provided in this Charter.

SECTION 106. MUNICIPAL CLASS RETENTION.

Unless otherwise expressly stated in this Charter, the Township will retain the structure, privileges, rights, and duties and limitations thereon of a Township of the Second Class, as provided by 53 P.S. §§ 65101, et seq., not subject to this Charter. The Township may change its underlying class in any way that is provided to Townships of the Second Class by the Laws of this Commonwealth. If the Township changes its underlying class, all references to the Second Class Township Code in this Charter will thereafter refer to the new class and all references to the Board of Supervisors in this Charter will refer to the new form of governing body.

SECTION 107. CONSTRUCTION.

The powers of the Township under this Charter shall be liberally construed in favor of the Township, and the specific mention of particular powers in this Charter shall not be construed as limiting in any way the general power stated in this article. All possible powers of the Township, except as limited in Section 104 and Section 106 above, are to be considered as if specifically and individually set forth in this article, whether such powers are presently available to the Township or may hereafter from time to time become available.

ARTICLE II

ELECTED OFFICES

SECTION 201. ELECTED OFFICE RETENTION.

Unless otherwise expressly stated in this Charter, the Township shall retain the elected offices of a Township of the Second Class. All privileges, election procedures, terms, rights and duties of said offices and limitations thereon shall be retained unless otherwise stated in this Charter.

SECTION 202. GOVERNING BODY.

The Township is a Township of the Second Class and its governing body is a Board of Supervisors consisting of five (5) at-large members elected to six-year terms.

ARTICLE III

FINANCIAL PROCEDURES

SECTION 301. FINANCIAL PROCEDURE RETENTION.

Unless otherwise expressly stated in this Charter, the Township shall retain the financial procedures of a Township of the Second Class.

SECTION 302. LIMITATIONS ON THE RATES OF TAXATION.

Until this Charter is amended or such time as the General Assembly shall provide uniform laws on rates of taxation which apply to a municipality with a Home Rule Charter that are stricter to such limitations of a Township of the Second Class, the Township shall continue to be subject to the limitations on the rates of taxation which apply to a Township of the Second

Class.

ARTICLE IV

INITIATIVE AND REFERENDUM

SECTION 401. GENERAL AUTHORITY.

401.1. Ordinance Initiative: The qualified voters of the Township shall have the power to propose ordinances to the Board of Supervisors and, if the Board of Supervisors fails to adopt an ordinance so proposed, shall have the power to adopt or reject it at a Township election.

401.2. Ordinance Reconsideration: The qualified voters of the Township shall have the power to require reconsideration by the Board of Supervisors of any adopted ordinance and, if the Board of Supervisors fails to repeal an ordinance so reconsidered, to approve or reject it at a Township election.

401.3. Board of Supervisors Proposal: The Township shall have the power to propose an ordinance directly on a ballot, allowing Township voters to adopt or reject the ordinance at a Township election.

SECTION 402. INITIATIVE.

Any five (5) qualified voters, designated as a Committee of the Petitioners, may commence initiative and referendum proceedings by filing with the Township Manager an affidavit stating their names and addresses and specifying the address to which all notices to the Petitioners' Committee are to be sent, and setting out in full the proposed ordinance or citing the ordinance sought to be reconsidered. Promptly, but no more than five (5) days after the submission of the petition, after the affidavit of the Petitioners' Committee is filed, the Township Manager shall issue the appropriate blank petitions to the Petitioners' Committee, at the committee's expense.

Proposed as of 3/9/2023

SECTION 403. PETITIONS.

403.1. Initiative and referendum petitions must be signed by qualified voters of the Township in number equal to at least fifteen (15%) per cent of the total number of qualified voters registered to vote at the last municipal election.

403.2. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Petitions may be executed in separate parts provided all executed versions contain all required information. Each signature shall be executed in ink or indelible pencil and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.

403.3. Each petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that they personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in the circulators presence, that the circulator believes them to be the genuine signatures of those whose names they purport to be, and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.

403.4. Petitions for referendum must be filed within thirty (30) days after the effective date of the ordinance sought to be reconsidered. Petitions for initiative must be filed within thirty (30) days of filing a petitioners' committee.

SECTION 404. PROCEDURE AFTER FILING.

404.1. Township Manager Review. Within twenty (20) days after the petition is filed, the Township Manager shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, and shall promptly send a copy of the certificate to the Petitioners' Committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the Petitioners' Committee files a notice of intention to amend it with the Manager within two business (2) days after receiving the copy of their

certificate, and files a supplementary petition upon additional papers within ten (10) days after receiving the copy of such certificate. Such supplementary petition shall comply with the requirements of Section 403 herein; and within five days after it is filed, the Township Manager shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the Petitioners' Committee by registered mail as in the case of an original petition. If a petition is certified insufficient and the Petitioners' Committee does not elect to amend or request Board of Supervisors review (under Section 404.2 to follow) within the time required, the Township Manager shall promptly present their certificate to the Board of Supervisors and the certificate shall then be a final determination as to the sufficiency of the petition.

404.2. Board of Supervisors Review. If a petition has been certified insufficient and the Petitioners' Committee does not file notice of intention to amend or if an amended petition has been certified insufficient, the Petitioners' Committee may, within two business (2) days after receiving a copy of the certificate, file a request that it be reviewed by the Board of Supervisors. The Board of Supervisors shall review the certificate at its next meeting following the such request. The Board of Supervisors shall provide an opportunity for the Petitioners' Committee to present the petition to the Board of Supervisors. Thereafter, the Board of Supervisors shall approve or disapprove the petition. The Board of Supervisors' determination shall then be a final determination as to the sufficiency of the petition.

404.3. Court Review; New Petition. A final determination as to the insufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose.

SECTION 405. EFFECT OF REFERENDUM PETITION ON ORDINANCE.

When a referendum petition is filed with the Township Manager, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- a. There is a final determination of insufficiency of the petition, or

- b. The Petitioners' Committee withdraws the petition, or
- c. The Board of Supervisors repeals the ordinance, or
- d. Thirty (30) days have elapsed after a vote of the Township electorate on the ordinance.

SECTION 406. ACTION ON PETITIONS.

406.1. By the Board of Supervisors. When an initiative or referendum petition has been determined sufficient, the Board of Supervisors shall promptly consider the adoption of the proposed initiative ordinance, or reconsider the referred ordinance as requested and vote upon its repeal. If the Board of Supervisors fails to adopt a proposed ordinance without change in substance within sixty (60) days or fails to repeal a reconsidered ordinance within thirty (30) days after the date on which the petition was finally determined sufficient, the Board of Supervisors shall submit the proposed ordinance or the reconsidered ordinance to the voters of the Township.

406.2. Submission to Voters. Consideration of a proposed or referred ordinance by the qualified voters of the Township shall be held not less than sixty (60) days and not more than one year after the date of the final the Board of Supervisors vote thereon. If no regular election or primary is to be held within the period so prescribed, the Board of Supervisors shall provide for a special election; otherwise, the vote shall be held at the same time as such regular election, except that the Board of Supervisors may in its discretion provide for a special election at an earlier date within the prescribed period. Copies of the proposed or referred ordinance shall be made available at the polls.

SECTION 407. BOARD OF SUPERVISORS PROPOSAL.

The Board of Supervisors may enact an ordinance that authorizes an election to be submitted to voters on an ordinance proposed by the Board of Supervisors. The election shall be held not less than sixty (60) days and not more than one year after authorization.

SECTION 408. ASSET MONETIZATION TRIGGER.

An ordinance authorizing the Township to enter an asset purchase agreement or an asset lease agreement of Township owned property to a non-governmental entity that would result in the Township receiving compensation that exceeds twenty-five (25%) percent of that year's budgeted revenue shall be required to be presented to voters in the manner described by Section 407 of this Charter.

SECTION 409. RESULTS OF ELECTION.

409.1. Initiative or Board of Supervisors Proposal. If a majority of the qualified electors voting on a proposed ordinance vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances adopted by the Board of Supervisors. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

409.2 Referendum. If a majority of the qualified electors voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election results.

SECTION 410. EXEMPTIONS.

The following types of ordinances shall be exempt from the processes described in this Article.

- a. Ordinances related to the budget or capital program
- b. Ordinances related to the compensation of Township personnel
- c. Emergency ordinances
- d. Ordinances authorizing elections
- e. Ordinances related to powers of the Township that are preempted from home rule
- f. An initiative or referendum that would violate applicable Laws of the Commonwealth of Pennsylvania

ARTICLE V

TRANSPARENCY

SECTION 501. AVAILABILITY OF DOCUMENTS.

After the effective date of this Charter, any ordinance or any other document that is required to be advertised and made available at the Township for public review must also be made available on the publicly accessible Township website. The Township shall make adopted ordinances available on the publicly accessible Township website by their effective date.

SECTION 502. TERM INFORMATION.

The Township shall make available on the publicly accessible Township website the names, any vacancies, and the dates of the end of terms of all Township elected officials and Township appointed members of authorities, boards, and commissions.

SECTION 503. CONTACT INFORMATION.

The Township shall make available on the publicly accessible Township website the contact information of all Township elected officials. The Township shall make available on the publicly accessible Township website the contact information of the chairs of all Township appointed authorities, boards, and commissions.

SECTION 504. BALLOT QUESTION PUBLIC MEETING.

Any time there is at least one Township specific ballot question in pursuit of Article IV of this Charter or Applicable Laws of the Commonwealth of Pennsylvania, the Township shall hold at least one advertised public meeting, not more than thirty (30) days nor fewer than fourteen (14) days

prior to the date of the election that the ballot question(s) shall appear. Prior to the date of the meeting the Township shall send mail that list the date and location of the meeting and the text of the ballot question(s) in full. The Board of Supervisors may provide an explanation of the ballot question(s) at this meeting. If a ballot question was commenced by Section 402, the Petitioner's Committee shall be allowed at least 10 minutes to motivate the ballot question. At least one (1) hour of public comment shall be made available if there are residents or taxpayers who would like to speak.

ARTICLE VI

RIGHT TO PUBLIC OWNERSHIP OF POTABLE WATER SYSTEMS, WASTEWATER SYSTEM, AND STORM SEWER SYSTEMS

SECTION 601. POTABLE WATER, WASTEWATER, AND STORM SEWER SYSTEM SALE PROHIBITION.

The Township, municipal authorities incorporated by the Township, or any other governmental entity that owns and/or operates a Potable Water System, a Wastewater system, or a Storm Water System in the Township, shall not permanently sell, transfer, assign, or deliver ownership or operation of the Potable Water System, the Wastewater System, or the Storm Water System to a non-governmental entity.

SECTION 602. POTABLE WATER, WASTEWATER, AND STORM SEWER SYSTEM LEASE RESTRICTION.

The Township, municipal authorities incorporated by the Township, or any other governmental entity that owns and/or operates a Potable Water System, a Wastewater system, or a Storm Water System in the Township, shall not lease, transfer, assign, or deliver ownership or operation of the Potable Water System, Wastewater system, or Storm Water System to a non-governmental entity for a period of longer than 2 years.

SECTION 603. MUNICIPAL AUTHORITY.

Any Municipal Authority that exists as of the date of adoption of this Home Rule Charter or that is hereafter created or modified pursuant to the 53 Pa.C.S. §§5601, et. seq., shall be created, renewed or modified in such a way that the Articles of Incorporation or other governing document(s) shall prohibit any activity of such Municipal Authority from acting or failing to act in a manner that is inconsistent with or frustrates the intent and/or terms of this Home Rule Charter. Any Municipal Authority that acts or fails to act in such a manner shall be dissolved and all assets owned by the Municipal Authority shall be deeded, conveyed and transferred to Towamencin Township.

SECTION 604. SALE OF ANY SYSTEM TO A GOVERNMENTAL ENTITY.

Any sale by the Township of its Potable Water System, Wastewater System or Storm Water System shall be predicated upon and include a covenant between Township as seller and the buyer that the purchasing governmental entity is prohibited from transferring ownership of the system to be sold to a non-governmental entity upon or after purchase. Furthermore, any creation, extension, renewal or modification of Article of Incorporation of a Municipal Authority on or after the date of adoption of this Home Rule Charter, in accordance with Section 603 of this Charter, shall include a similar prohibition against the sale of any assets of the Municipal Authority to a non-governmental entity.

SECTION 605. NORTH PENN WATER AUTHORITY.

The provisions of this Charter shall not apply to the North Penn Water Authority or any future proposed sale, transfer or lease of its assets except that, to the extent that the North Penn Water Authority's Articles of Incorporation, as they exist now or as they may be amended in the future, require the Township's approval for the sale, transfer or lease of the assets of the North Penn Water Authority, the Township shall be prohibited from approving or supporting the sale, transfer or lease of the assets of the North Penn Water Authority to a non-governmental entity as set forth herein. Nothing herein shall be construed to require the dissolution or re-incorporation of the North Penn Water Authority or the Township's

withdrawal therefrom or from prohibiting the Township from satisfying its obligations with regard to the Articles of Incorporation. If the North Penn Water Authority is dissolved and any portion of its assets are transferred or sold to the Township, the provisions of this Charter shall apply.

ARTICLE VII

GENERAL PROVISIONS

SECTION 701. TRANSITION.

701.1. Rights and Liabilities of the Township. Except as provided in this Charter, the Township shall continue to own, possess, and control all rights and property of every kind and nature, owned, possessed or controlled by it when this Charter takes effect, and shall be subject to all its debts, obligations, liabilities, and duties.

701.2. Elected Officers. In accordance with Article 2 hereof, all persons elected as Supervisors under the provisions of the Second Class Township Code, 53 P.S. §§ 65101, et seq., shall continue to be called Supervisors on the effective date of this Charter. They shall have the responsibilities, duties, compensation, and authority only as set forth in and in pursuance of this Charter. All other elected officials of the Township in office at the time this Charter becomes effective shall remain in office for the full term for which they were elected and they shall continue to perform the duties and receive the same compensation which they received prior to the adoption of this Charter. Nothing herein shall be construed to prohibit the Board of Supervisors or the Township from adjusting the compensation of any elected or appointed official as permitted by all applicable laws, or adjusting the salary or compensation of any employee or contractor as permitted by applicable law and/or any applicable contract.

701.3. Township Employees. Employees of the Township shall retain all rights and privileges held at the time this Charter becomes effective.

701.4. Continuation of Ordinances. All ordinances, resolutions, rules and regulations, or portions thereof, in force when this Charter takes effect and not in conflict herewith, are hereby continued in force and effect until

Proposed as of 3/9/2023

amended, repealed, superseded, or expired by their own terms. All ordinances and resolutions in continued effect as of the effective date of this Charter shall be construed as if enacted under this Charter, but as of the date of their original enactment.

701.5. Members of Boards, Commissions, and Authorities. Members of boards, commissions, and authorities in office at the time this Charter takes effect shall remain in office for as long as their respective terms of appointment continue.

SECTION 702. SEVERABILITY.

It is the intention of the electors of the Township that if this Charter cannot take effect in its entirety because of the judgment of any court of competent jurisdiction holding invalid any part or parts hereof, the remaining provisions of the Charter shall be given full force and effect as completely as if the part or parts held invalid had not been included herein.

SECTION 703. AMENDMENTS TO THE CHARTER.

Amendments to this Charter shall be in conformity with the provisions of applicable Laws of this Commonwealth.

SECTION 704. EFFECTIVE DATE.

This Charter shall become effective and shall be deemed operative on July 1st, 2023.

EXHIBIT G

Execution Version

ASSET PURCHASE AGREEMENT

By and Among

Township of Towamencin, Montgomery County

As Seller

Towamencin Municipal Authority

and

NextEra Water Pennsylvania, LLC

As Buyer

Dated as of June 14, 2022

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of June 14, 2022 (the “Effective Date”), is made and entered into by and between the Township of Towamencin, Montgomery County, a body corporate and politic, organized under the Pennsylvania law, (the “Seller” or the “Township”), the Towamencin Municipal Authority, a body corporate and politic created under the Pennsylvania Municipal Authorities Act (the “Authority”) and NextEra Water Pennsylvania, LLC (formerly known as NextEra Towamencin Wastewater, LLC) (the “Buyer”), a Delaware limited liability company.

WITNESSETH:

WHEREAS, the Authority owns that certain sanitary wastewater collection and treatment system (the “System”) which is leased to the Township under a Lease and Service Agreement dated June 30, 2015 (“Lease”) pursuant to which the Authority provides sanitary wastewater service to various customers in the Township and portions of Lower Salford, and Worcester, Montgomery County, Pennsylvania (the “Service Area”); and

WHEREAS, the Seller, acting by and through its Board of Supervisors (the “Municipal Board”) intends to terminate the Lease and acquire possession and operational control of the assets of the System on or before the Closing Date (as defined herein); and

WHEREAS, Buyer is, or as of the Closing Date will be, a regulated public utility that furnishes wastewater service to the public in Pennsylvania; and

WHEREAS, Buyer, in reliance upon the representations, warranties and covenants of the Seller and Authority herein, desires to purchase and acquire from the Seller, and the Seller, in reliance upon the representations, warranties and covenants of Buyer herein, desires to sell, transfer and convey to Buyer all of the assets of the System (other than the Excluded Assets), and in connection therewith, Buyer has agreed to assume certain ongoing obligations and liabilities of the Seller related to such acquired assets, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual representations, warranties, covenants, and agreements contained in this Agreement, the receipt and sufficiency of which are acknowledged, intending to be legally bound, the Parties agree as follows:

ARTICLE I.

DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following terms, as used in this Agreement (unless otherwise specified in this Agreement), have the meanings specified in this Article I:

“**Abstractor**” has the meaning specified in Section 6.05(a).

“**Accounts Receivables**” means all accounts or notes receivable held by Seller, and any security, claim, remedy or other right related to the foregoing, including the right to receive and collect payment for sanitary wastewater customer services and to receive and hold customer deposits in connection thereof.

“**Acquired Assets**” has the meaning specified in Section 2.01.

“**Act 537**” has the meaning specified in Section 7.10(a).

“**Act 537 Plan**” has the meaning specified in Section 7.10(a).

“**Additional Deposit**” has the meaning specified in Section 3.01(b).

“**Additional Deposit Escrow Agreement**” has the meaning specified in Section 3.01(b).

“**Affiliate**” means, when used to indicate a relationship with a specified Person, a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor, supervisor, sponsor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person is deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (and for purposes of this definition, a managed fund or trust is deemed to be an Affiliate of the Person managing, supervising, sponsoring or advising such fund or trust and a limited partner in a managed fund or trust is deemed to be an Affiliate of such fund or trust and of the Person managing, supervising, sponsoring or advising such fund or trust).

“**Agreement**” has the meaning specified in the preamble to this Agreement (and includes all Schedules and Exhibits referred to herein), as amended, modified and supplemented from time to time in accordance with the terms hereof.

“**Allocation Schedule**” has the meaning specified in **Error! Reference source not found.**

“**Assigned Contracts**” has the meaning specified in Section 2.01(c) and includes the Municipal Agreements.

“**Assignment and Assumption Agreement**” has the meaning specified in Section 13.02(c).

“**Assumed Liabilities**” has the meaning specified in Section 2.04(a).

“**Authority Board**” means the five member board of the Towamencin Municipal Authority who are appointed by the Municipal Board.

“Authorizations and Permits” mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, adjudications, variances, waivers and approvals currently in effect issued or granted by Governmental Authorities, including without limitation, environmental permits, operating permits and approvals that are held by the Seller or the Authority that primarily relate directly or indirectly to the operation of the System, including those set forth on Schedule 4.14.

“Authority” has the meaning specified in the preamble of this Agreement.

“Business Day” means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by either the Commonwealth of Pennsylvania or the United States government.

“Buyer” has the meaning specified in the preamble of this Agreement.

“Buyer Fundamental Representations” has the meaning specified in Section 8.01.

“Buyer Indemnified Persons” has the meaning specified in Section 8.02.

“CERCLA” means the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended.

“Closing” means the consummation of the sale and purchase of the Acquired Assets and assumption of the Assumed Liabilities, the release/waiver of liabilities and the other transactions contemplated by this Agreement, all in accordance with the terms and conditions of this Agreement and as provided for in Article XIII.

“Closing Date” has the meaning specified in Section 13.01.

“Closing Effective Time” has the meaning specified in Section 13.01.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” means the existing collective bargaining agreement between the Authority, as predecessor-in-interest to Seller, and the Union for the period beginning February 1, 2019 and ending January 31, 2023, as amended by the First Amendment and as may be amended from time to time.

“Confidential Information” means any information about Buyer, Seller or the System related to the transactions contemplated by this Agreement; except that such term does not include information which the receiving Party can demonstrate (a) is generally available to or known by the public other than as a result of improper disclosure by the receiving Party, (b) is obtained by the receiving Party from a source other than the disclosing Party, and that such source was not bound by a duty of confidentiality to the disclosing Party with respect to such information, or (c) is legally in the public domain.

“Deposit” has the meaning specified in Section 3.01(a).

“**Easements**” means all easements, rights of way, licenses, use agreements, occupancy agreements, leases and other agreements and appurtenances for and over the real property of third parties that, in each case, is for or used in connection with the operation of the System or to provide continuous and unimpeded rights of way for the Acquired Assets (including access thereto).

“**EDU**” means the equivalent dwelling unit that also equates to 280 gallons per day.

“**Effective Date**” has the meaning specified in the preamble.

“**Environment**” means soil, surface waters, ground waters, land, stream sediments, flora, fauna, surface or subsurface strata and ambient air.

“**Environmental Claims**” means all notices of investigations, warnings, notice letters, notices of violations, Liens, orders, claims, demands, suits or administrative or judicial actions for any injunctive relief, fines, penalties, third party claims, or other claims asserting violations or liability pursuant to Environmental Requirements or responsibility for Environmental Liabilities.

“**Environmental Conditions**” means the Release of Hazardous Materials or the presence of Hazardous Materials on, in, under or within any property (including the presence in the Environment), other than the presence of Hazardous Materials in locations and at concentrations that are naturally occurring.

“**Environmental Liabilities**” means any legal obligation or liability arising under Environmental Requirements or related to or arising out of any Environmental Condition, including those consisting of or relating to any (a) duty imposed by, breach of or noncompliance with any Environmental Requirements; (b) environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of Hazardous Materials); (c) Remedial Action undertaken by any Person; (d) bodily injury (including illness, disability and death, and regardless of when any such bodily injury occurred, was incurred or manifested itself), property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real or personal property), or other losses or damages incurred by any other Person (including any employee or former employee of such Person); (e) any injury to, destruction of, or loss of natural resources, or costs of any natural resource damage assessments; (f) exposure of any Person to any Hazardous Materials; and (g) the presence or Release of any Hazardous Materials.

“**Environmental Requirements**” mean all Laws (including common law), regulations, legally binding or otherwise enforceable requirements and Authorizations and Permits relating to human health, pollution, or protection of the Environment (including ambient air, surface water, ground water, land surface or surface strata), including (i) those relating to emissions, discharges, Releases, or threatened Releases of Hazardous Materials, and (ii) those relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, release, recovery, transport or other handling of Hazardous Materials. Without limiting the foregoing, the term “**Environmental Requirements**” includes (1) CERCLA; the Superfund Amendments and Reauthorization Act, Public Law 99-499, 100 Stat. 1613; the Emergency

Planning and Community Right to Know Act, 42 U.S.C. Sections 11001-11050; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901-6992k (“RCRA”); the Safe Drinking Water Act, 42 U.S.C. Sections 300f to 300j-26; the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101-5127; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387; the Oil Pollution Act of 1990, 33 U.S.C. Sections 2701--2761; the Clean Air Act, 42 U.S.C. Sections 7401-7671q; the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sections 2011 et seq.; the Low Level Radioactive Waste Policy Act, as amended, 42 U.S.C. Section 2021b et seq.; the Occupational Safety and Health Act, 29 U.S.C. Sections 651-678, and the regulations promulgated pursuant to the above-listed federal statutes, and (2) counterpart Laws and regulations promulgated or issued by any state or local Governmental Authority, specifically including the Pennsylvania Storage Tank and Spill Prevention Act of 1989 (35 Pa. C.S.A. § 6021.101 et seq.).

“EPA” means the United States Environmental Protection Agency, or a successor Governmental Authority with substantially similar power and authority thereto.

“Equipment and Machinery” means (i) all the equipment, tangible personal property, machinery, office furniture and equipment, fixtures, tooling, spare maintenance or replacement parts, environmental testing equipment, and vehicles owned or leased by the Seller or the Authority (including all leases of such property), which are primarily used in the operation of the System, (ii) any rights of the Seller or the Authority to warranties applicable to the foregoing (to the extent assignable), and licenses received from manufacturers and seller of any such item, and (iii) any related claims, credits, and rights of recovery with respect thereto, as listed on Schedule 4.10.

“Escrow Agreement” has the meaning set forth in **Error! Reference source not found.**(d).

“Excluded Assets” has the meaning specified in Section 2.02.

“Excluded Liability” or “Excluded Liabilities” means all liabilities other than Assumed Liabilities.

“Files and Records” means all files and records of each of the Seller and the Authority primarily relating to the System and the Acquired Assets, whether in hard copy, digital, or magnetic or other format including data, geographic information system data, plans, and contracts relating to the Acquired Assets (including property records, related to the foregoing), customer and supplier records, customer lists (both current and prospective), personnel and human resources records related to the Personnel, records of sales calls, manuals, books, files, records, engineering data, procedures, systems, instructions, drawings, blueprints, plans, designs, specifications, equipment lists, parts lists, equipment maintenance records, equipment warranty information, plant plans, specifications and drawings, sales and advertising material, computer software, and records, whether stored on-site or off-site.

“Final Order” means a Governmental Approval by a Governmental Authority as to which (a) no request for stay of the action is pending, no such stay is in effect and if any time period is permitted by statute or regulation for filing any request for such stay, such time period has

passed, (b) no petition for rehearing, re-argument, reconsideration, clarification, rescission, amendment, or supersedes of the action is pending and the time for filing any such petition has passed, (c) such Governmental Authority does not have action under consideration on its own motion and (d) no appeal to a court or administrative tribunal or a request for stay by a court or administrative tribunal of the Government Authority's action is pending or in effect and the deadline for filing any such appeal or request for stay has passed.

“Freeze Period” has the meaning specified in Section 7.04(a).

“Governmental Approval” means any consent, approval, authorization, notice, filing, registration, submission, reporting, order, adjudication or similar item of, to or with any Governmental Authority.

“Governmental Authority” or **“Governmental Authorities”** means any court, department, commission, board, bureau, municipality, municipal authority (established pursuant to the Pennsylvania Municipal Authorities Act of the Commonwealth of Pennsylvania), agency or instrumentality of the United States, any state, county, city or political subdivision thereof, or any foreign governmental body, including without limitation, the PaPUC, the EPA, PaDEP, the Municipal Board and the Authority Board.

“Hazardous Materials” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, residual waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Requirements or which is classified as hazardous or toxic under applicable Environmental Requirements (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

“Indemnified Party” means any Buyer Indemnified Persons or Seller Indemnified Persons, as applicable, entitled to indemnification pursuant to Article VIII.

“Indemnifying Party” means a Party which is obligated to indemnify the Buyer Indemnified Persons or the Seller Indemnified Persons, as applicable, pursuant to Article VIII.

“Knowledge” means either (i) the actual knowledge of a Representative of Buyer and the knowledge that such person would reasonably be expected to obtain in the course of diligently performing his or her duties for Buyer or (ii) the actual knowledge of Senior Staff, the Municipal Board and the Authority Board, and in the case of Senior Staff, the knowledge that each person would reasonably be expected to obtain in the course of diligently performing his or her duties for Seller or the Authority, as applicable based on the context in which the term is used.

“Law” means any applicable law, statute, regulation, ordinance, rule, order, judicial, administrative and regulatory decree, judgment, adjudication, consent decree, settlement agreement or governmental requirement enacted, promulgated, entered into, agreed or imposed by any Governmental Authority, as may be in effect at the relevant time or times in the context in which the term is used.

“**Lease**” has the meaning specified in the preamble of this Agreement.

“**Lender**” means the Delaware Valley Regional Finance Authority.

“**Liability Cap**” has the meaning specified in Section 8.05(c).

“**Lien**” means any lien in a fixed and ascertainable monetary sum, or any pledge, mortgage, deed of trust or security interest securing a fixed and ascertainable monetary sum, or any charge or claim in a fixed and ascertainable monetary sum. In addition, in connection with Real Property, any item otherwise falling within the definition of a “Lien” must be filed of record by the responsible Party in accordance with the terms of this Agreement.

“**Loss**” means any and all losses, liabilities, obligations, damages, penalties, interest, Taxes, claims, actions, demands, causes of action, judgments, reasonable attorneys’, consultants’ and other professional fees, and all other reasonable costs and expenses sustained or incurred in investigating, preparing or defending or otherwise incident to any such claim, action, demand, cause of action or judgment or the enforcement of a Party’s rights under Article VIII; except that “**Losses**” do not include punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party in respect of a Third Party Claim.

“**Material Adverse Effect,**” means any result, occurrence, fact, change, event or effect that has a materially adverse effect on the business, financial condition or results of operations of the System; except that no effect arising out of or in connection with or resulting from any of the following will be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting the real estate, financial services, construction, water utility or sewer utility industries generally; (iv) any existing event, circumstance, condition or occurrence of which the Buyer has Knowledge as of the Effective Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated by this Agreement; and (vi) negligence, intentional misconduct or bad faith of the Buyer or its Representatives.

“**Missing Easements**” means, as of any particular date, each Easement that either (a) has not been expressly obtained through a duly executed and recorded instrument by the Authority or Seller and is for or used in connection with the operation of the System or (b) if such Easement has been obtained by the Authority or Seller, such Easement is unrecorded or such Easement is not sufficient to operate the System as currently conducted.

“**Municipal Agreements**” means, collectively, the inter-municipal agreements pursuant to which the Seller or the Authority provides sanitary wastewater service in various municipalities in Montgomery County, Pennsylvania, as more specifically set forth in Schedule 4.15.

“**Municipal Board**” has the meaning set forth in the recitals to this Agreement.

“**Non-Union Personnel**” means Personnel who are not members of the Union.

“**Objection Notice**” has the meaning set forth in Section 6.02(a).

“**Outside Date**” means the date that is 180 days after the Effective Date for a municipal authority and with respect to a regulated utility 365 days after the later to occur of (i) the date the application to the PaPUC is accepted as complete by the PaPUC, and (ii) the date the statutory 6-month consideration period is initiated.

“**Outstanding Indebtedness**” means the following outstanding indebtedness of the Seller and the Authority: Delaware Valley Regional Finance Authority Guaranteed Sewer Revenue Notes, 2019 Series and the Delaware Valley Regional Finance Authority Guaranteed Sewer Revenue Notes, 2013 Series.

“**PaDEP**” means the Pennsylvania Department of Environmental Protection, or any successor Governmental Authority with substantially similar powers thereto.

“**PaPUC**” means the Pennsylvania Public Utility Commission, or any successor Governmental Authority with substantially similar powers thereto.

“**Party**” means Buyer, the Authority or the Seller and the term “**Parties**” means collectively Buyer, the Authority and the Seller.

“**PCB Equipment**” means PCB equipment as defined in 40 C.F.R. Part 761.

“**Pending Development Plan**” means any project for the development of real property which is the subject of a subdivision or land development plan that has been submitted to the Seller for approval, or for which the Seller already has granted approval, pursuant to the Pennsylvania Municipal Planning Code, but which has yet to be constructed as of the Effective Date (and as updated before the Closing Date), as provided in Schedule 4.19.

“**Permitted Liens**” means (a) Liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures; (b) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property and Easements as set forth on Schedule 4.09; (c) other than with respect to Real Property owned by Seller, Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; (d) other imperfections of title or Liens, if any, that have not had, and would not have, a Material Adverse Effect; and (e) any encumbrances set forth in the Title Commitment not identified in the Objection Notice in accordance with the procedures and deadlines prescribed in Section 6.02(a).

“**Person**” means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

“**Personnel**” means the employees of the Authority who are primarily employed to operate the System and includes Union Personnel and Non-Union Personnel.

“**Purchase Price**” has the meaning specified in Section 3.01.

“**Real Property**” means those certain parcels of land, with the buildings, improvements, and Equipment and Machinery affixed thereto, that are part of the System and fee simple title to which is to be conveyed by Seller to Buyer as part of the Acquired Assets.

“**Regulated Asbestos Containing Material**” means regulated asbestos containing material as defined by 40 C.F.R. § 61.141.

