

**Addendum No. 2 for
Request for Bids
Sale of Wastewater System
Issued by the Township of Long Hill, New Jersey
on April 18, 2019**

**Addendum No. 2 Issued
May 23, 2019**

Township of Long Hill, New Jersey
Request for Bids
Sale of Wastewater System
Addendum Number 2

Section 1: The attached Appendix 1 (Vendor Questions/Data Requests and Township Responses) contains additional written questions to the RFB and requests for data received by the Township and the Township’s responses to such questions/requests.

Section 2: The first sentence in Section 1.4 (Bid Submission Date) of the RFB is hereby amended as follows: “Copies of the Bid responding to this RFB must be submitted no later than 10:00 a.m. (Eastern Time) on Tuesday, June 4, 2019 in accordance with Section 5 of this RFB.”

Section 3: The schedule in Section 1.7.2 (Schedule Adherence) of the RFB is hereby amended as follows:

Optional Pre-Bid Meeting	May 1, 2019 at 10:00 a.m.
Site Visits	May 2–8, 2019 (by appointment only)
Bidder Questions Due	May 14, 2019
Bids Due	June 4, 2019 at 10:00 a.m.

Section 4: The last sentence in the first paragraph of Section 2.2 (Description of Wastewater System) of the RFB is hereby amended as follows: “The Township Wastewater System currently serves 2,835 accounts.”

Section 5: The first sentence in Section 5.1.1 (Bid Submission; Timing of Submission; Number of Bids to be Submitted) of the RFB is hereby amended as follows: “Bids must be submitted by 10:00 a.m. (Eastern Time) on Tuesday, June 4, 2019.”

Section 6: The Draft Agreement of Sale has been revised. A blackline showing changes is attached hereto as Attachment 1-B (Addendum No. 2 Version Draft Agreement of Sale). A Word version of the revised Draft Agreement of Sale will be sent to all potential Bidders who have registered in accordance with Section 1.6 (Inquiries and Correspondence) of the RFB.

Section 7: The second sentence in Section 3.4 (Required Capital Improvements to Lift Sewer Ban) of the RFB is hereby amended as follows: “The Buyer will be required to begin to undertake such capital improvements as soon as reasonably practicable and no later than three years following Closing, and all capital improvements necessary to lift the sewer ban will be required to be completed within five years from Closing.” See Section 8.4 (Required Capital Improvements to Lift Sewer Ban) of the revised Draft Agreement of Sale.

APPENDIX 1

**VENDOR QUESTIONS / DATA REQUESTS AND
TOWNSHIP RESPONSES**

APPENDIX 1 to
ADDENDUM NO. 2
VENDOR QUESTIONS/DATA REQUESTS AND
TOWNSHIP RESPONSES

Note to Potential Bidders: Over the past two years, Township personnel with historical information regarding the sewer system have left the Township and recently the system has been operated and maintained by private water companies. Information provided herein is to the best of the Township's knowledge at this time.

Question 1: What are the known deficiencies in the underground utilities such as inoperable or leaky pipes, conduits, valves?

Response: There is one leaky pipe being attended to currently.

Question 2: Are there any underground storage tanks and if so: (a) what are their condition? (b) what do they contain? (c) are there leak sensors, etc?

Response: The Township is not aware of any underground storage tanks.

Question 3: What underground storage tanks have been removed and please provide removal documents?

Response: Five underground tanks were removed in 1996 and 1997. The NJDEP issued a No Further Action letter in connection with such removal. Documents associated with this removal are available in the Dropbox.

Question 4: How is grease removed from the wet wells/lift stations and how often is removal?

Response: On a quarterly basis, the DPW takes a VAC truck to remove grease from the wet wells/lift stations.

Question 5: Please may we have a copy of the very detailed sewer collection map that shows the wastewater system in its entirety, including: (a) The eight pumping stations and the force main locations and discharge manholes structures; (b) Future gravity sewer areas that need to constructed and connected to the existing system; (c) Location on the system map of all the following pipes: (i) 14,700 feet of 14" diameter pipe (ACP); (ii) 8,850 feet of 12" diameter pipe (ACP); (iii) 29,440 feet of 10" diameter pipe (VCP); (iv) 232,300 feet of 8" diameter pipe (VCP); (v) 15,000 LF of force main and material type; (vi) Gravity sewers that were lined in 2014 (14,000 feet).

Response: A Sanitary Sewer Mapbook of 2008 is available in the Dropbox.

Question 6: How does the Township deal with the ACP pipe removed? Is there any specific township requirements to keep or remove and dispose of the old abandoned ACP pipes?

Response: The Township has not had to address this issue.

Question 7: Are there any known easements or land use issues for the whole system?

Response: The Township has been given easements by property owners.

Question 8: Are there any known Green Acres limitations on the pumping station locations?

Response: The Township is not aware of any such limitations.

Question 9: Are there any known environmental issues at any of the Long Hill properties? Have the township received any NJDEP violations in the past ten years? If yes, please share with us copies of the violations. Also were there any fines associated with the violations and or corrective actions and if CAs what is the disposition of each? Are there any pending NOV/NONs for recent or past violations for the last 2 years?

Response: See Addendum No. 1, response to Question 2. **Please note: the NJDEP and the Township have located a No Further Action letter that the Township believes will satisfy the NJDEP's concerns regarding work done at the site to remove underground storage tanks, and the Township has located additional information that may indicate that no further remediation work will be necessary at the site. This issue has not yet formally been resolved.**

The Township does not believe that it has received any NJDEP violations in the past ten years. The Township is not aware of any pending NOV/NONs for recent or past violations.

Question 10: Do you currently have any ACO's with the NJDEP or the EPA?

Response: Not at this time.

Question 11: As a lot of structures are built in early 1930s, are you aware of any Lead or Asbestos issues? Have lead and asbestos studies been performed on the structures, if so please provide results of the studies.

Response: See Section 2.7 (Environmental Remediation) of the RFB. See Addendum No. 1, response to Question 2. The Township is not aware of any studies performed on the structures.

Question 12: At the WWTP, the open green field, was that a pond or some type of sludge collection basin? What was the type of backfill used to fill the area? Was the sludge removed before the area was back filled? Was soil sampling conducted of the area to ensure no metal or other contaminants remain in proximity to the site?

Response: The open green field was a polishing lagoon. The Township believes that any sludge was removed before the area was backfilled, as required by NJDEP. Pursuant to NJDEP approval, the Township deposited approximately 17,000 cubic yards of material containing asbestos and soil contaminated with petroleum hydrocarbons to fill the lagoon. After being filled, the lagoon was capped with established vegetation. Soil sampling in the area was conducted in 2011.

Question 13: During the past fifteen years, the Passaic River experienced major flooding events close to or above the 100 years events for the Passaic River Basin. Have the flooding water overtopped the plant walking surfaces or any of the other structures walking surface during any of the flooding events? Was the plant of any of the pumping stations inoperable during any of the major flooding events?

Response: The Township is not aware of any flooding events that have caused water to overtop the WWTP or other structures walking surfaces, or any other flooding events which have caused the WWTP or pumping stations to be inoperable.

Question 14: Does the plant and all pumping stations have sufficient back up generation to be self-sufficient and completely disconnected from the Grid for up to four days during emergencies?

Response: The WWTP and all pumping stations have generators. It is unknown whether the propane would last four days.

Question 15: Has a confined space evaluation been completed for the facility and pump stations? Please provide your Confined Space Inventory if available.

Response: The Township has no information on this.

Question 16: Has a noise survey been completed for the facility and pump stations? Please provide results if available.

Response: No noise survey has been completed.

Question 17: Are there any security cameras, door access control, or other monitoring systems in place at the facility and pump stations?

Response: The WWTP and all pumping stations do not have any security cameras, and there are no electronic monitoring systems in place.

Question 18: Who provides after hours security for the facility and pump stations? Are there any contracts with private security firms for monitoring and response or is it local police and emergency response organizations such as fire department and Medic?

Response: Local police, emergency response organizations and the fire department are the only security for the WWTP and pump stations.

Question 19: Please provide a current list of chemicals in use at the facility and pump stations.

Response: See Addendum No. 1, response to Question 11.

Question 20: Are electrical cabinets and panels in compliance with NFPA 70E, are they properly labeled?

Response: This information is unknown.

Question 21: Were the rotary screens upgraded in screen size or replaced and if yes, with what equipment?

Response: No.

Question 22: In 2014, how long did it take to drain and clean Oxidation Ditch #2? What was the volume of grit/debris removed? Has Oxidation ditch #1 been drained and cleaned and if yes, how long did this take and what was the volume of debris removed?

Response: It is unknown how long it took to drain and clean Oxidation Ditch #2, and the volume of grit/debris removed. It is unknown whether Oxidation Ditch #1 has been drained and cleaned.

Question 23: In 2016, Clarifier #1 has a blow out at a stress crack. How long did it take to drain the tank and repair the crack/s? Who conducted the work? Did sewage spill through the crack onto the ground? Was NJDEP notified and was there a violation notice issued for this event? Have any other stress cracks in other tanks experienced blow out and were they repaired from inside the tank?

Response: This information is unknown.

Question 24: What type of equipment is in use for sludge dewatering? Include Manufacturer, Model # and year of installation. What percent solids is the WAS (waste activated sludge) and what percent solids is achieved after thickening? What is the volume of final sludge disposed off-site per week, per month, per year? Where is final sludge transported to?

Response: The equipment used for sludge dewatering is Envivo Dyne System Model # USAT50. The final sludge is transported to Passaic Valley Sewer Authority.

Question 25: What is the monthly and annual electric expense for the wastewater treatment plant?

Response: The budget account details for operating years 2017 and 2018 are available in the Dropbox. See also Sheets 35–36 on <https://longhillnj.gov/finance/docs/2019-Final-Budget.pdf>.

Question 26: What chemicals are used at the pump stations and what are the current dosage rates?

Response: No chemicals are used at the pump stations.

Question 27: Have odor complaints been received throughout the collection system and at what locations?

Response: The Township is not aware of any odor complaints.

Question 28: What locations have experienced sewer backups, sewer overflows or collapsed sewer pipes? Were any notices of violations issued for these events? How many customer complaints are received each year regarding these events?

Response: Railroad Avenue and Union Avenue experienced sewer back-ups. Railroad Avenue experienced a collapsed sewer pipe. No notices of violation were received.

Question 29: Please provide the Plant As-built drawings and pump station As-built drawings for review.

Response: Plans of the WWTP are available for inspection at the WWTP site upon coordination with Matt Berger from Veolia whose contact information is provided in Section 1.7.3 of the RFB.

Question 30: Please may we have a copy of the modelling results from a hydraulic model performed for the system?

Response: The Township does not have such modelling results. Kleinfelder relied upon the 2009 I&I study in designing the improvements to the WWTP. However, see Dry and Wet Weather Analysis Final Report (2011) included in the Dropbox.

Question 31: Please may we have the GIS map of their entire collection system (in ESRI)?

Response: See response to Question 5.

Question 32: What is the effective date of the NJDEPS [sic] permit?

Response: The effective date of the NJPDES Surface Water permit is 10/01/2018.

Question 33: When should the plant upgrades to 1.25 MGD capacity be completed?

Response: Capital improvements to 1.25 MGD capacity are expected to be completed by December 2020.

Question 34: Will Long Hill Township complete the plant expansion construction before they hand the system to the new owner?

Response: Yes.

Question 35: During high flow events (i.e. peak hourly factor of 4), have you ever experienced any overflow or exceedance and have you sampled during very high flow events?

Response: See Addendum No. 1, response to Question 12. The Township has not sampled during high flow events.

Question 36: Please provide us with a copy of the design documents (Engineers report, drawings and specs) that were part of the TWA permit.

Response: Design documents are available for review at the Clerk's Office in the Municipal Building in Long Hill Township.

Question 37: Please may we have a list of all sewer customers broken by residential, commercial, industrial?

Response: The winning Bidder will receive this list upon completion of the sale. There are 7 commercial customers and 2,828 residential customers. The Township does not have any industrial customers.

Question 38: What is Capex requirement to lift sewer ban?

Response: This requirement is unknown.

Question 39: Please may we have a copy of the 2018 actual operational costs for the wastewater system?

Response: See response to Question 25.

Question 40: What are the budgeted 2019 opex costs for Long Hill Wastewater system?

Response: See Sheets 35–36 on <https://longhillnj.gov/finance/docs/2019-Final-Budget.pdf>.

Question 41: How many personnel currently operate and maintain the wastewater treatment system (including plant) on a full-time and part-time basis?

Response: See Addendum No. 1, response to Question 13.

Question 42: With regard to Vendors associated to Long Hill wastewater treatment system, please provide the following: (a) Who are these Vendors and what are their contract terms, lengths and rates (haulage, sludge disposal, chemical, sampling, laboratory, utilities – Verizon, PSE&G, JCP&L)? (b) 2018 actuals and 2019 budget associated to each vendor.

Response: See response to Question 25. See response to Question 40 for budgeted 2019 operating costs. There is no individual budget for each vendor.

Question 43: Are there any contributions currently associated to the Long Hill wastewater treatment system? If so, please may we have these details?

Response: The Township is not aware of any contributions.

Question 44: What loans are currently associated to the system?

Response: Please refer to the Annual Financial Statement on the Township’s website at: <http://www.longhillnj.gov/finance/index.html>.

Question 45: What is the current telemetric system on site, SCADA, alarm dialers etc?

Response: There are alarm dialers at the pump stations. The provider is Mission Systems.

Question 46: Will the listed below 0.13 MGD be additional flow above and beyond the current flow that already exceeds the plant’s new capacity of 1.25 MGD?

