

AGREEMENT FOR CONSTRUCTION AND OPERATION
OF COMMUNITY SEWAGE AND WATER FACILITIES

THIS AGREEMENT is made this ____ day of _____, 2023, by **UPPER MOUNT BETHEL TOWNSHIP** (“**Township**”), a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal office for the conduct of business at 387 Ye Olde Highway, Mount Bethel, Northampton County, Pennsylvania 18343; **UPPER MOUNT BETHEL TOWNSHIP MUNICIPAL AUTHORITY** (“**Authority**”), a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal office for the conduct of business at 387 Ye Olde Highway, Mount Bethel, Northampton County, Pennsylvania 18343; **BANGOR AREA COMMERCIAL AND INDUSTRIAL DEVELOPMENT AUTHORITY** (“**BACIDA**”), a body corporate and politic, organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal office for the conduct of business at 187 Blue Valley Drive, Bangor, Northampton County, Pennsylvania 18013; **RIVER POINTE LOGISTICS CENTER, LLC** (“**River Pointe**”), a Delaware limited liability company, with offices for the conduct of business at 559 Main Street, Suite 300, Bethlehem, Northampton County, Pennsylvania 18018; **RPL EAST, LLC** (“**RPL East**”), a Delaware limited liability company, with offices for the conduct of business at 559 Main Street, Suite 300,

Bethlehem, Northampton County, Pennsylvania 18018; and **NEW DEMI ROAD, LLC**, (“**New Demi**”), a Delaware limited liability company, with offices for the conduct of business at 559 Main Street, Suite 300, Northampton County, Bethlehem, Pennsylvania 18018.

(River Pointe, RPL East, and New Demi are sometimes hereinafter collectively referred to as the “**Developers**”) (Township, Authority, BACIDA, River Pointe, RPL East, and New Demi are sometimes hereinafter collectively referred to as the “**Parties**”).

BACKGROUND

1. River Pointe is the owner of parcels of land which contain approximately 800 acres, located adjacent to the west side of River Road in the Township (“**RPL Property**”). Approximately 663 acres of the RPL Property are located in the Township’s I-2 Industrial Zoning District (“**I-2 District**”).

2. New Demi is the owner of a 60.84-acre parcel of land located adjacent to the western end of Demi Road in the Township (“**New Demi Property**”). The New Demi Property is located adjacent to the RPL Property and is also located in the I-2 District.

3. BACIDA is the legal owner of an approximately 162-acre parcel of land (“**RPL East Property**”) located in the Township between the east side of River Road and the Delaware River. The RPL East Property is located in the Township’s

I-3 Industrial Zoning District (“**I-3 District**”). A large, obsolete coal-fired electric generation plant is located on portions of the RPL East Property (“**Generation Plant**”). Portions of the Generation Plant and the land on which it is located are contaminated (“**Contamination**”).

4. On August 3, 2021, BACIDA and RPL East entered into a Development Agreement (“**Development Agreement**”). The Development Agreement provides that: (a) BACIDA will acquire title to the RPL East Property, (b) BACIDA will hold title to the RPL East Property until the Contamination on the RPL East Property is remediated under the Pennsylvania Land Recycling and Remediation Standards Act of 1995 (“**Act 2**”), (c) BACIDA will convey the RPL East Property to RPL East when the Remediation is complete, and (d) RPL East will provide the funds necessary to BACIDA to acquire, hold, and remediate the RPL East Property in accordance with Act 2.

5. The Developers intend to develop a “Planned Industrial Park” or “Planned Industrial Parks” on the RPL Property, the New Demi Property, and the RPL East Property. Attached hereto as Exhibit “A” is the “Master Site Sketch Plan” for the River Point Logistics Center, dated 1/14/2022, last revised 7/25/22, prepared by Dynamic Engineering Consultants, PC (“**Master Plan**”), which depicts the current conceptual plan for the “Planned Industrial Park(s)” on the RPL Property and the New Demi Property. Attached hereto as Exhibit “B” is an aerial photograph

of the RPL East Property on which a sketch is overlaid depicting the current conceptual plan for the “Planned Industrial Park” to be developed on the RPL East Property.

6. The Authority has been established to own and operate a community sewage system and a community water system (hereinafter sometimes referred to as “**Water Facilities**”), as defined hereinafter in this Agreement.