“**Release**” means any actual or threatened spilling, leaking, pumping, pouring, injecting, emptying, discharging, emitting, escaping, leaching, dumping, disposal, or release or migration of Hazardous Materials into the Environment, including the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Materials.

“**Remedial Action**” means any and all actions to (a) investigate, clean up, remediate, remove, treat, contain or in any other way address any Hazardous Materials in the Environment, (b) prevent the Release or threat of Release or minimize the further Release of any Hazardous Materials so it does not migrate or endanger public health or welfare or the indoor or outdoor Environment, and (c) perform pre-remedial studies and investigations and post-remedial monitoring, maintenance and care. The term “**Remedial Action**” includes any action which constitutes (i) a “removal”, “remedial action” or “response” as defined by Section 101 of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25); (ii) a “corrective action” as defined in RCRA, 42 U.S.C. § 6901 et seq.; or (iii) a “response” or “interim response” as defined in the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §6020.103.

“**Representative**” means, with respect to any Person, any director (including, in the case of the Seller, any member of the Municipal Board and, in the case of the Authority, any member of the Authority Board), officer, employee, official, lender mortgagee, financier, provider of any financial instrument (or any agent or trustee acting on their behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“**Schedules**” means the disclosure schedules delivered by Seller and Buyer, respectively, concurrently with the execution and delivery of this Agreement, and as may be supplemented and updated pursuant to Sections 9.03 and 10.04. Any disclosure set forth on any particular Schedule are deemed disclosure in reference to all Schedules comprising the Schedules to which such disclosure is reasonably apparent.

“**Seller**” has the meaning specified in the preamble of this Agreement.

“**Seller DEP Permits**” means the permits listed on Schedule 4.14 issued by PaDEP to Seller with respect to the System, including any revisions or amendments thereto.

“Seller Fundamental Representations” has the meaning specified in Section 8.01.

“Seller Indemnified Persons” has the meaning specified in Section 8.03.

“Seller’s Benefit Obligations” means all material obligations, arrangements, or practices, whether or not legally enforceable, to provide benefits, other than salary or wages to present or former directors, employees or agents, (other than obligations, arrangements and practices that are Seller’s Plans), that were owed, adopted or followed by the Authority, and upon the termination of the Authority, are now owned, adopted or followed by the Seller. Seller’s Benefit Obligations also include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies and fringe benefits within the meaning of Code §132.

“Seller’s Plans” means each voluntary employees’ beneficiary association under Section 501(c)(9) of the Code whose members include any Personnel and any employee benefit plans or any other retirement, pension, profit sharing, stock option, stock bonus, deferred compensation (including any “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code), severance, sick leave or other material plan or arrangement providing benefits to current or former Personnel, in each case, if either currently in effect or terminated within the last six (6) years, to which the Authority is a plan sponsor or to which the Authority otherwise contributes or has contributed within the last six (6) years, or in which the Authority otherwise participates or has participated within the last six (6) years.

“Senior Staff” means the Township Manager, the Township Director of Finance and Administration, the Township Sanitary Sewer Engineer and Authority Engineer.

“Service Area” has the meaning specified in the recitals to this Agreement.

“Supplies” means all lubricants, spare parts, fuel, chemicals, raw materials, and other supplies and inventory as related to the Acquired Assets, and all rights to warranties received from suppliers with respect to the foregoing, and related claims, credits, and rights of recovery with respect thereto.

“System” has the meaning specified in the recitals to this Agreement and includes the Acquired Assets and excludes the Excluded Assets.

“System Improvements” has the meaning specified in Section 7.10(a).

“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, abandoned or unclaimed property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

“**Third Party Claim**” has the meaning specified in Section 8.04(a).

“**Threshold Amount**” has the meaning specified in Section 8.05(a).

“**Title Commitment**” has the meaning specified in Section 6.01.

“**Title Company**” has the meaning specified in Section 6.01.

“**Title Policy**” has the meaning specified in Section 2.03.

“**Township**” has the meaning specified in the preamble of this Agreement.

“**Transferred Personnel**” has the meaning specified in Section 7.03(a).

“**UCC Search**” has the meaning specified in Section 6.04.

“**Union**” means District Council 88, American Federation of State, County and Municipal Employees AFL-CIO.

“**Union Personnel**” means Personnel who are members of the Union.

“**Unscheduled Real Property**” has the meaning specified in Section 6.06.

“**Utility Valuation Expert**” means an expert that has applied and has been approved by the PaPUC and is currently, at the time of this Agreement, on the list of approved appraisers maintained by the PaPUC.

ARTICLE II.

TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

Section 2.01. Purchase and Sale of Acquired Assets

Subject to the terms and conditions set forth in this Agreement, at Closing, Buyer shall purchase from the Seller and the Seller shall sell, transfer, assign and deliver to Buyer, free and clear of all Liens except for Permitted Liens, all of Seller’s right, title and interest in and to all assets, facilities, business, goodwill, properties and rights of the Seller of every kind and description, whether tangible or intangible, real, personal or mixed, wherever situated, in each case used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of the operation or conduct of the System (whether or not any such assets have any value for accounting purposes or are carried or reflected on the books or financial records of the Seller), including any of the foregoing in which Seller is entitled to acquire such rights or interests but in all cases other than the Excluded Assets (the foregoing collectively referred to as the “**Acquired Assets**”), including:

(a) all real property and appurtenant interests necessary for the operation of the System, including without limitation (i) good and marketable fee simple title to the Real Property set forth on Schedule 4.09 hereof, and (ii) all Easements, including without limitation those set forth on Schedule 4.09;

(b) all sanitary wastewater related treatment and conveyance facilities, including but not limited to the Seller's (i) assets set forth on Schedule 2.01(b), (ii) sewage treatment plant located in the Township and (iii) all collection system mains (whether gravity or force mains), laterals (from the collection system main to the edge-of-road or curb-line when the main is located within a public right-of-way or the edge of an easement where the main is located within private property), generators, manholes, pump stations and other related appurtenances and any billing and collections related assets necessary to own and operate the System;

(c) all contracts, licenses and leases set forth on Schedule 4.15 to which the Seller (or the Authority as predecessor in interest) is a party, including without limitation, all Municipal Agreements, customer service agreements or applications for service, construction contracts, surety bonds, operation and maintenance agreements, management agreements, reserved capacity agreements, architect agreements and consultant agreements, and agreements relating to vehicles and other items of personal property (the "Assigned Contracts");

(d) all Supplies;

(e) all personal property and fixed assets, including all Equipment and Machinery, auxiliary equipment and plant equipment, including without limitation those items listed on Schedule 4.10 hereof;

(f) all expenses prepaid by Seller or the Authority and security deposits by Seller and by the Authority;

(g) all Files and Records;

(h) Accounts Receivable arising on or after the Closing Date; and

(i) all Authorizations and Permits of or held by the Seller (or the Authority as predecessor in interest) (to the extent transferrable to Buyer under Law), including all Authorizations and Permits which are environmental permits, the Seller DEP Permits as set forth on Schedule 4.14 hereto and other operating permits and those items set forth on Schedule 4.14 hereto; and

(j) all goodwill of the System.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTIES OF ANY KIND WHATSOEVER REGARDING THE VALUE OF ANY OF THE ACQUIRED ASSETS OF THE SYSTEM OR THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE ACQUIRED ASSETS OR THE SYSTEM OR ANY FUTURE RATEMAKING THAT MAY BE ALLOWED BY THE PAPUC FOR ANY OF THE ACQUIRED ASSETS. NOTWITHSTANDING THE FOREGOING, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE VALID UNTIL THE TIME OF CLOSING.

Section 2.02. Excluded Assets

Notwithstanding Section 2.01 or any other provision of this Agreement to the contrary, the Acquired Assets do not include the following (the “Excluded Assets”):

- (a) all contracts, licenses and leases that are not Assigned Contracts;
- (b) the seals, organizational documents, minute books, Tax returns, books of account or other records having to do with the organization of Seller and the organization of the Authority;
- (c) cash (including any cash whenever received resulting from the payment received by Seller or the Authority attributable to wastewater service provided to EDU’s before the Closing Date) and cash equivalents, including Accounts Receivable accrued before the Closing Date and existing financial security guaranteeing installation of public improvements (including sewer facilities);
- (d) all insurance policies of Seller and all insurance policies of the Authority and all rights to applicable claims and proceeds thereunder;
- (e) all Seller’s Plans and trusts or other assets attributable thereto;
- (f) other than to the extent relating to any Assumed Liability, all actions, suit or claim of any nature available to or being pursued by Seller or the Authority, whether arising by way of counterclaim or otherwise;
- (g) all assets, properties and rights used by Seller or the Authority other than those which primarily relate to the operations of the System;
- (h) the assets, properties and rights specifically set forth on Schedule 2.02(h);
- (i) all municipal separate storm sewer system (“MS4”) assets and stormwater assets of the Seller or the Authority (and any related NPDES permits); and
- (j) the rights which accrue or will accrue to Seller or the Authority under this Agreement and any related agreement, exhibit or schedule.

Section 2.03. Sale Free of Liens

After Buyer fulfills its obligations pursuant to Section 3.01(a), on the Closing Date, the Acquired Assets will be free and clear of all Liens other than Permitted Liens. The Seller (or the Authority as predecessor in interest) shall convey such Acquired Assets by appropriate special warranty or other deed (subject to Section 6.02(c)), bills of sale, endorsements, assignments and other instruments of transfer or conveyance described in the Agreement, or by transfer documents satisfactory in form and substance reasonably acceptable to Buyer and Seller and their counsel in their reasonable discretion. At Closing, Buyer shall cause the Title Company to insure the Real Property, at the Title Company’s filed rates, as a good and marketable title, free and clear of all Liens and exceptions to title insurance coverage, except for the Permitted Liens, pursuant to an

owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006, subject to the terms of Section 6.02 below (the "Title Policy").

Section 2.04. **Assumption of Liabilities**

(a) On the terms and subject to the conditions set forth in this Agreement and excluding the Excluded Liabilities, Buyer shall assume and agrees to pay, perform and discharge when due any and all liabilities and obligations of the Seller (1) arising under the Seller DEP Permits (arising from, related to, or based on events or circumstances occurring on or after the Closing Date), (2) arising under the Collective Bargaining Agreement or an amended and restated collective bargaining agreement with respect to any Transferred Personnel (arising from, related to or based on events or circumstances occurring on or after the Closing Date), and (3) arising out of or relating to the System or the Acquired Assets on or after the Closing, including, without limitation, the following:

(i) all liabilities and obligations under the Assigned Contracts and Authorizations and Permits resulting from events that occur or conditions that arise on or after the Closing;

(ii) any litigation initiated against Seller or the Authority related to the System or the Acquired Assets resulting from events that occur or conditions that arise on or after the Closing;

(iii) all liabilities and obligations for Taxes relating to the System, its operation, the Acquired Assets and the Assumed Liabilities attributable to the period beginning on the Closing Date; and

(iv) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the System and the Acquired Assets on or after the Closing (all of the aforementioned liabilities in this Section 2.04(a) are referred to as the "Assumed Liabilities").

(b) After the Closing, Buyer shall indemnify Seller against its obligations under the Assumed Liabilities in accordance with Section 8.03.

(c) Buyer shall not assume or be liable to pay any liabilities or obligations relating to the Excluded Liabilities or any other liabilities or obligations that are not Assumed Liabilities.

Section 2.05. **Further Assurances** At any time and from time to time after the Closing Date, the Seller shall, upon the request of Buyer, and Buyer shall, upon the request of the Seller, at the cost of requesting Party, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, conveyance, transfer, assignment and delivery hereunder of the Acquired Assets to Buyer, (b) the assumption by Buyer of any of the Assumed Liabilities, (c) performance by the Parties of any of their other respective obligations under this Agreement, (d) the vesting in Buyer of all right, title and

interest in the Acquired Assets and the System as provided herein, and (e) any other matters reasonably requested by a Party to carry out the provisions, purposes and intent of this Agreement.

Section 2.06. Certain Transfers; Assignment of Contracts

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.06(a) and Section 2.06(b), to the extent that the sale, transfer, assignment, conveyance and delivery, or attempted sale, transfer, assignment, conveyance and delivery, to Buyer of any Assigned Contract or other Acquired Asset would result in a violation of Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties hereto), including any Governmental Authority, and such consent, authorization, approval or waiver has not been obtained before the Closing, this Agreement shall not constitute a sale, transfer, assignment, conveyance and delivery, or an attempted sale, transfer, assignment, conveyance and delivery, thereof (any such Acquired Asset, a “Nonassignable Asset”). Following the Closing, the Seller and the Buyer shall use commercially reasonable efforts (at the cost and expense of the Party that is responsible for compliance with such Law or obtaining such consent, authorization, approval or waiver), and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution, novation or amendment required to sell, transfer, assign, convey and deliver any such Nonassignable Asset to Buyer; except that in no event will Buyer be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, the Seller shall sell, transfer, assign, convey and deliver to Buyer the relevant Acquired Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Any applicable sales, transfer and other similar Taxes in connection with such sale, transfer, assignment, conveyance and delivery shall be paid fifty percent (50%) by Buyer and fifty percent (50%) by Seller.

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Article II, Buyer and Seller shall cooperate in any commercially reasonable and economically feasible arrangements (such as subleasing, sublicensing or subcontracting) to provide to the Parties the economic and, to the extent permitted under Law, operational equivalent of the transfer of such Nonassignable Asset to Buyer at the Closing and the performance by Buyer of its obligations with respect thereto, and so long as the Seller transfers and turns over all economic and beneficial rights with respect to each such Nonassignable Asset, Buyer shall, to the extent permitted under Law and the terms of any applicable contract that constitutes a Nonassignable Asset, as agent or subcontractor for the Seller, pay, perform and discharge the liabilities and obligations of the Seller thereunder from and after the Closing Date, but only to the extent that such liabilities and obligations would constitute Assumed Liabilities if the applicable consent or approval had been obtained on or before the Closing Date and such Nonassignable Asset had been assigned to Buyer at Closing. To the extent permitted under Law, the Seller shall hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Asset and all income, proceeds and other monies received by Seller with respect to such Nonassignable Asset in connection with the arrangements under this Article II.

(c) If, following the Effective Date and before the Closing, Buyer identifies any contract to which the Seller (or the Authority) is a party which is not set forth on Schedule 4.15 as an Assigned Contract as of the Effective Date, and Buyer reasonably determines such contract is necessary to the operation of the System, Buyer shall notify Seller of such determination and Seller shall, promptly following receipt of such notice, deliver to Buyer an updated Schedule 4.15 reflecting the addition of such contract, and such contract will thereafter constitute and be deemed an Assigned Contract for all purposes hereunder.

(d) If, during the twenty four (24) month period following the Closing, Buyer identifies any contract to which the Seller or the Authority was a party as of the Closing and which (i) was not set forth on Schedule 4.15 (as may be updated pursuant to (c)) and (ii) Buyer reasonably believes is necessary to the operation of the System, the Seller shall, promptly following Buyer's written request therefor, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate the assignment of such contract to Buyer for no additional consideration, and upon such assignment, such contract will be deemed an Assigned Contract for all purposes hereunder.

ARTICLE III. PURCHASE PRICE

Section 3.01. **Purchase Price**

The purchase price for the Acquired Assets is One Hundred Fifteen Million Three Hundred Thousand Dollars (\$115,300,000) (the "Purchase Price") which Buyer shall pay as follows at Closing unless otherwise indicated:

(a) **Deposit.**

(i) Buyer shall pay One Hundred Thousand Dollars (\$100,000) to Seller as a deposit on account of the Purchase Price (the "Deposit") upon the third Business Day following the execution by the Parties of this Agreement; and

(ii) Seller shall be free to use the Deposit as it determines in the Seller's sole discretion;

(iii) In the event that this Agreement is terminated for any reason, half of the Deposit shall be refundable to the Buyer within ninety days following the effective date of termination per Section 14.01, provided, however, if the Agreement is terminated by Seller pursuant to Section 14.01(c), then Seller shall be permitted to offset against Seller's obligation to refund the Deposit any damages recoverable by Seller per the terms of this Agreement.

(b) **Additional Deposit.**

(i) Buyer shall cause to be deposited in escrow pursuant to an escrow agreement substantially in the form attached as Exhibit D and entered into by and among the Seller, the Buyer and the escrow agent party thereto (the “Additional Deposit Escrow Agreement”), an amount equal to Ten Million Dollars (\$10,000,000) as a deposit on account of the Purchase Price (the “Additional Deposit”) upon the third Business Day following the execution by the Parties of this Agreement;

(ii) Seller shall be free to use the Additional Deposit solely in accordance with the terms and conditions of the Additional Deposit Escrow Agreement; and

(iii) In the event that this Agreement is terminated for any reason, the Additional Deposit shall be refunded to the Buyer within thirty days following the effective date of termination per Section 14.01 in accordance with the Additional Deposit Escrow Agreement.

(c) Outstanding Indebtedness. Buyer shall pay in full the total amount of Outstanding Indebtedness;

(d) Escrow. Buyer shall cause to be deposited in escrow pursuant to an escrow agreement, in form and substance as mutually agreed by Buyer and Seller and entered into by and among the Seller, the Buyer and the escrow agent party thereto (the “Escrow Agreement”), an amount calculated in accordance with Section 6.05(e);

(e) Final Payment. Subject to any adjustment in Purchase Price resulting from the proration procedures specified in Section 3.01(f) below, Buyer shall pay to the Seller at Closing by wire transfer of immediately available funds the balance of the Purchase Price remaining after the payment of the Deposit, the Additional Deposit, debt repayment pursuant to Section 3.01(b), and any escrow as set forth in Section 6.05(e), to one or more accounts that Seller designates and provides to Buyer at least three (3) Business Days before the Closing Date; and

(f) Final Billing. The Buyer is entitled to all customer billings with respect to sanitary wastewater customer services for the period on or after the Closing Effective Time, and the Seller is entitled to all such billings before the Closing Effective Time. The Parties shall cooperate to calculate an agreed upon proration of billing amounts and to the extent that a Party collects billings that are attributable to service provided by another Party, the Party holding the other Party’s billing collections shall pay such amount to the other Party.

Section 3.02. Fair Consideration

The Parties acknowledge and agree that the consideration provided for in this Article III represents fair consideration and reasonable equivalent value for the sale and transfer of the Acquired Assets and the transactions, covenants and agreements set forth in this Agreement, which consideration was agreed upon as the result of arm’s-length good faith negotiations between the Parties and their respective Representatives.

Section 3.03. Allocation Schedule

The Purchase Price (which for purposes of this Section 3.03 shall include any liabilities required to be treated as part of the Purchase Price for federal income tax purposes), may, at the option of the Buyer, be allocated among the Acquired Assets in accordance with the allocation reflected in a schedule prepared by Buyer and attached hereto as Schedule 3.03. In the event Buyer does not opt to prepare a schedule pursuant to the preceding sentence, then within sixty (60) days following the Closing Date, Buyer may deliver to Seller a draft of the Allocation Schedule setting forth Buyer's proposed allocation for Seller's review. Seller shall have the right to review and reasonably comment upon Buyer's proposed Allocation Schedule, provided, that (a) such proposed Allocation Schedule shall be deemed approved by Seller and shall be final and binding upon the Parties unless Seller provides written notice of Seller's comments to one or more items reflected in the proposed Allocation Schedule within twenty (20) Business Days after delivery of the proposed Allocation Schedule to Seller, and (b) upon receipt of any such written comments from Seller with respect to the proposed Allocation Schedule, Buyer may make such adjustments or revisions to the proposed Allocation Schedule based on Seller's comments as Buyer determines in good faith to be necessary and appropriate, provided further, that Buyer shall have no obligation to make any such adjustments or revisions absent manifest error. The Parties shall adhere to the Allocation Schedule (as finally determined pursuant to this **Error! Reference source not found.**) for all purposes relevant to the calculation of federal or state Taxes, and will report the transactions contemplated herein in a manner consistent with such Allocation Schedule. Except as required by applicable Law, Buyer and Seller shall not take any position on their respective Tax Returns that is inconsistent with the Allocation Schedule.

Section 3.04. Transfer Taxes

Any and all deed stamps or transfer Taxes which may be due the Commonwealth of Pennsylvania or any political subdivision in connection with the sale, transfer, assignment, conveyance and delivery hereunder of the Acquired Assets to Buyer (collectively, "Transfer Taxes"), will be paid fifty percent (50%) by Buyer and fifty percent (50%) by Seller. The terms hereof shall survive Closing. Seller and Buyer shall cooperate in good faith to prepare the Pennsylvania Form REV-138 (Realty Transfer Tax Statement of Value) setting forth the amount of the Purchase Price that shall be allocated to the Real Property for purposes of calculating Transfer Taxes.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF THE SELLER AND THE AUTHORITY

The Seller and Authority jointly and severally make only the specified representations and warranties which are set forth in this Article IV.

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated by this Agreement, the Seller and Authority represent and warrant, as of the Effective Date (except to the extent any of the following representations and warranties specifically apply to or relate to another date, in which event such representations and warranties shall be true and correct as of such other date), as follows:

Section 4.01. Organization

Seller is a township of the Second Class of the Commonwealth of Pennsylvania duly organized under the Pennsylvania Second Class Township Code. The Authority is a body corporate and politic, duly organized and existing under the Municipal Authorities Act and incorporated by appropriate legal action of the Seller.

Section 4.02. Power and Authority

Seller has (i) duly adopted the ordinance(s) authorizing the transactions contemplated by this Agreement, which remain(s) in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement, and (iii) duly authorized and approved the performance by the Seller of its obligations contained in this Agreement. The Seller has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof. The Authority has (i) duly adopted the resolution(s) authorizing the transactions contemplated by this Agreement, which remain(s) in full force and effect, and (ii) duly authorized and approved the performance by the Authority of the obligations specific and exclusive to the Authority as contained in this Agreement. The Authority has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

Section 4.03. Enforceability

This Agreement has been duly authorized, executed and delivered by each of the Seller and the Authority and constitutes a valid and legally binding obligation of the Seller and the Authority, enforceable against the Seller and the Authority in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

Section 4.04. No Conflict or Violation

The execution and delivery of this Agreement by each of the Seller and the Authority, the consummation of the transactions contemplated by this Agreement and the performance by the Seller and the Authority of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Seller or the Authority under (i) any Law or (ii) any agreement, instrument or document to which the Seller or the Authority is a party or by which it is bound.

Section 4.05. Consents and Approvals

Schedule 4.05 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by the Seller and the Authority or the performance by the Seller or the Authority of their respective obligations hereunder.

Section 4.06. **Undisclosed Liabilities**

Except as set forth on Schedule 4.06, there are no liabilities or obligations of Seller or the Authority as predecessor in interest, either accrued, absolute, contingent or otherwise, relating to the Acquired Assets, that would be required to be set forth on a balance sheet prepared under generally accepted accounting principles applicable to municipalities, other than liabilities incurred in the ordinary course that could not reasonably be expected to have a Material Adverse Effect on Buyer. Upon payment of the Purchase Price in accordance with Section 3.01, (a) all of the Outstanding Indebtedness shall, without further action, be immediately repaid, extinguished or defeased in full and (b) any security interests granted by Seller to secure its obligations pursuant thereto shall, without further action, be immediately extinguished or terminated at or before the Closing pursuant to the contractual terms applicable to such Outstanding Indebtedness.

Section 4.07. **Absence of Certain Changes or Events**

Except as set forth on Schedule 4.07, since December 31, 2020, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect and the Seller, either through itself or the Authority, has operated and maintained the System since December 31, 2020 in the ordinary course.

Section 4.08. **Tax Matters**

Except as set forth on Schedule 4.08 or as would not have a Material Adverse Effect, that (i) the Seller and the Authority as predecessor in interest have timely paid all Taxes that may have been or may be due and payable by the Seller or the Authority on or before the Closing Date, arising from the ownership or operation of the Acquired Assets or the System on or before the Closing Date; (ii) no Taxing authority has asserted any claim against either the Seller or the Authority for the assessment of any additional Tax liability or initiated any action or proceeding which could result in such an assertion; (iii) the Seller and the Authority have made all withholding of Taxes required to be made under all Laws and regulations, including without limitation, withholding with respect to compensation paid to employees, and the amounts withheld have been properly paid over to the appropriate Taxing authorities; and (iv) the Seller and the Authority have at all times been exempt from U.S. federal income Tax and from income Taxes imposed by the Commonwealth of Pennsylvania (and its political subdivisions) and by other states (and their respective political subdivisions), and income and revenue produced by or with respect to the System and the Acquired Assets has at all times been excluded from gross income by virtue of the provisions of Section 115(1) of the Code. This section does not apply to any Tax matter related to an employee benefit plan or compensation arrangement that is addressed separately in Section 4.11.

Section 4.09. **Real Property and Easements**

Schedule 4.09 identifies all Real Property of Seller and the Authority, as applicable, and separately identifies all Easements. Except as provided in Schedule 4.09, Seller does not lease (as lessee) any real property that is used in the operation of the System. There are no pending condemnation proceedings relating to any of the Real Property or Easements nor has Seller

actually received any written threats of any condemnation proceedings and, to the Knowledge of Seller, no such proceedings are threatened. Neither the Seller nor the Authority has received any written notices of any violations of any Law from any Governmental Authority with respect to the Real Property or the Easements which have not been cured in all material respects and, to Seller's Knowledge, no such violations of Law exist. With respect to the Real Property (i) there are no leases, options, rights of reversions or other rights of use or rights to acquire the Real Property held by third parties, (ii) Seller or Authority, as applicable, is in sole possession of the Real Property, and (iii) to Seller's Knowledge there are no encroachments either way across the boundary of the Real Property, nor any dispute with adjacent property owners over the location of boundaries or potential claims adverse to title.

Section 4.10. **Equipment and Machinery**

Schedule 4.10 sets forth all Equipment and Machinery included in the Acquired Assets. Except as set forth on Schedule 4.10, the Seller or Authority, as applicable, has good title, free and clear of all Liens (other than the Permitted Liens and Liens which are released on or before Closing) to such Equipment and Machinery. Except as specifically disclosed on Schedule 4.10, all the Equipment and machinery is owned by Seller or Authority, as applicable, and none is leased or used under any conditional sales, title-retention, lease, license or similar arrangement.

Section 4.11. **Employee Benefit Plans**

(a) Schedule 4.11(a) contains a true and complete list of all the Seller's Plans and Seller's Benefit Obligations, including amounts owed to current or past employees for severance, unpaid and unused vacation pay or sick leave, or similar obligations. All such Seller's Plans and Seller's Benefit Obligations are in full force and effect and are in material compliance both as to form and operation, with applicable provisions of Employee Retirement Income Security Act of 1974, as amended or the Code, and any other Laws, and with any applicable collective bargaining agreement. To Seller's Knowledge, no event has occurred which has resulted in the imposition of any liability on the Seller or the Authority under the Code or other Law with respect to any Seller's Plans or Seller's Benefit Obligations and there is no unfunded pension liability owed or owing to any Person pursuant to Seller's Plans that is required to be assumed by Buyer;

(b) Except as set forth on Schedule 4.11(b), with respect to the System, neither the Seller nor the Authority sponsor, maintain, contribute to, or are required to contribute to, any "multiemployer plan" within the meaning of Section 414(f) of the Code, and neither has any liability of any nature, whether known or unknown, fixed or contingent, with respect to any such multiemployer plan;

(c) Except as set forth on Schedule 4.11(c), neither the Seller nor the Authority sponsor, maintain, contribute to, or are required to contribute to, any medical, health, life or other welfare plan or benefits for present or future terminated or retired Personnel or their spouses or dependents, other than as required by COBRA, or any comparable state law, and neither has any liability of any nature, whether known or unknown, fixed or contingent, with respect to any such post-termination welfare benefits;

(d) The Seller and the Authority are and have been in compliance in all material respects with the requirements of COBRA regarding the Personnel and are not subject to any excise Tax under Code Section 4980B for the current or any prior taxable year; and

(e) Except as set forth on Schedule 4.11(e), neither the Seller nor the Authority has entered into any severance or similar arrangement with respect to any present or former Personnel that will result in any obligation (absolute or contingent) of Buyer to make any payment to any present or former Personnel following termination of employment, including the termination of employment effected by the transactions contemplated by this Agreement. The consummation of the transactions contemplated by this Agreement will not trigger any severance or other obligation of the Seller or the Authority as predecessor in interest for which Buyer shall have any liability.

Section 4.12. Seller's Personnel

(a) Schedule 4.12(a) sets forth all collective bargaining agreements and contractual relationships with Personnel relating to the System to which the Seller or the Authority is a party, including the identification of the parties thereto and the expiration dates. Other than the collective bargaining agreements and relationships set forth on Schedule 4.12(a), there are no commitments, contracts, agreements, arrangements or understandings (whether written or oral, formal or informal) of the Seller or the Authority with respect to the Union or the Union Personnel, and the collective bargaining agreements set forth on Schedule 4.12(a) constitute the entire agreement between the Authority and the other parties thereto, with respect to the subject matter thereof.

(b) Except as set forth on Schedule 4.12(b), the Authority shall timely pay, or cause to be timely paid, the Personnel as required under its policies and/or by Law for accrued but unused and unpaid vacation, sick leave and other accrued benefits as of the Closing Date. To Seller's Knowledge, all obligations to the Personnel under applicable wage and hour Laws and leave policies will have been satisfied by the Closing Date.

(c) The Authority or Seller has not, in the past five (5) years, effectuated:

(i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act ("WARN Act")) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the System; or

(ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the System; nor has the System been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local Law.

None of the Personnel has suffered an "employment loss" (as defined in the WARN Act) during the previous six months.

Section 4.13. Environmental Compliance

Except as set forth on Schedule 4.13 or that otherwise could not be expected to have a Material Adverse Effect:

(a) To the Seller's Knowledge, the System as currently operated by the Seller and the Authority and all operations and activities conducted by the Seller and the Authority with respect to the System are in compliance in all material respects with all applicable Environmental Requirements.

(b) To the Seller's Knowledge, the Seller and the Authority has generated, used, handled, treated, stored and disposed of all Hazardous Materials in (i) compliance in all material respects with all applicable Environmental Requirements and (ii) a manner that has not given, and could not reasonably be anticipated to give, rise to Environmental Liabilities.

(c) Except as has been disclosed to Buyer on Schedule 4.13, neither the Seller nor the Authority has received notice of any Environmental Claims related to the System that have not been fully and finally resolved, and to the Knowledge of Seller no claims of Environmental Liabilities have been threatened allegedly arising from or relating to the System that have not been fully and finally resolved.

(d) To Seller's Knowledge, Hazardous Materials are not present at or on the System, there has been no Release of Hazardous Materials at, on or from any part of the System or the Acquired Assets, in each case in a manner that violates any Environmental Requirements or has resulted in, or could reasonably be anticipated to give rise to, Environmental Liabilities which has not been appropriately resolved pursuant to applicable Environmental Requirements.

(e) No Lien or activity use limitation or institutional control has been recorded affecting any Acquired Assets by any Governmental Authority due to either the presence of any Hazardous Material on or off the Acquired Assets or a violation of any Environmental Requirement except as has been disclosed by the Seller or the Authority to Buyer.

(f) Neither the Seller nor the Authority has Knowledge of any underground storage tanks on or at any of the Acquired Assets other than as set forth on Schedule 4.13. To the Seller's Knowledge, any underground storage tanks previously located at the Acquired Assets other than as set forth on Schedule 4.13 have been removed or otherwise closed, plugged and abandoned in compliance with applicable Environmental Requirements in effect at the time of such closure.

(g) Neither the Seller nor the Authority has Knowledge of any PCB Equipment on or at any of the Acquired Assets. Any PCB Equipment that previously existed at the Acquired Assets has been flushed of polychlorinated byphenyls or has been removed and properly disposed of, in compliance with applicable Environmental Requirements, and any remaining PCB Equipment is labeled to the extent required under applicable Environmental Requirements and being managed in compliance with applicable Environmental Requirements.

(h) Neither the Seller nor the Authority has Knowledge of the existence of any Regulated Asbestos Containing Material in or on the Acquired Assets in an aggregate amount that would reasonably be expected to result in an Environmental Liability; and any Regulated Asbestos Containing Material is being managed in compliance with all applicable Environmental Requirements.

(i) The Seller has delivered to Buyer (1) all environmental site assessments, if any, pertaining to the System, that the Seller or the Authority has Knowledge of, within the previous five (5) years, (2) all material compliance audits or compliance assurance reviews prepared within the previous five (5) years relating to compliance with Environmental Requirements by the System, and (3) all documents pertaining to, any known and unresolved Environmental Liabilities incurred in relation to the System, to the extent possessed by or under the reasonable control of the Seller or the Authority.