- 100,000gpd sewer capacity should be set aside for the Township's affordable housing obligations.
- 30,000gpd should be set aside for redevelopment plans.

Response: The increase to 1.25 MGD is consistent with the build-out average flow set forth in the Wastewater Management Plan. However, if flows are in excess of those anticipated in the Wastewater Management Plan, additional increases to capacity may be necessary to meet these demands.

Question 47: With regard to the billing/tariff: is there any usage data by class of customer? If not what is average winter usage for residential customer?

Response: Average winter usage for residential customer is approximately 30,000 gallons per year.

Question 48: Are the non-metered amounts in addition to the \$175 user fee?

Response: No. As of the adoption of the updated sewer rate ordinance on May 8, 2019, the non-metered fee is \$644 for residential users and \$1,344 for commercial users. The user fee for metered users (residential and commercial) is raised to \$196.

Question 49: For bill calculation purposes, is the bill for the year say 2018: winter usage 2017 x 18.27 / 12 months = monthly amount to be billed?

Response: The bill for 2019 is calculated as follows:
Actual usage for Jan, Feb, March, Oct, Nov, Dec 2018 x \$20.46 + the \$196 fee.

Question 50: What were the user fees in prior years?

Response: The user fees were \$75 in prior years.

Question 51: Of the 2,818 accounts, how many are there in each class? Residential, commercial etc.

Response: See response to Question 37.

Question 52: Provide copies of any Consent Orders issued by NJDEP or EPA.

Response: The Township is not aware of any consent orders issued by NJDEP or USEPA.

Question 53: Provide a copy of the NJPDES permit and the SQAR permit.

Response: The NJPDES permit and the SQAR permit are provided on the Township website. The NJPDES permit is also available in the Dropbox.

Question 54: Provide copies of any air permits issued by NJDEP.

Response: A certificate of the effective air permit is available in the Dropbox.

Question 55: Does the facility maintain any SPCC Plans? If yes, please provide a copy.

Response: The Township is not aware of any SPCC Plans.

Question 56: Provide copies of Right-to-Know reports for the past 3 years.

Response: A copy of the Right to Know Compliance Reinspection Report from November 2017 is available in the Dropbox.

Question 57: Provide a copy of the facility Emergency Response Plan(s).

Response: The Public Works Annex K is available in the Dropbox.

Question 58: What is the current vendor used for sludge hauling? Provide a copy of the sludge hauling contract.

Response: The current vendor used for sludge hauling is Applied Waste Services. This vendor is covered through a contract with Veolia. As the Township is not a party to this contract, it does not have a copy of the agreement.

Question 59: What is the current vendor/facility used for sludge disposal? Provide a copy of the sludge disposal contract.

Response: The current vendor used for sludge disposal is Passaic Valley Sewerage Commission. This vendor is covered through a contract with Veolia. As the Township is not a party to this contract, it does not have a copy of the agreement.

Question 60: Provide copies of any Waste Generator ID nos. (hazardous waste &/or others).

Response: The Township cannot locate any ID numbers at the WWTP.

Question 61: Are there any IPP requirements? If yes, please explain.

Response: No.

Question 62: Are there any STAYs of NJPDES permit limits? If, yes please explain.

Response: No.

Question 63: What is the current S & C operator license rating/requirements?

Response: The current operator license classes are S-3 and C-2.

Question 64: Is there a laboratory certification? If yes, please provide a copy.

Response: Yes. See Attachment 1-A (Long Hill Township Sewerage Treatment Plant Laboratory Certification).

Question 65: Provide a copy of contract for laboratory services.

Response: The current vendor used for laboratory services is NJ Analytical. This vendor is covered through a contract with Veolia. As the Township is not a party to this contract, it does not have a copy of the agreement.

Question 66: Are there any current remediation of soils or groundwater projects in progress?

Response: See response to Question 9.

Question 67: Provide copies of any No Further Action letters (or equivalent; ie, RAO) issued by the NJDEP for tank removals and/or remediation of soils or groundwater.

Response: See responses to Questions 3 and 9.

Question 68: Is the facility required to have a Stormwater permit? If yes, please provide a copy. If yes, is the facility required to have a Stormwater Pollution Prevention Plan? Please provide a copy.

Response: No.

Question 69: Provide a copy of any NJDEP permits for backflow devices.

Response: The permits for backflow devices are available in the Dropbox.

Question 70: Are there any transformers on any of the owned properties? If yes, is ownership known (self or 3rd party?) and has the transformer oil been tested for PCB concentration?

Response: No.

Question 71: Please supply the vendors the Township deals with for equipment service/maintenance and chemical supplies.

Response: See response to Question 25.

Question 72: What vendors are you currently using for maintenance...pumps, motors, VFDs, conveyance assets, etc.

Response: See response to Question 25.

Question 73: Please provide a listing of any outstanding federal or state loans provided to the system.

Response: See response to Question 44.

Question 74: Please provide a listing of any previous federal or state grants to the system, including specifically any grants that may be subject to recoupment in whole or part in connection with the sale of the system (see e.g. Executive Order 12803).

Response: The Township is not aware of any grants to the system.

Question 75: Is the Town required to obtain U.S. Environmental Protection (USEPA) approval of the sale of the system under USEPA Guidance on the Privatization of Federally Funded Wastewater Treatment Works (EPA-832-B-00-002)?

Response: The Township does not believe that USEPA would need to approve of the sale of the wastewater system.

Question 76: Have there been any additional capital improvements completed since the 2017 RFB was issued? If so, please identify and provide the cost breakdown for those projects.

Response: No.

Question 77: Please supply the filing for the renewal of the WWTP NJDEP [sic] Permit. Are metals now required monitoring?

Response: See response to Question 53.

Question 78: Please provide copies of the Discharge Monitoring Reports (DMR) as per the NJPDES permit for the last 5 years.

Response: The DMR Reports for the years 2018 to 2019 are available in the Dropbox.

Question 79: Are there any outstanding or pending notice of violations or Administrative Consent Orders? If so, please provide.

Response: See responses to Questions 9 and 53.

Question 80: Please provide a list of all above-ground and underground storage tanks, including size (in gallons), materials of construction, identify of contents, corrosion prevention and leak prevention systems.

Response: See response to Question 2. There is an above-ground 3,000-gallon diesel tank at the WWTP.

Question 81: Is a current air permit available for the WWTP? If so, please provide.

Response: See response to Question 54.

Question 82: Please provide the WWTP Emergency Response Plan.

Response: See response to Question 57.

Question 83: Please provide WWTP operations manual.

Response: There is no consolidated WWTP operations manual. A number of various WWTP operations manuals are available for review at the WWTP site upon coordination with Matt Berger from Veolia whose contact information is provided in Section 1.7.3 of the RFB.

Question 84: Section 3.6 Permitted Capacity of WWTP of the RFP says that “The permitted capacity of the WWTP is currently 1.25 MGD. However, the February 2018 Kleinfelder Report on page ES-7 under Conclusions and Recommendations says “The WWTP’s NJPDES Permit will need to be modified to increase the permitted capacity from 0.9 to 1.25 mgd. Because NJPDES Permits must be consistent with the relevant WMP, the LHT WMP may need to be amended before the modified NJPDES Permit will be approved by the NJDEP. Please advise on the status of the WMP amendment and the modified NJPDES Permit.

Response: The NJPDES permit has been issued and reflects the capacity of 1.25 MGD. The Township's WMP has been amended accordingly and has been submitted to the County.

Question 85: Have all stream studies required to modify the NJPDES permit been completed?

Response: See response to Question 53.

Question 86: When is the modified NJPDES permit expected to be released for comment?

Response: See response to Question 53.

Question 87: Is there a more recent Capacity Assurance Report update from Kleinfelder since February 2018?

Response: See response to Question 53.

Question 88: Are metal limits for copper, nickel and zinc expected in the new NJPDES permit? Was a Water Effects Ratio (WER) study completed by Kleinfelder to reduce and/or eliminate metal limits in the proposed permit? If so, can we obtain a copy of it?

Response: See response to Question 53. No WER study was performed.

Question 89: Please provide a list of written contracts to which the Township is a party which relate to the System (Exhibit F to the Agreement).

Response: There are no agreements associated with the system that the winning Bidder would have to assume.

Question 90: Will the Township consider anchoring its 5-year binding rate plan described in Section 5.6.4 of the Request for Bids and Section 8.3 of the draft Agreement of Sale off of the currently introduced Ordinance #435-19, which was passed and adopted at the May 8, 2019 Township Committee meeting?

Response: No.

Question 91: Would the Township consider allowing the Bidders no later than seven (7) years to increase the permitted capacity of the WWTP and connect the non-sewered properties referenced in Sections 3.6 and 3.7 respectively in the bid documents?

Response: No.

ATTACHMENT 1-A

**LONG HILL TOWNSHIP SEWERAGE TREATMENT PLANT
LABORATORY CERTIFICATION**

State of New Jersey
Department of Environmental Protection
Certifies That

LONG HILL TOWNSHIP SEWERAGE TREATMENT PLANT

Laboratory Certification ID # 14521

having duly met the requirements of the
Regulations Governing the Certification of
Laboratories and Environmental Measurements N.J.A.C. 7:18 et. seq.

is hereby approved as a
State Certified Environmental Laboratory
to perform the analyses as indicated on the Annual Certified Parameter List
which must accompany this certificate to be valid

Expires June 30, 2019



A handwritten signature in cursive script, reading "Michele M. Potter".

Michele M. Potter
Manager

ATTACHMENT 1-B

**ADDENDUM NO. 2 VERSION
DRAFT AGREEMENT OF SALE**

~~RFB~~ADDENDUM NO. 2 VERSION

HDW ~~DRAFT 4/18/19~~Draft 5/22/19

DRAFT

AGREEMENT OF SALE

BETWEEN

THE TOWNSHIP OF LONG HILL, NEW JERSEY

AND

[BUYER]

[Date]

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE TOWNSHIP

<u>Section 2.1. REPRESENTATIONS AND WARRANTIES OF THE TOWNSHIP</u>	3
<u>Section 2.2. DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES</u>	3
<u>Section 2.3. SURVIVAL OF REPRESENTATIONS AND WARRANTIES</u>	4

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE BUYER

<u>Section 3.1. REPRESENTATIONS AND WARRANTIES OF THE BUYER</u>	5
<u>Section 3.2. SURVIVAL OF REPRESENTATIONS AND WARRANTIES</u>	6

ARTICLE IV

BASIC TRANSACTION

<u>Section 4.1. PURCHASE AND SALE OF ASSETS</u>	7
<u>Section 4.2. EXCLUDED ITEMS</u>	7
<u>Section 4.3. PURCHASE PRICE</u>	7
<u>Section 4.4. TOWNSHIP TRANSACTION EXPENSE</u>	7
<u>Section 4.5. ADDITIONAL OBLIGATIONS</u>	7
<u>Section 4.6. THE CLOSING</u>	8
<u>Section 4.7. DELIVERIES AT THE CLOSING</u>	8
<u>Section 4.8. APPORTIONMENTS</u>	910
<u>Section 4.9. SETTLEMENT STATEMENT</u>	10

ARTICLE V

PRE-CLOSING COVENANTS

<u>Section 5.1. PRE-CLOSING COVENANTS</u>	11
---	----

ARTICLE VI

TITLE AND CONDITION OF SYSTEMS

<u>Section 6.1. TITLE</u>	14
<u>Section 6.2. PROPERTY INFORMATION MATERIALS</u>	15
<u>Section 6.3. CONDITION OF THE SYSTEMS</u>	15

<u>Section 6.4. POST-CLOSING COOPERATION OF THE TOWNSHIP</u>	<u>15</u>
--	-----------

ARTICLE VII

CONDITIONS TO OBLIGATION TO CLOSE

<u>Section 7.1. CONDITIONS TO OBLIGATION OF THE BUYER</u>	<u>16</u>
<u>Section 7.2. CONDITIONS TO OBLIGATION OF THE TOWNSHIP</u>	<u>16</u>
<u>Section 7.3. SCHEDULE FOR CLOSING CONDITIONS</u>	<u>17</u>

ARTICLE VIII

POST-CLOSING OBLIGATIONS OF BUYER

<u>Section 8.1. CONTINUATION OF WASTEWATER SERVICES</u>	<u>18</u>
<u>Section 8.2. MAINTENANCE, REPAIRS, AND REPLACMEENTREPLACEMENT</u>	<u>18</u>
<u>Section 8.3. RATE STABILIZATION COVENANT</u>	<u>18</u>
<u>Section 8.4. CAPITAL IMPROVEMENTS TO LIFT SEWER BAN</u>	<u>18</u>
<u>Section 8.5. SERVICE TO TOWNSHIP FACILITIES</u>	<u>18</u>
<u>Section 8.6. CAPACITY FOR AFFORDABLE HOUSING UNITS</u>	<u>18</u>
<u>Section 8.7. CONNECTION OF NON-SEWERED PROPERTIES WITHIN THE TOWNSHIP</u>	<u>18</u> <u>19</u>
<u>Section 8.8. PERMITTED CAPACITY OF WWTP</u>	<u>19</u>
<u>Section 8.9. SENIOR DISCOUNT PROGRAM</u>	<u>19</u>
<u>Section 8.10. CITIZENS ADVISORY PANEL</u>	<u>19</u>
<u>Section 8.11. PAVING</u>	<u>19</u>

ARTICLE IX

REMEDIES FOR BREACHES OF THIS AGREEMENT

<u>Section 9.1. PRE-CLOSING DEFAULT BY THE BUYER</u>	<u>20</u>
<u>Section 9.2. PRE-CLOSING DEFAULT BY THE TOWNSHIP</u>	<u>20</u>
<u>Section 9.3. POST-CLOSING DEFAULTS</u>	<u>20</u>