7. In order to provide sanitary sewage collection, treatment, and disposal service to the Planned Industrial Parks, Developers plan to construct or install (a) a new waste water treatment plant (“**Treatment Plant**”) located on an easement on Lot 7, near the southern boundary of the Planned Industrial Park (“**Treatment Plant Easement Area**”), which is designated as the “Waste Water Treatment Plant” on the Master Plan, (b) a sewage pump station to be located on an easement adjacent to River Point Drive and Lot 1 (“**Pump Station Easement Area**”) as depicted on the Master Plan (“**Pump Station**”), (c) sewage conveyance lines to (i) collect and convey sewage from the buildings to be located in the Industrial Parks to either the Pump Station or the Treatment Plant, and (ii) to convey sewage from the Pump Station to the Treatment Plant, (“**Sewage Conveyance Lines**”), and (d) sewage conveyance lines to convey treated effluent (“**Treated Effluent Lines**”) from the Treatment Plant to effluent disposal areas located on (i) (1) the R-1 zoned portion of the RPL Property adjacent to the Treatment Plant as depicted on the Master Plan,

and (2) the R-1 zoned portion of the RPL Property located adjacent to the southwestern corner of the RPL Property as depicted on the Master Plan (“**Developer Disposal Fields**”), (ii) a portion of the Township’s Potomac Street Park as depicted on _____, attached hereto as **Exhibit “C”** (“**Township Disposal Field**”), and (iv) such other parcels of land that the Developers, the Township, or the Authority acquire in the future for the disposal of treated effluent by drip irrigation (“**Future Disposal Fields**”) (the Developer Disposal Fields, Township Disposal Field, and Future Disposal Fields are hereinafter collectively referred to as the “**Disposal Fields**”) (the location of the Developer Disposal Fields, Township Disposal Field, and Future Disposal Fields are hereinafter collectively referred to as the “**Disposal Field Areas**”). (The Treatment Plant, Pump Station, Sewage Conveyance Lines, Treated Effluent Lines are hereinafter collectively referred to as the “**Developers Sewer Improvements**”).

8. The Township intends to convey the portion of the Potomac Street Park on which the Township Disposal Field will be located to the Authority.

9. The construction of the Treatment Plant will be phased. Initially the Treatment Plant will contain two (2) modular sequential batch reactors (“**SBR**”), capable of treating 200,000 gallons of sewage per day (“**Initial Treatment Capacity**”). However, initial Planning Approval from the Pennsylvania Department of Environmental Protection (“**PADEP**”) will be limited to approval to treat 140,000

gallons of sewage per day (“GPDS”) (“**Approved Treatment Capacity**”). 30,000 GPDS of the said 140,000 GPDS of Approved Treatment Capacity shall be allocated by the Authority to properties located in the Township not owned by the Developers (“**Initial Authority Treatment Capacity**”), and the remaining 110,000 GPDS of Approved Treatment Capacity shall be allocated to the buildings to be constructed on the lots depicted on the Master Plan (“**Initial Developers Treatment Capacity**”).

10. As demand for sewage treatment capacity from the Planned Industrial Parks or properties located in the Township not owned by the Developers (“**Township Properties**”) increases, the capacity of the Treatment Plant will be increased to 400,000 GPDS (“**Treatment Capacity**”) by the Developers by the addition of two (2) additional SBRs, each capable of treating 100,000 GPD. 300,000 GPDS of the Treatment Capacity will be reserved to treat the sewage generated by the Planned Industrial Parks (“**Developers Capacity**”). The remaining 100,000 GPDS of Treatment Capacity (together with such additional Treatment Capacity as the Authority creates by expanding the Treatment Plant) will be available to treat sewage generated by Township Properties and conveyed to the Treatment Plant in accordance with the Rules and Regulations of the Authority (“**Authority Capacity**”).

11. The Developers intend to initially design, permit, and construct the Disposal Fields on the Disposal Field Areas that will be permitted to dispose of

approximately 140,000 gallons per day of treated effluent (“**GPDE**”) (“**Disposal Capacity**”). 30,000 GPDE of such Disposal Capacity will be allocated to the Authority so that it may use such Disposal Capacity to serve Township Properties (“**Authority Disposal Capacity**”). The remaining 110,000 GPDE of Disposal Capacity shall be reserved to the Developers (“**Developers Disposal Capacity**”) who shall have the right to allocate the Developers Disposal Capacity among the buildings to be constructed on the lots depicted on the Master Plan.

12. Future Disposal Fields may be constructed on additional disposal areas acquired by the Developers (“**Additional Developer Disposal Fields**”) (the location of the Additional Developer Disposal Fields are hereinafter collectively referred to as “**Additional Developer Disposal Areas**”) to provide for additional disposal capacity. Any additional disposal capacity provided by the Additional Developer Disposal Fields shall be allocated by the Developer among the buildings to be constructed on the lots depicted on the Master Plan (“**Additional Developers Disposal Capacity**”). Future Disposal Fields may be constructed on additional disposal areas acquired by the Township or the Authority (“**Additional Authority Disposal Fields**”) (the location of the Additional Authority Disposal Fields are hereinafter collectively referred to as “**Additional Authority Disposal Areas**”) to provide for Additional Authority Disposal Capacity. Any Additional Authority

Disposal Capacity provided by the Additional Authority Disposal Fields shall be allocated by the Authority to Township Properties.