(j) Except as has been disclosed to Buyer on Schedule 4.13, neither the Seller nor the Authority has received notice or has Knowledge of any historic environmental conditions that could give rise to any Environmental Claims related to the System, any Acquired Asset, or the underlying Real Property.

Section 4.14. Authorizations and Permits

Schedule 4.14 sets forth the Authorizations and Permits of the Seller and the Authority as applicable. The Seller has made true and complete copies of all Authorizations and Permits available to Buyer. Except as set forth on Schedule 4.14, the Seller and Authority, as applicable, is in compliance in all material respects with all terms, conditions and requirements of all Authorizations and Permits, except in each case where such violation or failure, individually or in the aggregate, would not have a Material Adverse Effect, and no proceeding is pending or, to the Knowledge of the Seller threatened relating to the revocation or limitation of any of the Authorizations or Permits, other than those revocations or limitations which do not individually or in the aggregate have a Material Adverse Effect.

Section 4.15. System Contracts

(a) Schedule 4.15 sets forth a complete and accurate list of all the Assigned Contracts and any amendments thereto.

(b) Except as specifically identified on Schedule 4.15, the Seller and the Authority have made available to Buyer true and complete copies of all the contracts primarily related to the System, including the foregoing Assigned Contracts.

(c) All of the Assigned Contracts set forth on Schedule 4.15 are in full force and effect. Neither Seller nor the Authority has, nor to the Knowledge of the Seller has any other party thereto, breached any material provision of or defaulted under the material terms of, nor does any condition exist which, with notice or lapse of time, or both, would cause the Seller or the Authority, or to the Knowledge of Seller, any other party, to be in default under any Assigned Contract.

Section 4.16. Compliance with Law; Litigation

(a) The Seller and the Authority have operated and are operating the System in compliance, in all material respects, with all Laws, Authorizations and Permits and are not in breach of any Law, Authorization or Permit that would have a Material Adverse Effect on the operations of the System or on the Buyer. There are no Authorizations or Permits from any Governmental Authority necessary for the operation of the System as currently being operated except for those Authorizations and Permits listed in Schedule 4.14.

(b) Except as set forth on Schedule 4.16, there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any environmental claims or governmental enforcement actions that could reasonably be expected to have a Material Adverse Effect, and there are no past, pending or threatened environmental claims or governmental enforcement actions against the Seller or the Authority that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth on Schedule 4.16, there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the Knowledge of the Seller, threatened against the Seller or the Authority before or at the Closing Effective Time, which will have a Material Adverse Effect. There is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the Knowledge of the Seller, threatened against the Seller or the Authority which could materially affect the validity or enforceability of this Agreement.

Section 4.17. Broker's and Finder's Fees

No broker, finder, or Person is entitled to any commission or finder's fee by reason of any agreement or action of Seller or the Authority in connection with this Agreement or the transactions contemplated by this Agreement. Seller has employed PFM Financial Advisors LLC, as municipal advisor to provide transaction structuring advice and to provide Seller with municipal advice relating to the sale of the System. Seller is solely responsible to pay all fees owed to PFM Financial Advisors LLC in connection with the transactions contemplated by this Agreement.

Section 4.18. Title to the Acquired Assets; Sufficiency

(a) Except as set forth on Schedule 4.18(a), the Seller or the Authority as predecessor in interest has good and marketable title to, valid leasehold interest in or valid licenses or Easements to use, all of the Acquired Assets, free and clear of all Liens, other than Permitted Liens and Liens which will be fully and unconditionally released at or before Closing. The use of the Acquired Assets is not subject to any Liens, other than Permitted Liens, and such use does not encroach on the property or the rights of any Person.

(b) Except as set forth on Schedule 4.18(b), the Acquired Assets are sufficient for, and constitute all the assets, properties, business, goodwill and rights of every kind and description, and services required for, the continued conduct and operation of the System by Buyer in substantially the same manner as currently conducted and operated by Seller and the

Authority. Except for the Excluded Assets and except as set forth on Schedule 4.18(b), (i) the Acquired Assets, taken as a whole, comprise all the assets, properties, business, goodwill and rights of every kind and description used or held for use in, or useful or necessary to the operation of the System as currently operated by Seller and the Authority, and (ii) there are no assets, properties, business, goodwill, rights or services used in the conduct or operation of the System that are owned by any Person other than Seller or the Authority as predecessor in interest that will not be licensed or leased to Buyer under valid, current license arrangements or leases pursuant to an Assigned Contract, if applicable. None of the Excluded Assets are material to the System.

Section 4.19. Pending Development Plans

Schedule 4.19 sets forth a full and complete list of all Pending Development Plans for which Seller has received notice as of the Effective Date. Each Pending Development Plan, if consummated, could result in additional customers and reduction of available treatment capacity. Seller provides no assurances whatsoever that any development or expansion of the Service Area associated with any Pending Development Plan will actually be undertaken or completed. The Parties expect that Schedule 4.19 will change from time to time between the Effective Date and Closing, and the Seller shall promptly provide updates to Schedule 4.19 upon the occurrence of any significant change, decision or development and shall further deliver such updates pursuant to Section 9.03.

Section 4.20. Customer Sewer Laterals and Grinder Pumps

As of the Closing Date, neither the Seller nor the Authority will own, or have any responsibility for: any grinder pumps; connecting facilities located in the area originating from the Seller's terminus point of the collection facilities at the edge-of-road or curb-line when the facilities are located with a public right-of-way or the edge of an easement where the collection facilities are located within private property to and throughout the customer's property; or any and all piping and fixtures internal to each individual customer structure (whether residential, commercial, industrial or other customer classes/types).

ARTICLE V. **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer makes only the representations and warranties that are set forth in this Article V.

As a material inducement to the Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer represents and warrants to the Seller, as of the Effective Date and as of the Closing Date (except to the extent any of the following representations and warranties specifically apply or relate to another date, in which event such representations and warranties shall be true and correct as of such other date), as follows:

Section 5.01. Organization

Buyer is duly organized, validly existing and in good standing under the laws of the state of its organization.

Section 5.02. **Authorization and Validity of Agreement**

Buyer has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof. This Agreement has been duly authorized, executed and delivered by the Buyer and constitutes a valid and legally binding obligation of the Buyer, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

Section 5.03. **No Conflict or Violation**

The execution and delivery of this Agreement by the Buyer, the consummation of the transactions contemplated by this Agreement and the performance by the Buyer of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Buyer under (i) any Law, (ii) any material agreement, instrument or document to which the Buyer is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Buyer.

Section 5.04. **Consents and Approvals**

Schedule 5.04, sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any Governmental Authority required in connection with the execution and delivery of this Agreement by Buyer or the performance by Buyer of its obligations hereunder.

Section 5.05. **Broker's and Finder's Fees**

No broker, finder or third party is entitled to any commission or finder's fee in connection with this Agreement or the transactions contemplated by this Agreement.

Section 5.06. **Financial Wherewithal**

Upon Closing, and after giving effect to the consummation of the transactions contemplated by this Agreement and the incurrence of any indebtedness in connection therewith, Buyer shall have the financial ability and will have sufficient working capital for its needs and anticipated needs to operate the System as a certificated public utility system regulated by the PaPUC authorized, among things, to provide wastewater utility services to retail residential, commercial and industrial customers in the System.

Section 5.07. **Sufficient Funds**

Buyer shall have sufficient funds available at Closing to consummate the transactions contemplated by this Agreement, to pay the Purchase Price in accordance with Article III and expenses related to the transactions contemplated by this Agreement, and on and after Closing, to generally provide ownership, operation and capital for the operations and capital needs of the

System following the Closing, and assuring that the customers of the System will receive safe, adequate and reliable wastewater service equal to or better than such customers would have received without the transactions contemplated by this Agreement and at all times consistent with the provisions of the Pennsylvania Public Utility Code, 66 Pa. C. S. § 101 *et seq.*, and Law.

Section 5.08. Independent Decision

Except as expressly set forth in this Agreement, or any of the related agreements, Buyer acknowledges that (a) neither Seller nor any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of the System or information provided to Buyer, and (b) neither Seller nor any other Person shall have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer use of, any information regarding the System or Acquired Assets that has been furnished or made available to Buyer and its Representatives. Buyer acknowledges that other than as expressly set forth in this Agreement or any related agreement, Seller expressly disclaims any warranty of future profitability or future earnings performance of any Acquired Assets or the System.

Section 5.09. Scheduled Matters

Buyer acknowledges that: (a) the inclusion of any matter on any Schedule is not an admission by Seller that such listed matter is material or that such listed matter has or could have a Material Adverse Effect or constitutes a material liability with respect to the Acquired Assets; (b) matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in such Schedules; and (c) such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature.

Section 5.10. Independent Investigation

Buyer acknowledges that it has conducted an independent investigation of the financial condition, assets, liabilities, properties and projected capital needs and operations of the System in making its determination as to the propriety of the transaction contemplated by this Agreement and, in entering into this Agreement and related agreements, has relied solely on the results of its investigation and on the representations and warranties of the Seller and the Authority expressly contained in Article IV of this Agreement.

Section 5.11. Litigation

The Buyer is not in breach of any applicable Law that could have a Material Adverse Effect on the operations of the System or the Buyer. Neither the Buyer nor any Affiliate of the Buyer is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors, or on any other list of Persons with which the Seller may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. Except as set forth on Schedule 5.11, there is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the Knowledge of the Buyer, threatened against the Buyer before or at the Closing Effective Time, which will have a material adverse effect on (i)

the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

ARTICLE VI.
TITLE TO REAL ESTATE; EASEMENTS

Section 6.01. Evidence of Title

Subject to Section 6.06, with respect to all Real Property, Buyer shall obtain, at its sole cost and expense, a commitment for an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006 (the "Title Commitment"), issued by a title insurance company selected by Buyer and licensed to insure title to real property by the Commonwealth of Pennsylvania (the "Title Company"), having an effective date after the Effective Date. Promptly following the Effective Date, Buyer shall order the Title Commitment from the Title Company and shall provide Seller evidence of the order. Notwithstanding anything to the contrary in Section 6.02(a) below, Buyer shall not be entitled to send an Objection Notice with respect to any parcel of Real Property and the Title Commitment for the same if, within forty five (45) Business Days after the Effective Date, Buyer has not ordered the Title Commitment from the Title Company for such parcel of Real Property and provided Seller with evidence of the same.

Section 6.02. Objections to Title

(a) Notice of Objections. Within thirty (30) days of Buyer's receipt from the Title Company of a Title Commitment for any of the parcels of Real Property, Buyer shall deliver to Seller a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the Title Commitment, along with Buyer's written notice to Seller of any of the exceptions to title set forth on Schedule B of such Title Commitment to which Buyer objects (the "Title Objection Items") (such written notice of Buyer being referred to as the "Objection Notice"). The Objection Notice shall (a) not contain exceptions that are Permitted Liens, (b) not relate to the Buyer or any requirements, conditions or obligations of the Buyer, (c) not relate to matters of record and set forth in the Title Commitment and unrecorded matters revealed to Buyer in its due diligence or revealed in the survey unless such Title Objection Item materially and adversely in Buyer's commercially reasonable opinion restricts or prevents the use of the Real Property in the current operation of the System and (d) not contain the standard Title Company exceptions to the extent that such standard Title Company exceptions are commonly removed by the execution and delivery of a standard owner's affidavit by Seller. The Buyer shall include a true, correct and complete copy of the Title Commitment and true, correct, complete and legible copies of any and all exception documents listed in the same in the Objection Notice. If Buyer provides the Seller with an Objection Notice, the Seller shall use commercially reasonable efforts to have all of the Title Objection Items cured, satisfied or released of record, or insured over, by the Title Company (individually, "Cure" and collectively, "Cured") before or as of the Closing. At or before the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing that Seller has Cured all such Title Objection Items. In the event that Seller is unable to Cure any Title Objection Item per this Section 6.02(a), Seller shall

indemnify Buyer for such inability per the terms of Article VIII hereof, provided that Seller's indemnification obligation arising under this Section 6.02(a) shall not be subject to the Threshold Amount nor the Liability Cap set forth in Section 8.05. For avoidance of doubt, Buyer acknowledges that no item listed in clauses (a) through and including (d) above, may be objected to by Buyer as a Title Objection Item.

(b) Liens. Without limiting the Seller's obligations pursuant to Section 6.02(a) above, before or as of the Closing, the Seller shall, at the Seller's cost and expense, Cure any Lien encumbering the Real Property which can be Cured by the payment of money (other than Permitted Liens).

(c) Title Endorsements/Survey. Buyer shall pay for any endorsements required by the Buyer or any mortgagee of the Buyer to Buyer's Title Policy. If any survey is required by Buyer or its mortgagee, either as a condition to any such endorsement or otherwise, the Buyer shall obtain it at its sole cost and expense. If Buyer obtains a survey of any or all of the Real Property and desires the deed to contain the legal description based on such survey, if the same is not identical to the legal description contained in Seller's deed of record, Seller is not obligated to include the same in the deed to Buyer unless the survey is certified to Seller and such description is included in the deed on a "quitclaim" basis only and without warranty of title.

(d) License at Closing. At Closing, Seller shall provide Buyer with a license agreement granting Buyer a license in all of Seller's rights to access such Real Property (as acquired from the Authority) in order to allow Buyer to operate and maintain in the System until such time as Buyer is provided title to such Real Property as provided for in this Agreement. For the avoidance of doubt, Seller shall provide such title as soon as reasonably practicable in accordance with Section 6.01.

(e) Insurable Claims. To the extent any Claim for Losses under Article VIII constitutes an Insurable Claim (as defined below), Buyer shall assert the Insurable Claim and use its commercially reasonable efforts to obtain recovery for such Insurable Claim against the Title Company (which shall include commencing litigation and diligently prosecuting such Insurable Claim to judgment) before pursuing a Claim for Losses under Article VIII. If at any time following a non-favorable judgment that substantially denies the relief sought by Buyer from the Title Company in connection with the Insurable Claim (each a "Non-Favorable Judgment"), Buyer may, following such Non-Favorable Judgment, pursue the Seller with a Claim for Losses under Article VIII (any such Claim against the Seller following an attempted Insurable Claim against the Title Company being a "Residual Title Claim"). Notwithstanding anything to the contrary in Article VIII, Buyer may assert a Claim for Losses based upon a Residual Title Claim for a sixty (60) day period after the Non-Favorable Judgment. For purposes of this Section 6.02(e), an "Insurable Claim" means a Claim that: (i) arises out of Buyer's discovery of a title defect or encumbrance with respect to any of the Real Property following the Closing that materially restricts or prevents the use of such Real Property in the operation of the System; and (ii) constitutes a claim against the Title Company under Buyer's Title Policy. Buyer acknowledges that any and all Claims which Buyer could otherwise bring as a breach of a covenant of title under the special warranty deed to the Real Property shall be included within the Claim for Losses under Article VIII and is subject to the terms of this Section 6.02(e).

Section 6.03. **Title Expenses**

Irrespective of whether the transactions described by this Agreement are consummated and Closing occurs, Buyer shall pay all costs and expenses of obtaining the Title Commitment, Title Policy and any survey.

Section 6.04. **UCC Search; Releases**

Not later than one hundred eighty (180) days after the Effective Date, Buyer shall obtain at its sole cost and expense a Uniform Commercial Code search against Seller covering any of the personal property or fixtures included among the Acquired Assets from the Office of the Secretary of the Commonwealth of Pennsylvania and the Recorder of Deeds Montgomery County, Pennsylvania (the "UCC Search"). On or before the Closing, Seller shall at its sole cost and expense obtain releases of any and all security interests in any of the Acquired Assets which are not Permitted Liens. The Seller shall provide the form of the releases of such security interests to Buyer on or before the Closing Date.

Section 6.05. **Easements**

(a) **Abstract of Easements.** Within ninety (90) days after the Effective Date, the Seller shall, at its sole cost and expense, cause an abstractor selected by the Seller and reasonably acceptable to Buyer and the Title Company (the "Abstractor"), to perform a search of the public land records of Montgomery County, based on the Seller's and the Authority's records and plans of the System (and such other sources of information as are reasonably related thereto), by searching the grantee index in the names of the Seller and the Authority and such other searches as the Abstractor may reasonably make, to (i) identify and provide Buyer with title information on any and all recorded Easements (including information related to any Liens or encumbrances on Seller's or the Authority's title thereto), and (ii) taking into account any information provided by Buyer, identify all Missing Easements. During the process, as the Abstractor provides written search results to the Seller (including updated versions of the abstractor search result chart), the Seller will promptly provide the same to Buyer for its review, and, without limiting the foregoing, the Seller shall, or shall cause the Abstractor to, provide Buyer with periodic updates (which shall occur no less frequently than bi-weekly) on the status of the activities set forth in the previous sentence.

(b) **Notice of Objections.** Within forty-five (45) days of Buyer's receipt from the Seller (or the Abstractor) of the information specified in subsection (a) above, Buyer shall deliver to Seller written notice identifying the encumbrances on the Easements that, in Buyer's reasonable commercial opinion, could materially and adversely restrict or prevent the use of the Easements in the current operation of the System (the "Easement Objection Items") (such written notice of Buyer being referred to as an "Easement Objection Notice"). The Easement Objection Notice shall not include any encumbrances that: (a) are Permitted Liens, (b) pertain to the Buyer or any requirements, conditions or obligations of the Buyer, or (c) are matters of record and set forth in the Abstractor's search results that do not, in Buyer's commercially reasonable opinion, materially and adversely restrict or prevent the use of the Easements in the current operation of the System (specifically including mortgages or other instruments securing indebtedness incurred by the owner of the land burdened by the Easement). If Buyer provides the Seller with an

Easement Objection Notice, the Seller shall use commercially reasonable efforts to have the Easement Objection Items Cured, prior to or as of the Closing. At or prior to the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing Seller has Cured all Easement Objection Items. In the event that Seller is unable to Cure any such Easement Objection Item per this Section 6.05(b), Seller shall indemnify Buyer for such inability per the terms of Article VIII hereof, provided that Seller's indemnification obligation arising under this Section 6.05(b) shall not be subject to the Threshold Amount nor the Liability Cap set forth in Section 8.05.

(c) Missing Easements. If during the process of Abstractor's review and investigation of the Montgomery County land records, either Party determines, based on the Abstractor's investigation, that there is a Missing Easement, the Seller (at its cost and expense) shall take any and all actions (including the use of its power of condemnation) to obtain any such Missing Easements so that the same may be sold, assigned, transferred and conveyed to Buyer at the Closing pursuant to the terms and conditions of this Agreement. The Seller shall pay for all costs and expenses incurred in connection with obtaining each Missing Easement (including any consideration payable to the landowner in connection with condemnation, in lieu of condemnation or otherwise to obtain Missing Easements). If Seller has not obtained all Missing Easements by the date that is ninety (90) days after the date that Abstractor has completed his review of the County land records and delivered the last results of the same to Seller (the "Abstract Completion Date"), then the Seller (at its cost and expense) shall, as soon as reasonably practicable, commence and file in the Court of Common Pleas, Montgomery County, a condemnation or eminent domain proceeding to obtain any and all such Missing Easements. For the purposes of clarity, upon obtaining each Missing Easement (including upon the final resolution of a condemnation proceeding), each Missing Easement that has been acquired or obtained by the Seller is considered an Easement.

(d) License at Closing. At Closing, Seller shall provide Buyer with a license agreement granting Buyer a license in all of Seller's and the Authority's rights to access such Missing Easement in order to allow Buyer to operate and maintain the System until such time as Buyer is provided title to such Missing Easement as provided for in this Agreement.

(e) Escrow at Closing for Missing Easements. For all of the Missing Easements listed on attached Schedule 6.05(e) as of the Closing Date, Seller will have additional time following the Closing Date to secure and assign and transfer the Missing Easements to Buyer. Seller shall diligently pursue and deliver the Missing Easements on or before the third (3rd) anniversary of the Closing Date, subject to any extension as permitted by the Escrow Agreement, that will require, among other things, the funding of an escrow account in the amount of Two Thousand Dollars (\$2,000) for each Missing Easement set forth on Schedule 6.05(e) as of the Closing Date to secure the Seller's obligations under this Agreement and the Escrow Agreement.

Section 6.06. Unscheduled Property

The Parties acknowledge that the Seller may own interests in or have the legal right to use or occupy the Real Property and/or Easements that are necessary or essential to the operation of the System and that are not set forth in Schedule 4.09 (the "Unscheduled Real Property"). If the

Parties discover before or after the Closing Date, one or more parcels of Unscheduled Real Property, the discovering Party shall give written notice of such discovery to the non-discovering Party. In addition to its obligations in Section 2.03, Seller shall convey, assign or otherwise transfer any rights to each parcel of Unscheduled Real Property, with no adjustment to the Purchase Price, in such a manner as to provide Buyer with reasonable assurances that Buyer will have the right to use or occupy the Unscheduled Real Property as it was used by Seller as of the Effective Date.

ARTICLE VII. OTHER AGREEMENTS

Section 7.01. Taxes

Except as provided in this Agreement, Seller or the Authority as predecessor in interest shall pay any and all Taxes, if any, arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing Date.

Section 7.02. Cooperation on Tax Matters

Seller and the Authority shall furnish or cause to be furnished to Buyer, as promptly as practicable, whether before or after the Closing Date, such information and assistance relating to the System as is reasonably necessary for the preparation and filing by Buyer of any filings relating to any Tax matters.

Section 7.03. Personnel Matters

(a) Subject to the obligations of the Authority under applicable Law and Buyer's obligations specified in Section 7.03(h) below with respect to Union Personnel, Buyer shall, or shall cause an Affiliate of Buyer to, offer employment effective on the Closing Date, to the Personnel set forth on Schedule 7.03(a), who are available to commence work on the Closing Date, subject to Buyer's existing standard hiring policies and procedures applicable to new employees, (including background check and drug testing, and written acknowledgment of Buyer's Code of Conduct and other employment policies, if applicable) except with respect to benefits as otherwise provided in Section 7.03(c). The Personnel who accept such employment and commence employment on the Closing Date, are referred to in this Agreement as the "Transferred Personnel." Schedule 7.03(a) shall not be amended after the date this Agreement is executed without the prior written consent of Buyer. For purposes of clarity, nothing contained in this Section 7.03 limits, restricts or prohibits Buyer from interviewing the Personnel for informational purposes only in connection with the transfer of employment of the Personnel to Buyer as provided in this Section 7.03. Buyer may make the required offer of employment at such a time to permit Buyer to require such offerees' decision to accept or reject such offers up to three (3) months prior to the Closing Date. Nothing contained in Section 7.03 limits or restricts Buyer from interviewing Personnel for employment purposes in connection with the transfer of Personnel to Buyer.

(b) Transferred Personnel who are Non-Union Personnel will be employees-at-will of Buyer. Buyer shall provide each of the Transferred Personnel who are Non-Union Personnel

compensation and benefits which are substantially comparable to the compensation and benefits then provided to similarly situated employees of Buyer. Nothing in this Agreement requires Buyer to provide any particular form or type of employee benefit program, plan or policy to any Transferred Personnel who are Non-Union Personnel as a result of the transaction contemplated by this Agreement.

(c) Subject to the obligations of the Authority under the Collective Bargaining Agreement and Law and Buyer's obligations specified in Section 7.03(h) below with respect to Union Personnel, with respect to any employee benefit plan maintained by Buyer or an Affiliate of Buyer for the benefit of any Transferred Personnel, effective as of the Closing, Buyer shall, or shall cause its Affiliate to, recognize all service of the Transferred Personnel with the Authority, as if such service were with Buyer for purposes of determining eligibility and vesting for benefits (except where doing so would result in a duplication of benefits). Buyer's pension plans and retiree medical plans are excluded from the foregoing sentence.

(d) Subject to the obligations of the Authority under the Collective Bargaining Agreement and applicable Law and Buyer's obligations specified in Section 7.03(h) below with respect to Union Personnel, effective as of the Closing, the Transferred Personnel employment with the Authority will end and will cease active participation in the Seller's Plans. Seller shall remain liable for all eligible claims for benefits under the Seller's Plans that are incurred by the Transferred Personnel before the Closing Date. Subject to the obligations of Seller, as successor to the Authority, under the Collective Bargaining Agreement and applicable Law and Buyer's obligations specified in Section 7.03(h) below with respect to Union Personnel, Seller shall remain liable to make any contributions to Seller's Plans related to, and/or to fund any retirement benefits accrued by, the Transferred Personnel before Closing. Notwithstanding anything in this Agreement to the contrary, Seller will remain liable for all pay, expenses, liabilities, wages, Taxes and all other obligations and liabilities of any nature whatsoever relating to (i) the period prior to the Closing Date with respect to any Personnel that become Transferred Personnel and (ii) relating to all periods before or after the Closing Date with respect to any current or former Personnel who do not become Transferred Personnel.

(e) This Section 7.03 binds and inures solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 7.03, express or implied, is conferred upon any other Person any rights or remedies of any nature whatsoever under or because of this Section 7.03. This Section 7.03 does not create any right in any Transferred Personnel or any other Person to any continued employment with Buyer or any of its Affiliates or compensation or benefits of any nature or kind whatsoever, and is not be deemed to restrict Buyer in the exercise of its independent business judgment in establishing or modifying any of the terms or conditions of the employment of the Transferred Personnel. Nothing contained in this Section 7.03 constitutes an amendment of, or an undertaking to amend, any employee benefit plan, program or arrangement maintained by Buyer or its Affiliates or is intended to prevent Buyer or its Affiliates from amending or terminating any such employee benefit plan, program or arrangement in accordance with its terms.

(f) Notwithstanding anything in this Agreement to the contrary, it is expressly understood that Buyer will not acquire any asset, or assume any liability or obligation in

connection with the transactions contemplated by this Agreement relating to any of the Seller's Plans or Seller's Benefit Obligations. Seller is solely responsible for any liability, funding obligation, claim or expense arising from the Seller's Plans or Seller's Benefit Obligations, both before, and after, the Closing Date, except as provided in Section 7.03(c).

(g) At a reasonable time prior to the Closing Date, Seller and Authority shall transfer all records pertaining to the employment of the Transferred Personnel to Buyer including, but not limited to, all personnel and human resources Files and Records.

(h) Effective as of and conditioned upon Closing and to the greatest extent permissible by law:

(1) Buyer shall recognize the Union as the exclusive bargaining representative for Union Personnel in their current bargaining unit if the Buyer's employees performing the bargaining unit work previously performed by Union Personnel constitute at least a majority of Union Personnel in the applicable bargaining unit and the related bargaining unit contains more than one (1) employee.

(2) To the extent the Union is recognized pursuant to Section 7.03(h)(1) herein, Buyer shall collectively bargain in good faith with the Union to establish a new collective bargaining agreement. Except as outlined in Section 7.03(h)(3) herein, if initial terms and conditions of employment cannot be agreed to by the Buyer and the Union, Buyer will adopt Seller's Collective Bargaining Agreement for employees in the applicable bargaining unit as of and conditioned upon Closing.

(3) Buyer is not required, however, to provide medical insurance, paid time off or pension benefits as provided for in the Collective Bargaining Agreements, but instead may provide Union Personnel with the medical insurance, paid time off and retirement benefits it provides to similarly situated employees. The Buyer also shall not be bound by and any provision of the Collective Bargaining Agreement with which it legally cannot comply. Seller makes no representations, and Buyer is solely responsible for determining, that these terms meet Buyer's obligations under applicable labor law.

Section 7.04. **Initial and Future Rates**

(a) **Rates**. After Closing, Buyer shall implement the Seller's sanitary wastewater rates then in effect at Closing, as set forth on Schedule 7.04 and inclusive of any PaPUC permitted or required surcharges or pass-through costs ("**Base Rates**"), as Buyer's effective sanitary wastewater rates, provided that the rates reflected on Schedule 7.04 (at Closing) shall not be lower than those in effect on the date of the Effective Date. The Base Rates shall not be increased until after the second anniversary of the Closing Date (the "**Freeze Period**") provided that the foregoing Freeze Period restriction shall not apply to rates applicable to the Municipal Agreements or any customer(s) receiving services pursuant to such Municipal Agreements nor shall the Freeze Period apply to any customer receiving services pursuant to any other agreement set forth set forth on Schedule 4.15. During the Freeze Period, Buyer shall apply its then-existing miscellaneous fees and charges, rules and regulations for wastewater service as set forth in Buyer's tariff within Seller's Service Area. Buyer intends to bill on a monthly basis.

(b) PaPUC Approval. The Buyer shall include the rate provisions of Section 7.04(a) in its requested PaPUC Governmental Approval.

Section 7.05. Buyer Taxpayer

From and after the Closing Date, Buyer acknowledges that, upon conveyance of the Acquired Assets to Buyer, the Buyer will be subject to, among other Taxes, real estate Taxes, which Buyer shall pay when due. But solely to the extent such Taxes are owed for and relating to periods after the Closing.

Section 7.06. PaPUC Approval

(a) Promptly after the Effective Date, Buyer shall timely initiate and faithfully prosecute the necessary proceedings to obtain from the PaPUC (i) the issuance of certificates of public convenience to Buyer to provide wastewater services in the Service Area, (ii) the approval of the acquisition of the System by Buyer under terms and conditions that are reasonably acceptable to Seller and Buyer, and (iii) the approval of any inter-municipal agreements. Seller shall cooperate with and assist Buyer in proceedings before the PaPUC.

(b) The Parties agree that the procedures for determining fair market value of the System and Acquired Assets outlined in subsection (a) of Section 1329 of Title 66 of the Pennsylvania Consolidated Statutes ("Section 1329") shall be utilized and filed with the PaPUC as contemplated by Section 1329.

(c) The fees and expenses related to engaging the licensed engineer for such Section 1329 determination shall be paid fifty percent (50%) by Buyer and fifty percent (50%) by the Seller.

(d) To the extent requested by Buyer, Seller shall participate in any proceedings before the PaPUC as an intervenor and active party, provided that the Seller shall bear the fees and expenses directly related to such intervention. Seller may be represented by the counsel of its choice in any such proceedings.

(e) Buyer, in Buyer's first base rate proceeding with respect to the System following the Closing, shall propose the use of statutory and regulatory mechanisms that may be available to Buyer to benefit the Buyer's acquired customers for ratemaking purposes. In the Buyer's first base rate proceedings including the Seller's System, the Seller shall not file an intervention, complaint (formal or informal), or protest of Buyer's base rate proceedings. For the avoidance of doubt this provision does not apply to citizens in the Township.

Section 7.07. Remedies for Breach of Article VII Agreements

If Buyer breaches any of the covenants and agreements set forth in this Article VII, in addition to all other rights and remedies available at law or in equity, including specific performance and/or injunctive relief, Seller may commence proceedings before the PaPUC seeking enforcement of such covenants and agreements.

Section 7.08. **Operation and Maintenance of MS4 and Stormwater Systems**

Subject to Law, the Seller shall at all times maintain ownership of its MS4 system and stormwater system assets. This provision shall not preclude Seller from transferring its MS4 system and stormwater system assets to another governmental entity, municipal authority or other qualified purchaser at a future time.

Section 7.09. **Pending Development Plans**

(a) Buyer and the Seller acknowledge that from the time of the Effective Date, the Seller shall continue to administer, and perform its duties and responsibilities with respect to the Pending Development Plans set forth on Schedule 4.19. For the avoidance of doubt, after the Closing Date, the Seller shall not seek to collect any EDU or tapping related fees.

(b) Following the Effective Date, Seller shall not enter into any contract with a third party that contemplates the construction of new sanitary wastewater facilities or upgrades to existing facilities, including, without limitation, pumping stations, force mains, manholes, or pipelines for service to future customers related to Pending Development Plans (collectively, "New System Assets") without providing a draft of such contracts to Buyer for its review and approval as to the design and specifications before execution by the parties to such contracts. Buyer shall have fifteen (15) Business Days to review and approve such contracts, and Buyer's failure to object in writing to any terms of such contracts within such fifteen (15) Business Day review period is deemed an approval of the same by Buyer.

Section 7.10. **Act 537 Plan**

(a) Buyer acknowledges that Seller and the Authority as predecessor in interest have previously committed to an official plan, commonly known as an Act 537 Plan (the "Act 537 Plan") under the Pennsylvania Sewage Facilities Act ("Act 537"), which has been made available to Buyer. Buyer understands that the Act 537 Plan contains obligations and commitments, as more fully set forth in the Act 537 Plan to complete certain improvements and upgrades to the System (the "System Improvements"). Buyer shall accept and complete all of the System Improvements as Seller and the Authority agreed to complete under the existing Act 537 Plan. Prior to agreeing to further obligations pursuant to future amendments to the Act 537 Plan that could reasonably be deemed to affect Buyer, Seller shall provide written notice of such proposed amendment(s), and Buyer and Seller shall negotiate in good faith to resolve any objections Buyer may raise in connection with such proposed amendment(s).