ARTICLE X

ESCROW AGENT

<u>Section 10.1. ESCROW</u>	<u>21</u>
-----------------------------	-----------

ARTICLE XI

NON-BINDING MEDIATION; FORUM FOR DISPUTE RESOLUTION

<u>Section 11.1. RIGHTS TO REQUEST AND DECLINE NON-BINDING MEDIATION</u>	<u>22</u>
<u>Section 11.2. PROCEDURE</u>	<u>22</u>

<u>Section 11.3. NON-BINDING EFFECT</u>	22
<u>Section 11.4. RELATION TO JUDICIAL LEGAL PROCEEDINGS</u>	22
<u>Section 11.5. FORUM FOR DISPUTE RESOLUTION</u>	22

ARTICLE XII

INDEMNIFICATION

<u>Section 12.1. INDEMNIFICATION BY THE BUYER</u>	23
<u>Section 12.2. INDEMNIFICATION BY THE TOWNSHIP</u>	23
<u>Section 12.3. THIRD PARTY CLAIMS</u>	23
<u>Section 12.4. NO OTHER DAMAGES</u>	24

ARTICLE XIII

MISCELLANEOUS

<u>Section 13.1. THIRD PARTY BENEFICIARIES</u>	25
<u>Section 13.2. ENTIRE AGREEMENT</u>	25
<u>Section 13.3. SUCCESSION AND ASSIGNMENT</u>	25
<u>Section 13.4. COUNTERPARTS</u>	25
<u>Section 13.5. HEADINGS</u>	25
<u>Section 13.6. NOTICES</u>	25
<u>Section 13.7. GOVERNING LAW</u>	26
<u>Section 13.8. AMENDMENTS AND WAIVERS</u>	26
<u>Section 13.9. SEVERABILITY</u>	26
<u>Section 13.10. EXPENSES</u>	26
<u>Section 13.11. CONSTRUCTION</u>	26
<u>Section 13.12. VARIATIONS IN PRONOUNS</u>	27
<u>Section 13.13. INCORPORATION OF EXHIBITS AND SCHEDULES</u>	27
<u>Section 13.14. TRANSFER TAXES</u>	27
<u>Section 13.15. TIME IS OF THE ESSENCE</u>	27
<u>Section 13.16. REVIEW OR AUDIT BY OFFICE OF THE STATE COMPTROLLER</u>	27

LIST OF EXHIBITS

- Exhibit A. Description of the Wastewater System
- Exhibit B. Form of Assignment and Assumption Agreement
- Exhibit C. Form of Bill of Sale
- Exhibit D. Tariff
- Exhibit E. List of Written Contracts to Which Township is a Party which Relate to the Wastewater System [**Note to Bidders: To be identified.**]
- Exhibit F. Form of Assignment and Grant of Easements, Rights of Way and other Property
- Exhibit G. Form of General Assignment
- Exhibit H. Disclosure Schedule to the Agreement of Sale
- Exhibit I. Escrow Agreement
- Exhibit J. Customer Service Standards and Customer Service Plan
- Exhibit K. Capital Improvements to Lift Sewer Ban
- Exhibit L. [Form of Township Consent](#)

AGREEMENT OF SALE

THIS AGREEMENT OF SALE (this “Agreement”), dated [Date] is made and entered into by and between the **TOWNSHIP OF LONG HILL**, a public body corporate and politic in Morris County in the State of New Jersey (the “Township”) and [BUYER], a [_____] [Corporation] with principal corporate offices at [] (the “Buyer”). The Buyer and the Township are referred to collectively herein as the “Parties.”

WHEREAS, the Township currently owns and operates a Wastewater Treatment Plant, wastewater collection system and eight sanitary pump stations (collectively, the “Wastewater System”), more particularly described herein, located in the Township of Long Hill, New Jersey; and

WHEREAS, in connection with the proposed sale of its Wastewater System, the Township prepared, advertised, and made available to all prospective buyers a Request for Bids on April 18, 2019; and

WHEREAS, on [~~May 30~~ June 4, 2019], the Township received bids from [] private water and sewer utilities in response to the RFB; and

WHEREAS, after review and clarifications of the Bid(s) received, the Township determined that the Buyer had submitted the Highest Responsible Bid; and

WHEREAS, the Township and the Buyer have agreed to the terms and conditions set forth in this Agreement, which sets forth the terms upon which sale of the Township’s Wastewater System to the Buyer will take place, provided all conditions of the Closing are satisfied; and

WHEREAS, the Township desires to sell and the Buyer desires to purchase the Wastewater System pursuant to the terms of the Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows:

ARTICLE I

DEFINITIONS

“Agreement” shall mean this Agreement of Sale of the Wastewater System and all exhibits, attachments, and schedules hereto, dated [_____, 2019].

“Assumed Liabilities” shall have the meaning set forth in Section 4.5 below.

“BPU” means the New Jersey Board of Public Utilities or any successor agency.

“Buyer” means [_____].

“Township” means the Township of Long Hill, New Jersey.

“Closing” has the meaning set forth in Section 4.6 below.

“Closing Date” shall mean the date upon which Closing takes place as more particularly described in Section 4.6 below.

“Deposit” shall mean a payment of money equal to 10% of the Purchase Price, which is payable to the Township upon execution of this Agreement, and which shall be held by the Escrow Agent under the Escrow Agreement attached hereto and incorporated herein by reference as **Exhibit I**, and together with the earnings accrued thereon shall be the Deposit.

“Disclosure Schedule” has the meaning set forth in Section 2.1.

“Encumbrances” means any security interest, pledge, mortgage, lien (including, without limitation, environmental and tax liens), charge, encumbrance, adverse claim or restriction on use or transfer.

“Escrow Agent” shall mean Pidgeon & Pidgeon, P.C.

“Final Approval Order” shall mean an order of the BPU ~~authorizing~~approving Township Consent, the approval of which will allow the Buyer and the Township to consummate the purchase of assets as contemplated by this Agreement; and as to which the time for filing an appeal as of right has expired, and as to which there are no appeals, petitions for reconsideration, petitions for re-argument, or similar petitions pending.

“Governmental Authority” means any federal, state, regional, or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

“Monetary Liens” shall mean (a) judgment liens and tax liens entered against the Township and encumbering any part of the Wastewater System, and (b) mortgages, security interests and other liens granted by the Township and encumbering the Wastewater System.

“NJDEP” means the New Jersey Department of Environmental Protection or any successor agency.

“Party” shall mean either the Township or the Buyer.

“Parties” shall mean the Township and the Buyer.

“Permits” shall mean all permits, certificates, licenses, orders, registrations, franchises, authorizations and other rights and approvals from any governmental authority with respect to the Wastewater System held by the Township.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

“Permitted Encumbrances” shall have the meaning set forth in Article VI.

“Purchase Price” has the meaning set forth in Section 4.3 below.

“RFB” means the Request for Bids for the sale of the Wastewater System issued by the Township on April 18, 2019 and responded to by the Buyer.

“Wastewater System” shall mean the Township’s wastewater treatment plant, the wastewater collection system and the eight pumping stations, as described in detail in **Exhibit A**.

“Township” means the Township of Long Hill, New Jersey.

“Township Consent” shall mean the municipal consent ordinance that is to be enacted by the Township as a condition of the Closing: and which grants the authority to the Buyer to provide the services referenced hereunder and conveying the Township’s consent to the Buyer for the ownership, construction, expansion and operation of the Wastewater System, in the form as more specifically set forth in **Exhibit L**.

“Transaction Documents” means collectively this Agreement and all agreements, documents, and certificates required by this Agreement.

“Transaction Costs Payment” has the meaning set forth in Section 4.4 below.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE TOWNSHIP

Section 2.1. REPRESENTATIONS AND WARRANTIES OF THE TOWNSHIP. Except as set forth in the disclosure schedule accompanying this Agreement and initialed by the Parties (the “Disclosure Schedule”), which is attached as **Exhibit H**, the Township represents and warrants to the Buyer that the statements contained in this Article II are correct and complete as of the date of this Agreement. The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered paragraphs contained in this Article II.

- (A) Organization of the Township. The Township is a public body corporate and politic in Morris County in the State of New Jersey.
- (B) Authorization of Transaction. The Township has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (C) Title. The Township is the sole owner of all assets and each fee parcel of real property included in the Wastewater System, and leasehold interest, license or easement in all other real property in the Wastewater System.
- (D) No Litigation. To the best of the Township’s knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the Township, in any way that would adversely affect its ability to perform its obligations under the Agreement.
- (E) No Default. To the best of the Township’s knowledge, the Township is not in default of any provisions of law, charter, by-laws, contract, franchise, rules or regulations of any governmental agency or any instrument to which it is a party and which in any way affects the Wastewater System.
- (F) No Reimbursement Obligations. To the best of the Township’s knowledge, the Township is not party to any wastewater extension agreement or other contract which, if assigned to the Buyer, would obligate the Buyer by rebate, reimbursement, or other payment to return moneys to third parties by reason of installation of some portion of the Wastewater System.
- (G) System Compliance. The Wastewater System is in compliance with all State, federal, and local laws and regulations.
- (H) Tariff. The tariff, attached as **Exhibit D**, represents the true rates of the Wastewater System and are in effect as of the Contract Date.

Section 2.2. DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES. Except for representations and warranties as expressly set forth in this Article II, the Township makes no other representation or warranty, express or implied, at law

or in equity, with respect to the Wastewater System or operations, including with respect to merchantability or fitness for any particular purpose and any such other representations or warranties are hereby expressly disclaimed. The Buyer hereby acknowledges and agrees that, except for the representations and warranties specifically set forth in this Article II, the Buyer is purchasing the Wastewater System on an “as-is, where-is” basis. The Buyer has satisfied itself on all aspects of the Wastewater System, including but not limited to all physical, economic, operational, regulatory, tax and title matters that the Buyer deems relevant, and is not relying on any representation of the Township in connection therewith except for the representations and warranties set forth in this Agreement. The Township shall not be liable for any latent or patent defects in the System.

Section 2.3. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

All of the representations and warranties made by the Township are true and correct as of the date of this Agreement and shall be true and correct and deemed repeated as of Closing, subject to the Disclosure Statement as same may be modified by the terms of this Agreement. No claim for a misrepresentation or breach of warranty of the Township shall be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was known to the Buyer prior to the Closing.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE BUYER

Section 3.1. REPRESENTATIONS AND WARRANTIES OF THE BUYER.

Except as set forth in the Disclosure Schedule, the Buyer represents and warrants to the Township that the statements contained in this Article III are correct and complete as of the date of this Agreement. The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered paragraphs contained in this Article III.

- (A) Organization of Buyer. The Buyer is a corporation duly organized, validly existing and in good standing under the law of the State of [New Jersey].
- (B) Authorization of Transaction. The Buyer has full right and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (C) No Litigation. To the best of the Buyer's knowledge, there is no litigation, either at law or in equity, nor any proceedings before any commission or regulatory body pending, or threatened against the Buyer, in any way that would affect its ability to perform its obligations under this Agreement.
- (D) No Warranties. The Buyer is purchasing the Wastewater System "as is", and ~~that~~ the Buyer will have no recourse against the Township with respect to any condition of the Wastewater System that might be discovered after the Closing. [Note: This representation may be modified pending discussions with NJDEP as to whether any remediation may be necessary at the wastewater treatment facility site, and if so, whether such remediation is complete by Closing.]
- (E) Right to Inspect. Prior to the Contract Date, the Buyer has been afforded the opportunity to inspect and has inspected the Wastewater System to the extent that the Buyer deemed necessary and has made such examination of the Wastewater System, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Buyer deemed necessary. In entering into this ~~Contract~~Agreement, the Buyer has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by the Township or any agent, employee or other representative of the Township or by any broker or any other person representing or purporting to represent the Township, which are not expressly set forth in this ~~Contract~~Agreement, whether or not any such representations, warranties or statements were made in writing or verbally.

- (F) Other Limitations of Local, State, and Federal Laws and Regulations. The Buyer accepts the terms of this Agreement subject to the terms and limitations of all applicable local, State, and federal laws, statutes, rules and/or regulations.
- (G) Source of Funds. The funds comprising the Purchase Price to be delivered to the Township in accordance with this ~~Contract~~Agreement are not derived from any illegal activity.
- (H) Not a Blocked Person. The Buyer is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by Executive Order of the United States Treasury Department as a terrorist, “Specifically Designated National and Blocked Person”, or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and the Buyer is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation.

Section 3.2. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

All of the representations and warranties made by the Buyer are true and correct as of the date of this Agreement and shall be true and correct and deemed repeated as of Closing, subject to the Disclosure Statement as same may be modified by the terms of this Agreement.

ARTICLE IV

BASIC TRANSACTION

Section 4.1. PURCHASE AND SALE OF ASSETS. Subject to the terms and conditions of this Agreement, at the Closing referred to in Section 4.6, the Township will sell to the Buyer, and the Buyer will buy from the Township, all of the Township's rights, title, and interest in the Wastewater System as further described in **Exhibit A** for the consideration specified below in Section 4.3.

Section 4.2. EXCLUDED ITEMS. Except as specifically described in **Exhibit A**, in no event shall the Wastewater System include personal property, office equipment, office supplies, vehicles, cash, securities, and the accounts receivable of the Township relating to the Wastewater System up to and including the Closing Date.