13. The Authority shall pay all costs incurred in the acquisition, design, construction, and permitting of Additional Authority Disposal Areas and the Developers shall pay all costs incurred in the acquisition, design, construction and permitting of Additional Developer Disposal Areas.

14. The Developers' Sewer Improvements, Disposal Fields, Disposal Field Areas, Additional Developer Disposal Fields, Additional Developer Disposal Field Areas, Additional Authority Disposal Fields, and Additional Authority Disposal Field Areas (collectively, the "**Sewage Facilities**") will ultimately be owned, operated, and maintained by the Authority. Accordingly, the permittee of the Treatment Plant will be the Authority.

15. The Authority will operate the Sewage Facilities upon substantial completion of same, even if this occurs prior to Dedication.

16. In order for River Pointe, RPL East, and New Demi to provide potable water, adequate water, and under adequate pressure for fire protection, River Pointe and New Demi intend to construct a water system composed of (a) at least three production wells ("**Production Wells**") on the RPL Property in the locations depicted on the Overall Utility Plan for the River Point Logistics Development dated 10/26/22, and prepared by Ebert Engineering, Inc. ("**Utility Plan**"), which is

attached hereto as Exhibit "D", (b) water supply lines from the Production Wells to a 70' high, elevated Water Tower with associated water treatment facilities ("**Water Tower**") in the location depicted on the Utility Plan, and (c) water supply lines from the Water Tower to the buildings to be located in the Industrial Parks (hereinafter collectively "**Water Facilities**"). The Water Facilities will initially be designed as a "stand-alone" system, in that it will not need to be connected to any other water system to properly function. However, because there may be some mutually beneficial results realized from connecting the Water Facilities to the Portland Authority public water system located in Route 611 ("**Portland System**"), the Utility Plan depicts two water conveyance lines from the Water Tank to Route 611 and to REDACTED. Such connections will only be made pursuant to an agreement acceptable to the Authority and the Portland Authority.

17. The Water Facilities will initially be designed to exclusively provide water service to the Industrial Parks. Therefore, the first REDACTED gallons per day of water ("**GPDW**") will be reserved to service the buildings in the Industrial Parks. However, when additional sites for Production Wells are acquired by the Township or Authority and are constructed and connected to the Water Tower by the Township or Authority, the additional capacity produced by such additional wells will be allocated to the Authority to serve Township Properties.

18. The Authority and the Developers shall cooperate to find grants or financing to pay for all or portions of the cost of expanding the Sewage Facilities and/or the Water Facilities as additional needs arise and additional Disposal Areas or water sources are identified.

19. The Water Facilities will ultimately be owned, operated, and maintained by the Authority. Accordingly, the permittee of the Water Facilities will be the Authority.

20. The Authority will operate the Water Facilities upon substantial completion of same, even if this occurs prior to Dedication.

21. The Parties desire to define and memorialize the terms and conditions pursuant to which (a) Developers will design, construct, and dedicate, and (b) the Authority will operate and accept dedication of the Sewage Facilities and Water Facilities.

NOW, THEREFORE, in consideration of the matters recited above and the agreements contained below, the Parties hereto, each intending to be legally bound, agree as follows:

INCORPORATION OF BACKGROUND

The Background to this Agreement is hereby incorporated into the body of this Agreement to the same extent as if it had been repeated in full in the body of this Agreement.

DEFINITIONS

In addition to the terms defined within the Background and body of this Agreement, the following capitalized terms, for the purposes of this Article of this Agreement, shall have the meanings set forth below:

“Approved Treatment Capacity” shall mean 140,000 GPDS, the treatment capacity the PADEP is expected to approve during the initial phase of construction and operation of the Treatment Plant by the DEP. It is anticipated that the Approved Treatment Capacity will be increased as additional demand is created and additional disposal capacity is created.

“Authority Capacity” shall mean 100,000 GPDS of Treatment Capacity in the Treatment Plant, which is that part of the Treatment Capacity which will not be consumed by the buildings and other improvements constructed in the Planned Industrial Parks.

“Authority Disposal Capacity” shall mean 30,000 GPDE of Disposal Capacity allocated to the Authority for the benefit of the Township Properties. It is anticipated that the Approved Treatment Capacity will be increased as additional demand is created and additional disposal capacity is created.