(b) Buyer acknowledges Seller and the Authority as predecessor in interest has jurisdiction over sewage facilities planning and sewer service within portions of the System that provide service within the Service Area through the Act 537 Plan and its Act 537 planning program, zoning, subdivision and land development ordinances and comprehensive land use planning policies. Buyer, Seller and the Authority shall cooperate with respect to current and future sewage facilities planning and sewer service consistent with the provisions of this Section 7.10.

(c) Subject to PaPUC approval of the Service Area as provided in Section 7.06, Buyer shall extend sewer lines and provide sewage collection and treatment services to properties within the Service Area in a manner consistent with the Act 537 Plan and the Buyer's tariff, the Public Utility Code, and the Pa PUC's regulations and orders. Seller will confer with Buyer concerning any amendment to the Act 537 Plan that would affect the provision of sewage collection and treatment services within the Service Area. Neither Seller nor the Authority shall propose or adopt any amendment to the Act 537 Plan that would reduce the Service Area or divert wastewater flows generated from properties located within the Service Area from being served by the System without the approval of Buyer.

(d) Buyer will not request, pursue, or implement expansions of the System within the Seller beyond the current Service Area (that would trigger an Act 537 Plan amendment) without the prior written approval of Seller and the PaDEP. Seller shall promptly notify and confer with Buyer, and consider Buyer's comments, concerning any proposed Act 537 Plan amendment (including any sewage facilities planning module) that would involve the provision of sewage collection and treatment services by the System to area or properties outside of the Service Area. With respect to any such potential Act 537 Plan amendment, Seller and Buyer shall cooperate in evaluating alternatives for provision of sewage services to such areas consistent with the requirements of 25 Pa Code Ch. 71, including consideration of the technical feasibility, economic feasibility and cost effectiveness, consistency with the objectives and policies of plans and requirements of 25 Pa. Code Ch. 71.21(a)(5), consistency with municipal land use plans and ordinances, subdivision ordinances and other ordinances and plans for controlling land use and development, technically and administratively able to be implemented, and other factors required under Act 537 or under Buyer's tariff, the Public Utility Code, and the Pa PUC's regulations and orders.

(e) If Seller and Buyer each determine that the provision of sewage collection and treatment services by the System to certain areas or properties outside of the Service Area is technically feasible, economically feasible and cost effective, and meets all of the requirements set forth in Act 537 and 25 Pa. Code Ch. 71, the Seller and the Authority shall amend the Act 537 Plan to include such identified areas and properties in the Service Area. If Seller and the Authority amend the Act 537 Plan pursuant to this subsection and such amendment is approved by PaDEP, (i) Buyer shall request that the modified Service Area be approved by PaPUC; and (ii) subject to PaPUC approval of the inclusion of such modified Service Area, Buyer shall extend sewer lines and provide sewage collection services to properties within such Service Area in a manner consistent with the Act 537 Plan and Buyer's tariff, the Public Utility Code, and the Pa PUC's regulations and orders.

Section 7.11. Utility Valuation Experts

Buyer and Seller shall each be responsible for the costs associated with their respective Utility Valuation Expert for the preparation and completion of their respective Utility Valuation Expert's appraisal report and any additional work by their respective Utility Valuation Expert necessary to assist in the processing and prosecution of the application to the PaPUC in regard to this transaction under Section 1329.

Section 7.12. **Compliance and Operational Reports**

After the Effective Date and through the Closing Date, Seller shall provide Buyer with a monthly report to the person designated by Buyer, disclosing any and all material compliance or operational deficiencies that occurred during the previous month. During the same period, Seller shall also provide Buyer with copies of all reports filed with PaDEP regarding the System, including any discharge monitoring reports, associated supplemental reports, and WETT reports, when available. Seller shall permit Buyer to complete an inspection of the Acquired Assets within twenty (20) days prior to Closing.

Section 7.13. **Implementation and Enforcement of Municipal Code**

Following the Effective Date and continuing after Closing Date, Seller shall continue to implement and enforce the relevant provisions of the Municipal Code of the Township of Towamencin, as amended, including, without limitation, enforcement of the Seller's fats, oils, and grease program, lateral inspection program, investigation of illegal connections, and related operations and maintenance programs.

Section 7.14. **Covenant Survival**

The covenants in this Article survive Closing.

Section 7.15. **Phase I Environmental Site Assessment**

Following the Effective Date, if requested by Buyer, Seller and the Authority shall make the System and the Real Property available for Phase I environmental site assessment by Buyer at Buyer's expense and Buyer's Representatives during normal business hours upon reasonable notice.

**ARTICLE VIII.
INDEMNIFICATION**

Section 8.01. **Survival**

All representations and warranties contained in this Agreement shall survive until twelve (12) months following the Closing Date, except that (a) the representations and warranties of the Seller and the Authority specified in Section 4.01 (Organization), Section 4.02 (Power and Authority), Section 4.03 (Enforceability), Section 4.17 (Brokers' and Finders' Fees) and Section 4.18 (Title to Acquired Assets; Sufficiency) (collectively, the "Seller Fundamental Representations") shall survive the Closing indefinitely or until the latest date permitted by applicable Law, (b) the representations and warranties of Seller and the Authority specified in Section 4.13 (Environmental Compliance) shall survive Closing until the expiration of the applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof) , and (c) the representations and warranties of Buyer specified in Section 5.01 (Organization), Section 5.02 (Authorization and Validity of Agreement), and Section 5.05 (Brokers' and Finders' Fees) (collectively, the "Buyer Fundamental Representations") shall survive the Closing indefinitely or until the latest date permitted by applicable Law. The covenants and agreements

of the Parties contained herein shall survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive indefinitely or until the latest date permitted by applicable Law. Notwithstanding the preceding sentences, (x) any breach of representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought before such time, and (y) nothing contained in this Section 8.01 shall limit in any way any rights a Party may have to bring claims grounded in fraud, intentional misrepresentation or willful misconduct, which rights shall survive the Closing indefinitely.

Section 8.02. **Indemnification by the Seller**

To the maximum extent permitted by applicable Law and subject to the terms and conditions of this Article VIII, the Seller shall indemnify, defend and hold harmless, Buyer and its successors and Affiliates and their respective employees, officers, directors, trustees and agents (the "**Buyer Indemnified Persons**"), from and against any and all claims for Losses arising from or relating to: (a) any misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of the Seller and/or the Authority contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by the Seller or the Authority before the Closing pursuant to this Agreement (without regard to any materiality, Material Adverse Effect or related qualifications in the relevant representation or warranty (except where such provision requires disclosure of lists of items of a material nature or above a specified threshold)); (b) any material breach or material nonfulfillment of any of the covenants or agreements of the or the Authority Seller contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by the Seller or the Authority before the Closing pursuant to this Agreement; or (c) any Excluded Liability or Excluded Asset, or (d) the ownership, use, operation or control of the Acquired Assets or the System prior to the Closing or any incident, occurrence, condition or claim arising prior to Closing and relating to the ownership, use, operation or control of the System prior to Closing.

Section 8.03. **Indemnification by Buyer**

To the maximum extent permitted by applicable Law and subject to the terms and conditions of this Article VIII, Buyer shall defend, indemnify and hold harmless the Seller and its successors and Affiliates and each of their respective employees, officers, directors and agents (the "**Seller Indemnified Persons**") from and against any and all claims for Losses arising from or relating to: (a) any misrepresentation as to, or any material inaccuracy in, any of the representations and warranties of Buyer contained in this Agreement or in any exhibit, schedule, certificate or other instrument or document furnished or to be furnished by Buyer pursuant to this Agreement; (b) any material breach of any of the covenants or agreements of Buyer contained in this Agreement or in any exhibit, schedule certificate or other instrument or document furnished or to be furnished by the Buyer pursuant to this Agreement; (c) any Assumed Liability as and when payment and performance is due, including without limitation any liability related to any claims by any Governmental Authority; (d) Buyer's actions involving Environmental Requirements,

Hazardous Materials or environmental claims from and after the Closing Date; or (e) the ownership, operation or control of the Acquired Assets or the System from and after the Closing Date.

Section 8.04. Indemnification Procedure

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party may be obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses because of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party may participate in, or by giving written notice to the Indemnified Party (and subject to the other requirements herein) to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel (which counsel is reasonably acceptable to the Indemnified Party), so long as (i) the Indemnifying Party notifies the Indemnified Party, within ten (10) Business Days after the Indemnified Party has given notice of the Third Party Claim to the Indemnifying Party (or by such earlier date as may be necessary under applicable procedural rules in order to file a timely appearance and response) that the Indemnifying Party is assuming the defense of such Third Party Claim, provided, that if the Indemnifying Party assumes control of such defense it must first agree and acknowledge in such notice that the Indemnifying Party is fully responsible (with no reservation of any rights other than the right to be subrogated to the rights of the Indemnified Party) for all Losses relating to such Third Party Claim, (ii) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently and at its own cost and expense, and (iii) the Third Party Claim (A) does not involve injunctive relief, specific performance or other similar equitable relief, any claim in respect of Taxes, any Governmental Authority, any criminal allegations, or any potential damage to the goodwill, reputation or overriding commercial interests of Buyer or its Affiliates, (B) is not one in which the Indemnifying Party is also a party and joint representation would be inappropriate or there may be legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party, or (C) does not involve a claim which, upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend. The Indemnified Party shall reasonably cooperate in good faith in such defense. If the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.04(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party may, at its own cost and expense, participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the

Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 8.04(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Seller and Buyer shall reasonably and in good faith cooperate with one another in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this Section 8.04(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give prompt written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within fifteen (15) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.04(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any claim by an Indemnified Party with respect to any Loss which does not arise or result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses because of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Losses that have been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. During the thirty (30) day period, the Indemnified Party shall reasonably cooperate and assist the Indemnifying Party in determining the validity and amount of such Direct Claim. If the Indemnifying Party does not so respond within such thirty (30) day period, by delivery of written notice disputing the basis or amount of the Direct Claim, the Indemnifying Party is deemed to have rejected such claim, in which case the Indemnified Party is free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement. If the Indemnifying Party has timely disputed its indemnity obligation for any Losses with respect to such Direct Claim, the

Parties shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute may be resolved by litigation in an appropriate court of jurisdiction determined pursuant to this Agreement.

Section 8.05. Limitations on Indemnification Obligations

(a) Subject to the other limitations contained in this Section 8.05, neither Buyer nor Buyer Indemnified Persons is entitled to indemnification pursuant to Section 8.02(a) (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Losses incurred by Buyer and Buyer Indemnified Persons under this Agreement exceeds one percent (1%) of the Purchase Price in the aggregate (the “Threshold Amount”), in which case Seller shall then be liable for Losses in excess of the Threshold Amount; except that the foregoing limitations contained in this Section 8.05(a) shall not apply to any claims for indemnification (i) based on fraud, intentional misrepresentation or willful misconduct, (ii) based on any inaccuracy in, misrepresentation as to or breach of any of the Seller Fundamental Representations or any of the representations and warranties set forth in Section 4.13, or (iii) pursuant to Section 8.02(d).

(b) Subject to the other limitations contained in this Section 8.05 neither Seller nor the Seller Indemnified Persons is entitled to indemnification pursuant to Section 8.03(a) (other than for an intentional breach of any agreement or covenant contained in this Agreement) unless the aggregate amount of Losses incurred by Seller and Seller Indemnified Persons under this Agreement exceeds the Threshold Amount, in which case Buyer shall then be liable for Losses in excess of the Threshold Amount; except that the foregoing limitations contained in this Section 8.05(a) shall not apply to any claims for indemnification based on fraud, intentional misrepresentation or willful misconduct or pursuant to Sections 8.03(c), (d) and (e).

(c) Except in the case of fraud, intentional misrepresentation or willful misconduct (for which all applicable legal and equitable remedies will be available to Buyer), the Buyer Indemnified Parties shall only be entitled to assert claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations, which shall not be limited by this Section 8.05(c)) up to the aggregate amount of 8% of Purchase Price (the “Liability Cap”), which shall represent the sole and exclusive remedy of Buyer and the other Buyer Indemnified Parties for any such claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations, in the case of fraud, intentional misrepresentation or willful misconduct or pursuant to Section 8.02(c) which shall not be subject to the Liability Cap, but is capped at the Purchase Price).

(d) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss is limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds actually received and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses before seeking indemnification under this Agreement.

(e) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Loss will be reduced by an amount equal to any Tax benefit realized or reasonably expected to be realized as a result of such Loss by the Indemnified Party.

(f) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

(g) Subject to the provisions of Sections 3.02, 7.07, 15.11 and any other provisions for equitable relief and/or specific performance, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, each Party waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Party hereto and their Affiliates and each of their respective representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.05(g) limits any Parties' right to seek and obtain any equitable relief and/or specific performance to which any Party is entitled pursuant to this Agreement.

Section 8.06. **Knowledge of Breach**

Seller will not be liable under this Article VIII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had Knowledge of such inaccuracy or breach before the Closing Date. Buyer will not be liable under this Article VIII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement if Seller had Knowledge of such inaccuracy or breach before the Closing Date.

ARTICLE IX. **PRE-CLOSING COVENANTS OF THE SELLER AND THE AUTHORITY**

Section 9.01. **Operation of the System**

Except as otherwise expressly permitted by this Agreement, as required by applicable Law or with the prior written consent of Buyer (which consent shall not be unreasonably withheld, delayed or conditioned), from the Effective Date until the Closing, the Seller and the Authority shall (i) operate and manage the System only in the ordinary course of business in accordance with past practices and procedures, (ii) comply in all material respects with all applicable Laws and Authorizations and Permits, (iii) use commercially reasonable efforts to maintain and preserve intact the business and assets of the System and preserve the rights, franchises, goodwill and relationships of the Seller, the Authority and the System and their customers, lenders, suppliers, regulators and others having business relationships with the Seller, the Authority and the System including, but not limited to, the land development agreements and the agreements

with Clemens Food Group (Hatfield Quality Meats) in existence as of the Effective Date which such agreements shall not be extended, renewed, replaced or materially amended without notice to and the consent of Buyer, which consent shall not be unreasonably withheld or delayed, and (iv) prior to Closing, maintain the existence of the Lease except for purposes of acquiring title to the System by the Seller in order to consummate the sale of the System to Buyer.

Section 9.02. Cooperation

The Seller and the Authority shall reasonably cooperate with Buyer and its employees, attorneys, accountants and other agents and, generally, act in reasonably good faith to timely carry out the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement, including without limitation to effect the following at or before the Closing: (i) the repayment of the Outstanding Indebtedness, and (ii) the acquisition by Seller of title to all Acquired Assets.

Section 9.03. Supplements and Updates

The Seller and the Authority shall promptly deliver to Buyer any supplemental information updating the information set forth in the representations and warranties in Article IV of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. At least ten (10) Business Days of having Knowledge of the same, but in no event later than (3) Business Days before the Closing Date, the Seller shall advise Buyer of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained in this Agreement. For the avoidance of doubt, no such supplemental information or facts provided pursuant to this Section 9.03 shall be deemed to alter any Schedules without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed).

Section 9.04. Governmental Approvals

Promptly after the execution of this Agreement, or as required by Law, except as provided in Section 7.06 or otherwise expressly provided herein, the Seller and the Authority, as applicable, shall file all applications and reports that are required to be filed by Seller or the Authority with any Governmental Authority as provided on Schedule 4.05 to the Buyer. The Seller and the Authority shall also promptly provide all information that any Governmental Authority may require in connection with any such application or report. The Seller and the Authority shall use commercially reasonable efforts to obtain all required material consents, waivers, authorizations or approvals of any Governmental Authority, or of any other Person in connection with the transactions contemplated by this Agreement, including as required under any Assigned Contract. All authorizations of any Governmental Authority necessary to consummate the transactions contemplated by this Agreement shall be in form and content reasonably satisfactory to Buyer and the Seller before Closing and must be final and non-appealable. If a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and the Seller may agree to proceed to consummate the transaction.

ARTICLE X.
PRE-CLOSING COVENANTS OF BUYER

Section 10.01. Actions Before the Closing Date

Buyer shall not take any action that will cause it to be in breach of any representation, warranty, covenant or agreement contained in this Agreement or cause it to be unable to perform in any material respect its obligations hereunder, and Buyer shall use commercially reasonable efforts (subject to any conditions set forth in this Agreement) to perform and satisfy all conditions to Closing to be performed or satisfied by Buyer under this Agreement, including action necessary to obtain all consents and approvals of third parties required to be obtained by Buyer to effect the transactions contemplated by this Agreement.

Section 10.02. Governmental Approvals

Promptly after the execution of this Agreement, or as required by Law, except as otherwise expressly provided herein, Buyer shall file all applications and reports which are required to be filed by Buyer with any Governmental Authority as provided on Schedule 5.04. Buyer shall also promptly provide all information that any Governmental Authority may reasonably require in connection with any such application or report. Buyer shall use commercially reasonable efforts to obtain all consents, waivers, authorizations or approvals of any Governmental Authority, or of any other Person necessary to consummate the transactions contemplated by this Agreement.

Section 10.03. Cooperation

Buyer shall reasonably cooperate with the Seller and the Authority and their employees, attorneys, accountants and other agents and, generally, do such other acts and things in good faith as may be reasonable to timely carry out the purposes of this Agreement and the consummation of the transactions contemplated in accordance with the provisions of this Agreement.

Section 10.04. Supplements and Updates

Buyer shall promptly deliver to the Seller any supplemental information updating the information set forth in the representations and warranties in Article V of this Agreement so that such representations and warranties as supplemented by such information will be true and correct as of the Closing Date (or such other date as provided in such representations and warranties) as if then made. Within ten (10) Business Days of having Knowledge of the same, and at least three (3) Business Days before the Closing Date, Buyer shall advise the Seller of any facts which would constitute a breach of a representation or warranty as of the date made or a default in a covenant contained herein.

ARTICLE XI.
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER

The obligation of the Seller to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any one or more of which may be waived in writing by the Seller in its sole discretion:

Section 11.01. Consents and Approvals

Receipt of all required consents, waivers, authorizations or approvals of any Governmental Authority, or of any other Person and any other approvals necessary to consummate the transactions contemplated by this Agreement set forth on Schedule 5.04, including without limitation all required EPA and PaDEP approvals and all such Authorizations and Permits and Governmental Approvals must be final (and not subject to any appeal and any applicable appeal period having expired). Seller shall obtain the consent of any Governmental Authority as required by the PaPUC.

Section 11.02. Representations and Warranties of Buyer

The representations and warranties made by Buyer in Article V which are (a) not qualified by materiality shall be true and correct in all material respects on and as of the Closing Date (except for representations or warranties that speak of a specific date or time other than the Closing Date which shall be true and correct in all material respects as of such specified date) and (b) qualified by materiality shall be true and correct in all respects on and as of the Closing Date (except for representations or warranties that speak of a specific date or time other than the Closing Date which shall be true and correct in all respects as of such specified date), and the Seller shall have received a certificate to the effect of the foregoing from a duly authorized officer of Buyer dated as of the Closing Date.

Section 11.03. PaPUC Approval

PaPUC must have issued a Final Order approving the acquisition of the System under terms and conditions that are reasonably acceptable to the Seller and Buyer. If a party to the PaPUC proceeding appeals or files a petition for reconsideration of the PaPUC authorization of the transaction, the Buyer and Seller may mutually agree to proceed to consummate the transaction.

Section 11.04. No Injunctions

Neither Seller nor Buyer shall be subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement.

Section 11.05. Performance of the Obligations of Buyer

Buyer shall have performed and been in compliance in all material respects with all obligations and covenants required under this Agreement to be performed by Buyer on or before the Closing

Date, and the Seller shall have received a certificate to that effect from Buyer dated the Closing Date.

Section 11.06. Deliveries by Buyer

Buyer shall have made delivery to the Seller of the documents and items specified in Section 13.03.

Section 11.07. No Material Adverse Effect

There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System.

**ARTICLE XII.
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER**

The obligation of Buyer to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any one or more of which may be waived in writing by Buyer in its sole discretion:

Section 12.01. Consents and Approvals

(a) Receipt of all required material, non-governmental third party consents and any other approvals necessary or advisable to consummate the transactions contemplated by this Agreement set forth on Schedule 4.05 and all consents, waivers, authorizations and approvals of any Governmental Authority required pursuant to Section 5.04, including without limitation all required EPA and PaDEP approvals/renewals and all such Authorizations and Permits and Governmental Approvals must be final (and not subject to any appeal and any applicable appeal period having expired); and

(b) Approval by the Municipal Board and the Authority Board for: (i) defeasance and redemption of any outstanding bonds issued by the Seller or the Authority on the System included in the Outstanding Indebtedness, and (ii) discharge of any other outstanding debt issued to the Seller or the Authority and payable to any current lender secured by the lease payments under the Lease.

(c) Delivery of evidence that Seller shall have taken all actions to acquire title to the System and the Acquired Assets required to permit Seller to convey the System and the Acquired Assets to Buyer as pursuant to this Agreement; and

(d) Delivery of evidence of: (1) the termination of the Authority or transfer of all leasehold and operating rights in the assets of the System to the Township and the assumption of the Authority's rights and obligations thereunder, and (2) the transfer of the ownership to the Township of the laterals from the collection system main to the edge-of-road or curb-line when the main is located within a public right-of-way or the edge of easement where the main is located within private property.

Section 12.02. **Representations and Warranties of Seller**

The representations and warranties made by the Seller and the Authority in Article IV of this Agreement (disregarding all “materiality” and “Material Adverse Effect” or similar qualifications contained therein) shall be true and correct on and as of the Closing Date (except for representations and warranties expressly stated to relate to a specific date, in which case each such representation and warranty shall be true and correct as of such earlier date), with only such exceptions as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and the Buyer shall have received a certificate to that effect from the Seller dated as of the Closing Date.

Section 12.03. **PaPUC Approval**

PaPUC must have issued a Final Order authorizing the Buyer to operate as a public utility in the Commonwealth of Pennsylvania and Final Order(s) approving the acquisition of the System under terms and conditions that are reasonably acceptable to the Seller and Buyer. If a party to the PaPUC proceeding appeals PaPUC authorization of the transaction, the Buyer and Seller may agree to proceed to consummate the transaction.

Section 12.04. **No Injunctions**

The Seller, the Authority and the Buyer are not subject to any injunction, preliminary restraining order or other similar decree of a court of competent jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement.

Section 12.05. **No Material Adverse Effect**

There shall not have occurred any event or condition which gives rise to a Material Adverse Effect with respect to the Acquired Assets or the System.

Section 12.06. **Deliveries by Seller**

Seller shall have made delivery to Buyer of the documents and items specified in Section 13.02.

Section 12.07. **Performance of the Obligations of Seller**

Seller shall have performed and been in compliance in all material respects with all obligations and covenants required under this Agreement to be performed by Seller on or before the Closing Date, and Buyer shall have received a certificate to that effect from Seller dated the Closing Date.

Section 12.08. **Phase 1 Environmental Site Assessment**

If applicable under Section 7.15 hereof, a Phase 1 environmental site assessment shall have been properly completed in respect of the System and the Real Property.

ARTICLE XIII.
CLOSING

Section 13.01. Closing Date

The Closing shall take place at a place in Pennsylvania that is mutually agreed upon by the Parties, at 10:00 a.m. eastern standard time on the earliest agreed upon date or within twenty (20) Business Days after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived and Buyer and the Seller receive the last of the required consents, waivers, authorizations and approvals from the Governmental Authorities, in each case, for the transactions contemplated by this Agreement, or at such other place and time, by such other method, or on such other date, as may be mutually agreed to by the Parties (the "Closing Date"). The Closing will be effective at 12:01 a.m., Township of Towamencin, PA time, on the Closing Date (the "Closing Effective Time").

Section 13.02. Deliveries by the Seller

At the Closing, Seller, shall have delivered or cause to be delivered to Buyer executed copies of the following agreements, documents and other items:

(a) A Bill of Sale transferring all of the Acquired Assets comprising personal property, in the form attached hereto as Exhibit A;

(b) Possession of the Acquired Assets, including without limitation, the Real Property, the Easements and an interest in the Missing Easements, including a license from Seller to Buyer;

(c) A duly executed counterpart to an Assignment and Assumption Agreement with respect to the Assumed Liabilities (the "Assignment and Assumption Agreement"), in the form attached hereto as Exhibit B;

(d) The consents to transfer all of the Assigned Contracts and Authorizations and Permits (including environmental Authorizations and Permits), to the extent required hereunder;

(e) One or more special warranty or other deeds in recordable form reasonably acceptable to Buyer transferring fee simple title of Real Property, and one or more assignments in recordable form reasonably acceptable to Buyer with respect to the Easements (exclusive of any Missing Easements);

(f) Copies or originals of all Files and Records, materials, documents and records in possession of the Seller relating to the Real Property or the Assigned Contracts;

(g) Certificate of Seller pursuant to Section 12.02 of this Agreement;

(h) Certificate of Seller pursuant to Section 12.07 of this Agreement;

(i) Any documents duly executed by Seller required by the Title Company to issue final owner's title policies in accordance with the procedures set forth in Article VI;

(j) A duly executed counterpart to the Escrow Agreement;

(k) Pursuant to Section 12.01(d), documents and certificates, as applicable, evidencing that the System is reclaimed from the Authority and the Authority conveyed the System to Seller, in accordance with the Pennsylvania Municipal Authorities Act;

(k) All such other instruments of conveyance or other documents as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer to Buyer the Acquired Assets in accordance with this Agreement or to carry out the terms of this Agreement, duly executed and acknowledged by Seller, if necessary, and in a recordable form;

(l) A form W-9 properly completed by the Seller;

(m) Simultaneously with Closing, evidence of UCC-3 termination statements filed with the Secretary of State of the Commonwealth of Pennsylvania releasing all liens held in the Acquired Assets by or on behalf of the Lender;

(n) An executed release, in form and substance acceptable to the Buyer, from the Lender confirming the discharge of the Outstanding Indebtedness and release of any and all security interests in any of the Acquired Assets which are not Permitted Liens, subject only to the receipt by the Lender of the Payoff Amount at Closing; and

(o) Copies of the duly adopted ordinance(s) and resolution(s) of the Seller and the Authority authorizing the transactions contemplated by this Agreement.

Section 13.03. **Deliveries by Buyer**

At the Closing, Buyer shall have delivered or caused to be delivered to the Seller the following agreements, documents and other items:

(a) Payment in full of the Purchase Price;

(b) A duly executed counterpart to the Assignment and Assumption Agreement;

(c) Certificate of Buyer pursuant to Section 11.02 of this Agreement;

(d) Certificate of Buyer pursuant to Section 11.05 of this Agreement;

(e) Evidence of PaPUC approval as provided in Section 12.03;

(f) A duly executed counterpart to the Escrow Agreement; and

(g) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement.

ARTICLE XIV. **TERMINATION**

Section 14.01. **Events of Termination**

This Agreement may, by notice given in the manner provided in this Agreement, be terminated and abandoned at any time before completion of the Closing:

- (a) By the consent of both of the Seller and the Buyer;
- (b) By any of the Seller or the Buyer if:

- (i) the Closing shall not have occurred on or before the Outside Date; except that the Buyer shall have the one-time right to extend the Outside Date for up to ninety (90) days if, in the Buyer's sole discretion, any such amount of time up to ninety (90) days is necessary to obtain a required Governmental Approval; or

- (ii) any Governmental Authority shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the material transactions contemplated by this Agreement and such order, decree, ruling or other action will have become final and non-appealable, provided however, that the Party seeking termination pursuant to this clause (b) of this Section 14.01 is not in breach in any material respect of any of its representations, warranties, covenants or agreements contained in this Agreement;

- (c) By the Seller (if Seller is not then in material breach of any provision of this Agreement) in the event of a material breach of any covenant or agreement to be performed or complied with by the Buyer pursuant to the terms of this Agreement or of any representation or warranty of the Buyer contained in this Agreement, which breach (i) has continued without cure for a period of sixty (60) days following written notice thereof by the Seller to the Buyer or if such breach cannot be cured and (ii) would result in a condition to Closing set forth in Article XI of this Agreement not being satisfied (which condition has not been waived by the Seller in writing); or

- (d) By the Buyer (if Buyer is not then in material breach of any provision of this Agreement) in the event of a material breach of any covenant or agreement to be performed or complied with by the Seller or the Authority pursuant to the terms of this Agreement or of any representation or warranty of the Seller or the Authority contained in this Agreement, which breach (i) has continued without cure for a period of sixty (60) days following written notice thereof by the Buyer to the Seller or the Authority or if such breach cannot be cured and (ii) would result in a condition to Closing set forth in Article XII of this Agreement not being satisfied (which condition has not been waived by the Buyer in writing).

This Agreement may not be terminated after completion of the Closing.

Section 14.02. **Effect of Termination**

If this Agreement is terminated by the Seller or the Buyer pursuant to Section 14.01, written notice thereof will forthwith be given to the other and all further obligations of the Parties under this Agreement will terminate without further action by any Party and without liability or other obligation of any Party to any other Party hereunder; except that no Party will be released from liability hereunder if this Agreement is terminated and the transactions abandoned because of any willful breach of this Agreement. For the avoidance of doubt, the Parties agree that in the event that this Agreement is terminated for any reason, the Additional Deposit shall be refunded to the Buyer as specified in Section 3.01(b)(iii) of this Agreement.

ARTICLE XV. MISCELLANEOUS

Section 15.01. Confidentiality

Except as and to the extent required by applicable Law (including but not limited to the Pennsylvania Right-To-Know Act at 65 Pa § 67.101) or pursuant to an order of a court of competent jurisdiction and as required hereunder to obtain any and all required Governmental Approvals, no Party hereto shall, directly or indirectly, disclose or use (and no Party shall permit its representatives to disclose or use) any Confidential Information with respect to any other Party furnished, or to be furnished, by such other Party hereto or its shareholders, directors, officers, agents, or representatives to the other Party hereto or its employees, directors, officers, agents or representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and related transactions.

Section 15.02. Public Announcements Subject to applicable Law or listing rules of an exchange on which Buyer's parent corporation's stock is listed, and except as otherwise set forth in this Agreement, the initial public announcement relating to the transactions contemplated herein will be mutually agreed upon and jointly made by the Parties. Subsequent public announcements by one Party are subject to review and approval by the other Parties before issuance, such approval not to be unreasonably withheld, conditioned or delayed.

Section 15.03. Notices

The Parties shall make all notices, other communications and approvals required or permitted by this Agreement in writing, stating specifically that they are being given pursuant to this Agreement and shall be addressed as follows:

in the case of the Seller and the Authority:

Attention:

Township of Towamencin
1090 Troxel Road
Lansdale, PA 19446
Attention: Township Manager
Fax: 215-368-7650

with a copy to:

Township of Towamencin
1090 Troxel Road
Lansdale, PA 19446
Attention: Solicitor
Fax: 215-368-7650

in the case of the Buyer:

NextEra Water Pennsylvania, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: Eric Mooney
E-mail: eric.mooney@nexteraenergy.com

with a copy to:

NextEra Water Pennsylvania, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: Vice President & General Counsel
E-mail: Neer-General-Counsel@nexteraenergy.com

or such other persons or addresses as a Party may from time to time designate by notice to the other Party. A notice, other communication or approval is deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval is deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by United States registered or certified mail.

Section 15.04. Headings

The article, section and paragraph headings in this Agreement are for reference purposes only and have no affect the meaning or interpretation of this Agreement.

Section 15.05. Severability

If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement remain in full force and effect and in no way be affected, impaired or invalidated.

Section 15.06. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party because of such provision of this Agreement having been drafted on behalf of one Party rather than the other Party.

Section 15.07. **Amendments; Waivers**

This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right precludes any other or further exercise of such right or the exercise of any other right.

Section 15.08. **Parties in Interest; Third Party Beneficiary**

Except as provided in this Agreement, this Agreement is not intended to and shall not be construed to create upon any Person other than the Parties any rights or remedies hereunder.

Section 15.09. **Successors and Assigns**

None of the Parties to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other Parties, and any purported assignment or purported delegation without prior written consent is void. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective permitted successors and assigns.