Section 4.3. PURCHASE PRICE. The Buyer agrees, subject to the terms and conditions set forth in this Agreement, to pay to the Township, at the Closing referred to in Section 4.6, the sum of [(\$___)] (the "Purchase Price"). Upon the execution of this Agreement, the Buyer shall pay the Deposit to be held by Escrow Agent pursuant to the terms of the Escrow Agreement, with any interest or earnings to follow the Deposit, and which Deposit shall be credited against the Purchase Price. Subject to the terms and conditions of this Agreement, the balance of the Purchase Price less the Deposit, increased or decreased by the items to be apportioned pursuant to Section 4.8 of this Agreement (such sum, before the apportionments referred to herein is referred to as the "Closing Balance" and after such apportionments is referred to as the "Adjusted Closing Balance") shall be paid on the Closing Date by wire transfer in federal funds to a bank account designated in writing by the Township at least five (5) business days prior to the Closing Date.

Section 4.4. TOWNSHIP TRANSACTION EXPENSE. Notwithstanding any obligations of the Township set forth in the Agreement to solely bear its expenses and costs in connection herewith, and in addition to the Purchase Price provided for in Section 4.3, the Buyer agrees to pay the Township \$100,000 for costs and expenses incurred and reasonably anticipated to be incurred by the Township in connection with the sale of the Wastewater System, including, but not limited to, outside attorney, engineering, inspection, and other consultant costs (collectively the "Transaction Costs Payment"). The Buyer agrees to pay the Township one-third (\$33,333) of the Transaction Costs Payment upon the passing of the Township Ordinance approving the sale of the Wastewater System, which amount shall be non-refundable. The Buyer agrees to pay the Township the remaining two-thirds (\$66,667) of the Transaction Costs Payment upon Closing.

Section 4.5. ADDITIONAL OBLIGATIONS. In addition to the payment of the amounts set forth in Sections 4.3 and 4.4 hereof, the Buyer agrees to:

- (A) assume responsibility for all claims and liabilities relating to the Wastewater System that arise post-Closing, and for clarification, in the event that prior to

the Closing, the NJDEP requires the Township to perform any remediation at the wastewater treatment plant site, the Township shall be responsible for such remediation;

- (B) assume and meet all contractual commitments of the Township on and after the Closing Date in connection with the contracts set forth in **Exhibit E** (collectively, (A) and (B) constitute the “Assumed Liabilities”);
- (C) comply with the Rate Stabilization Covenant set forth in Section 8.3;
- (D) ~~(E)~~ provide the customers of the Wastewater System with continuous, safe and reliable service in accordance with applicable laws and regulations, and the Buyer’s tariff as approved by the BPU;
- (E) ~~(F)~~ maintain or expand the Wastewater System in conformance with existing Township land use and zoning ordinances, master plan, and historic district standards, as applicable;
- (F) ~~(G)~~ connect at least 95% of existing properties (as of the Closing Date) within the Township to the Wastewater System as described in Section 8.7;
- (G) ~~(H)~~ make the required capital improvements pursuant to Section 8.4; and
- (H) ~~(I)~~ make application for the transfer, with the reasonable assistance of the Township, effective at the Closing, of all wastewater system permits and approvals issued to the Township prior to Closing by the NJDEP or any other local, State or federal agency.

Section 4.6. THE CLOSING. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Pidgeon & Pidgeon, P.C. forty-five (45) days after the satisfaction of the last condition to be satisfied pursuant to Article VII herein (the “Closing Date”). The Parties may mutually agree in writing to have the Closing at another time or place.

Section 4.7. DELIVERIES AT THE CLOSING. At the Closing:

- (A) The Township will execute, acknowledge (if appropriate), and deliver to the Buyer:
 - (i) a bargain and sale deed associated with the Wastewater System without covenant against ~~grantor's~~grantor's acts, in recordable form, duly executed by Township;
 - (ii) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all easement rights associated with the Wastewater System, subject to the Permitted Encumbrances;

- (iii) a Bill of Sale in the form attached hereto as **Exhibit C**;
 - (iv) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit B**;
 - (v) a General Assignment in the form attached hereto as **Exhibit G**;
 - (vi) a Settlement Statement;
 - (vii) a certified copy of the appropriate Township resolution(s) and/or ordinances authorizing the transactions contemplated hereunder;
 - (viii) a signed certification by the Township that the warranties and representations in Article II are true and correct as of the Closing Date;
 - (ix) originals or copies of all governmental permits and licenses for the Wastewater System, or any component thereof, in the Township's possession, to the extent transferable;
 - (x) Any other tax information regarding the Township that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;
 - (xi) Such other resolutions, instruments, affidavits and documents as may be reasonably necessary to effectuate the transaction.
- (B) Buyer will execute, acknowledge (if appropriate) and deliver to Township:
- (i) an assignment of easements in the form attached hereto as **Exhibit F**, to convey all ~~easement~~easement rights associated with the Wastewater System, subject to the Permitted Encumbrances;
 - (ii) an Assignment and Assumption Agreement in the form attached hereto as **Exhibit B**;
 - (iii) a General Assignment in the form attached hereto as **Exhibit G**;
 - (iv) a Settlement Statement;
 - (v) Certified copy of appropriate corporate resolution(s) authorizing the transactions contemplated hereunder;
 - (vi) a signed certification by Buyer that the warranties and representations in Article III are true and correct as of the Closing Date;

- (vii) Any tax information regarding Buyer that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;
- (viii) The Purchase Price;
- (ix) The balance of the Transaction Costs Payment (\$66,667); and
- (x) Such other documents, resolutions, instruments, affidavits and documents as may be reasonably necessary to effectuate the transaction.

Section 4.8. APPORTIONMENTS. At the Closing, real estate taxes, if any, for the fee parcels constituting Wastewater System assets to be transferred to the Buyer and all other operating expenses and revenues for the Wastewater System allocable to periods before and after the Closing Date, shall be apportioned for the Wastewater System as of 11:59 p.m. on the day preceding the Closing Date.

Section 4.9. SETTLEMENT STATEMENT. At the Closing, the ~~parties~~Parties shall jointly execute the Settlement Statement setting forth all adjustments to the Purchase Price and the basis for same. In the event that any adjustments or apportionment cannot be apportioned or adjusted at the Closing by reason of the fact that final amounts have not been ascertained, or are not available as of such date, the ~~parties~~Parties hereto agree to apportion or adjust such items on the basis of their best estimates of the amounts known at the Closing and to re-prorate any and all of such amounts promptly when the final amounts are ascertained, which obligation shall survive the Closing.

(A)

ARTICLE V

PRE-CLOSING COVENANTS

Section 5.1. PRE-CLOSING COVENANTS. The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing:

- (A) General. Each of the Parties will use its reasonable best efforts to take all actions and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement and the Transaction Documents.
- (B) Access to Books. Upon reasonable prior notice, the Township will give the Buyer, its accountants, engineers, counsel and other representatives full access during normal business hours throughout the period from the date of this Agreement through the Closing Date to all of the Township's records, books, and properties with respect to the Wastewater System, including, without limitation, all customer usage data and will furnish the Buyer copies, including in electronic format reasonably acceptable to the Buyer, at the ~~Buyer's~~Buyer's expense, of such documents or portions of documents related to the ownership, operation and maintenance of the Wastewater System as the Buyer may reasonably request, provided such documents and electronic media are in the Township's possession or in the possession of third parties under contract with the Township.
- (C) Permits. Prior to the Closing, the Parties shall cooperate to effect the transfer of all Permits related to the operation of the Wastewater System which were granted to the Township by any Governmental Authority, which transfer shall be effective on ~~error~~error after but not before the Closing. The Township shall provide reasonable assistance to the Buyer as reasonably requested by the Buyer with respect to such applications.
- (D) Operation of Wastewater System. The Township will:
- (i) continue to operate and maintain the Wastewater System;
 - (ii) maintain the Wastewater System in at least as good order and condition as existed on the date of this Agreement, casualty and normal wear and tear excepted; and
 - (iii) timely comply with the provisions of all leases, agreements, and contracts relating to the Wastewater System; ~~and~~.
- (E) ~~BPU Approvals~~.

- (~~F~~) BPU Approvals. The Buyer shall as soon as reasonably practicable after the execution of this Agreement by both Parties, ~~at its~~ and the adoption of the Township Consent as set forth in Section 5.1(F), at Buyer's sole cost and expense, file or cause to be filed all necessary documentation with the BPU to obtain the approvals required for the sale of final order of the BPU approving the Township Consent for the Buyer to own and operate the Wastewater System to the Buyer.
- (F) Township Consent. The Township shall adopt pursuant to applicable law, the Township Consent in substantially the same form as set forth in Exhibit L. The Buyer shall be responsible, at its sole cost and expense, with reasonable assistance from the Township, for obtaining BPU approval of the Township Consent pursuant to N.J.S.A. 48:2-14.
- (G) Risk of Loss. The Parties agree that the Township shall bear the risk of and be responsible for loss with respect to the assets and properties constituting the Wastewater System from the date of this Agreement through the Closing Date. In the event that the condition of the Wastewater System is significantly adversely changed from the date of this Agreement to the Closing Date by virtue of fire, casualty, act of God or condemnation, the Township and the Buyer may mutually agree, in writing, to a reduction in Purchase Price or other consideration as compensation for the significant adverse change in the System. If the Township and the Buyer cannot reach agreement within sixty (60) days of the event despite good faith efforts, either ~~party~~ Party has the option to terminate this Agreement upon written notice to the other Party. If the Buyer terminates the Agreement pursuant to this section, the Township shall promptly, and in no event later than five (5) business days after such termination, repay to the Buyer, the Deposit, and upon such termination this Agreement shall be deemed canceled, null and void and neither Party shall have any further obligation or liability to the other hereunder.
- (H) Customer List and Information; Final Bills. The Township shall provide or cause to be provided to the Buyer a full and complete customer list for the Wastewater System as of the date of the execution of the Agreement by both ~~parties~~ Parties, together with an electronic data file, in a format reasonably satisfactory to the Buyer, containing such customer information; such list and electronic file are to be updated by the Township and provided to the Buyer within 60 days before the Closing or as otherwise agreed to between the Parties. The Parties shall agree no later than 60 days before the Closing to a process and method for the final billing of the Wastewater System's customers and any appropriate adjustment to the Purchase Price pursuant to Section 4.8.
- (I) Publicity. The Parties agree to cooperate on any formal public announcement or statement regarding this Agreement or the transactions contemplated herein. Each Party shall make a good faith effort to provide the other with advance notice of the proposed content of any public announcement or statement.

- (J) Identification of Contracts to be Assigned. As set ~~for~~[forth](#) in Section 4.5(C), the Buyer must assume the Township's obligations on and following the Closing Date for those agreements set forth in **Exhibit E**.
- (K) Buyer Access. The Township shall provide the Buyer, at the Buyer's sole cost, reasonable access to the Wastewater System from the Contract Date until the Closing Date for purposes including, but not limited to, examination of customer accounts, ordinances, deeds, contracts, maps, and plans; inspection and tests of plant and equipment; and surveys of the real property comprising the Wastewater System and easements. The Buyer hereby agrees to indemnify and hold the Township harmless from any and all claims, demands, suits, actions, damages, liabilities, or expenses with respect to or arising from the Buyer's access to the Wastewater System during this period. The Buyer's rights under this Section shall be exercised during normal business hours, with reasonable notice and shall not interfere with the Township's continuing operation of the Wastewater System. The Township shall cooperate with the Buyer with respect to such access to ensure a smooth transition in ownership of the Wastewater System.
- (L) Confidentiality. Any information provided by the Township to the Buyer regarding the Township's customers and the Wastewater System that is not generally available to the public shall remain confidential.
- (M) Cooperation During Transition. Generally, the ~~parties~~[Parties](#) shall cooperate to facilitate a smooth transition and the Buyer shall not do anything that will interfere with the Township's operation and administration of the Wastewater System.
- (N) Referendum Education Campaign. The Buyer shall provide reasonable assistance to the Township in connection with its public referendum education campaign.

ARTICLE VI

TITLE AND CONDITION OF SYSTEMS

Section 6.1. TITLE. Title to the Wastewater System, including the subdivision of the WWTP lot shall be conveyed by the Township to the Buyer at the Closing free and clear of all Encumbrances, subject only to the Permitted Encumbrances. “Permitted Encumbrances” means any and all:

- (A) matters disclosed by the Property Information Materials (as defined in Section 6.2 hereof);
- (B) matters that become Permitted Encumbrances in accordance with the provisions of this Article VI;
- (C) matters that would be revealed by a physical inspection of or a complete and accurate survey, of the real property comprising the Wastewater System;
- (D) rights of way and easements that do not materially interfere with the existing use of the real property comprising the Wastewater System;
- (E) zoning and other governmental restrictions;
- (F) matters common to any plot or subdivision in which the real property comprising the Wastewater System is located; and
- (G) taxes, assessments and other public charges on real property comprising the Wastewater System not due as of the Closing Date, provided, however, in no event shall Permitted Encumbrances include Monetary Liens. With respect to the real property comprising the Wastewater System, Buyer shall within five (5) business days of execution of this Agreement apply for an ~~owner's~~sowner's title insurance policy or policies from a reputable title insurance company licensed to do business in New Jersey (the “Commitment”). Within five (5) business days after receipt of the Commitment, the Buyer shall notify the Township of any objections, other than the Permitted Encumbrances. Any matters set forth on the Commitment and not objected to by the Buyer within said five (5) day period shall become Permitted Encumbrances hereunder. The Township may elect to cure any title defect by so notifying the Buyer. If the Township does not so elect within twenty (20) days after notice of the objection, or if after so electing, the Township fails to cure the defect(s) prior to the Closing, then the Buyer's sole remedy shall be to close without any reduction in the Purchase Price or to terminate this Agreement upon notice to the Township, said notice to be delivered within seven (7) days of the Township's failure to so elect or, if the Township elects to cure but does not, to be delivered at the Closing. If the Buyer terminates the Agreement pursuant to this section, the Township shall

promptly, and in no event later than ten (10) business days after such termination, repay to the Buyer the Deposit, and upon such termination this Agreement shall be deemed canceled, null and void and neither Party shall have any further obligation or liability to the other hereunder.