Section 15.10. **Governing Law; Jurisdiction**

The laws of the Commonwealth of Pennsylvania (without giving effect to its conflicts of law principles) govern all matters arising and relating to this Agreement, including torts. The Parties irrevocably agree and consent to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Montgomery County, Pennsylvania, for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Montgomery County, Pennsylvania, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's

address set forth in this Agreement shall be effective service of process for any suit, action or other proceeding brought in any such court. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 15.11. Specific Performance

The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties is entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 15.12. Interpretation.

For purposes of this Agreement: (a) the words “include,” “includes”, and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein”, “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. The definition given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined.

Section 15.13. Counterparts; Electronic Mail; Facsimile Execution

This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement will be effective when it has been executed by each Party and delivered to each Party. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Parties by electronic mail or facsimile transmission. Such Party is deemed to have executed and delivered this Agreement on the date it sent such electronic mail or facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

Section 15.14. Future Sale

If at any time before the third (3rd) anniversary of the Closing Date the Buyer determines to sell the System, Buyer shall promptly notify the Seller and provide Seller with a reasonable opportunity to discuss a potential repurchase of the System by the Seller.

[THIS SPACE INTENTIONALLY LEFT BLANK;

SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized Representatives, this Agreement as of the Effective Date.

TOWNSHIP OF TOWAMENCIN,
MONTGOMERY COUNTY

NEXTERA WATER PENNSYLVANIA, LLC


By: _____
Name:
Its:

By:  _____
Name: Bruce Hauk
Its: President

ATTEST:

ATTEST:

By: _____
Name:
Its:

By:  _____
Name: Eric C. Mooney
Its: Assistant Vice President

TOWAMENCIN MUNICIPAL AUTHORITY

By: _____
Name:
Its:

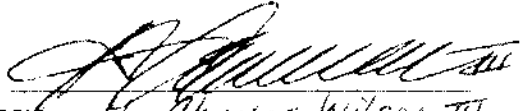
ATTEST:

By: _____
Name:
Its:

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized Representatives, this Agreement as of the Effective Date.


TOWNSHIP OF TOWAMENCIN,
MONTGOMERY COUNTY

NEXTERA WATER PENNSYLVANIA, LLC

By: 
Name: H. Charles Wilson III
Its: Chairman

By: _____
Name: _____
Its: _____

ATTEST:

By: 
Name: Laura C. Smith
Its: Secretary

ATTEST:

By: _____
Name: _____
Its: _____

TOWAMENCIN MUNICIPAL AUTHORITY

By: _____
Name: _____
Its: _____

ATTEST:

By: _____
Name: _____
Its: _____

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized Representatives, this Agreement as of the Effective Date.

TOWNSHIP OF TOWAMENCIN,
MONTGOMERY COUNTY

NEXTERA WATER PENNSYLVANIA, LLC

By: _____
Name:
Its:

By: _____
Name:
Its:

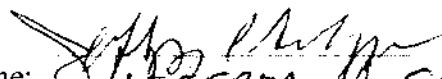
ATTEST:

ATTEST:

By: _____
Name:
Its:

By: _____
Name:
Its:

TOWAMENCIN MUNICIPAL AUTHORITY

By: 
Name: JEFFREY A. SCHOPPE
Its: CHAIRMAN

ATTEST:

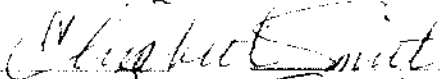
By: 
Name: Elizabeth Smith
Its: Secretary

EXHIBIT A
BILL OF SALE
[see attached]

BILL OF SALE

This BILL OF SALE (this "**Bill of Sale**") is dated as of _____, 202_ by and between **TOWAMENCIN TOWNSHIP, MONTGOMERY COUNTY**, a body corporate and politic, duly organized under the laws of the Commonwealth of Pennsylvania ("**Seller**") and NextEra Water Pennsylvania, LLC (formerly known as NextEra Towamencin Wastewater, LLC), a limited liability company organized and existing under the laws of Delaware ("**Buyer**").

RECITALS:

WHEREAS, pursuant to that certain Asset Purchase Agreement by and among Seller, the Towamencin Municipal Authority, a body corporate and politic created under the Pennsylvania Municipal Authorities Act (the "**Authority**") and Buyer dated _____, 2022 (the "**APA**"), Seller has agreed to sell and Buyer has agreed to purchase, certain assets of Seller as more particularly described in Section 2.01 of the APA (the "**Acquired Assets**") owned and used in connection with that certain sanitary wastewater collection and treatment system (the "**System**") that provides sanitary wastewater service to various customers in Towamencin Township and portions of Lower Salford, and Worcester, Montgomery County, Pennsylvania (the "**Service Area**"); and

WHEREAS, the use, maintenance and right of access to the Acquired Assets constituting interests in real property are being transferred on the date hereof by Seller to Buyer by deeds, assignments and/or a license; and

WHEREAS, Seller intends to convey the Acquired Assets not constituting interests in real property as more particularly described in **Exhibit "A"** attached hereto as of the date hereof.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Buyer agree as follows:

1. **Recitals; Capitalized Terms.** The Recitals of this Bill of Sale are incorporated herein as if set forth in full. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA.

2. **Transfer of Acquired Assets.** Seller hereby sells, assigns, conveys, transfers, grants and deliver to Buyer all of Seller's right, title and interest in and to the Acquired Assets, free and clear of all Liens except for Permitted Liens, and Buyer hereby purchases and accepts from Seller, as of the date hereof, all right, title and interest of Seller in and to the Acquired Assets, free and clear of all Liens except for Permitted Liens.

3. **Further Assurances.** Promptly upon request of the other party, Buyer and Seller shall each execute and deliver to the other party such further assurances and take such further actions as may be reasonably required or appropriate to perfect the transfer of the Acquired Assets and otherwise carry out the intent and purpose of this Bill of Sale.

4. **Relationship to APA.** This Bill of Sale is being delivered pursuant to the APA and will be construed consistently therewith. This Bill of Sale is not intended to, and does not, in

any manner enhance, diminish, or otherwise modify the rights and obligations of the parties under the APA. To the extent that any provision of this Bill of Sale conflicts or is inconsistent with the terms of the APA, the terms of the APA will govern.

5. **As Is.** THIS BILL OF SALE IS MADE ON AN “AS-IS, WHERE-IS, WITH ALL FAULTS” BASIS, WITHOUT RECOURSE AND WITHOUT ANY REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) WHATSOEVER EXCEPT AS MAY EXPRESSLY BE SET FORTH IN THE APA.

6. **Binding Effect.** All of the terms and provisions of this Bill of Sale shall be binding upon, inure to the benefit of and be enforceable by the legal representatives, successors and assigns of Seller and Buyer.

7. **Law to Govern.** This Bill of Sale shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to any conflicts of law’s provisions.

8. **Headings, Gender, etc.** All section headings contained in this Bill of Sale are for convenience of reference only, do not form a part of this Bill of Sale and shall not affect in any way the meaning or interpretation of this Bill of Sale. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

9. **Exhibits.** All Exhibits referred to herein are intended to be and hereby are specifically made a part of this Bill of Sale.

10. **Counterparts.** This Bill of Sale may be executed by facsimile, electronically or by exchange of documents in PDF format, and in several counterparts, each of which shall be deemed an original instrument and all of which together shall constitute a single agreement. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

(Signatures appear on following page)

IN WITNESS WHEREOF, the parties have executed this Bill of Sale under seal as of the date first above written.

SELLER:

ATTEST:

TOWAMENCIN TOWNSHIP

By: _____
Name:
Its:

By: _____
Name:
Its:

BUYER:

ATTEST:

NEXTERA WATER PENNSYLVANIA, LLC

By: _____
Name:
Its:

By: _____
Name:
Its:

[Signature Page to the Bill of Sale]

EXHIBIT "A"
ACQUIRED ASSETS

EXHIBIT B
ASSIGNMENT AND ASSUMPTION AGREEMENT

[see attached]

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Agreement”) is made and entered into to be effective as of the ____ day of _____, 20__, by and between **TOWAMENCIN TOWNSHIP**, a body corporate and politic, duly organized under the laws of the Commonwealth of Pennsylvania (“Assignor”), and **NEXTERA WATER PENNSYLVANIA, LLC** (formerly known as NextEra Towamencin Wastewater, LLC), a limited liability company organized and existing under the laws of Delaware (“Assignee”).

BACKGROUND

This Agreement is made pursuant to the Asset Purchase Agreement (the “Asset Purchase Agreement”) dated _____ by and between Assignor, the Towamencin Municipal Authority (the “Authority”) and Assignee, in which Assignor is selling, transferring, conveying, assigning and delivering to Assignee the Acquired Assets, as defined in the Asset Purchase Agreement. Capitalized terms used and not defined herein shall have the meanings given to them in the Asset Purchase Agreement.

Pursuant to the Asset Purchase Agreement, as part of the consideration for the Acquired Assets, Assignee is required to assume and agree to perform, pay or discharge, when due, certain Assumed Liabilities, as defined in the Asset Purchase Agreement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby covenant and agree as follows:

1. Assignor hereby assigns, and Assignee hereby assumes and agrees to pay, perform and discharge, in accordance with their terms, the Assumed Liabilities.

2. Notwithstanding the foregoing or any other provision of this Agreement, Assignee will not assume or be bound by and shall be deemed not to have assumed, agreed to pay, perform, fulfill or discharge any of the Excluded Liabilities.

3. Assignor hereby assigns, transfers, sets over and grants to Assignee all of its rights and obligations under the Assigned Contracts subject to any required consents of other parties to the Assigned Contracts. Assignee hereby accepts such assignment and transfer and hereby assumes and agrees to perform all obligations and duties of and to make all payments and perform all required actions under the Assigned Contracts. Assignor is hereby released and discharged from all obligations and duties arising from this day forward under, or in respect of, the Assigned Contracts.

4. The assumption by Assignee of the Assumed Liabilities shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of Assignee under the Asset Purchase Agreement.

5. Nothing contained herein shall change, amend, extend or alter (nor shall it be deemed or construed as changing, amending, extending or altering) the terms or conditions of the Asset

Purchase Agreement in any manner whatsoever. This Agreement does not create or establish liabilities or obligations not otherwise created or existing under or pursuant to the Asset Purchase Agreement. In the event of any conflict or other difference between the Asset Purchase Agreement and this Agreement, the provisions of the Asset Purchase Agreement shall control.

6. Nothing contained herein shall confer any rights on any third party or in any way enhance or expand the rights of any third party with respect to any of the Assumed Liabilities, and Assignee reserves any and all defenses, rights of offset, claims and counterclaims that either the Assignor or Assignee may have with respect to any of the Assumed Liabilities.

7. The law of the Commonwealth of Pennsylvania shall govern all questions concerning the construction, validity, interpretation and enforceability of this Agreement, without giving effect to any choice of law or conflict of law rules or provisions (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the Commonwealth of Pennsylvania.

8. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that no party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party hereto.

9. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

10. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption Agreement as of the day and year first above written.

ASSIGNOR:

TOWAMENCIN TOWNSHIP

By: _____

Name:

Title:

ASSIGNEE:

NEXTERA WATER PENNSYLVANIA, LLC

By: _____

Name:

Title:

EXHIBIT C
[RESERVED]

EXHIBIT D

ADDITIONAL ESCROW AGREEMENT

[see attached]

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated effective as of June 14, 2022 ("Agreement"), is by and among NextEra Water Pennsylvania, LLC (fka NextEra Towamencin Wastewater, LLC, a Delaware limited liability company ("Purchaser"), Township of Towamencin, Montgomery County, a body corporate and politic organized under the Pennsylvania Law ("Seller"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as escrow agent hereunder ("Escrow Agent").

BACKGROUND

A. Purchaser, Seller and Towamencin Municipal Authority have entered into an Asset Purchase Agreement (the "Purchase Agreement"), dated as of June 13, 2022, pursuant to which Purchaser is purchasing the Acquired Assets described therein. The Purchase Agreement provides that a portion of the Purchase Price shall be deposited by Purchaser into escrow to be held and distributed by the Escrow Agent to Seller at Closing in accordance with the terms of this Agreement.

B. Escrow Agent has agreed to accept, hold, and disburse the funds deposited with it and any earnings thereon in accordance with the terms of this Agreement.

C. Purchaser and Seller have appointed the Representatives (as defined below) to represent them for all purposes in connection with the funds to be deposited with Escrow Agent and this Agreement.

D. Purchaser and Seller acknowledge that (i) Escrow Agent is not a party to and has no duties or obligations under the Purchase Agreement, (ii) all references in this Agreement to the Purchase Agreement are solely for the convenience of Purchaser and Seller and (iii) Escrow Agent shall have no implied duties beyond the express duties set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when used herein:

"Business Day" means any day, other than a Saturday, Sunday or legal holiday, on which Escrow Agent at its location identified in Section 15 is open to the public for general banking purposes.

"Escrow Funds" means the funds deposited with Escrow Agent pursuant to Section 3 of this Agreement, together with any interest and other income thereon.

"Escrow Period" means the period commencing on the date hereof and ending at the close of Escrow Agent's Business Day when Escrow Agent is notified in writing by Seller or Purchaser that the Purchase Agreement has been terminated.

“Joint Written Direction” means a written direction executed by a Purchaser Representative and a Seller Representative, delivered to Escrow Agent in accordance with Section 15 and directing Escrow Agent to disburse all or a portion of the Escrow Funds or to take or refrain from taking any other action pursuant to this Agreement.

“Purchaser Representative” means the person(s) so designated on Schedule C hereto or any other person designated in a writing signed by Purchaser and delivered to Escrow Agent and a Seller Representative in accordance with the notice provisions of this Agreement, to act as its representative under this Agreement.

“Representatives” means a Purchaser Representative and a Seller Representative.

“Seller Representative” means the person(s) so designated on Schedule C hereto or any other person designated in a writing signed by Seller and delivered to Escrow Agent and a Purchaser Representative in accordance with the notice provisions of this Agreement, to act as its representative under this Agreement.

All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Purchase Agreement.

2. Appointment of and Acceptance by Escrow Agent. Purchaser and Seller hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt by wire transfer of the Escrow Funds in accordance with Section 3, shall hold, invest and disburse the Escrow Funds in accordance with this Agreement.

3. Deposit of Escrow Funds. Within three (3) Business Days after the execution and delivery of this Agreement, Purchaser will transfer the Escrow Funds in the amount of TEN MILLION U.S. DOLLARS (\$10,000,000), by wire transfer of immediately available funds, to an account designated by Escrow Agent (the “Escrow Account”). Escrow Funds will remain uninvested except as provided in Section 7.

4. Disbursements of Escrow Funds.

(a) Escrow Agent shall disburse Escrow Funds at any time and from time to time, upon receipt of, and in accordance with, a Joint Written Direction substantially in the form of Attachment 1 hereto and received by Escrow Agent as set forth in Section 15. Such Joint Written Direction must contain complete payment instructions, including funds transfer instructions or an address to which a check should be sent.

(b) Upon the expiration of the Escrow Period, Escrow Agent shall distribute to Purchaser pursuant to the funds transfer instruction set forth in this Section 4(b), as promptly as practicable, the Escrow Funds. Purchaser and Seller each acknowledges that the Escrow Agent is authorized to use the following funds transfer instructions to disburse any funds due to Purchaser in the event the Escrow Period has expired:

Bank Name: Bank of America
Bank Address: 100 West 33rd Street, New York NY 10001
ABA No. (for wires): 029009593
Account name: NextEra Energy Capital Holdings, Inc.
Account no: 3750658123

(c) Prior to any disbursement, Escrow Agent must receive reasonable identifying information regarding the recipient so that Escrow Agent is able to comply with its regulatory obligations and reasonable business practices, including without limitation a completed United States Internal Revenue Service (“IRS”) Form W-9 or Form W-8, as applicable. All disbursements of Escrow Funds will be subject to the fees and claims of Escrow Agent and the Indemnified Parties pursuant to Section 11 and Section 12.

(d) Purchaser and Seller may each deliver written notice to Escrow Agent in accordance with Section 15 changing their respective funds transfer instructions, which notice will be effective only upon receipt by Escrow Agent and after Escrow Agent has had reasonable time to act upon such notice.

5. Suspension of Performance; Disbursement into Court. If, at any time, (a) a dispute exists with respect to any obligation of Escrow Agent under this Agreement, (b) Escrow Agent is unable to determine, to Escrow Agent’s sole satisfaction, Escrow Agent’s proper actions with respect to its obligations hereunder, or (c) the Representatives have not, within 10 days of receipt of a notice of resignation, appointed a successor escrow agent to act under this Agreement, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

(i) suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Agreement until such dispute or uncertainty is resolved to the sole satisfaction of Escrow Agent or until a successor escrow agent is appointed.

(ii) petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction, in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty and, to the extent required or permitted by law, pay into such court, for holding and disposition by such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys’ fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

Escrow Agent will have no liability to Purchaser or Seller for any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise due to any delay in any other action required or requested of Escrow Agent.

6. RESERVED.

7. Investment of Funds. Based upon Purchaser’s and Seller’s prior review of investment alternatives, in the absence of further specific written direction to the contrary at any time that an investment decision must be made, Escrow Agent is directed to invest and reinvest the Escrow Funds in the investment identified in Schedule A. If applicable, Purchaser and Seller acknowledge receipt from Escrow Agent of a current copy of the prospectus for the investment identified in Schedule A. Purchaser and Seller may deliver to Escrow Agent a Joint Written Direction changing the investment of the Escrow Funds, upon which direction Escrow Agent may conclusively rely without inquiry or investigation; provided, however, that Purchaser and Seller warrant that no investment or reinvestment direction will be given except in the following:

(a) direct obligations of the United States of America or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America; (b) U.S. dollar denominated deposit accounts and certificates of deposit issued by any bank, bank and trust company, or national banking association (including Escrow Agent and its affiliates), which are either (i) insured by the Federal Deposit Insurance Corporation (“FDIC”) up to FDIC limits, or (ii) with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of at least “A-1” by S&P or “P-1” by Moody’s (ratings on holding companies are not considered as the rating of the bank); or (c) money market funds, including funds managed by Escrow Agent or any of its affiliates; provided further, however, that Escrow Agent will not be directed to invest in investments that Escrow Agent determines are not consistent with Escrow Agent’s policies or practices. Purchaser and Seller recognize and agree that Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of Escrow Funds or the purchase or disposition of any investment and the Escrow Agent will not have any liability for any loss in an investment made pursuant to the terms of this Agreement. Escrow Agent has no responsibility whatsoever to determine the market or other value of any investment and makes no representation or warranty as to the accuracy of any such valuations. To the extent applicable regulations grant rights to receive brokerage confirmations for certain security transactions, Purchaser and Seller waive receipt of such confirmations.

All investments will be made in the name of Escrow Agent. Escrow Agent may, without notice to Purchaser and Seller sell or liquidate any of the foregoing investments at any time for any disbursement of Escrow Funds permitted or required hereunder and will not be liable for any loss, cost or penalty resulting from any sale or liquidation of any such investment. All investment earnings will become part of the Escrow Funds and investment losses will be charged against the Escrow Funds. With respect to any Escrow Funds or investment instruction received by Escrow Agent after 11:00 a.m., U.S. Central Time, Escrow Agent will not be required to invest applicable funds until the next Business Day. Receipt of the Escrow Funds and investment and reinvestment of the Escrow Funds will be confirmed by Escrow Agent by an account statement. Failure to inform Escrow Agent in writing of any error or omission in any such account statement within 90 days after receipt will conclusively be deemed confirmation and approval by Purchaser and Seller of such account statement.

8. Tax Reporting. (a) Escrow Agent has no responsibility for the tax consequences of this Agreement and Purchaser and Seller shall consult with independent counsel concerning any and all tax matters. Purchaser and Seller jointly and severally agree to (i) assume all obligations imposed now or hereafter by any applicable tax law or regulation with respect to payments or performance under this Agreement and (ii) request and direct the Escrow Agent in writing with respect to withholding and other taxes, assessments or other governmental charges, and advise the Escrow Agent in writing with respect to any certifications and governmental reporting that may be required under any applicable laws or regulations. Except as otherwise agreed by Escrow Agent in writing, Escrow Agent has no tax reporting or withholding obligation except to the Internal Revenue Service with respect to Form 1099-B reporting on payments of gross proceeds under Internal Revenue Code Section 6045 and Form 1099 and Form 1042-S reporting with respect to investment income earned on the Escrow Funds, if any. Escrow Agent shall have no responsibility for Form 1099-MISC reporting with respect to disbursements that Escrow Agent makes in an administrative or ministerial function to vendors or other service providers and shall have no tax reporting or withholding duties with respect to the Foreign Investment in Real Property Tax Act (FIRPTA).

(b) To the extent that U.S. federal imputed interest regulations apply, Purchaser and Seller shall so inform the Escrow Agent, provide the Escrow Agent with all imputed interest calculations and direct the Escrow Agent to disburse imputed interest amounts as Purchaser and Seller deem appropriate. The Escrow Agent will rely solely on such provided calculations and information and will have no responsibility for the accuracy or completeness of any such calculations or information. Purchaser and Seller shall provide Escrow Agent a properly completed IRS Form W-9 or Form W-8, as applicable, for each payee. If requested tax documentation is not so provided, Escrow Agent is authorized to withhold taxes as required by the United States Internal Revenue Code and related regulations.

(c) Except as otherwise directed by Purchaser and Seller in writing, Escrow Agent will report, on an accrual basis, all interest or income on the Escrow Funds as being owned by Seller for federal income tax purposes. If any accrued interest income attributed to Seller is subsequently disbursed by Escrow Agent to Purchaser, Purchaser and Seller shall jointly direct Escrow Agent in writing with respect to the appropriate tax treatment and reporting of such disbursements.

9. Resignation or Removal of Escrow Agent. Escrow Agent may resign and be discharged from the performance of its duties hereunder at any time by giving ten (10) Business Days' prior written notice to Purchaser and Seller specifying a date when such resignation will take effect and, after the date of such resignation notice, notwithstanding any other provision of this Agreement, Escrow Agent's sole obligation will be to hold the Escrow Funds pending appointment of a successor Escrow Agent. Similarly, Escrow Agent may be removed at any time by Purchaser and Seller giving at least thirty (30) days' prior written notice to Escrow Agent specifying the date when such removal will take effect. If Purchaser and Seller fail to jointly appoint a successor Escrow Agent prior to the effective date of such resignation or removal, Escrow Agent may petition a court of competent jurisdiction to appoint a successor escrow agent, and all costs and expenses related to such petition shall be paid jointly and severally by Purchaser and Seller. The retiring Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction and payment to the retiring Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder. After any retiring Escrow Agent's resignation or removal, the provisions of this Agreement will inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Agreement.

10. Duties and Liability of Escrow Agent.

(a) Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties will be implied. Escrow Agent has no fiduciary or discretionary duties of any kind. Escrow Agent's permissive rights will not be construed as duties. Escrow Agent has no liability under and no duty to inquire as to the provisions of any document other than this Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein and whether or not a copy of such document has been provided to Escrow Agent. Escrow Agent's sole responsibility is to hold the Escrow Funds in accordance with Escrow Agent's customary practices and disbursement thereof in accordance with the terms of this Agreement. Escrow Agent shall not be responsible for or have any duty to make any calculations under this

Agreement, or to determine when any calculation required under the provisions of this Agreement should be made, how it should be made or what it should be, or to confirm or verify any such calculation. Escrow Agent will not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. This Agreement will terminate upon the distribution of all the Escrow Funds pursuant to any applicable provision of this Agreement, and Escrow Agent will thereafter have no further obligation or liability whatsoever with respect to this Agreement or the Escrow Funds.

(b) Escrow Agent will not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines, which determination is not subject to appeal, that Escrow Agent's gross negligence or willful misconduct in connection with its material breach of this Agreement was the sole cause of any loss to Purchaser or Seller. Escrow Agent may retain and act hereunder through agents, and will not be responsible for or have any liability with respect to the acts of any such agent retained by Escrow Agent in good faith.

(c) Escrow Agent may conclusively rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent believes to be genuine and to have been signed or presented by the person purporting to sign it and shall have no responsibility or duty to make inquiry as to or to determine the truth, accuracy or validity thereof (or any signature appearing thereon). In no event will Escrow Agent be liable for (i) acting in accordance with or conclusively relying upon any instruction, notice, demand, certificate or document believed by Escrow Agent to have been created by or on behalf of Purchaser or Seller, (ii) incidental, indirect, special, consequential or punitive damages or penalties of any kind (including, but not limited to lost profits), even if Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action or (iii) any amount greater than the value of the Escrow Funds as valued upon deposit with Escrow Agent.

(d) Escrow Agent will not be responsible for delays or failures in performance resulting from acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, attacks or intrusions, power failures, earthquakes or any other circumstance beyond its control. Escrow Agent will not be obligated to take any legal action in connection with the Escrow Funds, this Agreement or the Purchase Agreement or to appear in, prosecute or defend any such legal action or to take any other action that in Escrow Agent's sole judgment may expose it to potential expense or liability. Purchaser and Seller are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. Escrow Agent will have no liability to Purchaser or Seller, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Funds escheat by operation of law.

(e) Escrow Agent may consult, at Purchaser's and Seller's cost, legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving this Agreement, and will incur no liability and must be fully indemnified from any liability whatsoever in acting in accordance with the advice of such counsel. Purchaser and Seller agree to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as Escrow Agent may reasonably

request in connection with its duties hereunder. When any action is provided for herein to be done on or by a specified date that falls on a day other than a Business Day, such action may be performed on the following Business Day.

(f) If any portion of the Escrow Funds is at any time attached, garnished or levied upon, or otherwise subject to any writ, order, decree or process of any court, or in case disbursement of Escrow Funds is stayed or enjoined by any court order, Escrow Agent is authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders, decrees or process so entered or issued, including but not limited to those which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction; and if Escrow Agent relies upon or complies with any such writ, order, decree or process, it will not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even if such order is reversed, modified, annulled, set aside or vacated.

(g) Escrow Agent and any stockholder, director, officer or employee of Escrow Agent may buy, sell and deal in any of the securities of any other party hereto and contract and lend money to any other party hereto and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein will preclude Escrow Agent from acting in any other capacity for any other party hereto or for any other person or entity.

(h) In the event instructions, including funds transfer instructions, address change or change in contact information are given to Escrow Agent (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile or otherwise, Escrow Agent is authorized, but not required, to seek confirmation of such instructions by telephone call-back to any person designated by the instructing party on Schedule C hereto, and Escrow Agent may rely upon the confirmation of anyone purporting to be the person so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and will be effective only after Escrow Agent has a reasonable opportunity to act on such changes. If Escrow Agent is unable to contact any of the designated representatives identified in Schedule C, Escrow Agent is hereby authorized but will be under no duty to seek confirmation of such instructions by telephone call-back to any one or more of Purchaser's or Seller's executive officers ("Executive Officers"), as the case may be, which will include the titles of Chief Executive Officer, President and Vice President, as Escrow Agent may select. Such Executive Officer must deliver to Escrow Agent a fully executed incumbency certificate, and Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. Purchaser and Seller agree that Escrow Agent may at its option record any telephone calls made pursuant to this Section. Escrow Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by Purchaser or Seller to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank, even when its use may result in a transfer of funds to a person other than the intended beneficiary or to a bank other than the intended beneficiary's bank or intermediary bank. Purchaser and Seller acknowledge that these optional security procedures are commercially reasonable.

11. Indemnification of Escrow Agent. Purchaser and Seller, jointly and severally, shall indemnify and hold harmless Escrow Agent and each director, officer, employee and affiliate of Escrow Agent (each, an "Indemnified Party") upon demand against any and all claims, actions and proceedings (whether asserted or commenced by Purchaser and Seller or any other person or entity and whether or not valid), losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys' fees, costs and expenses) (collectively, "Losses") arising from this Agreement or Escrow Agent's actions

hereunder, except to the extent such Losses are finally determined by a court of competent jurisdiction, which determination is not subject to appeal, to have been directly caused solely by the gross negligence or willful misconduct of such Indemnified Party in connection with Escrow Agent's material breach of this Agreement. Purchaser and Seller further agree, jointly and severally, to indemnify each Indemnified Party for all costs, including without limitation reasonable attorneys' fees, incurred by such Indemnified Party in connection with the enforcement of Purchaser's and Seller's obligations to Escrow Agent under this Agreement. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by Purchaser and Seller jointly and severally. The obligations of Purchaser and Seller under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent.

12. Compensation of Escrow Agent.

(a) Fees and Expenses. Except for the One-Time Fee for which Purchaser shall be solely responsible, Purchaser and Seller agree, jointly and severally, to compensate Escrow Agent upon demand for its services hereunder in accordance with Schedule B attached hereto. The obligations of Purchaser and Seller under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent. As used herein, the "One-Time Fee" means the fee specified in Schedule B attached hereto.

(b) Disbursements from Escrow Funds to Pay Escrow Agent. Escrow Agent is authorized to, and may disburse to itself from the Escrow Funds, from time to time, the amount of any compensation and reimbursement of expenses due and payable hereunder (including any amount to which Escrow Agent or any other Indemnified Party is entitled to seek indemnification hereunder). Escrow Agent shall notify Purchaser and Seller of any such disbursement from the Escrow Funds to itself or any other Indemnified Party and shall furnish Purchaser and Seller copies of related invoices and other statements.

(c) Security and Offset. Purchaser and Seller hereby grant to Escrow Agent and the other Indemnified Parties a first priority security interest in, lien upon and right of sale and offset against the Escrow Funds with respect to any compensation or reimbursement due any of them hereunder (including any claim for indemnification hereunder). If for any reason the Escrow Funds are insufficient to cover such compensation and reimbursement, Purchaser and Seller shall promptly pay such amounts upon receipt of an itemized invoice.

13. Representations and Warranties. Purchaser and Seller each respectively make the following representations and warranties to Escrow Agent:

(a) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and this Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms.

(b) each of the applicable persons designated on Schedule C attached hereto has been duly appointed to act as its authorized representative hereunder and individually has full power and authority on its behalf to execute and deliver any instruction or direction, to amend, modify or waive any provision of this Agreement and to take any and all other actions as its authorized representative under this Agreement and no change in designation of such authorized representatives will be effective until written notice of such change is delivered to each other

party to this Agreement pursuant to Section 15 and Escrow Agent has had reasonable time to act upon it.

(d) it will not claim any immunity from jurisdiction of any court, suit or legal process, whether from service of notice, injunction, attachment, execution or enforcement of any judgment or otherwise.

(e) there is no security interest in the Escrow Funds or any part thereof and no financing statement under the Uniform Commercial Code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the Escrow Funds or any part thereof.

14. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity, Escrow Agent requires documentation to verify its formation and existence as a legal entity. Escrow Agent may require financial statements, licenses or identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. Purchaser and Seller agree to provide all information requested by Escrow Agent in connection with any legislation or regulation to which Escrow Agent is subject, in a timely manner. Escrow Agent's appointment and acceptance of its duties under this Agreement is contingent upon verification of all regulatory requirements applicable to Purchaser and Seller and any of their permitted assigns, including successful completion of a final background check. These conditions include, without limitation, requirements under the USA PATRIOT Act, the USA FREEDOM Act, the Bank Secrecy Act, and the U.S. Department of the Treasury Office of Foreign Assets Control. If these conditions are not met, Escrow Agent may at its option promptly terminate this Agreement in whole or in part and refuse any otherwise permitted assignment by Purchaser or Seller, without any liability or incurring any additional costs.

15. Notices. All notices, approvals, consents, requests and other communications hereunder (each, a "Notice") must be in writing, in English, and may only be delivered (a) by personal delivery, or (b) by national overnight courier service, or (c) by certified or registered mail, return receipt requested, or (d) by facsimile transmission or (e) by email. Notice will be effective upon receipt except for notice via email, which will be effective only when the recipient, by return email or notice delivered by other method provided for in this Section, acknowledges having received that email (with an automatically generated receipt or similar notice not constituting an acknowledgement of an email receipt for purposes of this Section). Notices may only be sent to the applicable party or parties at the address specified below:

If to Purchaser or Purchaser Representative, at:
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: Eric Mooney
Telephone:
E-mail: eric.mooney@nexteraenergy.com

with a copy to: Vice President & General Counsel
E-mail: Neer-General-Counsel@nexteraenergy.com

If to Seller or Seller Representative, at:

Township of Towamencin
1090 Troxel Road
Lansdale, PA 19446
Attention: Township Manager
Fax: 215-368-7650

with a copy to:

Township of Towamencin
1090 Troxel Road
Lansdale, PA 19446
Attention: Solicitor
Fax: 215-368-7650

If to Escrow Agent at:

U.S. Bank National Association, as Escrow Agent
ATTN: Global Corporate Trust / Jack Ellerin
Address: 2 Concourse Parkway, Suite 800
Atlanta, GA 30328-5588
Telephone: (404) 898-8830
Facsimile: (404) 898-2467
Email: jack.ellerin@usbank.com

with a copy to:

U.S. Bank National Association
TFM Corporate Escrow Shared
Address: 60 Livingston Avenue
St. Paul, MN 55107
Email: tfmcorporateescrowshared@usbank.com

or to such other address as each party may designate for itself by like notice and unless otherwise provided herein will be deemed to have been given on the date received. Escrow Agent shall not have any duty to confirm that the person sending any Notice by electronic transmission (including by e-mail, facsimile transmission, web portal or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by Escrow Agent to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to Escrow Agent) shall be deemed original signatures for all purposes. Notwithstanding the foregoing, Escrow Agent may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to Escrow Agent in lieu of, or in addition to, any such electronic Notice. Purchaser and Seller agree to assume all risks arising out of the use of electronic signatures and electronic methods to submit instructions and directions to Escrow Agent, including without limitation the risk of Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

16. Amendment and Assignment. None of the terms or conditions of this Agreement may be changed, waived, modified, terminated or varied in any manner whatsoever unless in writing duly signed by each party to this Agreement. No course of conduct will constitute a waiver of any of the terms and conditions of this Agreement, unless such waiver is specified in writing, and then only to the extent so specified. No party may assign this Agreement or any of its rights or obligations hereunder without the written consent of the other parties, provided that if Escrow Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business (including the escrow contemplated by this Agreement) to another entity, the successor or transferee entity without any further act will be the successor Escrow Agent.

17. Governing Law, Jurisdiction and Venue. This Agreement must be construed and interpreted in accordance with the internal laws of the State of Pennsylvania without giving effect to the conflict of laws principles thereof that would require the application of any other laws. Each of the parties hereto irrevocably (a) consents to the exclusive jurisdiction and venue of the state and federal courts in the State of Pennsylvania in connection with any matter arising out of this Agreement, (b) waives any objection to such jurisdiction or venue (c) agrees not to commence any legal proceedings related hereto except in such courts (d) consents to and agrees to accept service of process to vest personal jurisdiction over it in any such courts made as set forth in Section 15 and (e) waives any right to trial by jury in any action in connection with this Agreement.

18. Entire Agreement, No Third-Party Beneficiaries. This Agreement constitutes the entire agreement between the signatory parties hereto relating to the holding, investment and disbursement of Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to Escrow Funds. This Agreement and any Joint Written Direction may be executed in two or more counterparts, which when so executed will constitute one and the same agreement or direction. To the extent any provision of this Agreement is prohibited by or invalid under applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. The Section headings have been inserted for convenience only and will be given no substantive meaning or significance whatsoever in construing the terms and conditions of this Agreement. Nothing in this Agreement, express or implied, is intended to or will confer upon any person other than the signatory parties hereto and the Indemnified Parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

[signature page follows]

The parties hereto have caused this Agreement to be executed effective as of the date first above written.

**NEXTERA WATER PENNSYLVANIA, LLC
as Purchaser**

By: _____
Name: Bruce Hauk
Title: President

**TOWNSHIP OF TOWAMENCIN, MONTGOMERY COUNTY
as Seller**

By: _____
Name: H. Charles Wilson, III
Title: Chairman

**U.S. BANK NATIONAL ASSOCIATION
as Escrow Agent**

By: _____
Name: Jack Ellerin
Title: Vice President

SCHEDULE A

U.S. BANK NATIONAL ASSOCIATION Investment Authorization Form

U.S. BANK MONEY MARKET DEPOSIT ACCOUNT

Description and Terms

The U.S. Bank Money Market Deposit Account is a U.S. Bank National Association (“U.S. Bank”) interest-bearing money market deposit account designed to meet the needs of U.S. Bank’s Corporate Trust Services Escrow Group and other corporate trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank’s discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as agent for its corporate trust customers. U.S. Bank’s Corporate Trust Services Escrow Group performs all account deposits and withdrawals. Deposit accounts are FDIC insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

U.S. BANK IS NOT REQUIRED TO REGISTER AS A MUNICIPAL ADVISOR WITH THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF COMPLYING WITH THE DODD-FRANK WALL STREET REFORM & CONSUMER PROTECTION ACT. INVESTMENT ADVICE, IF NEEDED, SHOULD BE OBTAINED FROM YOUR FINANCIAL ADVISOR.

Automatic Authorization

In the absence of specific written direction to the contrary to the extent and as authorized in the applicable escrow agreement, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Deposit Account. The customer(s) confirm that the U.S. Bank Money Market Deposit Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of permissible alternate instructions.

SCHEDULE B

Schedule of Fees for Services as Escrow Agent

Acceptance Fee Waived

One-Time Fee - \$3,000

Extraordinary Expenses/Other Services ... Billed at Cost

The above-mentioned fees are basic charges and do not include out-of-pocket expenses, which will be billed in addition to the regular charges as required. Out-of-pocket expenses shall include, but are not limited to: legal expenses, telephone tolls, stationery, travel and postage expenses.

Charges for performing extraordinary or other services not contemplated at the time of the execution of the transaction or not specifically covered elsewhere in this schedule will be determined by appraisal in amounts commensurate with the service to be provided.

To help the government fight the funding of terrorism and money laundering activities, Federal Law requires all financial institutions to obtain, verify and record information that identifies each client who opens an account. For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

Our proposal is subject in all aspects to our review and acceptance of the final documents, which set forth our duties and responsibilities.

ATTACHMENT 1

FORM OF JOINT WRITTEN DIRECTION

[To be completed on closing]

U.S. Bank National Association, as Escrow Agent
ATTN: Global Corporate Trust Services
Address: _____

RE: ESCROW AGREEMENT made and entered into as of [] by and among []
("Purchaser"), [] ("Seller") and U.S. Bank National Association, in its capacity as escrow
agent (the "Escrow Agent").

Pursuant to Section 4(a) of the above-referenced Escrow Agreement, Purchaser and Seller
hereby instruct Escrow Agent to disburse the amount of [\$_____] from the Escrow Account to
Purchaser, as provided below:

Purchaser

Bank Name: _____
Bank Address: _____
ABA No.: _____
Account Name: _____
Account No.: _____

Purchaser

By: _____
Name: _____
Date: _____

Seller

By: _____
Name: _____
Date: _____

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT (“First Amendment”) is made as of the 23rd day of March, 2023 (the “Effective Date”), by and between the Township of Towamencin, Montgomery County, a body corporate and politic, organized under the Pennsylvania law, (the “Seller” or the “Township”), the Towamencin Municipal Authority, a body corporate and politic created under the Pennsylvania Municipal Authorities Act (the “Authority”) and NextEra Water Pennsylvania, LLC (formerly known as NextEra Towamencin Wastewater, LLC) (the “Buyer”), a Delaware limited liability company.

RECITALS:

WHEREAS, Seller, the Authority and Buyer entered into that certain Asset Purchase Agreement dated June 14, 2022 (the “Agreement”); and

WHEREAS, the Seller, the Authority and Buyer desire to amend a certain provision of the Agreement to become effective upon the Effective Date of this First Amendment; and

WHEREAS, the Seller and Buyer desire to reaffirm all other provisions of the Agreement not specifically amended by this First Amendment; and

WHEREAS, capitalized terms not otherwise defined in this First Amendment have the meaning ascribed to such terms in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this First Amendment, intending to be legally bound, agree as follows:

- 1. The amount of Purchase Price in Section 3.01 of the Agreement is hereby amended as set forth below:

“Purchase Price. The purchase price for the Acquired Assets is One Hundred Four Million (\$104,000,000) (the “Purchase Price”) which Buyer shall pay as follows at Closing:”

- 2. The language regarding the Additional Deposit and the Additional Deposit Escrow Agreement in Article I, Section 3.01(b), Section 3.01(e) and Section 14.02 of the Agreement are hereby deleted and promptly after the Effective Date of this First Amendment, the Parties shall direct the escrow agent party to the Additional Deposit Escrow Agreement to release the Additional Deposit to the Buyer in accordance with Section 4(a) of the Additional Deposit Escrow Agreement.

- 3. The definition of the term “Outside Date” is hereby amended as set forth below:

“Outside Date” means 365 days after the later to occur of (i) the date the application to the PaPUC is accepted as complete by the PaPUC, and (ii) the date the statutory 6-

month consideration period is initiated, provided that if there is litigation pending or threatened on such date in which a party thereto seeks to prevent the consummation of the transaction described in this Agreement, or to frustrate a material term contained in this Agreement (specifically including, without limitation, litigation involving the proceedings before the PaPUC as contemplated by this Agreement,) the Outside Date will be extended to the date that is sixty (60) days following the unappealable resolution of any such litigation.

4. Section 7.04(a) is hereby amended as set forth below:

“(a) Rates. After Closing, Buyer shall implement the Seller’s sanitary wastewater rates then in effect at Closing, as set forth on Schedule 7.04 (“Base Rates”), provided that the rates reflected on Schedule 7.04 at Closing shall not be lower than those in effect on the date of the Effective Date. The Buyer may apply PaPUC permitted or required surcharges or pass-through costs (e.g. Distribution System Improvement Charge and/or State Tax Adjustment Surcharge). After the Closing the Buyer shall institute its grant or discount program for low-income customers currently served by the Authority to the Base Rates. Buyer intends to bill on a monthly basis.”

5. In Section 14.01(b)(ii) add the words “with jurisdiction and authority over the material transaction contemplated by the Agreement” immediately after “(ii) any Governmental Authority”

6. Section 3.01(a)(iii) is hereby amended as set forth below:

“(iii) The Deposit shall be non-refundable to Buyer.”

7. Except for certain conforming changes to effect the amendments set forth above, all other provisions, terms, and conditions of the Agreement not specifically amended by this First Amendment remain in full force and effect. Seller and Buyer reaffirm the Agreement as amended by this First Amendment.

8. Neither Party to this First Amendment may assign any right or delegate any performance under this First Amendment without the prior written consent of the other Party. A purported assignment or purported delegation without prior written consent is void.

9. The laws of the Commonwealth of Pennsylvania (without giving effect to its conflicts of law principles) govern all matters arising and relating to this First Amendment, including torts. The Parties irrevocably agree and consent to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania and the Court of Common Pleas of Montgomery County, Pennsylvania, for the adjudication of any matters arising under or in connection with this First Amendment. Any action initiated in court shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Montgomery County, Pennsylvania, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process,

summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS FIRST AMENDMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS FIRST AMENDMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS FIRST AMENDMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10. This First Amendment may be executed in any number of counterparts which, taken together, is one and the same agreement. To evidence the fact that it has executed this First Amendment, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission or e-mail in accordance with Section 15.03 of the Agreement.

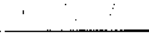
[Remainder of Page Intentionally Blank; Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties have duly executed this First Amendment on the date first written above.

TOWAMENCIN TOWNSHIP,
MONTGOMERY COUNTY

NEXTERA WATER PENNSYLVANIA,
LLC

By: _____

By: 

Printed: _____

Printed: Matthew Valle

Its: _____

Its: Vice President

ATTEST:

ATTEST:

By: _____

By: _____

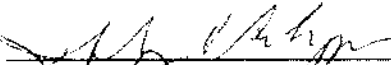
Printed: _____

Printed: Eric C. Mooney

Title: _____

Title: Assistant Vice President

TOWAMENCIN MUNICIPAL
AUTHORITY

By: 

Printed: JERRY A. SCHOPPE

Its: CHAIRMAN

ATTEST:

By: 

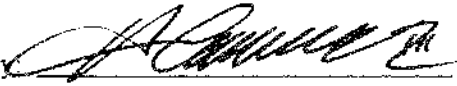
Printed: Elizabeth Smith

Title: Secretary

IN WITNESS WHEREOF, the Parties have duly executed this First Amendment on the date first written above.

TOWAMENCIN TOWNSHIP,
MONTGOMERY COUNTY

NEXTERA WATER PENNSYLVANIA,
LLC

By: 

By: _____

Printed: _____

Printed: _____

Its: _____

Its: _____

ATTEST:

ATTEST:

By: 

By: _____

Printed: *Laime C. Smith*

Printed: _____

Title: *Secretary*

Title: _____

TOWAMENCIN MUNICIPAL
AUTHORITY

By: _____

Printed: _____

Its: _____

ATTEST:

By: _____

Printed: _____

Title: _____

Assignment and Assumption Agreement of Asset Purchase Agreement

This Assignment and Assumption Agreement ("**Agreement**") effective as of the last date signed below (the "**Effective Date**"), is entered into by and among NextEra Water Pennsylvania, L.L.C., a Delaware limited liability company, ("**NEWPA**"), Pennsylvania American Water Company, a Pennsylvania Corporation, ("**PAWC**"), Township of Towamencin, Montgomery County, a body corporate and politic, organized under the Pennsylvania law, ("**Township**"), and the Towamencin Municipal Authority, a body corporate and politic created under the Pennsylvania Municipal Authorities Act ("**Authority**", and, together with Township, the "**Remaining Parties**"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the APA (as hereinafter defined).

WHEREAS, NEWPA, Township and Authority entered into that certain Asset Purchase Agreement dated as of June 14, 2022, as amended by that First Amendment to Asset Purchase Agreement dated on or about the Effective Date hereof, a copy of which is attached in Exhibit A hereto (the "**APA**");

WHEREAS, in connection with the APA, NEWPA, Township and the U.S. Bank National Association ("**Escrow Agent**") have entered into that certain Escrow Agreement dated as of June 14, 2022 (the "**Escrow Agreement**"), pursuant to which NEWPA has deposited in escrow an amount of \$10,000,000 as an additional deposit on account of the Purchase Price (the "**Additional Deposit**");

WHEREAS, NEWPA desires to assign to PAWC all of its rights and transfer and delegate to PAWC all of its obligations under the APA;

WHEREAS, PAWC desires to accept such assignment of rights and transfer and delegation of obligations under the APA; and

WHEREAS, Remaining Parties desire to release NEWPA from its obligations under the APA, consent to the assignment of NEWPA's rights under the APA to PAWC and substitute PAWC as a party to the APA in NEWPA's place.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Effective on the date when NEWPA receives the Additional Deposit (such date, the "**Additional Deposit Refund Date**"), NEWPA irrevocably sells, assigns, grants, conveys, and transfers to PAWC all of NEWPA's right, title, and interest in and to the APA.

1.2 Assumption. Effective on the Additional Deposit Refund Date, PAWC unconditionally accepts such assignment of NEWPA's right, title, and interest in and to the APA and assumes all of NEWPA's duties, liabilities, and obligations under the APA, and agrees to pay, perform, and discharge, as and when due, all of the obligations of NEWPA under the APA accruing on and after the Additional Deposit Refund Date.

2. Release. Notwithstanding anything to the contrary in the APA, each of the Remaining Parties hereby releases and forever discharges NEWPA, as well as its directors, managers, members, officers, employees, agents, and representatives, from all further obligations arising under the APA, and from all manner of actions, causes of action, suits, debts, damages, expenses, claims, and demands whatsoever that each of the Remaining Parties has or may have against any of the foregoing persons, arising out of or in any way connected to performance under the APA on and after the Additional Deposit Refund Date. For avoidance of doubt, nothing herein affects any rights, liabilities, or obligations of the Remaining Parties or NEWPA due to be performed before the Additional Deposit Refund Date.

3. Substitution. The parties intend that the PAWC be substituted for the NEWPA. Each of the Remaining Parties consents to this Agreement and recognizes PAWC as NEWPA's successor-in-interest in and to the APA. PAWC by this Agreement becomes entitled to all right, title, and interest of NEWPA in and to the APA in as much as PAWC is the substituted party to the APA as of and after the Additional Deposit Refund Date. Each of the Remaining Parties and PAWC shall be bound by the terms of the APA in every way as if PAWC is named in the APA in place of NEWPA as a party thereto.

4. Consideration. As consideration for the Remaining Parties' consent to this Agreement, NEWPA agrees to pay an amount equal to Five Hundred Thousand U.S. Dollars (\$500,000) (the "**Consideration**") in immediately available funds by wire transfer to an account designated by Township in writing. NEWPA shall pay the Consideration no later than three (3) Business Days after the Additional Deposit Refund Date, provided that Township has provided the details of the account for the wire transfer to NEWPA no later than one (1) Business Day after the Effective Date.

5. Release of Additional Deposit. No later than one (1) Business Day after the Effective Date hereof, Towamencin and NEWPA shall direct Escrow Agent to release the Additional Deposit to NEWPA in accordance with Section 4(a) of the Escrow Agreement. Promptly after receiving the Additional Deposit, NEWPA shall provide Notice thereof to PAWC and the Remaining Parties. For the avoidance of doubt, the parties agree that this Agreement shall not become effective until and unless the Additional Deposit is received by NEWPA.

6. Representations and Warranties.

6.1 Representations and Warranties of NEWPA and PAWC. Each of NEWPA and PAWC represents and warrants as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation; (b) it has the full right, corporate power, and authority to enter into this Agreement and to perform its obligations hereunder; (c) it has taken all necessary corporate action to authorize the execution of this Agreement by its representative whose signature is set forth at the end hereof; and (d) when executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of such representing party, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

6.2 Representations and Warranties of Remaining Parties. Each of the Remaining Parties represents and warrants as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation; (b) it has duly adopted the ordinance(s) or resolution(s), as applicable, authorizing the transactions contemplated by

this Agreement, which remain(s) in full force and effect, (c) it has duly authorized and approved the execution and delivery of this Agreement and the performance of its obligations, as applicable to it, contained in this Agreement; (d) it has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof; and (e) when executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of such representing party, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

7. Miscellaneous.

7.1 Further Assurances. On the other party's reasonable request, each party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

7.2 Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at its address set forth below (or to such other address that the receiving party may designate from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

Notice to NEWPA:

NextEra Water Pennsylvania, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: Eric Mooney
E-mail: eric.mooney@nexteraenergy.com

with a copy to:
NextEra Water Pennsylvania, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: Vice President & General Counsel
E-mail: Neer-General-Counsel@nexteraenergy.com

Notice to PAWC:

[PAWC NAME]
[PAWC'S ADDRESS]
Facsimile: [FAX NUMBER]
Email: [EMAIL ADDRESS]
Attention: [TITLE OF OFFICER TO RECEIVE]

NOTICES]

Notice to Remaining Parties: Township of Towamencin
1090 Troxel Road, Lansdale, PA 19446
Email: [EMAIL ADDRESS]
Attention: Township Manager

Towamencin Municipal Authority
1090 Troxel Road, Lansdale, PA 19446
Email: [EMAIL ADDRESS]
Attention: Solicitor

7.3 Interpretation. For purposes of this Agreement: (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references in this Agreement: (x) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

7.4 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

7.5 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

7.6 Amendments; Waivers. No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each party to this Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under this

Agreement will operate as a waiver of such right. No single or partial exercise of any such right precludes any other or further exercise of such right or the exercise of any other right.

7.7 Limitation of Liability. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY HERETO FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING LOSS OF FUTURE REVENUE OR INCOME, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY ARISING OUT OF OR RELATED TO THIS AGREEMENT.

7.8 Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties, or otherwise.

7.9 Successors and Assigns; No Third-Party Beneficiaries. None of the parties to this Agreement may assign any right or delegate any performance under this Agreement without the prior written consent of the other parties, and any purported assignment or purported delegation without prior written consent is void. This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

7.10 Governing Law; Jurisdiction. This Agreement must be construed and interpreted in accordance with the internal laws of the State of Pennsylvania without giving effect to the conflict of laws principles thereof that would require the application of any other laws. Each of the parties hereto irrevocably (a) consents to the exclusive jurisdiction and venue of the state and federal courts in the State of Pennsylvania in connection with any matter arising out of this Agreement, (b) waives any objection to such jurisdiction or venue (c) agrees not to commence any legal proceedings related hereto except in such courts, and (d) consents to and agrees to accept service of process to vest personal jurisdiction over it in any such courts made as set forth in Section 7.2. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.11 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

NEXTERA WATER PENNSYLVANIA, LLC

By _____
Name:
Title:
Date:

**PENNSYLVANIA AMERICAN WATER
COMPANY**

By _____
Name:
Title:
Date:

**TOWNSHIP OF TOWAMENCIN,
MONTGOMERY COUNTY**

By _____
Name:
Title:
Date:

TOWAMENCIN MUNICIPAL AUTHORITY

By _____
Name:
Title:
Date:

EXHIBIT A - ASSET PURCHASE AGREEMENT

EXHIBIT H



Date: May 25, 2023

Board of Supervisors' Statement: Home Rule Charter/ Sewer Sale

We are aware of the unofficial results regarding the Home Rule Charter from the election last week. Although the vote was close, the Home Rule Charter did pass and we acknowledge that the Charter will be the law of the Township as of July 1. However, the relevant issue at this time is whether a prospective law can upend a contract. As have we previously stated, and as we have shared with the opponents of the sewer system sale, the Township legal team does not believe the passage of the Home Rule Charter negates the sewer sale under current Pennsylvania law and the Pennsylvania Constitution. There is strong legal precedent against overturning pre-existing contracts based on the passage of new laws. As such, we do not intend to seek to terminate the contract. We, as elected representatives of our citizens, continue to believe firmly that the sale is in the best interest of our community.

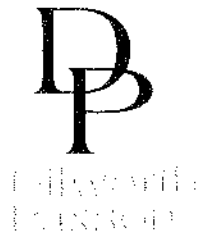
We explored privatization in accordance with Pennsylvania's Act 12 of 2016 (sale of municipal water/wastewater systems for fair market value), believing it was our duty to do so. Throughout this 18-month journey - including learning about how the Act 12 fair market value process works, retaining municipal finance experts, identifying current and future township needs, evaluating the benefits of a sale, pre-qualifying bidders and then finally making the decision to sell - we exercised due diligence and transparency. We remain confident that, after considering the many benefits to our community, we have made the right decision. We intend to honor our contractual commitments. We are committed to working with PA American Water Co. on a smooth transition.

This matter is pending at the Public Utility Commission. The Public Utility Commission is the statewide agency with jurisdiction to determine whether the transaction is in the public interest and to ensure that rates will be just and reasonable. The Township is confident that the Commission, after full consideration of the mounting environmental challenges of the system and other relevant facts, will find that the transaction is in the public interest.

1090 TROXEL ROAD LANSDALE, PA 19446

PHONE 215.368.7602 FAX 215.368.7650 E-MAIL info@towamencin.org WEB www.towamencin.org

EXHIBIT I



DIRECT DEAL NUMBER:
(215) 575-7143

James J. Rodgers
jrodgers@dilworthlaw.com

May 12, 2023

VIA PUC E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North 2nd Floor North
Harrisburg, PA 17120

Re: APPLICATION OF TOWAMENCIN TOWNSHIP, PURSUANT TO 66 PA. C.S. § 1102(A), FOR A CERTIFICATE OF PUBLIC CONVENIENCE TO OFFER, FURNISH, RENDER, AND SUPPLY WASTEWATER SERVICE TO THE PUBLIC IN CERTAIN PORTIONS OF WORCESTER TOWNSHIP, LOWER SALFORD TOWNSHIP, FRANCONIA TOWNSHIP AND LANSDALE BOROUGH, ALL IN MONTGOMERY COUNTY, PENNSYLVANIA

Dear Secretary Chiavetta:

I represent Applicant, Towamencin Township, in the above-listed matter, and I attach for filing an Application for Certificate of Public Convenience, Nunc Pro Tunc.

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

Thank you for your prompt attention to this matter.

Respectfully,

James J. Rodgers, Esquire

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**IN RE: APPLICATION OF
TOWAMENCIN TOWNSHIP,
PURSUANT TO 66 PA. C.S. § 1102(A),
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE TO OFFER,
FURNISH, RENDER, AND SUPPLY
WASTEWATER SERVICE TO THE
PUBLIC IN CERTAIN PORTIONS OF
WORCESTER TOWNSHIP, LOWER
SALFORD TOWNSHIP, FRANCONIA
TOWNSHIP AND LANSDALE
BOROUGH, ALL IN MONTGOMERY
COUNTY, PENNSYLVANIA**

DOCKET A-2023-

**APPLICATION OF TOWAMENCIN TOWNSHIP FOR A
CERTIFICATE OF PUBLIC CONVENIENCE, *NUNC PRO TUNC***

Applicant, Towamencin Township (“Applicant”), by and through its counsel, Dilworth Paxson, LLP, files this Application for a Certificate of Public Convenience, *Nunc Pro Tunc*, pursuant to 66 Pa. C.S. § 1102(a), seeking approval from the Pennsylvania Public Utility Commission for Applicant to offer, furnish, render, and supply wastewater service to the public in certain portions of Worcester and Lower Salford Townships, Montgomery County, Pennsylvania, as well as to bulk customers that interconnect with the Applicant’s system outside the Applicant’s geographic boundaries as specified further below. Applicant also requests a Certificate to Abandon Service upon the closing of a proposed sale by Applicant of substantially all of the assets comprising its wastewater system to Pennsylvania-American Water Company (“PAWC”) as specified further below.

In support, Applicant avers as follows:

1. The name and address of Applicant is as follows:

Towamencin Township
1090 Troxel Road

Lansdale, PA 19446

2. The names and addresses of Applicant's attorneys are as follows:

- a. James Rodgers, Esquire
Dilworth Paxson, LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102
215-575-7143 (telephone)
215-754-4603 (fax)
jrogers@dilworthlaw.com
- b. Elizabeth Preate Havey, Esquire
Dilworth Paxson, LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102
215-575-7123 (telephone)
215-754-4603 (fax)
epreatehavey@dilworthlaw.com
- c. Marc Feller, Esquire
Dilworth Paxson, LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102
215-575-7242 (telephone)
215-754-4603 (fax)
mfeller@dilworthlaw.com

3. The Applicant was established in 1728 and is centrally located in the middle of Montgomery County. It is a township of the second-class with a population of approximately 18,500 residents. The Township is governed by the Board of Supervisors consisting of five members who are elected at-large by the residents of Township.

4. The Applicant and Towamencin Municipal Authority (the "Authority") own and operate the wastewater system (the "System") and the Authority leases the System to Applicant pursuant to a Lease and Service Agreement. A copy of the Lease and Service Agreement is attached and incorporated by reference as **Exhibit A**.

5. The System is comprised of a wastewater collection and conveyance system as well as the Towamencin Township Wastewater Treatment Plant (the "WWTP" or the "Plant").

6. The WWTP is located at 2225 Kriebel Road in Towamencin Township, Montgomery County, Pennsylvania near the confluence of the Towamencin Creek and Bustard Road. The WWTP has a permitted capacity of 6.5 MGD and employs comminutors, influent pumping and metering, primary screening, pre-aeration, conventional activated sludge and contact stabilization activated sludge, intermediate clarification, trickling filter treatment, final clarification, and disinfection by chlorination.

7. The wastewater collection and conveyance system consists of approximately 420,000 linear feet of sewage collection/conveyance piping, 2,100 manholes, 23,500 linear feet of force mains, and three pumping stations (Rittenhouse Road, Hollis Hills and Milestone). The collection/conveyance system consists of 8-inch, 10-inch, 12-inch, 15-inch and 21-inch sewer pipes constructed of various materials. There are approximately 108,000 linear feet of laterals.

8. Since 1964, Applicant has provided wastewater service within the entirety of its geographical boundaries. In addition, Applicant currently provides wastewater service (directly or indirectly) to customers situated in portions of Worcester Township (“Worcester”), Lower Salford Township (“Lower Salford”), Franconia Township (“Franconia”), the Borough of Lansdale (“Lansdale”), Upper Gwynedd Township (“Upper Gwynedd”), and Hatfield Township (“Hatfield”), all located in Montgomery County. A map depicting Applicant’s current wastewater service area is attached and incorporated by reference as **Exhibit B**.

9. Applicant began providing wastewater services to customers in Worcester Township, Montgomery County as required under a Court Order issued on March 30, 1987, as a result of a settlement of litigation in the Court of Common Pleas of Montgomery County, in a matter captioned *Bronia Sultanki vs. Board of Supervisors of Towamencin Township and Towamencin Township*, Civil Action No. 1986-03576. The settlement agreement and Order

resolving the litigation obligated Applicant to provide wastewater services to customers living in what is now the Milestone development in Worcester and established the fee that those customers would pay for Applicant's wastewater services. The Court Order was not conditioned on compliance with the Code's requirement that a municipality obtain a Certificate of Public Convenience prior to providing utility service outside the municipality's boundaries. Pursuant to the March 30, 1987 Court Order, Applicant passed Resolution No. 89-12, attached and incorporated by reference as **Exhibit C**, which provided that Applicant will provide wastewater services to customers living in the Milestone development.

10. After the Court Order regarding service to the Milestone development, Applicant began providing wastewater services to customers living in an additional development in Worcester Township, what is now the Hollis Hills development, because Worcester Township did not have the capability to provide wastewater service in that area. Applicant codified this service by adopting Ordinance No. 89-7, which is attached and incorporated by reference as **Exhibit D**.

11. Applicant began providing service in 1989 to 22 customers located in Lower Salford Township due to their proximity to Applicant's sewer mains. Applicant and Lower Salford Township agreed that Applicant will provide these customers with wastewater service directly.

12. In addition to the direct bill customers in Worcester and Lower Salford mentioned above, Applicant provides wastewater service under bulk contracts with (i) Lower Salford Township, pursuant to an agreement among Applicant, Lower Salford Township and Lower Salford Township Authority, attached and incorporated by reference as **Exhibit E**; (ii) Lansdale, pursuant to an agreement among Applicant, Lansdale, Upper Gwynedd, and Lansdale Sewer Authority, attached and incorporated by reference as **Exhibit F**; and (3) one

commercial customer located in Franconia pursuant to an agreement among the Applicant, Franconia Township Authority, and JDJ Associates, attached and incorporated by reference as **Exhibit G**.

13. The points of interconnection of the System utilized to provide bulk service in those three municipalities of Lower Salford, Lansdale and Franconia are not located in Towamencin Township but instead are in those respective municipalities, which is why they are part of the Applied-for-Territory (as defined below).

14. In addition to the bulk service arrangements referenced above, the Township provides bulk service to Upper Gwynedd and Hatfield pursuant to bulk service agreements. The points of interconnection of the System are located in Towamencin Township so these two municipalities are not part of the Applied-for-Territory.

15. In connection with a proposed sale by Applicant of substantially all of the assets comprising the wastewater system to PAWC, and as a predicate to the application to be filed by PAWC under Section 1329 of the Pennsylvania Public Utility Code, Applicant requires a certificate of public convenience for the wastewater service provided to the customers described above in Worcester, Lower Salford, Franconia and Lansdale (collectively the “Applied-For Service Territory”).

16. A map depicting the Applied-For Service Territory is attached and incorporated by reference as **Exhibit H**.

17. The Applied-For Service Territory includes the customers contained on the list attached and incorporated by reference as **Exhibit I**.

18. Applicant’s facilities providing wastewater service to the Applied-For Service Territory include approximately 24,100 linear feet of piping. Of this approximately 24,100

linear feet, approximately 22,850 linear feet of piping is located in Worcester Township and approximately 1,250 linear feet is located in Lower Salford Township.

19. The initial rates to be charged to the customers in the Applied-For Service Territory will be the same rates charged to Applicant's customers located in its geographical boundaries. The Township currently bills its residential customers a flat annual sewer rental charge of \$450 per equivalent dwelling unit ("EDU"). Commercial customers are billed bi-annually in one of two ways: (i) a flat rate of \$225 per EDU per billing cycle, or (ii) a metered rate equal to \$0.04611 per cubic foot of water consumption with a minimum fee of \$225 per EDU per billing cycle.

20. Due to the loss of a significant number of customers to the System in connection with the planned withdrawal of Upper Gwynedd from the Authority and the System, Applicant expects its Board of Supervisors to implement a rate increase effective January 1, 2024, which is likely to occur prior to closing on the proposed sale to PAWC (the "Closing"): (A) for residential customers, a flat annual sewer rental charge of \$590 per EDU and (B) for commercial customers, they will be billed bi-annually in one of two ways: (i) a flat rate of \$295 per EDU per billing cycle, or (ii) a metered rate equal to \$0.06045 per cubic foot of water consumption with a minimum fee of \$295 per EDU per billing cycle.