Section 6.2. PROPERTY INFORMATION MATERIALS. The Buyer acknowledges that prior to the ~~Buyer's~~Buyer's execution of this Agreement, the Township delivered to the Buyer and the Buyer reviewed the materials and information concerning the Wastewater System provided as part of the RFB (collectively, "Property Information Materials"). The Buyer acknowledges and understands that the Property Information Materials may have been prepared by parties other than the Township and that the Township makes no representation or warranty whatsoever, express or implied, as to the content, completeness, or accuracy of the Property Information Materials. The Buyer specifically releases the Township from all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including attorney's fees whether suit is instituted or not)—₂ whether known or unknown, liquidated or contingent (collectively, "Claims"), asserted against or incurred by the Buyer by reason of the information contained in, or that should have been contained in, the Property Information Materials or any inconsistency between such information and any representation or warranty of the Township contained in this ~~Contract~~Agreement. However, the foregoing release shall not apply to any Claims resulting from any intentional misstatements or willful misconduct on the part of the Township.

Section 6.3. CONDITION OF THE SYSTEMS. Subject to the terms and conditions of this Agreement, and the representations and warranties contained in the other Transaction Documents, the Buyer has agreed to purchase the Wastewater System in its "AS-IS" condition, including their environmental condition, operating condition, and condition of repair. The Buyer acknowledges that the Buyer has had and/or has been given pursuant to the RFB, an adequate opportunity to make such legal, factual, and other inquiries and investigation as the Buyer deems necessary, desirable, or appropriate with respect to the Wastewater System. The Buyer has satisfied itself on all aspects, without limitation, of the Wastewater System and is not relying on any representation of the Township in connection therewith except for the representations and warranties contained in this Agreement and the other Transaction Documents.

Section 6.4. POST-CLOSING COOPERATION OF THE TOWNSHIP. On or after the Closing Date, the Township shall, upon reasonable request, reasonably cooperate with the Buyer to implement a proper transition.

ARTICLE VII

CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1. CONDITIONS TO OBLIGATION OF THE BUYER. The obligation of the Buyer to perform its obligations in connection with the Closing is subject to the satisfaction or waiver by the Buyer of the following conditions:

- (A) the representations and warranties set forth in Article II of this Agreement and the other Transaction Documents shall be true and correct in all material respects as of the Closing Date;
- (B) the Township shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;
- (C) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement and the Transaction Documents; and
- (D) the Buyer shall have secured from the Township, the BPU, NJDEP, and all other applicable ~~governmental~~Governmental Authorities and quasi-governmental entities, all authorizations and ~~approvals~~Permits required for the transfer of the Wastewater System to the Buyer, including but not limited to the NJDEP Permits, if necessary (the "Approvals"). The Parties shall use all reasonable efforts to obtain the Approvals and to do so as expeditiously as reasonably possible. In connection with the Approvals, the Buyer shall deliver to the Township or cause to be delivered to the Township, through addition(s) to the applicable service list(s), copies of all correspondences to and from the bodies with whom the applications have been filed or will be filed. The Township covenants to cooperate with the Buyer, at the Buyer's cost and expense, in the ~~Buyer's~~Buyer's efforts to obtain the Approvals and to promptly consent, when required by law, to all applications for the Approvals filed by the Buyer. The Buyer shall immediately notify the Township in writing of any determinations made by any authority considering any application; ~~and~~.

Section 7.2. CONDITIONS TO OBLIGATION OF THE TOWNSHIP. The obligation of the Township to perform its obligations in connection with the Closing is subject to satisfaction or waiver by the Township of the following conditions:

- (A) the representations and warranties set forth in Article III of this Agreement and in the other Transaction Documents shall be true and correct in all material respects as of the Closing Date;
- (B) the Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;

- (C) there shall not be any injunction, judgment, order, decree, ruling, or charge in effect preventing consummation of any of the transactions contemplated by this Agreement or the Transaction Documents;
- (D) the Buyer shall have secured from the Township, the BPU, NJDEP, and all other applicable governmental and quasi-governmental entities, all authorizations and approvals required for the transfer of the Wastewater System to the Buyer, including but not limited to the NJDEP Permits, if necessary (the “Approvals”). The Parties shall use all reasonable efforts to obtain the Approvals and to do so as expeditiously as reasonably possible. In connection with the Approvals, the Buyer shall deliver to the Township or cause to be delivered to the Township, through addition(s) to the applicable service list(s), copies of all correspondences to and from the bodies with whom the applications have been filed or will be filed. The Township covenants to cooperate with the Buyer, at the Buyer’s cost and expense, in the ~~Buyer’s~~Buyer’s efforts to obtain the Approvals and to promptly consent, when required by law, to all applications for the Approvals filed by the Buyer. The Buyer shall immediately notify the Township in writing of any determinations made by any authority considering any application; and
- (E) ~~(E)~~ the Township shall have obtained any necessary consents and releases for the assignment and assumption of the assumed liabilities as defined in **Exhibit B**.
- (F) the Township shall have completed, at Township’s sole cost and expense, all investigations and remediation of the wastewater treatment plant site in reference to NJDEP Case No. _____ (the “Remediation Obligations”), if applicable, or the Parties have agreed on a post-Closing contractual mechanism that obligates the Township to complete such remediation. [Note: Pending discussions with the NJDEP, this paragraph may not be necessary.]

Section 7.3. SCHEDULE FOR CLOSING CONDITIONS. The Buyer shall promptly initiate and complete its conditions of Closing set forth in Section 7.1, provided, however, that all such conditions must be met no later than the date that is nine (9) months following the date of this Agreement. In the event that all such Closing conditions are not completed by such date notwithstanding the Company’s good faith efforts, the Township shall have the right to terminate this Agreement and keep the Deposit and the \$33,333 portion of the Transaction Costs Payment that had been paid to the Township upon the passing of the Township Ordinance approving the sale.

ARTICLE VIII

POST-CLOSING OBLIGATIONS OF BUYER

Section 8.1. CONTINUATION OF WASTEWATER SERVICES. The Buyer shall continue to provide services in accordance with the Customer Service Standards and the Customer Service Plan described in **Exhibit J** and shall guarantee the collection, conveyance, and treatment of wastewater to the customers of the Wastewater System in a manner that meets all local, state, and federal laws and regulations relating to the collection, conveyance and treatment of wastewater and shall operate and maintain the Wastewater System to provide safe, reliable and adequate service.

Section 8.2. MAINTENANCE, REPAIRS, AND REPLACEMENT. The Buyer shall perform, at its own expense, all maintenance, repair, and replacement of the machinery, equipment, structures, improvements, and all other property and components constituting the Wastewater System. The Buyer shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, and services which are necessary for the normal and ordinary maintenance of the Wastewater System and shall conduct predictive, preventive, and corrective maintenance of the Wastewater System as required by applicable law.

Section 8.3. RATE STABILIZATION COVENANT. [NOTE: To be developed based on Buyer's Bid.] Covenant will reflect that rates will not be increased for at least 2 years from the ~~closing~~Closing (based on 2018 sewer rates) and rates will not be raised more than 9% in total over the three (3) years after that. Any future base rate increases shall be included in Buyer's base rate cases periodically filed with the BPU. The Buyer shall use good faith efforts to minimize rate increases to Township customers by spreading costs of the Wastewater System across its statewide customer base to the extent permitted by law.

Section 8.4. CAPITAL IMPROVEMENTS TO LIFT SEWER BAN. As soon as reasonably practicable and no later than ~~two~~three years following Closing, the Buyer shall begin to undertake the capital improvements necessary to allow the Township to lift the existing sewer ban as described in **Exhibit K**. All capital improvements necessary to lift the sewer ban shall be completed within five years from Closing.

Section 8.5. SERVICE TO TOWNSHIP FACILITIES. The Buyer shall provide wastewater service to Township-owned facilities at no cost to the Township at the same volume levels as existed as of the Closing Date.

Section 8.6. CAPACITY FOR AFFORDABLE HOUSING UNITS. In accordance with the requirements of N.J.A.C. 5:93-4.3¹, the Buyer shall reserve and set aside

¹ While the Second Round COAH rules, including N.J.A.C. 5:93-4.3, have expired, the Township's court-approved settlement agreement with Fair Share Housing Center cited N.J.A.C. 5:93-4.3(c), because the Supreme Court in Mount Laurel IV (In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015)) held that because COAH had failed to adopt Fourth Round rules, "previous methodologies employed in the First and Second Round Rules should be used to establish present and prospective statewide and regional affordable housing need."

new sewer capacity of 100,000 gpd on a priority basis, when it becomes available, for the low and moderate income housing that is included in the Township's Housing Element and Fair Share Plan.

Section 8.7. CONNECTION OF NON-SEWERED PROPERTIES WITHIN THE TOWNSHIP. The Buyer shall extend the Wastewater System to connect the non-sewered properties of the Township to the Wastewater System so that at least 95% of the existing properties (as of the Closing Date) within the Township are connected to the Wastewater System no later than five years following Closing.

Section 8.8. PERMITTED CAPACITY OF WWTP. The Buyer is required, within five years from Closing, to complete all permitting and capital work to expand the permitted capacity of the WWTP so that the WWTP will be able to accommodate future growth of the Township as described below. The capacity of the plant shall be sufficient to serve the existing customers, accommodate additional flows from COAH/Affordable Housing obligations and associated non-COAH/Affordable Housing units (estimated 100,000 gpd), accommodate additional flows from redevelopment plans (estimated 30,000 gpd) and accommodate additional flows from the Purchaser's obligation to connect at least 95% of the existing properties to the Wastewater System (estimated 64,000 gpd). The Buyer shall be required to meet the obligations described herein to the maximum extent allowable by the NJDEP and otherwise permitted by applicable laws and regulations. In addition, as allowed by future changes to the NJDEP regulations, the Buyer shall use commercially reasonable efforts to accommodate additional flows from approved development and redevelopment programs in Long Hill Township.

Section 8.9. SENIOR DISCOUNT PROGRAM. The Buyer shall continue the Township's current senior citizen discount program for all residents age sixty-five (65) and older who are enrolled in the Township's program as of the Closing Date. The existing senior citizen discount is set forth in **Exhibit D**.

Section 8.10. CITIZENS ADVISORY PANEL. The Buyer shall allow citizens of the Township to volunteer to serve on a citizens advisory panel for customer service issues.

Section 8.11. PAVING. The Buyer shall pave curb to curb on streets where sewer connection repairs or replacements are being performed. The Buyer shall coordinate its paving schedule with other Township construction projects.

Section 8.12.

ARTICLE IX

REMEDIES FOR BREACHES OF THIS AGREEMENT

Section 9.1. PRE-CLOSING DEFAULT BY THE BUYER. In the event that the Buyer materially breaches or defaults under this Agreement before the Closing hereunder, and such material breach or default continues for ten (10) business days after written notice from the Township to the Buyer specifying such material breach or default, the Township shall have the right as its sole remedy to terminate this Agreement and retain the Deposit and the \$33,333 portion of the Transaction Costs Reimbursement paid to the Township upon the passing of the Ordinance approving the sale as liquidated damages. The Township's rights and remedies pursuant to this Section 9.1 shall survive any termination of this Agreement by the Township as a result of the ~~Buyer's~~Buyer's default.

Section 9.2. PRE-CLOSING DEFAULT BY THE TOWNSHIP. In the event that the Township materially breaches or defaults under this Agreement before Closing and such material breach or default continues for ten (10) business days after written notice from the Buyer to the Township specifying such material breach or default the Buyer shall have the right as its sole remedy to either seek to enforce ~~the~~this Agreement by an action for specific performance (but not an action for damages) or to terminate this Agreement and have the Deposit returned. The Buyer's rights and remedies pursuant to this ~~section~~Section shall survive any termination of this Agreement by the Buyer as a result of the Township's default.

Section 9.3. POST-CLOSING DEFAULTS. In the event that either ~~party~~Party materially breaches or defaults under this Agreement or the Transaction Documents after the Closing, and such material breach or default continues for ten (10) business days after written notice from the non-defaulting ~~party~~Party to the defaulting ~~party~~Party specifying such material breach or default, the non-defaulting ~~party~~Party shall have the right to seek any available remedies at law or equity.

ARTICLE X

ESCROW AGENT

Section 10.1. ESCROW. The Deposit shall be held by the Escrow Agent, in trust, for the benefit of the Parties as their interests appear hereunder under the Escrow Agreement attached hereto and incorporated herein by reference as **Exhibit I**.

ARTICLE XI

NON-BINDING MEDIATION; FORUM FOR DISPUTE RESOLUTION

Section 11.1. RIGHTS TO REQUEST AND DECLINE NON-BINDING MEDIATION. Either ~~party~~Party may request non-binding mediation of any dispute arising under this Agreement. The non-requesting ~~party~~Party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Article shall apply. The costs of such non-binding mediation shall be divided equally between the Township and the Buyer.

Section 11.2. PROCEDURE. The mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either ~~party~~Party. The mediator shall have full discretion as to the conduct of the mediation. Each ~~party~~Party shall participate in the mediator's program to resolve the dispute until and unless the ~~parties~~Parties reach agreement with respect to the disputed matter or one ~~party~~Party determines in its sole discretion that its interests are not being served by the mediation.

Section 11.3. NON-BINDING EFFECT. Mediation is intended to assist the ~~parties~~Parties in resolving disputes over the correct interpretation of this Agreement. No mediator shall be empowered to render a binding decision.