21. Township will file a pro forma tariff that provides for a stepped increase in rates as outlined in this Application in paragraph 20 as its initial base rates for the Applied-For Service Territory.

22. PAWC will request approval to establish its own initial base rates for wastewater service to Applicant's existing customers at Closing as set forth in paragraph 19 hereof.

23. Although customers in the Applied-For Service Territory will be treated the same as customers located in Applicant's geographic boundaries in terms of the initial rates, as

described in paragraph 19, that was not always the case. Applicant previously charged residential customers in the Applied-For Service Territory surcharges in excess of the rates paid for by residential customers within Applicant's geographical boundaries to cover additional operating costs associated with a pump station needed to service those customers.

24. In particular, the customers in the Milestone development in Worcester were required to pay a 20% surcharge in excess of the rates paid for by residential customers within Applicant's geographical boundaries as established by the settlement of the aforementioned litigation captioned: *Bronia Sultanki vs. Board of Supervisors of Towamencin Township and Towamencin Township*, Civil Action No. 1986-03576. The customers in the Hollis Hills development in Worcester Township were charged an annual surcharge of \$290 in excess of the residential rates paid for by customers within Applicant's geographical boundaries. And residential customers in Lower Salford Township were previously charged a \$50 surcharge in excess of the rates paid for by customers within Applicant's geographical boundaries.

25. On May 10, 2023 the Applicant passed Ordinance 23-04 repealing provisions in prior ordinances and resolutions that provided for residential customers outside of Applicant's geographical boundaries to pay any charges above the rates Applicant's residential customers located within its geographical boundaries pay, thereby equalizing the rates for all customers of the System. Ordinance 23-04 is attached and incorporated by reference as **Exhibit J**.

26. The legal standard for the issuance of a certificate of public convenience is that the certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa. C.S. § 1103(a). A certificate of public convenience *nunc pro tunc* for the Applied-For-Territory will bring Applicant into compliance with the Commission's interpretation of the requirements of the Pennsylvania Public Utility Code. Compliance will serve as an example to other municipalities that may find themselves in a similar situation to

that of Applicant. Moreover, customers in the Applied-For Service Territory will benefit from the protection of the Public Utility Code and Commission oversight. These customers will not experience any type of interruption of service. Continued service in the Applied-For Service Territory by Applicant is appropriate from a technical and cost perspective because Applicant has the technical wherewithal to continue to service the Applied-For Service Territory and can do so cost effectively given the proximity of Applicant's sewer lines.

27. At the time of this application, the Towamencin Township Wastewater Treatment Plant operates at 52.3% of its capacity. The remaining Plant capacity is more than sufficient to serve the Applied-For Service Territory for the foreseeable future.

28. Applicant has provided wastewater service for over 50 years and has the requisite technical fitness to continue to provide wastewater service in the public interest.

29. Applicant is financially fit to provide wastewater service in the Applied-For Service Territory, with approximately \$5.7 million in available funds in the sewer account dedicated to its wastewater service.

30. Applicant has a Standard & Poor's credit rating of AA/Stable which indicates that Applicant is financially fit to provide service in the Applied-For Service Territory.

31. As discussed above, Applicant is currently complying with a court order by providing extra-territorial service without a Certificate of Public Convenience. Applicant otherwise has a good compliance history with relevant statutes, regulations, and orders, and is legally fit.

32. To the best of Applicant's knowledge, no corporation, partnership, or individual is furnishing or has corporate or franchise rights to furnish similar service rendered by Applicant in the Applied-For Service Territory, and no competitive condition will be created.

33. Given the Township's history of providing service in the Applied-For Service Territory, and the curative purpose of the within Application, the Applicant requests that all of the requirements of 52 Pa. Code § 3.501 be waived for purposes of this filing.

34. Applicant has determined that PAWC is better qualified to own and operate the wastewater service in the Applied-For Service Territory due to PAWC's industry-leading expertise in providing wastewater management, technical expertise in operating and maintaining wastewater systems, and capacity necessary to finance capital additions and improvements and that the sale of the System to PAWC provides a substantial public benefit. The Applicant and the Authority originally decided to sell the System to NextEra Water Pennsylvania, LLC ("NextEra") pursuant to an Asset Purchase Agreement dated as of June 14, 2022 (the "APA") among the Applicant, the Authority and NextEra for the sale of the System to NextEra. However, several months after the execution of the APA, NextEra decided to withdraw from the wastewater business and sell its Pennsylvania assets to PAWC. Consequently, the Applicant, the Authority, NextEra and PAWC executed an Assignment and Assumption Agreement assigning NextEra's rights and obligations under the APA to PAWC. In addition, and in connection with the transfer of the APA to PAWC, the parties to the APA entered into a First Amendment to APA modifying the purchase price and making certain other changes to the APA.

35. Applicant will continue to provide wastewater service to the Applied-For Service Territory if the Commission approves this application. Upon Closing of the sale, Applicant would abandon service in the Applied-For Service Territory. As noted above, Applicant requests as additional relief herein the approval of the Commission to abandon service to the Applied-for-Service Territory upon Closing of the proposed sale.

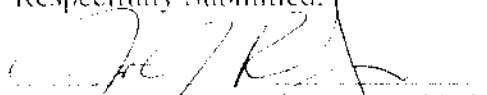
36. Applicant will supplement this Application with any additional information the Commission may request.

37. Applicant requests that the Commission issue a Certificate of Public Convenience, *nunc pro tunc*, pursuant to Section 1102(a)(1)(i) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(1)(i), authorizing Applicant to furnish wastewater service in the Applied-For Service Territory.

38. Applicant further requests conditional approval allowing Applicant, upon Closing, to be issued a Certificate of Public Convenience, pursuant to Section 1102(a)(2) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(2), by the Commission allowing Applicant to abandon service in the Applied-For Service Territory.

WHEREFORE, Towamencin Township respectfully requests that the Pennsylvania Public Utility Commission approve this Application and grant a Certificate of Public Convenience, *nunc pro tunc*, permitting Applicant to provide wastewater service in the Applied-For Service Territory and to abandon such service upon the Closing of the proposed acquisition by PAWC.

Respectfully Submitted,


James J. Rodgers, Esq. (PA ID 21635)

Elizabeth Preate Havey, Esq. (PA ID 80793)

Marc A. Feller, Esq. (PA ID 19545)

DILWORTH PAXSON LLP

1500 Market Street, Suite 3500E

Philadelphia, PA 19102

(215) 575-7143

Counsel for Applicant,
Towamencin Township

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: APPLICATION OF
TOWAMENCIN TOWNSHIP,
PURSUANT TO 66 PA. C.S. § 1102(A),
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE TO OFFER,
FURNISH, RENDER, AND SUPPLY
WASTEWATER SERVICE TO THE
PUBLIC IN CERTAIN PORTIONS OF
WORCESTER TOWNSHIP, LOWER
SALFORD TOWNSHIP, FRANCONIA
TOWNSHIP AND LANSDALE
BOROUGH, ALL IN MONTGOMERY
COUNTY, PENNSYLVANIA

DOCKET A-2023-

VERIFICATION

I, David Kraynik, Township Manager for Towamencin Township, hereby state that the facts set forth in the above-referenced Application are true and correct to the best of my knowledge, information, and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: _____

5/11/23



David Kraynik

EXHIBIT A

LEASE AND SERVICE AGREEMENT

Between

TOWAMENCIN MUNICIPAL AUTHORITY

as Lessor,

and

TOWNSHIP OF TOWAMENCIN,

as Lessee

Dated as of June 30, 2015
Montgomery County, Pennsylvania

LEASE AND SERVICE AGREEMENT

THIS LEASE AND SERVICE AGREEMENT, made as of June 30, 2015, between TOWAMENCIN MUNICIPAL AUTHORITY, an authority organized and existing under the laws of the Commonwealth of Pennsylvania, as Lessor, (the "Authority"), and the TOWNSHIP OF TOWAMENCIN, a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, as Lessee, (the "Township"), both situated in Montgomery County, Pennsylvania:

WITNESSETH:

WHEREAS, the Authority was incorporated on June 12, 1964 under the Pennsylvania Municipality Authorities Act, 53 Pa.C.S. §§5601-5623, as amended pursuant to ordinances of the Township of Upper Gwynedd ("Upper Gwynedd") and the Township of Towamencin (the "Township, and, together with Upper Gwynedd, the "Townships"); and

WHEREAS, in connection with previous projects, the Authority acquired title to all rights of way, permits and easements required for a system of collector and interceptor sewers in the Townships and has constructed or acquired the collection sewers and interceptor sewers in the Townships; and

WHEREAS, pursuant to a resolution of the Board of the Authority adopted April 6, 2015, agreeing to and approving the withdrawal of Upper Gwynedd from the Authority, and a resolution adopted by the Board of Commissioners of Upper Gwynedd at its meeting of March 25, 2015, Upper Gwynedd has withdrawn from the Authority; and

WHEREAS, the Authority purchased Upper Gwynedd's interest in certain wastewater treatment facilities (the "Authority Facilities") in the Township; and

WHEREAS, the Authority, at the request of the Township, will undertake an authorized project, consisting, *inter alia*, of (i) the acquisition of Upper Gwynedd's interest in the Authority Facilities, including infrastructure, buildings, equipment, and other facilities, and (ii) the acquisition, construction, equipping, renovation and improvement of other wastewater treatment facilities (the "2015 Project"); and

WHEREAS, the Authority, with the approval of the Townships, has undertaken to fund a portion of the costs of the 2015 Project by the issuance of its \$9,300,000 aggregate principal amount Guaranteed Revenue Note, Series of 2015 (the "2015 Note") to be secured under a Loan and Security Agreement, dated as of June 30, 2015 (the "Loan Agreement"), between the Authority and Susquehanna Bank (the "Bank") by, *inter alia*, an assignment of rentals, capital service charges and other amounts payable under this Lease and Service Agreement (the "Lease" or this "Agreement"); and

WHEREAS, to enhance the marketability of the 2015 Note, thereby achieving interest and other savings to the Authority and the Township, the Township has jointly guaranteed payments of the 2015 Notes, and the payment of amounts due under the Lease and the Loan Agreement pursuant to a Guaranty Agreement (the "Guaranty") dated as of June 30, 2015; and

WHEREAS, the Authority wishes to lease the Sewer System to the Township under the below terms and is willing to continue accepting and treating the sanitary sewage and industrial waste originating in the Township under the terms and conditions set forth in this Agreement;

WHEREAS, the parties hereto desire to set forth the terms and conditions under which the sewage collection system and the interceptor sewers exclusively used by the Township shall be leased to the Township.

NOW, THEREFORE, the Authority, as Lessor, and the Township, as Lessee, in consideration of the rentals hereinafter reserved and of the conditions and covenants herein contained do hereby covenant and agree as follows:

DEFINITIONS

Section 1. Capitalized terms used in this Lease and in any Amendment or Supplement hereto hereinafter entered into in accordance with the provisions hereof, shall have the meanings specified in the Loan Agreement, unless the context clearly otherwise requires.

The following terms used in this Lease shall have the following meanings, unless the context clearly requires otherwise:

Capital Service Charge: The term "Capital Service Charges" shall mean the charges of the Authority payable in each year, as ascertained in accordance with Section 3 of this Agreement.

Connection and Sewer Rent Ordinance: The term "Connection and Sewer Rent Ordinance" shall mean the ordinance enacted by the Township, as from time to time amended, requiring the owners of properties to connect with the sanitary sewers of the Sewer System and adopting rates, rules and regulations.

Lease Rental: The term "Lease Rental" shall mean one (1) dollar per year for the duration of this Agreement.

Operating Account: The term "Operating Account" shall mean the separate account established by the Authority under Section 12 of this Agreement.

Operating Expenses: The term "Operating Expenses" shall mean all costs and expenses of the Authority payable during any given period to operate, maintain and repair the Treatment Plant and for the payment of administration expenses, including, without limitation, costs of labor, supplies, materials, power, insurance, professional fees and expenses, and office expenses.

Operating Service Charge: The term " Operating Service Charge" shall mean the Township's proper share of the Operating Expenses of the Authority as ascertained under Section 5, Section 6, and Section 7 of this Agreement and payable thereunder in each year by the Township.

Sewer Funds: The term "Sewer Funds" shall mean the separate funds to be maintained by the Township pursuant to Section 10 and to be applied as provided in Section 11 hereof.

Sewer Pumping Stations: The term "Sewer Pumping Stations" shall mean the pumping and ejector stations used within the Sewer System.

Sewer System: The term "Sewer System" shall mean and include the system of sanitary sewers used from time to time for the collection of the sanitary sewage in the Township and adjoining municipalities and connected to the Treatment Plant, including lateral service connections, collection sewers, interceptor sewers, the Sewer Pumping Stations, and all real property, rights of way and easements or other interests in land owned or held by the Authority in connection with said facilities, all machinery, equipment and other sewer facilities used in connection therewith, and all renewals, replacements, additions, extensions and improvements of any of the foregoing from time to time acquired or constructed by the Authority or by the Township, exclusive, however, of the Treatment Plant.

Township: The term "Township" shall mean the Township of Towamencin, Montgomery County, Pennsylvania, and, as the context may require, the Board of Township Supervisors (in connection with matters requiring action by said Board) or such officers or employees of the Township as are authorized to act for the Township in the premises.

Treatment Plant: The term "Treatment Plant" shall mean the wastewater facility, located in the Township of Towamencin at 2225 Kriebel Road and the Kriebel Road Interceptor, that sewer trunk line extending from the Treatment Plant to Manhole 24 at Valley Forge Road (UT Trunk) and the portion of the Turnpike Trunk sewer (UT-6) located in Towamencin Township from MH 14 to MH 30 along the Turnpike.

LEASE OF SEWER SYSTEM

Section 2. The Authority, as Lessor, in consideration of the rentals and covenants herein contained does hereby demise and let the Sewer System unto the Township, as Lessee,

TO HAVE AND TO HOLD the same unto the Township for a term of approximately twenty (20) years commencing June 30, 2015 and ending June 1, 2035.

CAPITAL SERVICE CHARGE

Section 3. The Township covenants and agrees to pay to the Authority or its assigns in each year of this Lease commencing in December 2015 and ending with the installment payable June 1, 2035, out of the revenues and receipts of the Sewer System; out of fines and penalties imposed and collected under its Connection and Sewer Rent Ordinance and out of any other current revenues of the Township which may be lawfully applied to such payment, the Capital Service Charges. The Capital Service Charge for each year commencing with the year 2015 shall be the amount required to be paid in accordance with the terms of the Revenue Note and the Guaranty Agreement. Said payments will be made by the Township to the Authority semi-annually on June 1st and December 1st.

PAYMENT OF LEASE RENTAL.

Section 4. The Township agrees to pay out of the moneys in the Sewer Funds the Lease Rental payable on or before June 1 of each year under this Agreement. The Township agrees to operate, maintain and repair the Sewer System with the costs paid from the Sewer Funds.

OPERATING SERVICE CHARGE

Section 5. The Operating Service Charge shall be the amount necessary to fund the annual operating budget of the Authority.

On or before November 15 of each year the Authority shall prepare and submit to the Township a proposed operating budget of the Authority for the succeeding year which shall set forth all Operating Costs in such detail.

If the Township shall, on or prior to December 1 of each year, take exception in writing to such proposed budget or any item therein, the Authority shall, in good faith, consider such exception and make such recommended modification or correction as may be possible in the judgment of the Authority consistent always with the Authority's covenants to operate, maintain and repair the Treatment Plant as set forth in this Lease and Service Agreement. On or prior to December 15 of such year, the Authority shall adopt such proposed budget, with such modifications as the Authority shall deem proper, as the operating budget for the succeeding year and shall transmit a copy thereof to the Township.

PAYMENT OF OPERATING SERVICE CHARGE

Section 6. The Operating Service Charge shall be paid by the Township in equal quarterly installments on January 15, April 15, July 15, and October 15 of each year. The Township agrees that the first payment under this Agreement shall be due on or before July 15, 2015.

ADJUSTMENT OF OPERATING SERVICE CHARGE

Section 7. The actual Operating Expenses of the Authority shall be determined at the time of the annual audit of the books of the Authority.

Any difference between such actual Operating Expenses and the amount paid by the Township as the Operating Service Charge during the audited year shall cause either a credit or a debit, as appropriate, in the amount to be paid for the subsequent year.

SUBDIVISION/LAND DEVELOPMENT ADMINISTRATION

Section 8. The Township shall administer all subdivision/land development activities including establishing capacity requirements for projects, collection of fees, Act 537 planning module reviews, and plan reviews. The Authority shall provide Pennsylvania Department of Environmental Protection ("PADEP") Chapter 94 capacity certification reviews as per PADEP requirements.

SEWER PUMPING STATIONS

Section 9. The Authority covenants and agrees to operate, maintain, and repair the Sewer Pumping Stations at the request of the Township. The Authority agrees to provide monthly bills to the Township reporting the operating expenses incurred on operating the Sewer Pumping Station. The Township agrees to pay such operating expenses and associated capital costs.

SEWER OPERATING AND SEWER CAPITAL FUNDS

Section 10. The Township agrees to collect with all due dispatch all sewer rents and charges imposed by it under its Connection and Sewer Rent Ordinance. The Township agrees to maintain all such sewer revenues in segregated funds, designated as the Sewer Fund and/or the Sewer Capital Fund, to be maintained separate and apart from all other funds of the Township.

DISBURSEMENT OF SEWER REVENUES

Section 11. The money from time to time on deposit in the Sewer Funds shall be disbursed by the Township for the following purposes:

- (a) To pay the semi-annual installments of the Capital Service Charges;
- (b) To pay the quarterly installments of the Operating Service Charges;
- (c) To pay, or reimburse the Township for, Operating Expenses;
- (d) To pay the annual Lease Rental;
- (e) To pay, or reimburse the Township for, the cost of such extensions, additions and improvements to the Sewer System (undertaken by the Township, at its expense) as may be desirable to maintain adequate service; to pay, or reimburse the Township for, all or any part of the cost of other capital additions; to pay, or reimburse the Township for, the cost of sewer service lines to serve additional property owners; and to pay refund obligations under extension agreements entered into by the Authority or the Township pursuant to the Loan Agreement or this Lease.

If the Township shall construct extensions to the collection sewers within the Township and shall impose assessments against properties benefitted or shall enter into agreements with property owners to make payments in lieu of assessments, the Township shall be reimbursed under subsection (c) above only for the net costs of such extensions (that is after deducting the aggregate collection of the assessments and payments in lieu of assessments), except to the extent that the Township shall agree to deposit assessments and such payments as and when collected in the Sewer Fund as other revenues and receipts of the Sewer System under clause (c) of Section 10 and shall make such deposits as and when assessments and payments are collected.

AUTHORITY OPERATING ACCOUNT

Section 12. The Authority covenants and agrees to maintain with one or more banks or trust companies an account separate from all other accounts of the Authority to be known as the Operating Account. The Authority shall deposit in the Operating Account all payments of Operating Service Charges made by the Township under this Agreement and amendments hereto, the interest and profits on all investments of the Operating Account, and such other moneys or revenues of the Authority. The moneys and investments on deposit in the Operating Account shall be applied by the Authority only for the payment of Operating Expenses.

COVENANT AGAINST PRIOR LIENS

Section 13. The Township covenants and agrees that during the entire term of this Lease it will not create any charge on the revenues of the Sewer System prior to its obligations under Sections 3, 4, 5, and 10.

COMPLIANCE WITH LAW

Section 14. The Township covenants and agrees that it will at all times comply with all applicable requirements of the laws of the Commonwealth and with all applicable lawful requirements of the Department and of any other agency, board or commission created under the laws of the Commonwealth or of any other duly constituted public authority with respect to the Sewer System, or with respect to the sewer rents and charges imposed.

AMENDMENTS AND SUPPLEMENTS

Section 15. If the Authority shall require additional funds to complete construction of the 2015 Project and shall issue Indebtedness for such purpose, the Township covenants and agrees to execute such an Amendment to this Lease, and if an increase in the sewer rents is required, to amend its Connection and Sewer Rent Ordinance, putting the necessary increase into effect. If the Authority shall also issue Indebtedness to acquire, construct or complete capital additions approved by the Townships or to refund Notes, it shall likewise execute such Amendments as may be required and shall amend its Connection and Sewer Rent Ordinance as required.

FAILURE TO PAY RENTALS AND OTHER DEFAULTS

Section 16. If the Township shall fail to pay any installment of Capital Service Charges payable under this Lease or under any Amendment hereto, within sixty (60) days after the same shall become due, or shall fail to comply with any other of its covenants or agreements in this Lease or in any Amendment, for a period of sixty (60) days after written notice from the Authority or its attorney, the Authority or its attorney may, in addition to other remedies available to the Authority at law or in equity, without further notice terminate this Lease and take possession of the Sewer System and each and every part thereof. If the Authority shall be entitled to terminate this Lease upon default of the Township as aforesaid, the Bank, or any successor bank appointed pursuant to the Authorities Act by the owners of the Notes issued under the Loan Agreement, or any receiver appointed pursuant to said Act, may as attorney-in-fact of the

Authority exercise all of its rights to terminate this Lease as above provided and may take possession of the Sewer System. In the event that this Lease shall be terminated as above provided the Township shall surrender all its books and records relating to the Sewer System to whomever shall take possession thereof.

MISCELLANEOUS

Section 17. If the designation in this Lease of any fund, account, individual or other defined term shall duplicate or tend to cause confusion with a similar fund, account, individual or defined term in or referred to in any other Lease or Service Agreement, or other contract or document to which the Township is a party, the designations herein may be amended by adding thereto such qualifying word or figure as may be necessary or desirable to eliminate such duplication or confusion.

The terms and provisions of this Lease shall prevail over any prior agreement relating to the Sewer System.

TERMINATION OF LEASE

Section 18. When all the Notes by the Authority under the Loan Agreement and any other indebtedness of the Authority secured by lease payments hereunder, shall have been paid in full or due provisions for such payment made, the Township upon written notice to the Authority may terminate this Lease.

IN WITNESS WHEREOF, Towamencin Municipal Authority, as Lessor, and the Township of Towamencin, as Lessee, have caused this Lease and Service Agreement to be duly executed as of the day and year first above written.

TOWAMENCIN MUNICIPAL
AUTHORITY

By: [Signature]
Chairman

(SEAL)

Attest: [Signature]
Secretary

TOWNSHIP OF TOWAMENCIN

By: _____
Chairman, Board of
Supervisors

(SEAL)

Attest: _____
Township Secretary

[Signature Page to the Lease and Service Agreement]

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

IN WITNESS WHEREOF, Towamencin Municipal Authority, as Lessor, and the Township of Towamencin, as Lessee, have caused this Lease and Service Agreement to be duly executed as of the day and year first above written.

TOWAMENCIN MUNICIPAL
AUTHORITY

By: _____
Chairman

(SEAL)

Attest: _____
Secretary

TOWNSHIP OF TOWAMENCIN

By: 
Chairman, Board of
Supervisors

(SEAL)

Attest: 
Township Secretary

[Signature Page to the Lease and Service Agreement]

ASSIGNMENT

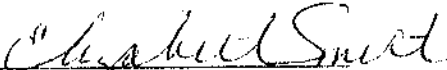
KNOW ALL MEN BY THESE PRESENTS, that the Towamencin Municipal Authority, an authority organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania (hereinafter called the Authority), does hereby assign, transfer and set over unto Susquehanna Bank as Note Purchaser under a certain Loan and Security Agreement dated as of June 30, 2015, and its successors in said trust, all its right, title and interest in and to the foregoing Lease dated as of June 30, 2015 between the Authority and the Township of Towamencin, together with all rentals payable thereunder, and all rentals which may be payable under any and all amendments and supplements to said Lease, to have and to hold said rentals and to apply the same in accordance with said Loan and Security Agreement.

IN WITNESS WHEREOF, the Towamencin Municipal Authority has caused this assignment to be duly executed this 30th day of June, 2015.

TOWAMENCIN MUNICIPAL
AUTHORITY

By: 
Chairman

(SEAL)

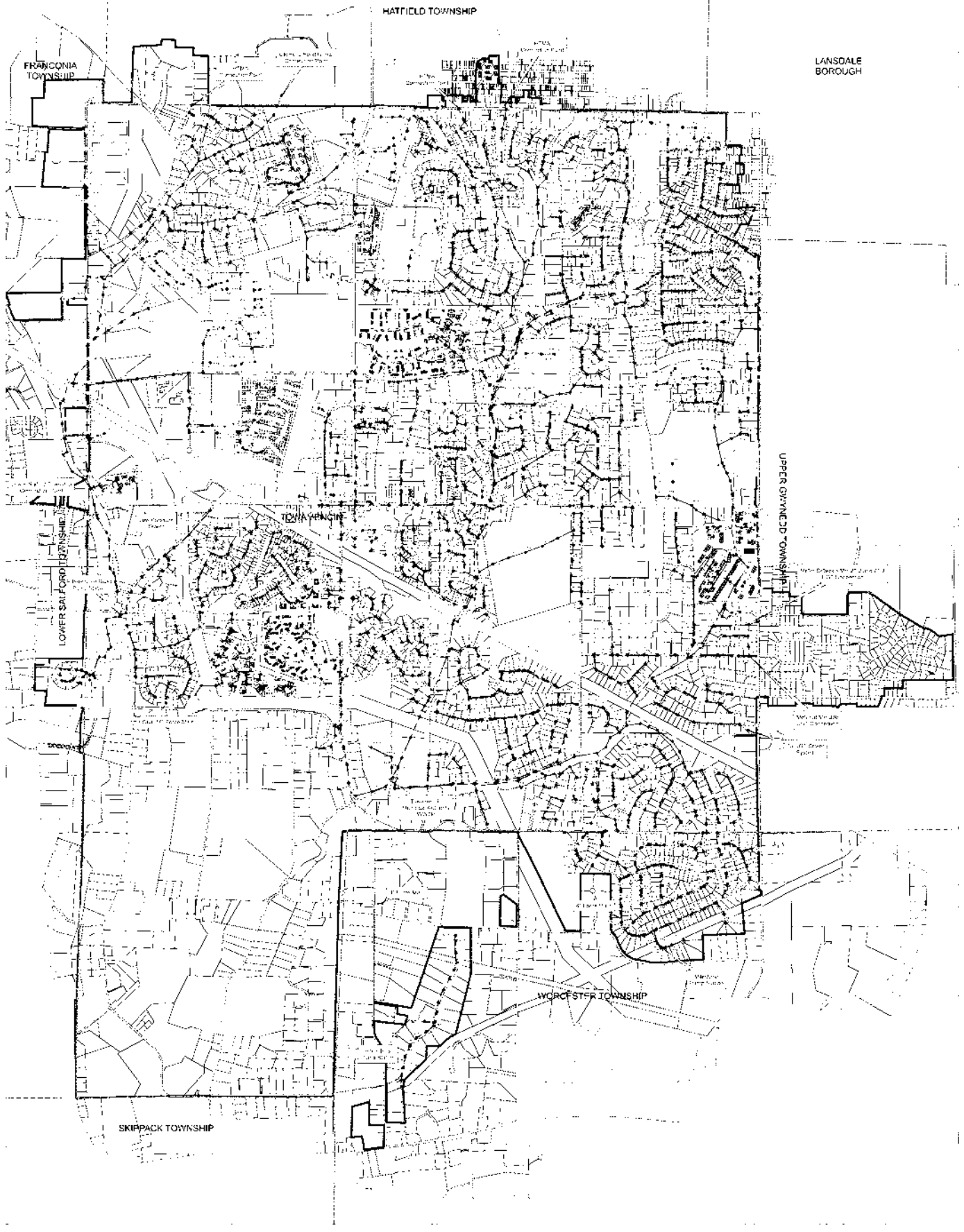
Attest: 
Secretary

[Signature Page to the Assignment of the Lease and Service Agreement]

EXHIBIT B

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$269.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

NO. 11 - All sewers and manholes in Hatfield Township are either owned by private entities or Hatfield Township Municipal Authority (HMA).



Legend

- Sanitary Manholes
- * Discharge Location
- Effluent Sanitary Man Junction Box
- Collector/Laterals (Private)
- Effluent Sanitary Sewer
- Force Main
- Sanitary Sewers (Private)
- Sanitary Sewers
- Hydrology
- Sewer Service Area



**TOWAMENCIN TOWNSHIP
SANITARY SEWER
SERVICE AREA MAP**



GILMORE & ASSOCIATES, INC.
1250 PENNSYLVANIA AVENUE, SUITE 200
PHILADELPHIA, PA 19104
TEL: 215-381-1000 FAX: 215-381-1001
WWW.GILMOREASSOCIATES.COM

EXHIBIT J

WHY THE SEWER SALE IS GOOD FOR TOWAMENCIN FAMILIES



MINIMIZES FUTURE TAX INCREASES FOR RESIDENTS & BUSINESSES

Good for your budget!

Proceeds from the sale of the wastewater system to Pennsylvania American Water would help us minimize future tax increases—**freeing up more dollars for your family budget.** Here's how:

- **Maximize Homestead/Farmstead Exemption**
(an extra \$130 annually in reduced taxes)
- **Eliminate All Township Debt** (making funds available for other annual general fund purposes and further reducing the need for future tax increases)
- **Enhance Existing Township Pension Plan Trust**
(reducing future annual pension contributions)

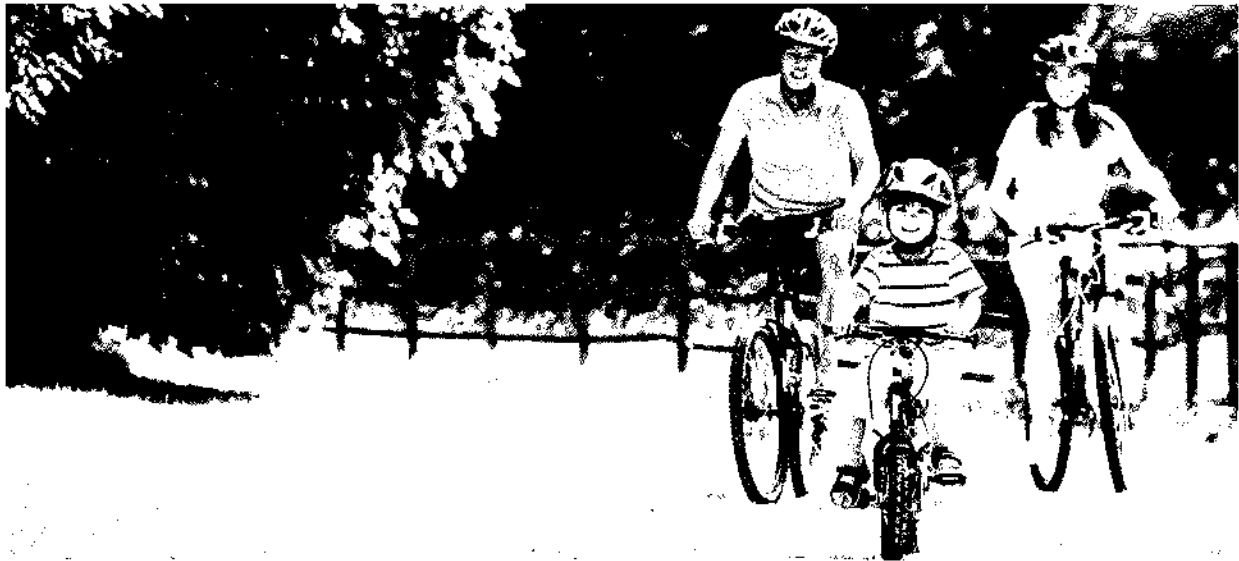


A Community of Tradition and Vision

IMPROVES PUBLIC WORKS

Good for your safety & our community!

- **The \$70 million (est.) capital reserve fund will eliminate the need for future borrowings to fund infrastructure projects** (identified projects are currently estimated to be \$40 million, which would equate to approximately \$5 million of annual debt service)
- **Increased Funding for Public Safety Infrastructure** (improved safety for everyone)
- **Increased Road Paving** (better streets)
- **Stormwater Upgrades** (improved flood protection)
- **Intersection Improvements** (less traffic congestion)



INCREASES FUNDS FOR COMMUNITY FACILITIES

Good for the health and well-being of our families and residents of all ages!