Section 11.4. RELATION TO JUDICIAL LEGAL PROCEEDINGS. Nothing in this Article shall operate to limit, interfere with, or delay the right of either ~~party~~Party under this Article to commence judicial legal proceedings upon a breach of this Agreement by the other ~~party~~Party, whether in lieu of, concurrently with, or at the conclusion of any non-binding mediation.

Section 11.5. FORUM FOR DISPUTE RESOLUTION. It is the express intention of the ~~parties~~Parties that all legal proceedings related to this Agreement or to the Wastewater System or to any rights or any relationship between the ~~parties~~Parties arising therefrom shall be solely and exclusively initiated and maintained in the applicable State courts located in Morris County, New Jersey.

ARTICLE XII

INDEMNIFICATION

Section 12.1. INDEMNIFICATION BY THE BUYER. The Buyer shall indemnify, defend and hold harmless, including paying all attorneys' fees, the Township, and its elected officials, employees, representatives, agents, consultants and contractors (each, a "Township Indemnitee"), from and against any and all third-party claims, demands, suits, actions, damages, liabilities or expenses arising from (or alleged to arise from or in connection with): (1) the operation of the Wastewater System subsequent to the Closing Date; (2) any failure by the Buyer to perform its obligations under this Agreement; and (3) the negligent acts, errors or omissions or willful misconduct of the Buyer or any of its officers, directors, employees, agents, representatives or subcontractors in connection with this Agreement.

Section 12.2. INDEMNIFICATION BY THE TOWNSHIP. To the extent permitted by law, the Township shall indemnify, defend and hold harmless the Buyer from and against any and all third-party claims, demands, suits, actions, damages, liabilities or expenses arising from (or alleged to arise from or in connection with): (1) the operation of the Wastewater System prior to the Closing Date; and (2) the willful misconduct of the Township in connection with this Agreement. [Note: This provision may be subject to adjustment to cover liabilities regarding remediation at the plant site if required and not completed before Closing.]

Section 12.3. THIRD PARTY CLAIMS. An Indemnitee shall give the Indemnitor notice of any matter which an Indemnitee has determined has given or could give rise to a right of indemnification under this Agreement (an "Indemnified Claim") within sixty (60) days of such determination, stating the amount of the Losses, if known, the method of computation thereof, and containing a reference to the provisions of this Agreement from which such right of indemnification is claimed or arises. If the Indemnitor acknowledges in writing that its obligation to indemnify the Indemnitee hereunder against any Losses that may result from such Indemnified Claim, then the Indemnitor shall be entitled to assume and control the defense of such Indemnified Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnitee within five (5) days of the receipt of such notice from the Indemnitee. In the event the Indemnitor exercises the right to undertake any such defense against any such Indemnified Claim as provided above, the Indemnitee shall cooperate with the Indemnitor in such defense and make available to the Indemnitor, at the Indemnitor's expense, all witnesses, pertinent records, materials and information in the Indemnitee's possession or under the Indemnitee's Indemnitee's control relating thereto as is reasonably required by the Indemnitor. Similarly, in the event the Indemnitee is, directly or indirectly, conducting the defense against any such Indemnified Claim, the Indemnitor shall cooperate with the Indemnitee in such defense and make available to the Indemnitee, at the Indemnitor's expense, all such witnesses, records, materials and information in the Indemnitor's possession or under the Indemnitor's Indemnitor's control relating thereto as is reasonably required by the Indemnitee. No such Indemnified Claim may be settled by the Indemnitor without the prior written consent of the Indemnitee which shall not be unreasonably withheld.

If the Indemnitor fails to acknowledge its indemnity obligation within the time period provided above then the Indemnitee may undertake its own defense without waiving its right to seek indemnity hereunder, including reimbursement of any defense costs incurred.

Section 12.4. NO OTHER DAMAGES. Other than in connection with third party claims, in no event shall either Party be liable to the other for any reason under this Agreement or any other Transaction Document for any form of special, incidental, indirect, consequential, or punitive damages of any kind (whether or not foreseeable), even if informed in advance of the possibility of such damages, and whether arising in contract, tort (including negligence), or otherwise.

ARTICLE XIII

MISCELLANEOUS

Section 13.1. THIRD PARTY BENEFICIARIES. Neither this Agreement nor any Transaction Document shall confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

Section 13.2. ENTIRE AGREEMENT. This Agreement (including the other Transaction Documents), constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter of any such agreement or document.

Section 13.3. SUCCESSION AND ASSIGNMENT. This Agreement and each Transaction Documents shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. Neither ~~party~~Party shall assign this Agreement to any Person without the other ~~party~~Party's prior written consent.

Section 13.4. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

Section 13.5. HEADINGS. The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 13.6. NOTICES. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to Township:

Municipal Clerk
Township of Long Hill
915 Valley Road
Gillette, New Jersey 07933

Copy to:

John R. Pidgeon, Esq.
Pidgeon & Pidgeon P.C.

600 Alexander Road
Princeton, New Jersey 08540

If to Buyer:

Copy to:

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it is actually received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

Section 13.7. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule (whether of the State of New Jersey or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Jersey.

Section 13.8. AMENDMENTS AND WAIVERS. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Buyer and the Township. No waiver by any Party of any default, misrepresentation, breach of warranty, or breach of covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, breach of warranty, or breach of covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

Section 13.9. SEVERABILITY. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Section 13.10. EXPENSES. Subject to the Township's retention of the \$33,333 portion of the Transaction Costs Payment paid to the Township upon the passing of the Ordinance approving the sale (except as provided in Section 6.1), in the event the Closing does not occur, other than by reason of a material default by one of the Parties, each Party shall bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

Section 13.11. CONSTRUCTION. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” shall mean including without limitation.

Section 13.12. VARIATIONS IN PRONOUNS. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

Section 13.13. INCORPORATION OF EXHIBITS AND SCHEDULES. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

Section 13.14. TRANSFER TAXES. The Buyer shall be responsible for all transfer taxes or other taxes applicable to the transaction, if any.

Section 13.15. TIME IS OF THE ESSENCE. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

Section 13.16. REVIEW OR AUDIT BY OFFICE OF THE STATE COMPTROLLER. In accordance with N.J.S.A. 52:15C-14(d), Buyer shall maintain all documentation related to products, transactions or services under this Agreement for a period of five years from the Closing Date. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement of the date first above written.

TOWNSHIP OF LONG HILL

By: _____

Name:

Title:

[BUYER]

By: _____

Name:

Title:

EXHIBIT A
DESCRIPTION OF THE WASTEWATER SYSTEM

Please refer to Sections 2 and 3 of the R&V Evaluation report which can be viewed and downloaded from the Township website: <http://longhillnj.gov/> for a comprehensive description of the Wastewater System.

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the “Assignment and Assumption Agreement”) is made and entered into on [] by and between the Township of Long Hill, a public body corporate and politic in Morris County in the State of New Jersey (the “Assignor”) and [], a [New Jersey] Corporation with principal corporate offices at [] (the “Assignee”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement of Sale (as defined below).

WHEREAS, Assignor and Assignee are parties to a certain Agreement of Sale, dated [], 2019 (the “Agreement”), providing for the sale by the Assignor of the assets constituting the Wastewater System to the Assignee; and

WHEREAS, the Assignor and the Assignee have agreed that on or prior to the Closing, the Assignor shall assign, and Assignee shall assume, the Assumed Liabilities, as more fully described herein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

Section 1. ASSIGNMENT AND ASSUMPTION. Subject to the terms and conditions of the Agreement of Sale, the Assignor hereby assigns, sells, transfers, and sets over (collectively, the “Assignment”) to the Assignee all of Assignor's rights, obligations, and liabilities relating to the Assumed Liabilities as more particularly set forth on Schedule I attached hereto and made a part hereof. Subject to the terms and conditions of the Agreement, the Assignee hereby accepts the Assignment and will assume, observe, and perform all of the duties, obligations, terms, provisions, and covenants contained therein. The Assignee shall also pay and discharge all of the obligations and liabilities of the Assignor to be observed, performed, paid, or discharged in connection with the Assumed Liabilities. To the extent that the Assignment contemplated by this Section 1 constitutes or would be deemed to constitute a grant, sale, assignment, transfer, conveyance, or delivery, or an attempted grant, sale, assignment, transfer, conveyance, or delivery to the Assignee of any Assumed Liabilities, and such transaction would be prohibited by any applicable law or would require any governmental or third party authorizations, approvals, consents, or waivers, and such authorizations, approvals, consents, or waivers have not been obtained prior to the date hereof, this Assignment and Assumption Agreement shall not constitute a grant, sale, assignment, transfer, conveyance, or delivery, or an attempted grant, sale, assignment, transfer, conveyance, or delivery thereof. Following the date hereof, the parties shall cooperate and use commercially reasonable best efforts to obtain promptly such authorizations, approvals, consents, or waivers, and to obtain novations or other agreements if appropriate and, after obtaining such, to complete the transactions contemplated hereby. Pending such authorization, approval, novation, consent, or waiver, the parties shall cooperate with each other in any reasonable and lawful arrangement designed to provide the economic costs and benefits of the Assumed Liabilities to

the Assignee. To the extent possible, performance obligations of Assignor with respect to any such Assumed Liabilities shall be deemed to be subcontracted to the Assignee.

Section 2. FURTHER ASSURANCES. The Assignor and the Assignee each covenants and agrees to execute and deliver, at the request and expense of the other party hereto, such further instruments of transfer and assignment and to take such other action as such the other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment and Assumption Agreement.

Section 3. MISCELLANEOUS. This Assignment and Assumption Agreement constitutes an agreement solely among the parties hereto and is not intended to and shall not confer any rights, remedies, obligations, or liabilities, legal or equitable, on any person other than the parties hereto and their respective successors, assigns, and legal representatives, nor shall person other such person otherwise constitute a third party beneficiary under or by reason hereof. This Assignment and Assumption Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument. This Assignment and Assumption Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey without reference to choice of law principles thereof. This Assignment and Assumption Agreement may only be amended or modified in writing, signed by the party against whom enforcement of such amendment or modification is sought. In the event that the Closing does not occur, this Assignment and Assumption Agreement shall become null and void and the Assumed Liabilities shall remain the sole obligation of Assignor.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TOWNSHIP OF LONG HILL

By: _____

Name:

Title:

[BUYER]

By: _____

Name:

Title:

SCHEDULE I TO ASSIGNMENT AND ASSUMPTION AGREEMENT

All obligations relating to the Wastewater System accruing and arising on or after the Closing Date, including, but not limited to all obligations accruing or arising out of the Township Consent.

All contractual commitments of the Township contained in the assumed contracts listed in **Exhibit E** accruing and arising after the Closing Date.

EXHIBIT C

FORM OF BILL OF SALE

THIS BILL OF SALE dated as [], 2019 from the Township of Long Hill, a public body corporate and politic in Morris County in the State of New Jersey (the “Township”) and [], a [New Jersey] Corporation with principal corporate offices at [] (the “Buyer”).

WITNESSETH

WHEREAS, by an Agreement of Sale, dated [], 2019 (the “Agreement”), between the Township and the Buyer, the Township has agreed to convey to the Buyer certain assets, properties, and rights defined, described, and referred to in the Agreement (collectively, the “Wastewater System”) which include those assets listed on the document attached hereto as **Schedule I to Exhibit C**, with the exception of those items expressly set forth on the document attached hereto as **Schedule II to Exhibit C**; and

WHEREAS, pursuant to due authorization, the Township is presently executing and delivering this Bill of Sale to the Buyer for the purpose of selling and assigning to and vesting in the Buyer all of the right, title, and interest currently held by the Township in and to the Wastewater System;

NOW THEREFORE, in consideration of the purchase price provided in the Agreement and other good and valuable consideration, and intending to be legally bound, the Township hereby grunts, sells, conveys, assigns, transfers, sets over to, and vests in the Buyer, its successors and assigns, all of its right, title and interest, legal and equitable, in and to the Wastewater System.

TO HAVE AND TO HOLD the same, including the appurtenances thereof, unto the Buyer, its successors and assigns, forever, to its and their own proper use and behoof.

Section 1. **SALE OF SYSTEMS AS IS**. Except as specifically set forth in the Agreement, the Wastewater System is being transferred “**AS IS**”, “**WHERE IS**”, and “**WITH ALL FAULTS**” as of the date of this Bill of Sale, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose merchantability or any other warranty, express or implied. Except as specifically set forth in the Agreement, the Township specifically disclaims and Buyer waives any warranty, guaranty or representation, oral or written, past or present, express or implied, concerning the Wastewater System. The Buyer is hereby thus acquiring the Wastewater System based solely upon the Buyer’s own independent investigations and inspections of that property and not in reliance upon any information provided by the Township or the Township’s agents or contractors. The Township has made no agreement to alter, repair, or improve any portion of the Wastewater System.

Section 2. **APPLICABLE LAW**. This instrument shall be governed by and enforced in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Township has caused this Bill of Sale to be duly executed as of the date first above written.

Township of Long Hill, a public body corporate and politic in Morris County in the State of New Jersey

By: _____

RECEIPT OF THE FOREGOING

BILL OF SALE

ACKNOWLEDGED AS OF

[____], 2019.

[BUYER]

By: _____

SCHEDULE I TO EXHIBIT C

INCLUDED ASSETS

All assets that comprise the Wastewater System as described in **Exhibit A**. The Included Assets shall not include the Excluded Assets set forth in Schedule II to **Exhibit C**.

SCHEDULE II TO EXHIBIT C

EXCLUDED ASSETS

Personal property

Office equipment

Office supplies

Vehicles

Cash, securities, bank accounts and the accounts receivable of the Township relating to the Wastewater System up to and including the Closing Date.

EXHIBIT D

TARIFF

**TOWNSHIP OF LONG HILL
ORDINANCE #418-18**

**AN ORDINANCE CONCERNING SEWER USER RATES AND
AMENDING CHAPTER XXII OF THE TOWNSHIP CODE ENTITLED "SEWERS"**

BE IT ORDAINED by the Township Committee of the Township of Long Hill in the County of Morris, New Jersey that Chapter XXII of the Township Code entitled "Sewers" is hereby amended as follows:

Section 1. Section 22-23 entitled "User Rates" is hereby amended to read as follows:

22-23 USER RATES.

The following sewer service and usage fees are hereby established effective January 1, 2018, and shall remain in full force and effect until revised by ordinance duly adopted by the Township Committee:

- a All residential sewer users shall be charged a service fee of \$175.00 per year per unit.
- b All commercial and industrial sewer users shall be charged a service fee of \$175.00 per year per unit.
- c Residential sewer users that are metered shall be charged a sewer usage fee at the rate of \$18.27 per thousand gallons.
 - 1. The gallons used shall be the total water metered (Actual Usage) for the six (6) winter months preceding the billing year. By example, in the billing year of 2017, the gallons are determined from the six (6) months January through March and October through December 2016. The months excluded are: April through September 2016.
 - 2. Water consumption figures for each user will be obtained from the water company servicing the premises or by the Township Sewer department if the meter is not serviced by the water company.
 - 3. If the meter is not read or incorrectly read for one or more months of the usage period as determined by the Sewer Utility Collector, the amount charged for those months shall be equal to the approximate average monthly usage among other billable months during the same period.
- d Commercial and industrial sewer users that are metered shall be charged a sewer usage fee at the rate of \$18.27 per thousand gallons.
 - 1. The gallons used shall be the total water metered (Actual Usage) for the six (6) winter months preceding the billing year. By example, in the billing year of 2017, the gallons

are determined from the six (6) months January through March and October through December 2016. The months excluded are: April through September 2016.

2. Water consumption figures for each user will be obtained from the water company servicing the premises or by the Township Sewer department if the meter is not serviced by the water company.
 3. If the meter is not read or incorrectly read for one or more months of the usage period as determined by the Sewer Utility Collector, the amount charged for those months shall be equal to the approximate average monthly usage among other billable months during the same period.
- e. Sewer Users that are not metered shall be charged a usage fee as follows:
- Residential units: \$575 per unit
 - Commercial or Industrial units: \$1200 per unit
- f. If a user has multiple water sources, the usage fee shall be the combined total of each source as specified in subsection 22-23c or d. if metered and subsection 22-23e. if unmetered. Only one service fee shall be applied.
- g. The Township Committee may require a water meter to be installed by any sewer user utilizing a well or other private water system at the property owner's expense.
- h. Each user who is a resident of this Township and who was sixty-five (65) years of age or older during the prior calendar year shall be entitled annually, upon submission of a claim on proper forms, to a deduction of forty (\$40.00) dollars from his or her sewer use charge as established hereinabove.

Section 2. Any and all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

Section 3. In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 4. This ordinance shall take effect immediately upon final passage and publication as required by law.

NOTICE

The foregoing ordinance having been introduced and passed on first reading by the Township Committee of the Township of Long Hill, in the County of Morris on Wednesday, April 25, 2018, will be considered for final passage and adoption at a public hearing held at a meeting beginning at 7:30 p.m. on Wednesday, May 9, 2018 at the Municipal Building, 915 Valley Road, Gillette, New Jersey when and where or at such time and place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said ordinance.

Deborah Brooks
Township Clerk

First Reading and Introduction: April 11, 2018
1st Publication: April 19th
Second Reading and Adoption: May 9th, 2018
2nd Publication: May 17, 2018

EXHIBIT E

**LIST OF WRITTEN CONTRACTS TO WHICH THE TOWNSHIP IS A PARTY
WHICH RELATE TO THE SYSTEMS**

[Note to Bidders: To be identified.]

EXHIBIT F

FORM OF ASSIGNMENT AND GRANT OF EASEMENTS,

RIGHTS OF WAY, AND OTHER PROPERTY

THIS ASSIGNMENT is made this day of [], 2019 between the **TOWNSHIP OF LONG HILL**, a public body corporate and politic in Morris County in the State of New Jersey (the “Grantor”), and [Buyer], a [New Jersey Corporation] (the “Grantee”), having an address at [].

WHEREAS, pursuant to an Agreement of Sale (the “Agreement”) dated [], 2019 and a Bill of Sale contemporaneously herewith, the Grantor has granted, sold, conveyed, assigned, transferred, set over, and vested in Grantee, its successors, and its assigns, all of the Grantor's right, title, and interest in the Wastewater System as defined in the Agreement.

WITNESSETH, that Grantor for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America, and other valuable consideration, unto it well and truly paid by Grantee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has assigned, granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents does assign, grant, bargain, sell, alien, enfeoff, release, and confirm unto Grantee, its successors and assigns:

ALL Grantor's right, title and interest in and to any and all: (a) those certain rights of way, easements, licenses, and other rights and interests created or evidenced by those instruments listed in **Schedule I to Exhibit F** and made a part hereof, as well as any and all other easements and rights of way owned by Grantor which are rights in real property related to the provisions of water and wastewater service (collectively, the “Easements”); (b) any rights of way or easements that may be located in private property without written instruments where rights may have arisen from the passage of time, the operation of law, or otherwise; (c) all rights of Grantor to easements that may be shown on subdivision or development plans; and (d) all rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in and otherwise appertaining, and the reversions, remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim, and demand whatsoever in and to the same and every part thereof (all of the foregoing being herein referred to as the “**Premises**”);

TOGETHER WITH all of Grantor's occupancy rights and privileges to use, maintain, replace, and repair all water mains and appurtenant facilities located in the public rights-of-way of State highways and Townships roads.

TOGETHER WITH all of Grantor's rights of ingress, egress, and regress to and from said Easements, water and wastewater mains and appurtenances, at any and all times for the purpose of operating the Wastewater System and laying, relaying, installing, operating, inspecting, maintaining, repairing, altering, removing, renewing, and replacing the Wastewater System and their appurtenances;

TO HAVE AND TO HOLD the Easements and Premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the Grantee, its successors and assigns, to and for the only proper use and behoof of the Grantee, its successors and assigns, forever.

This Grant and all of the covenants herein contained shall inure to the benefit of and shall be binding upon Grantor, its successors and assigns, and Grantee, its successors or assigns.

The Grantee accepts and assumes any and all obligations under and arising in connection with the Easements and shall indemnify the Township in connection with the Grantee's failure or improper performance of such obligations.

IN WITNESS WHEREOF the Grantor has caused this Assignment and Grant to be duly executed the day and year first above written.

[SEAL]

TOWNSHIP OF LONG HILL, a public body corporate and politic in Morris County in the State of New Jersey

Attest

: _____

By: _____

Name

Title:

STATE OF NEW JERSEY)
): **SS.:**
MORRIS)

On this, the ___ day of 2019, before me, a Notary Public in and for said County, personally appeared _____, who acknowledged himself to be the _____ of the Township of Long Hill, a public body corporate and politic in Morris County in the State of New Jersey, and that he, as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of _____ by himself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires:
[SEAL]

SCHEDULE I TO EXHIBIT F

LIST OF EASEMENTS GRANTED TO OR OBTAINED BY THE TOWNSHIP

Easements granted to or obtained by the Township of Long Hill herewith as described herein.

EXHIBIT G

FORM OF GENERAL ASSIGNMENT

GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT, dated [], 2019, by and between the **TOWNSHIP OF LONG HILL**, a public body corporate and politic in Morris County in the State of New Jersey (the “Assignor”) and [Buyer], a [] corporation having a mailing address at [] (the “Assignee”).

WHEREAS, Assignor and Assignee entered into an Agreement of Sale dated [], 2019 (the “Agreement”) for the sale and purchase of the Wastewater System (as defined in the Agreement); and

WHEREAS, in connection with such sale and purchase, and as provided in the Agreement, Assignor desires to assign, transfer, set over, and deliver to Assignee all of Assignor's right, title, and interest in and to all assignable permits, licenses, plans, warranties, and guarantees benefiting the Wastewater System (each issuer of any such permit, license, plan, warranty, or guarantee is hereinafter referred to as an “Issuer”), including, without limitation, items described on **Schedule I to Exhibit G** attached hereto (the “Assigned Rights”), and

WHEREAS, Assignee desires to accept the Assigned Rights.

NOW, THEREFORE, in accordance with the Agreement and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

Section 1. **ASSIGNMENT**. Assignor does hereby assign, transfer, set over, and deliver unto Assignee all of the Assignor’s right, title, and interest in and to the Assigned Rights. Assignor agrees that upon Assignee’s request, it shall, without charge, execute such further reasonable documents as any Issuer may require to evidence this assignment, provided that no such document imposes any obligation or liability upon Assignor for any obligations or liabilities accruing on or after the date of this Assignment.

Section 2. **BINDING ASSIGNMENT**. This Assignment shall be: (i) binding upon, and inure to the benefit of the parties to this Assignment and their respective heirs, legal representatives, successors and assigns and (ii) construed in accordance with the laws of the State of New Jersey without regard to the application of choice of law principles.

Section 3. **COUNTERPARTS**. This Assignment may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, this General Assignment has been signed, sealed and delivered by the parties as of the date first above written.

WITNESS:

Accepted this ____ day of _____, 20____.

WITNESS:

By: _____

ASSIGNOR:

TOWNSHIP OF LONG HILL, a public body corporate and politic in Morris County in the State of New Jersey

By: _____
Name
Title:

ASSIGNEE:

[BUYER]

By: _____
Name
Title:

SCHEDULE I TO EXHIBIT G
LIST OF ASSIGNED RIGHTS

PERMITS:

New Jersey Pollutant Discharge Elimination System Discharge to Surface Water Permit –
NJDEP Permit #NJ0024465

Sludge Permit – NJDEP Permit #NJG0212024

Air Quality Permit #25815

Back Flow Permit #1328

EXHIBIT H

DISCLOSURE SCHEDULE TO THE AGREEMENT OF SALE

[NOTE: Disclosures to be reflected in this exhibit prior to execution of Agreement.]

BETWEEN TOWNSHIP OF LONG HILL AND [BUYER]

These schedules are to be read in their entirety. Nothing in these schedules is intended to broaden the scope of any representation or warranty contained in the Agreement of Sale (the "Agreement"). The disclosure of any item, explanation, exception, or qualification in these schedules is disclosure of that item for all purposes for which disclosure is required under the Agreement, and is disclosed in all appropriate schedules irrespective of whether any cross-reference is made or whether no schedule is provided with respect to any representation or warranty. Capitalized terms used and not otherwise defined in these schedules shall have the meanings ascribed to them in the Agreement.

Schedule 2.1(A)

Organization of Township

Schedule 2.1(B)

Authorization of Transaction

Schedule 2.1(C)

Title

Schedule 2.1(D)

Litigation

Schedule 2.1(E)

Default

Schedule 2.1(F)

Reimbursement Obligation

Schedule 2.1(G)

System Compliance

Schedule 2.1(H)

Tariff

Schedule 3.1(A)

Organization of Buyer

Schedule 3.1(B)

Authorization of Transaction

Schedule 3.1(C)

Litigation

Schedule 3.1(D)

Warranties

Schedule 3.1(E)

Right to Inspect

Schedule 3.1(F)

Other Limitations of Local, State, and Federal Laws and Regulations

Schedule 3.1(G)

Source of Funds

Schedule 3.1(H)

Blocked Person

EXHIBIT I

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of [] (this “Escrow Agreement”), by and among **TOWNSHIP OF LONG HILL**, a public body corporate and politic in Morris County in the State of New Jersey (the “Township”), **[BUYER]**, a [] corporation (the “Buyer”), and **PIDGEON & PIDGEON, P.C.** (the “Escrow Agent”).

WITNESSETH

WHEREAS, the Buyer has executed and delivered to the Township an Asset Agreement of Sale, dated as of [] (the “Agreement”), pursuant to which the Buyer will purchase from the Township, and the Township will sell to the Buyer, the Wastewater System as defined in the Agreement;

WHEREAS, it is contemplated under the Agreement that the Buyer will deposit or cause to be deposited into escrow the sum of 10% of the Purchase Price (the “Escrow Amount”) in cash upon its execution of the Agreement, to be held and disbursed by the Escrow Agent in accordance with the terms herein; and

WHEREAS, Escrow Agent is willing to act as the Escrow Agent hereunder.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein and in the Agreement, and intending to be legally bound hereby, the parties hereby agree as follows:

Section 1. APPOINTMENT AND AGREEMENT OF ESCROW AGENT. The Buyer and the Township hereby appoint the Escrow Agent to serve as, and the Escrow Agent hereby agrees to act as the escrow agent upon the terms and conditions of this Agreement.

Section 2. ESTABLISHMENT OF THE ESCROW FUND. Pursuant to Section 2.4 of the Agreement, the Buyer shall deliver to the Escrow Agent on the date hereof the Escrow Amount. The Escrow Agent shall hold the Escrow Amount and all interest and other amounts earned and/or accrued thereon (the “Escrow Fund”) in escrow pursuant to the terms of this Escrow Agreement and the Agreement.

Section 3. PURPOSE OF THE ESCROW FUND. The Escrow Amount will be held by the Escrow Agent as a deposit made by the Buyer to be credited against the Purchase Price to the Township pursuant to Section 2.4 of the Agreement.

Section 4. PAYMENTS FROM THE ESCROW FUND.