- **Better Athletic Fields and Playgrounds**
- **Basketball and Pickleball Courts**
- **Township Swimming Pool Upgrades**
- **More Walking Trails**
- **Preserve More Open Space For Future Generations**

Towamencin Township

1090 Troxel Road, Lansdale, PA 19446

Phone 215.368.7602 ▪ **Fax** 215.368.7650 ▪ **Email** info@towamencin.org

www.towamencin.org

EXHIBIT K

**Towamencin Township
Board of Supervisors
Monthly Meeting
August 11, 2021
7:30 PM**

Present:

H. Charles Wilson III, Chairman
Daniel M. Littley, Jr., Vice Chairman
Daniel Bell, Treasurer
Richard Marino, Secretary
Laura Smith, Asst. Treasurer/Asst. Secretary

Staff:

Donald D. Delamater, Township Manager
Brooke Neve, Assistant Township Manager/Finance Director
Colleen Ehrle, Assistant to Township Manager
Jack Dooley, Esq., Township Solicitor
Mary Stover, Township Engineer
Niral Modi, IT Staff
Timothy Troxel, Chief of Police

Chairman Wilson called the meeting to order at 7:35 PM and led the assemblage in the Pledge of Allegiance.

Opening Comments

Chairman Wilson made the following announcements:

- This Board meeting is being held in person at the Township Meeting Hall. It is also being provided via Zoom, a video streaming option, for residents who may not be able to attend in person. With this option, the public is able to view and hear the meeting live remotely. As accorded by law and notice, public comments submitted by 4:30 pm on the day of the meeting will be read at the start of the meeting. For those physically present, public comment will be available at the beginning of the meeting.
- Our next concert will be Wednesday, August 25th, featuring AM Radio. The concert will begin at 7 pm at Fischer's Park. Food sales will start at 6 pm.
- The Township's Open Space and Parks Advisory Committee is seeking volunteers as "Friends of Fischer's Park." The volunteers will help maintain and make minor improvements to the park. Work will be performed under the direction of the Parks Committee and the Township Public Works Department. Tools and supplies will be provided. If you have some free time and would like to contribute, please send an e-mail to info@towamencin.org or call 215-368-7602. Be a friend! Volunteer!

- The board met in Executive Session prior to this evening's meeting to discuss legal and personnel matters.

Public Comments

See separate attachment listing public comment email submissions that were read prior to the in-person public comments.

Resident Evan Dimmerling, 1660 Wagon Wheel Lane, noted he is a licensed engineer and had hand-delivered a letter to the Township Manager addressed to the Board of Supervisors on January 27, 2021, expressing his opposition to the sewer system sale, and had not received a response to date. In his letter, he describes a conflict of fiduciary interest in the outcome/ conflict of interest with respect to the consultant contract. The consultant gets paid if the sale goes through and they do not get paid if the sale does not go through. Mr. Dimmerling expressed there is a responsibility to disclose such issues, and that the Board respond to his previous letter.

Mr. Dimmerling continued to describe a neighbor on Buttonwood Lane, who was in the process of connecting to the sanitary sewer system and was completely unaware that a potential sanitary sewer system sale was being contemplated. He concluded that this lack of awareness, signals a public messaging problem, as the public has not been adequately engaged.

Chairman Wilson responded that from the summary of Mr. Dimmerling's letter, he did not believe the Board received the letter and would have recall such contents. He recommended that Mr. Dimmerling get in touch with Township Manager Donald Delamater to resubmit his letter.

Resident Kofi Osei, of 105 Cambridge Way, read the following comment:

Chuck, I did watch the rest of the last Board meeting and I'm heartened to hear the Board did a great job securing that \$400,000 grant and that the sewer has a few million dollars in capital. That does, however, reduce the little charity I had to the idea of selling the sewer to absolutely nothing. Since Chuck let me know that the sewer is well maintained and in good financial order the concerns of capital expenditure cited on the sewer valuation website seem unfounded.

As the Board continues to do its due diligence, I request that before you decide about the bids, there be a Town Hall for public comment. For that Town Hall I have a few ancillary requests. I request to see what the Board's plans are for the revenue of a potential sale. Going off audited financial reports from 2019:

<u>Municipality</u>	<u>Total Liabilities in 2019</u>
Hatfield Township	\$7.1 Million
Montgomery Township	\$4.6 Million
Upper Gwynedd Township	\$7.3 Million
Towamencin Township	\$24.2 Million

Notwithstanding needed further analysis of the township's financial statements, I would hope that the Board isn't looking to use a sewer sale to cover up mismanagement of township finances. I also request a prospective 20-year comparative analysis of sewer rates between the township taking on upcoming repairs and the bidders taking on those repairs. I can say that since the bidders will also be paying off the lump sum to the township at 10 percent cost of capital, I am very certain the bidders' rates will be much worse. For my last request, I would also like that a Town Hall be advertised through the mail.

Chairman Wilson explained the Board's rationale in exploring a potential sale and other points related to the sewer system.

- The Board feels it is their fiduciary responsibility to the residents and rate payers to take a look if a sale of the sewer system assets makes sense to the Township financially. They are committed to seeing the process through the bid phase to see what the system is worth.
- As part of the evaluation, a rate analysis will be included forecasting rates if the Township continues to operate the system and for each of the subsequent bidders. The rates will go up regardless of who is the owner, by how much will be determined.
- The sewer system's capital plan will be finalized soon, upon receiving the new permit limits on the system discharge from the plant.
- A summary of timeline
 - bidding documents drafts currently underway
 - two rounds of revisions
 - PFM will review the bid documents with the Board and ask for authorization to release them at public meeting.
 - The bids will be due back in January.
- There will be detailed lists of what the Board would plan to do with the proceeds, such as debt repayment, capital improvements and funding reserves.
- The system has been well maintained with annual inspection and repair activities. The plant is in good condition.
- He acknowledged that an FAQ in the public comment was an excellent suggestion and that one should have been provided to date. The focus was to post all relevant documents to the Township's data room for public view.

Chairman Wilson urged patience as it is a long process that involves a lot of analysis work.

Approval of Minutes: July 28, 2021

On a motion by Supervisor Littley, seconded by Supervisor Smith, the Board approved the July 28, 2021 minutes.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith

Voting No: N/A

Abstaining: N/A

Absent: N/A

Chairman Wilson noted this was the first meeting with new Township Manager Donald Delamater and introduced him. Mr. Delamater expressed he was glad to be working here. He has been meeting with staff and getting brought up to speed on Township matters.

Zoning, Subdivision and Land Development

Towamencin Village Shopping Center Presentation Update

The Philadelphia Suburban Development Corporation ("PSDC") acquired the Towamencin Village Shopping Center, located on Allentown and Forty Foot Roads in 2015. The Township has been working with PSDC to facilitate the renovation and revitalization of the site. PSDC representatives are present this evening to provide an update on plans and progress for the development of the Shopping Center.

Developer representatives of Philadelphia Suburban Development Company (PSDC), Joseph J. Ferrier and John B. Anderson, presented a status update for the Towamencin Village Shopping Center. Mr. Ferrier and Mr. Anderson explained there was a lot going on behind the scenes despite the stagnant condition of the shopping center. They have been contracting work out for landscaping, roofs, and the store fronts. They acknowledged it has taken them longer than expected ordering the materials to renovate the building facades, noting shortages and delays in the supply chain for the delivery of many products. They anticipate the façade construction to begin later this month, moving from the Planet Fitness towards the front of the shopping center.

They were pleased to report the new Planet Fitness is fully-functioning and very active. There is a land development application underway for a Chipotle restaurant and Mattress Warehouse, located at the current Boston Market. They are also working on the development of two new pad sites, which would include a restaurant with drive-thru and a retail site. These pad sites would be located to the right of the entrance/intersection off of Forty Foot Road, across from the Village of Newbury community.

They noted progress is moving forward in securing a tenant at the former Genuardi's site, and anticipate a potential announcement for this second lead tenant in the next few weeks. Mr. Ferrier explained having two lead tenants for a shopping center is critical to filling additional leases. He added that they have a number of potential tenants, a combination of food and retail, which are waiting for a second deal to be signed. They were optimistic and looked forward to making this a great vibrant corner for shopping in the Township.

Chairman Wilson asked if the renderings reflected all the landscaping changes referenced in previous meetings. Mr. Anderson noted the plan did include those changes, but they were still working on a few items from CKS's review letter. They are almost ready to resubmit the plan. Mr. Ferrier added they are focused on getting the approval for the second anchor, so they can submit to PennDOT with the hope they will use that information to justify activating the signal at Forty Foot Road and Newbury Way.

Supervisor Marino asked what was the timeline on the façade construction. Mr. Ferrier responded later in August. Chairman Wilson asked when they would they be in for the land development of the new pad sites. Mr. Anderson replied it would be a new application and anticipated its submission by the end of August.

Supervisor Smith asked if they could confirm that the potential second anchor would not be a Wegmans or a Trader Joe's. Mr. Ferrier confirmed neither would be the second anchor.

Village Overlay District Change Request - Starbucks

The Starbucks being constructed on the corner of Towamencin Avenue and Sunnyside Pike is well on its way toward completion and a grand opening. In moving forward to completion, Starbucks is asking to use their standard bollard. This would be a change to the bollard specified in the Township's Land Use Design Manual, which depicts a specific Sternberg bollard, and would require Board approval. Developer representatives of Philadelphia Suburban Development Company (PSDC), Joseph J. Ferrier and John B. Anderson provided a brief summary of the request.

Chairman Wilson asked why Starbucks can not comply with the Township's bollard standard within the Village Overlay District. Mr. Ferrier responded that he suspected that they can comply, but preferred to use their own standard, possibly for future maintenance reasons and that their style is used at their locations.

Supervisor Bell asked if there are existing bollards installed at the adjacent properties, namely, the Marriott Courtyard and The Flats at Lansdale apartment complex. Mr. Anderson said there are but they are located within the interior grounds of the apartment complex, so the visibility is limited.

Chairman Wilson noted Royal Farms, and he suspected The Landing, had complied with the Township's bollard standard, emphasizing the point of establishing a uniform look within the District, but understands their perspective. Supervisor Smith agreed consistency is key.

Mr. Ferrier asked if they could install the Starbucks bollard in the interim, while waiting for the Sternberg bollard order. The Board was agreeable to the temporary bollard, while waiting for the Village Overlay Standard bollard to come in.

Ordinance 21-08: Cornerstone Premier Homes – Zoning Text Amendment

Adoption of this ordinance would amend the Township's Zoning Text to allow an increase in density from 3 dwelling units per acre to 4.5 units per acre with a minimum lot area or developable land of 120,000 sf when a minimum of a half-acre of open space is created within the development. It would also eliminate the requirement for shared driveways with a minimum of 400 feet continuous road frontage. These changes would be to the Residential Business and Professional Overlay District within the Mixed Cluster Development District. The required public hearing on the matter was held at the July 14, 2021 Board of Supervisors meeting and the ordinance has since been modified and re-advertised appropriately for adoption.

On a motion by Supervisor Littley, seconded by Supervisor Smith, the Board adopted Ordinance 21-08, Cornerstone Premier Homes – Zoning Text Amendment.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith
Voting No: N/A
Abstaining: N/A
Absent: N/A

Waiver of Land Development – Christ Lutheran Church

The Christ Lutheran Church, located at 2211 Mainland Road, submitted an application for a waiver of land development. The applicant proposes to remove an existing 1,250 sqft rubberized playground area and construct a pavilion with walkway. In addition, the applicant is proposing an 816 sqft expansion to the accessory building used for their Shepard’s Shelf Food Pantry. Per the Pennsylvania Municipalities Planning Code, an improvement of a non-residential property or the division of space to create a leasehold is considered land development. The Township Engineer has recommended approval of the waiver of land development with conditions as noted in their review letter.

Property Ministry Chair Robert Kagarise, representing the applicant, reviewed the project. Mr. Kagarise asked for clarification of the third comment listed in the CKS review letter with respect to erosion control measures. Mr. Kagarise explained the construction would be in the rear of the auxiliary building housing the Shepherd’s Shelf pantry and that any movement of materials would take place on their private roadway, not on any Township road. Ms. Stover clarified that in the event they would need to move soil along a Township road, the erosion control measures should be followed.

Mr. Kagarise continued by providing the reasoning behind the two improvements. The Church had suffered by not being able to hold regular indoor services with the pandemic. The proposed pavilion would provide an option for outside service and other gatherings. Eighty percent of the pavilion footprint would consist of the grounds of an old playground.

The Church’s goal is to convert the Shepherd’s Shelf pantry to a “choice pantry.” Currently, the pantry stores all its food in the basement. With this new pantry expansion, staff will be able to store the food on the first floor, allowing those in need to select their goods versus being handed a pre-made bag. In addition, it saves volunteer time and effort, who often are elderly, as they will not have to carry food up and down stairs. A choice pantry designation also translates to additional government benefits, which would allow the pantry to expand its programming to those they serve. The Shepherd’s Shelf pantry has been in existence for approximately 10 years, serving 35 to 40 families.

On a motion by Supervisor Littley, seconded by Supervisor Smith, the Board authorized staff to prepare a resolution documenting their approval to waive the formal land development process.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith

Voting No: N/A

Abstaining: N/A

Absent: N/A

Matteo Stipulation Amendment Request

In June 2006, a property owner sought relief from the Zoning Hearing Board to allow vehicle sales use on the site, which was previously used as a gas service station. The application was denied by the Zoning Hearing Board and the applicant appealed this decision to the Court of

Common Pleas of Montgomery County. A subsequent stipulation agreement was reached and executed, allowing for a C-2 Vehicle Sales use at 1740 Sumneytown Pike. The property owner has leased the property to Avis/Budget car rental. Matteo Real Estate Group is requesting a change to stipulation agreement 2006-20632 pertaining to hours of operation and building signs. Any revision to the agreement must be approved by the Board.

Joseph J. Matteo, owner of Matteo Real Estate Group, reviewed his change request with respect to operation hours and signage. The proposed hours of operation would be Monday and Friday from 8 am to 6 pm, and Saturday and Sunday from 9 am to 2 pm. The previous operation hours were Monday thru Saturday 9 am to 9 pm.

Two building signs are being requested, one for each street side. The sign facing Sumneytown Pike is a simple non-illuminated aluminum sign, measuring 3' x 11.5' (34.5 sqft) to be placed in the middle of the overhanging canopy reading "Avis/Budget." The second building sign would face Franklin Street and would be a 48" x 70" non-illuminated aluminum sign, reading "Avis/Budget," with an additional sign underneath measuring 10" x 70" (23.33 sqft) with an arrow and the word "entrance" to direct customers to the back rear office. Mr. Matteo noted both signs requested conform to the Township's sign code.

Chairman Wilson asked if there was an existing freestanding sign and would it be coming down. Mr. Matteo replied that there was one out along Sumneytown pike and that it would remain as it was allowed with the original stipulation.

The Board expressed their goal to add more green space to the Kulpsville entrance of the Township and made landscaping suggestions to the owner. Mr. Matteo acknowledged the Board comments and noted the existing landscaping at the property.

On a motion by Supervisor Littley, seconded by Supervisor Smith, the Board authorized the Township Solicitor to work with Mr. Matteo in revising the stipulation agreement.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith
Voting No: N/A
Abstaining: N/A
Absent: N/A

Old Business

Award of Bid – Skippack Creek Interceptor Repair & Rehabilitation

This bid is for a contract associated with the investigation, repair, and rehabilitation of the Skippack Creek Interceptor portion of the sanitary sewer collection and conveyance system. The Township was awarded a \$425,000 Commonwealth Financing Authority grant late in 2020 through the Pennsylvania Small Water and Sewer program to fund this project. The amount budgeted in 2021 for this project consists of the \$425,000 in grant funds plus \$75,000 in engineering expense. One bid was received. The bidder is Standard Pipe Services, LLC with a bid price of \$943,111. This bid was previously presented to the Board of Supervisors at their July 28th

meeting and clarification was sought before deciding on the award. The Sewer Engineers were consulted and the Sewer Committee met on August 9th and will provide a recommendation on how to proceed with this bid.

Township Sewer Engineer William Dingman of Gilmore and Associates reviewed his recommendation to reject the current bid with Standard Pipe Services, LLC and instead split the project into two bid components – investigative and repair. The rationale to split the contract would provide a defined scope of work for the construction phase, which should translate to more bidders, and greater accuracy with construction costs. Mr. Dingman noted he conferred with the Commonwealth Financing Authority grant staff and they will allow splitting the contract as noted. Mr. Dingman noted the concerns in receiving just one bid. In this instance, there were some duplicated items and alternatives incorporated, which helps explain the \$943,111 bid price.

Mr. Dingman estimated the investigative component to be around \$100,000 and the repair portion to be closer to \$570,000. He explained if the Board decided to split the contract and rebid, the overall project timeframe will extend to about a year compared with the estimated 6 months. The investigative component could be complete within 90 days provided the bid is advertised shortly. Mr. Dingman added that grant officials were not in favor of simply contracting out the televising effort to the Township's current sewer maintenance contractor, Sewer Specialty Services Company, instead they recommended the televising work be included as part of the bid process.

Supervisor Bell thanked Mr. Dingman for his thorough explanation and asked if there were any risks in breaking the project into two components, besides the added time. Mr. Dingman responded there might be twice the amount of bypass pumping operations needed compared with just one contact. However, he clarified this was not a definite outcome. Mr. Dingman did not feel this potential risk was a deterrent from rebidding the project as two components.

On a motion by Supervisor Littley, seconded by Supervisor Smith, the Board rejected the bid from Standard Pipe Services, LLC with a bid price of \$943,111.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith
Voting No: N/A
Abstaining: N/A
Absent: N/A

On a motion by Supervisor Littley, seconded by Supervisor Bell, the Board authorized Gilmore & Associates to advertise bids for the investigative portion of the project.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith
Voting No: N/A
Abstaining: N/A
Absent: N/A

Multicultural Fair Fischer's Park Request Update

Ms. Carmina Taylor attended the Board meeting on March 24th to propose the allowance of a countywide multi-cultural event at Fisher Park on Saturday September 25, 2021. The Board was receptive to the concept and recommended that it be discussed with the Township's Special Events Facilitator and relevant staff and brought back to the Board at its May 26th meeting for an update. At the May 26 meeting, planning and funding details were provided by Ms. Taylor and Shreya Bhutani. The Board then authorized the Multicultural Fair to move forward for September 25, 2021 with a unanimous vote. The Board asked the representatives to return this evening to provide another update on the planning progress of this event.

Shreya Bhutani and Carmina Taylor, representatives from the Movement for Black and Brown Lives in Montgomery County, provided an update to the Board of Supervisors. Ms. Taylor explained a conflict that arose with the September 25th date affecting the availability of the Township's and other municipal Fire Police, EMS and police officers. On the same day, there is a Fireman's Association of the State of Pennsylvania event being held in Limerick Township. This conflict made the feasibility of continuing with the event problematic, along with the uncertainty created by the rise in COVID-19 infections, associated with the Delta variant. Ms. Taylor said with this information, it is prudent to look at hosting the event next year, and is seeking approval to move forward with planning on either September 17th or September 24th. Ms. Taylor asked for notification of potential conflicts to these days. She added she wants to make it a successful event, but in order to do so, she needs the Township and local public safety resources in place. Ms. Taylor thanked the Township staff and Special Events volunteers for all their assistance to date.

Shreya Bhutani explained that with the extended preparation time, the group will focus on sponsorship options, and technological aspects such as an event website and app, and developing a virtual passport to tie into the event's design - designating the pavilions at Fischer's Park to symbolize the seven continents, that would feature games, music, sports and traditions native to that region.

Supervisor Smith said she was initially sad to hear the event was not going to take place this September, but then realized the extra time allows for more fundraising to make it truly stellar.

On a motion by Supervisor Smith, seconded by Supervisor Bell, the Board approved moving the Multicultural Fair at Fischer's Park to either September 17, 2022 or September 24, 2022.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith

Voting No: N/A

Abstaining: N/A

Absent: N/A

New Business

Weikel Road Drainage & Pedestrian Walkway Improvement Presentation

At the recommendation of the Public Works Committee, the Board authorized an update to the Township's 2007 Strategic Stormwater Management Plan so as to better evaluate locations where stormwater related problems are occurring, develop potential solutions with associated cost estimates, and provide a prioritized ranking based on severity. The Township Engineer presented

the updated plan to the Board at their April 14th meeting. In the plan, 16 locations were evaluated and prioritized.

Recommendations for improvements/repairs were identified at seven of the locations. Weikel Road was ranked third of the seven. The Board directed the priority locations be reviewed by the Public Works Committee. The Township Engineer then prepared and presented plans to the Public Works Committee illustrating various concept options for drainage and pedestrian walkway improvements along Weikel Road. Four (4) potential project options and associated cost estimates for each project were discussed. The Public Works Advisory Committee endorsed option 4. The Committee recommended that the options and associated costs estimates be reviewed with the Board of Supervisors and subsequently be presented to the affected Weikel Road residents at a future meeting.

Township Engineer Mary Stover presented the improvement options for Weikel Road:

- Option 1 - Roadside Swale with Driveway Culverts, \$115,540
- Option 2 - Widen Road, Add Curb, Storm Sewer and Sidewalk, \$479,965
- Option 3 - Bike Lane, Roadside Swale and Driveway Culverts, \$206,290
- Option 4 - Bike Lane, Add Curb and Storm Sewer, \$390,040

The next step, if acceptable by the Board, is coordinating a meeting with affected residents to review the proposed option or all options.

Supervisor Bell asked what was the rationale behind the Committee leaning towards option 4. Ms. Stover noted the preference was based on the storm sewer and curb work and their concern with the cost associated with a sidewalk. The bike lane is an alternative to a sidewalk, posing a limited impact to residential front yards.

Chairman Wilson recommended that all four options be presented to the residents. Supervisor Marino recommended reconfiguring the options in order of magnitude and cost when presenting to residents.

Supervisor Littley asked if the cost estimates included right-of-way/casement obtainment costs. Ms. Stover responded that they did not.

Chairman Wilson added the bike lane is a nice addition with the Township's pool close by. Supervisor Marino described the Public Works Director's preference to incorporate underground subservice drainage over a roadway swale. This would keep the character of the road with minimal widening width for the bike lane.

On a motion by Supervisor Smith, seconded by Supervisor Bell, the Board recommended option four from the Weikel Road Drainage and Pedestrian Walkway Improvement Presentation.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith

Voting No: N/A

Abstaining: N/A

Absent: N/A

Blue Print Brewery Request for 5K (Wheels Towards Hope) – September 26th

Representatives of Blueprint Brewery are seeking the Township’s approval to host a 5K on Sunday, September 26th at 11 am within an industrial park, located off of Gehman Road in Towamencin. The event would be held to benefit the non-profit organization Wheels Toward Hope, which helps quadriplegics and paraplegics in Montgomery and Bucks Counties. The proposed 5K would start and end at Blueprint Brewery Co., located at 1571 Gehman Road. It would be contained within the industrial park, while utilizing portions of Gehman Road and some of the parking lots. They anticipate approximately 100 participants. Participants will follow the rules of the road. There are no road closures being sought, nor is there a request for fire police assistance for the event.

Chairman Wilson was ok with the event itself, but had questions and concerns about designated parking, and added the need to seek permissions from the affected property and/or business owners.

On a motion by Supervisor Littley, seconded by Supervisor Smith, the Board approved Blueprint Brewery proposed 5K on September 26th, with conditions that representatives attend a future Board meeting to answer relevant questions and that necessary permissions are sought for the use of the referenced parking lots.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith
 Voting No: N/A
 Abstaining: N/A
 Absent: N/A

Request for Flat Fee for Field Rental – Senior Softball League

A group that formed a senior softball league has been renting a playing field at Bustard Park one morning a week. The board previously approved a flat rental rate fee of \$300 for Wednesday mornings from 9 am to 12 pm for June through October. The same group has requested that the Township consider a flat rental rate fee of \$150 to add Monday mornings from 9 am to 12 pm for August 9th through October. TYA officials have confirmed there are no programming conflicts with this request.

Rental Rate Per Fee Schedule	Hours Requested	Normal Fee
Resident	\$20 / per two hours	30
Non-Resident	\$30 / per two hours	30
		\$300
		\$450

Supervisor Littley suggested the flat fee be reduced to \$100 noting the condensed usage for the remainder of the season. The other Board members were receptive to the reduced fee.

On a motion by Supervisor Littley, seconded by Supervisor Bell, the Board approved the senior softball league’s flat fee request for \$100.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith
Voting No: N/A
Abstaining: N/A
Absent: N/A

Fire Police Request – Limerick Township

Limerick Township is requesting the assistance of the Towamencin Fire Company Fire Police Unit on a mutual aid basis for traffic and safety control for the Annual Fireman’s Association of the State of Pennsylvania parade. The parade will travel up West Ridge Pike on Saturday, September 25th. Assistance is requested from approximately 8 am to 4 pm.

On a motion by Supervisor Littley, seconded by Supervisor Smith, the Board approved Limerick Township’s Fire Police Request for September 25th.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith
Voting No: N/A
Abstaining: N/A
Absent: N/A

Fire Police Request – Lower Salford Township

Lower Salford Township is requesting the assistance of the Towamencin Fire Company Fire Police Unit on a mutual aid basis for traffic and safety control for their annual “Country Fair Days” fireworks and fair. The event will be held from Wednesday, September 1st through Saturday, September 4th, with fireworks taking place on Friday night, September 3rd. This request is for specific assistance on September 4th for the fireworks event.

On a motion by Supervisor Littley, seconded by Supervisor Bell, the Board approved Lower Salford Fire Police request.

Voting Yes: H. Charles Wilson, III, Daniel M. Littley, Jr., Richard Marino, Daniel Bell, Laura Smith
Voting No: N/A
Abstaining: N/A
Absent: N/A

There being no additional business, the meeting adjourned at 9:31 pm.

Respectfully submitted,



Colleen Ehrle
Assistant to Township Manager

From: Judy Phipps
Sent: Monday, August 9, 2021 7:58 PM
To: Info Towa
Subject: RE: selling sewer authority to Aqua American

Ladies and Gentleman:

Please be so kind as to read this email in regards to your proposed sale of The Towamencin Sewer Authority to Aqua America.

- 1) I am a resident of Towamencin Township and have been for nearly 50 years, except for 4 years when I lived in Eagleville.
- 2) During the time I lived in Eagleville, I had to deal, on a monthly basis, with Aqua America. I found them to be hostile to customers, continually overcharging me, bullying me when I tried to contest my bills, being verbally abusive on the phone and generally being an unbearable company with which to deal.
- 3) I lived in a 4 bedroom house in Towamencin with 2 other adults and moved into a 2 bedroom condo in Eagleville with only 1 adult. My bill for Aqua America was easily 3 times what I had paid to Towamencin and the North Penn Water Authority combined.
- 4) I subsequently moved back to Towamencin, largely because the bills from Aqua America were unsustainable and dealing with them on a monthly basis was unbearable.
- 5) I have talked with a municipal solicitor for other water and sewer authorities who has informed me that each authority for which she worked tried to hold Aqua America to task because of their "corporate raider" philosophy of paying townships large payments up front, and then passing the costs along to customers. Each time, Aqua America prevailed and customers generally bore the brunt of huge costs.
- 6) In speaking with multiple home owners (50 in this development alone, as well as countless others): none of us want to see this happen to us.

I am requesting that this email be entered into public comments so that others may hear just exactly what it is like to live under these unbearable conditions. I would present these comments in person at your township meeting, but because of Covid concerns and my age and health, I am unwilling to risk being part of a public meeting.

And, I implore the township supervisors to reconsider the plan to sell the sewer authority and particularly not to a corporation that has no conscience and does not service its end users: US, the residents of Towamencin Township.

Judy Phipps
1231 Archer Lane
Lansdale, PA 19446

Case# 2023-18907-0 Docketed at Montgomery County Prothonotary on 08/22/2023 3:50 PM. Fee = \$268.75. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

From: TIMOTHY GALLAGHER <[redacted]>
Sent: Friday, August 6, 2021 8:56 PM
To: Info Towa
Subject: Supervisor meeting

Please email the zoom link for the Aug 11th meeting.

Comments:

Thank you for carefully examining the possible sale of the sewer system. I have some concerns:

1. My husband and I will soon be on a fixed income so rate increases will effect us. I would like to see a side by side comparison that is longer than a year in length.
2. I find it difficult to understand the information on the township web page and feel the township could do a better job presenting the basic facts like a FAQ format.
3. I would also like to know if there are plans for the money that would be generated from the sale. Long range specific plans should be made public.

Tina Gallagher

From: samantha jackson
Sent: Tuesday, August 10, 2021 10:28 AM
To: Info Towa
Subject: Sewer system revitalization

I would like to send this email in opposition of the privatization of our sewer system. I am completely against the idea for many reasons but largely because of the financial impact it will have on residents. I am urging you to hear the voices of the residents and take into consideration the financial hardship it will cause many families. As a new resident of Towamencin township, one with a young family of 6, this is of major concern to me and because of this I wanted to make sure my voice was heard as well. The township needs to keep the sewer system, that is what's in our best interest!

Thank you,
Samantha Jackson
1105 Columbia Avenue

From: mike.rollin
Sent: Tuesday, August 10, 2021 1:25 PM
To: Info Towa
Subject: Privatization

This is the Rollin family from 1559 Yeakel Way. We are opposed to the privatization efforts underway. I would like a zoom link for the meeting on Wednesday please.

From: Katie Kelley <[REDACTED]>
Sent: Wednesday, August 11, 2021 2:03 PM
To: Info Towa
Subject: Public Comment 8/11/2021

Hello,

I am Katie Kelley and I live at 325 Central Drive. I am adamantly opposed to the privatization of our sewer system. Privatization will mean loss of community input, less transparency, and significantly higher utility bills from a for profit company. For the good of the township and its citizens, the waste water management system should remain in the hands of the township.

Thank you.

Katie Kelley
she/they

From: Kristen Panaski <[REDACTED]>
Sent: Wednesday, August 11, 2021 3:05 PM
To: Info Towa
Subject: Public Comment 8/11/21

Hello,

My name is Kristen Panaski. My husband Matthew and I live at 113 Carlton Court in Liberty Knoll. We both ADAMANTLY oppose the privatization of our sewer system. Privatization will mean the loss of community input, less transparency and significantly higher utility bills for a profit company. For the good of the township and it's citizens, the waste water management system should remain in the hands of the township.

Thank you,
Kristen Panaski

From: Marilyn Alderfer <[REDACTED]>
Sent: Wednesday, August 11, 2021 3:21 PM
To: Info Towa
Subject: Sewers

To the board of directors,

My name is Marilyn Alderfer I live at 1277 Buttonwood Dr. Lansdale. This letter is in reference to Towamencin selling the sewer plant. I Cannot Attend the meeting tonight.

My husband and I have lived in Towamencin Township for 58 yrs. We first lived on Franklin St Kulpville. Now I am at the Buttonwood address. My husband Gordon passed away 5 1/2 yrs. ago and he has wanted sewers for many years. I just recently got hooked up with sewers with a bill of almost \$32,000. I just

recently found out that you are looking into selling the plant which I am under the understanding our yearly fees will go up tremendously. That extremely upset me. I am a one person house hold and am 78 yrs old. I hope you are thinking of the strain this is going to put on so many household especially after going through what we all went through in this past year. Please reconsider and have out Township run the plant.

Sincerely Marilynn Alderfer

From: Sharif Riad
Sent: Wednesday, August 11, 2021 3:28 PM
To: Info Towa
Subject: Privatization Opposition

Hello Towamencin Board,

I have true concerns regarding the privatization of our sewer systems, especially with a company like Aqua. When profit is the main goal, your constituents within that area tend to suffer. I have seen estimates and heard anecdotal experiences of people who have been gouged by Aqua. I feel strongly that township is very capable of continuing to budget for the maintenance and repairs without a questionable corporate entity. Being forced to pay more for no improvement in service, is something that will motivate voters to make their voices heard at the ballot box if it gets snuck through against the will of the people.

Sincerely,

Sharif Riad

From: Daniel Cox
Sent: Wednesday, August 11, 2021 3:39 PM
To: Info Towa
Subject: Sewer Privatization

Good afternoon,

My name is Daniel Cox and I live at 1272 Orchard Lane. I am against the privatization of our sewer system. Being a former resident in another Montco town previously where the sewer system was privatized I know everything was passed on to the residents as far as raising rates was concerned and with no reason or explanation. I have not seen/or heard any reason why this is a need or benefit for our township and it's citizens.

I also feel this should not be voted on by a board of the few. This should be voted on by the citizens on Towamencin Township as this is a decision that will affect every citizen and not just those making this call.

The township should also be presented with clear and concise reasons as to why this decision will benefit us and how our rates will be altered over the next several years if this goes through.

Thanks