(A) At the Closing, upon written request of the Buyer and the Township, the Escrow Agent shall pay in full to the Township in immediately available funds all such amounts in the Escrow Fund. The Buyer and Township agree that such amount shall be credited against the Purchase Price in favor of the Buyer at the Closing.

(B) In the event that the Agreement is terminated as described in Section 9.2 of the Agreement of Sale, the Buyer shall provide written notice to the Escrow Agent of such termination specifying in reasonable detail the nature and basis for such termination. The Escrow Agent shall, upon receipt of such notice, deliver a copy of such notice to the Township's Representative. If within ten (10) Business Days after delivery of such notice, the Escrow Agent has not received a written objection from the Township or the Township's Representative, the Escrow Agent shall promptly transfer the Escrow Fund to the Buyer, by wire transfer in immediately available funds. If the Escrow Agent has received an objection within the stated time period, then Escrow Agent will proceed as described in Section 5 below.

(C) In the event that the Agreement is terminated as described in Section 9.1 of the Agreement, the Township shall provide written notice to the Escrow Agent of such termination specifying in reasonable detail the nature and basis for such termination. The Escrow Agent shall, upon receipt of such notice, deliver a copy of such notice to the Buyer. If within ten (10) Business Days after delivery of such notice, the Escrow Agent has not received a written objection from the Buyer, the Escrow Agent shall promptly transfer the Escrow Fund to the Township by wire transfer in immediately available funds. If the Escrow Agent has received an objection with the stated time period, then Escrow Agent will proceed as described in Section 5 below.

Section 5. OBJECTION TO A TERMINATION NOTICE. Either party, after receipt of a notice from the Escrow Agent that the other party is claiming a right to payment of the Escrow Fund pursuant to a termination right under the Agreement, may at any time within the ten (10) Business Days after receipt of said notice object by delivering to the Escrow Agent a writing specifying in reasonable detail the nature and basis for such objection. Upon receipt of such an objection, the Escrow Agent shall deliver a copy of such objection to the party seeking payment of the Escrow Fund. Unless the Escrow Agent thereafter receives, a statement from the objecting party that it is withdrawing its objection, the Escrow Fund shall be held by the Escrow Agent and shall not be released except in accordance with either: (i) written instructions jointly executed by an authorized officer of the Buyer and the Township's Representative or (ii) the final non-appealable judgment of a court.

Section 6. MAINTENANCE OF THE ESCROW FUND; TERMINATION OF THE ESCROW FUND.

(A) The Escrow Agent shall maintain the Escrow Fund in a non-interest bearing account in [Bank] until the earlier of:

- (i) the time at which there shall be no funds in the Escrow Fund; or
- (ii) the termination of this Escrow Agreement.

(B) Notwithstanding any other provision of this Escrow Agreement to the contrary, at any time prior to the termination of the Escrow Fund, the Escrow Agent shall, if so instructed in a writing jointly signed by the Buyer and the Township's Representative, pay

from the Escrow Fund, as instructed, to the Township or the Buyer, as directed in such writing, the amount of cash so instructed.

(C) Escrowee shall not be responsible for any interest on the Deposit except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Deposit prior to the date interest is posted thereon or for any loss caused by the failure, suspension, bankruptcy or dissolution of the institution in which the Deposit is deposited.

(D) In the event that the Escrow Agent is uncertain as to its duties or rights hereunder or receives instructions from any party hereto with respect to the Escrow Fund which, in its reasonable opinion, are in conflict with any of the provisions of this Escrow Agreement or any instructions received from one of the other parties to this Escrow Agreement, the Escrow Agent shall be entitled to refrain from taking any action other than to keep the Escrow Fund in question until: (i) such time as there has been a "Final Determination" (as defined herein) with respect to the Escrow Fund or (ii) deposit the Escrow Fund in escrow into any Court of competent jurisdiction at any time and thereafter shall have no further obligations or liabilities to anyone under this Escrow Agreement. For purposes of this Section, there shall be deemed to have been a "Final Determination" of the rights of the applicable parties with respect to the Escrow Fund at such time as any of the applicable parties shall file with the Escrow Agent: (i) an official certified copy of a court order, together with an opinion of counsel of the party filing the foregoing, in form and substance acceptable to the Escrow Agent and its counsel, stating that the court order is a final determination (and not subject to appeal in a federal or state court of competent jurisdiction) of the rights of the parties hereto with respect to the Escrow Fund, that the time to appeal from said court order has expired, and that said court order is binding upon the applicable parties or (ii) a fully executed agreement or consent by and among the applicable parties which provides for disposition of the Escrow Fund in accordance with Article XII of the Agreement.

Section 7. ASSIGNMENT OF RIGHTS TO THE ESCROW FUND; ASSIGNMENT OF OBLIGATIONS; SUCCESSORS. This Agreement may not be assigned by operation of law or otherwise without the express written consent of each of the parties hereto (which consent may be granted or withheld in the sole discretion of such parties); provided, however, that the Buyer may assign this Escrow Agreement to an Affiliate of the Buyer without the consent of the other parties. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns.

Section 8. ESCROW AGENT.

(A) Except as expressly contemplated by this Agreement or by joint written instructions from the Buyer and the Township, the Escrow Agent shall not sell, transfer, or otherwise dispose of all or any portion of the Escrow Fund in any manner, except pursuant to an order of a court of competent jurisdiction.

(B) The duties and obligations of the Escrow Agent shall be determined solely by this Escrow Agreement, and the Escrow Agent shall not be liable except for the

performance of such duties and obligations as are specifically set forth in this Escrow Agreement.

(C) In the performance of its duties hereunder, the Escrow Agent shall be entitled to rely upon any document, instrument, or signature believed by it in good faith to be genuine and signed by any party hereto or an authorized officer or agent thereof (specifically including the Township's Representative), and shall not be required to investigate the truth or accuracy of any statement contained in any such document or instrument. The Escrow Agent may assume that any person purporting to give any notice on behalf of a party hereto in accordance with the provisions of this Agreement has been duly authorized to do so.

(D) The Escrow Agent shall not be liable for any error of judgment or any action taken, suffered, or omitted to be taken hereunder except in the case of its gross negligence, bad faith, or willful misconduct. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

(E) The Escrow Agent shall have no duty as to the collection or protection of the Escrow Fund or income thereon, nor to preserve any rights pertaining thereto beyond the safe custody of any such funds actually in its possession.

(F) As compensation for its services to be rendered under this Agreement, Escrow Agent shall be reimbursed upon request for all expenses, disbursements, and advances, including reasonable fees of outside counsel, if any, incurred or made by it in connection with the preparation of this Escrow Agreement and the carrying out of its duties under this Escrow Agreement. All such expenses shall be the joint and several responsibility of the Township and the Buyer.

(G) The Buyer and the Township shall reimburse and indemnify the Escrow Agent for and hold it harmless against any loss, liability, or expense, including, without limitation, reasonable attorney's fees incurred except in connection with gross negligence, bad faith, or willful misconduct on the part of the Escrow Agent arising out of, or in connection with the acceptance or performance of its duties and obligations under this Escrow Agreement.

(H) The Escrow Agent may resign at any time by giving twenty (20) Business Days' prior written notice of resignation to the Township's Representative and the Buyer. The Township and the Buyer may remove the Escrow Agent at any time by jointly giving the Escrow Agent ten (10) Business Days' written notice signed by each of them. If the Escrow Agent is to resign or be removed, a successor Escrow Agent shall be appointed by the Buyer by written instrument executed by the Township's Representative and the Buyer. Such instrument shall be delivered to the Escrow Agent and to such successor Escrow Agent and, thereupon, the resignation or removal of the predecessor Escrow Agent shall become effective and such successor Escrow Agent, without any further act, deed or conveyance, shall become vested with all right, title, and interest to all cash and property held hereunder of such predecessor Escrow Agent. Such predecessor Escrow Agent shall, on the written request of the Township's Representative, the Buyer, or the successor Escrow Agent, execute and deliver to such successor Escrow Agent all the right, title, and interest hereunder in and to the Escrow

Fund of such predecessor Escrow Agent and all other rights hereunder of such predecessor Escrow Agent. If no successor Escrow Agent is appointed within twenty (20) Business Days of a notice of resignation by the Escrow Agent, the Escrow Agent's sole responsibility shall thereafter be to hold the Escrow Fund until the earlier of its receipt of designation of a successor Escrow Agent, a joint written instruction by the Township's Representative and the Buyer, or termination of this Escrow Agreement in accordance with its terms.

(I) The Escrow Agent is acting as a stakeholder only with respect to the Escrow Fund. Upon making delivery of the Escrow Fund in the manner herein provided, the Escrow Agent shall have no further liability hereunder.

(J) The Township and the Buyer acknowledge that the Escrow Agent has represented the Township in connection with, among others things, the Agreement and the matters giving rise to this Escrow Agreement and will continue to represent the Township in connection with such matters and any other matters. Each of the parties to this Agreement waives any right it now has or may have in the future to any claim of conflict as a result of the Escrow Agent's execution, delivery, and performance of this Agreement or the transactions contemplated hereby and the Escrow Agent's representation of the Township in any matter including, without limitation, any action, litigation, or representation relating to the Agreement, this Escrow Agreement, and the matters giving rise to each of them.

Section 9. TERMINATION. This Escrow Agreement shall terminate on the earlier of: (i) the date on which there are no funds remaining in the Escrow Fund or (ii) the date on which the Escrow Agreement receives a signed notice from the Township and the Buyer that the Escrow Agreement is terminated, including instruction to the Escrow Agent on the disbursement of the Escrow Fund.

Section 10. NOTICES. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by courier service, by cable, by telecopy, by telegram, by telex, or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10):

If to the Buyer:

[]

With a copy to:

[]

If to the Township:

Municipal Clerk
Township of Long Hill

915 Valley Road
Gillette, New Jersey 07933

Copy to:

John R. Pidgeon, Esq.
Pidgeon & Pidgeon P.C.
600 Alexander Road
Princeton, New Jersey 08540

Section 11. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey applicable to contracts executed and to be performed entirely within that State.

Section 12. AMENDMENTS. This Agreement may not be amended or modified except: (i) by an instrument in writing signed by, or on behalf of, the Township, the Buyer, and the Escrow Agent or (ii) by a waiver in accordance with this Agreement.

Section 13. WAIVER. Any party hereto may: (i) extend the time for the performance of any obligation or other act of any other party hereto or (ii) waive compliance with any agreement or condition contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party or parties to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition or a waiver of any other terms or conditions of this Agreement. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any of such rights.

Section 14. SEVERABILITY. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect as long as the economic and legal substance of the transactions contemplated by this Escrow Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner so that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

Section 15. ENTIRE AGREEMENT. This Escrow Agreement and the Agreement constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the Township, the Buyer, and the Escrow Agent with respect to the subject matter hereof

Section 16. NO THIRD PARTY BENEFICIARIES. This Escrow Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable

right, benefit, or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

Section 17. HEADINGS. The descriptive headings contained in this Escrow Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 18. COUNTERPARTS. This Agreement may be executed in one or more counterparts, and by different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which when taken together shall constitute one and the same agreement.

Section 19. TOWNSHIP'S REPRESENTATIVE. The Township hereby appoints its Municipal Clerk as its representative (the "Township's Representative") and agrees that such appointment give the Township's Representative full legal power and authority to take any action or decline to take any action on behalf of the Township.

Section 20. DEFINITIONS. Terms defined in the Agreement and not otherwise defined herein may be used herein as defined in the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

TOWNSHIP OF LONG HILL

[BUYER]

By: _____
Name
Title:

By: _____
Name
Title:

**ESCROW AGENT
PIDGEON & PIDGEON, P.C.**

By: _____
Name
Title:

EXHIBIT J

CUSTOMER SERVICE STANDARDS AND CUSTOMER SERVICE PLAN

1. The Buyer shall maintain the Wastewater System laterals from mains to curb line of property and shall undertake all necessary capital improvements, maintenance, repairs, and replacement to the Wastewater System as shall be required from time to time. Such undertaking shall be made in accordance with prudent industry standards.
2. The Buyer shall maintain buildings and property in a neat and orderly appearance consistent with community standards and shall undertake reasonable measures to protect the health, safety, and welfare of the public with respect to the Wastewater System.
3. The Buyer shall operate the Wastewater System in a manner to minimize odors, dust, spills, and other nuisances. The Buyer shall provide appropriate customer service staffing and response times for any complaints about nuisances or service problems.
4. The Buyer's employees shall provide a qualified staff and experienced employees and third party contractors who have direct experience in operating similar systems. The Buyer shall maintain the necessary number of employees, staff, and third party contractors to operate, maintain, and manage the Wastewater System.
5. The Buyer shall implement a plan of action protocol for emergency events which shall include notices to the Township and other regulating entities having jurisdiction and for measures which facilitate coordinated emergency response actions, as needed. The Buyer shall maintain a toll-free 24 hour telephone number where users of the Wastewater System can report emergencies.

[Note to Bidders: Customer Service Plan to be included based on Bid.]

EXHIBIT K

CAPITAL IMPROVEMENTS TO LIFT SEWER BAN

[NOTE: To be developed based upon information submitted with Bid.]

EXHIBIT L

FORM OF TOWNSHIP CONSENT

[NOTE: To be developed based upon Buyer's Bid.]

**Summary report:
 Litéra® Change-Pro TDC 7.5.0.72 Document comparison done on
 5/22/2019 11:35:45 PM**

Style name: New	
Intelligent Table Comparison: Active	
Original DMS: iw://EASTDMS/EAST1/3210227/5	
Modified DMS: iw://EASTDMS/EAST1/3210227/6	
Changes:	
Add	122
Delete	97
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	219