“Authority Engineer” shall mean the engineer who shall be retained by the Authority in connection with this Agreement.

“Authority Water Capacity” shall mean _____ gallons per day of Water Capacity which is that part of the Water Design Capacity which will not be consumed by the Buildings and other improvements constructed in the Planned Industrial Parks.

“Business Days” shall mean every day of the week except Saturday, Sunday, national, and state holidays.

“Contractor” shall mean the contractor or construction manager engaged by Developer to construct the Sewage Facilities and/or Water Facilities.

“Developers’ Disposal Capacity” shall mean 110,000 GPDE of Disposal Capacity reserved for the Developers to allocate among the buildings to be constructed on the lots depicted on the Master Plan. It is anticipated that the Developers’ Treatment Capacity will be increased as additional demand is created and additional disposal capacity is created.

“Developers Treatment Capacity” shall mean 300,000 GPDS of treatment capacity in the Treatment Plant, which is that part of the Treatment Capacity which will be consumed by the buildings and other improvements constructed in the Planned Industrial Parks or which Developers sell or otherwise allocate to third-parties.

“Developers Sewer Improvements” shall mean and refer to the sewer lines and all internal sewage collection and conveyance lines (including pump stations and interceptors) to convey sewage generated by the buildings and other structures constructed in the Planned Industrial Parks to the Treatment Plant, Pump Station, or gravity line and other sewer improvements which will be constructed and installed by the Developers to provide public sewer service to the Planned Industrial Parks only.

“Developers Water Improvements” shall mean and refer to the Production Wells, Water Conveyance Lines, Water Tower, Water Treatment Facilities, and Water Distribution Lines, used to produce, convey, treat, pressurize, and distribute water to the buildings and other structures constructed in the Planned Industrial Parks.

“Disposal Capacity” shall mean approximately 140,000 GPDE, the initial capacity of treated effluent that will be permitted to be disposed via drip irrigation onto the Disposal Fields in the Disposal Field Areas. The Disposal Capacity will automatically be increased as Additional Disposal capacity is created.

“Field Inspector” shall mean the Authority Engineer's construction representative.

“Field Order” shall mean a written order or written approval identified as a "Field Order" and issued by the Project Engineer to the Contractor to make an

immaterial design adjustment in the Design Plans and/or Shop Drawings. The Project Engineer's issuance of a Field Order shall constitute a certification that the change is not material and does not involve a substitution of material or equipment. Field Orders must be prepared, reviewed, and issued in accord with the terms contained in Article I, Section C.2.g. and/or Article II, Section C.2.g. of this Agreement.

“GPDE” shall mean gallons per day of treated effluent.

“GPDS” shall mean gallons per day of sewage.

“GPDW” shall mean gallons per day of water.

“Initial Authority Treatment Capacity” shall mean 30,000 GPDS of Approved Treatment Capacity in the Treatment Plant, which is that part of the Approved Treatment Capacity of the Treatment Plant which will not be consumed by the buildings and other improvements constructed in the Planned Industrial Parks.

“Initial Developers Treatment Capacity” shall mean 110,000 GPDS of treatment capacity in the Treatment Plant, which is that part of the initial Treatment Capacity of the Treatment Plant, which will be consumed by the buildings and other improvements constructed in the Planned Industrial Parks.

“Operating Deficit” shall mean, for any accounting period utilized by the Authority, the excess of ordinary operating and maintenance expenses for the Sewage Facilities over the revenues actually received for 1) sewer service provided

to the properties connected to the Treatment Plant; and 2) disposal services provided to third parties whose wastewater is delivered to and treated by the Treatment Plant. For purposes of calculating the Operating Deficit, expenses will not include any consulting fees paid by the Township to any third party, which fees do not pertain to an issue involving the day-to-day functioning of the Treatment Plant. Ordinary operating expenses may include reasonable allocations of capital reserves, calculated based upon estimated useful life and estimated replacement costs reduced to present value for depreciable items in the Treatment Plant.

“Operating Deficit Period” shall mean the period from the dedication of the Dedication Facilities until the close of the second consecutive calendar quarter when no Operating Deficit exists.

“Operating Deficit-Water” shall mean, for any accounting period utilized by the Authority, the excess of ordinary operating and maintenance expenses for the Water Facilities over the revenues actually received for water service provided to the properties connected to the Water Facilities. For purposes of calculating the Operating Deficit-Water, expenses will not include any consulting fees paid by the Township or the Authority to any third party, which fees do not pertain to an issue involving the day-to-day functioning of the Water Facilities. Ordinary operating expenses may include reasonable allocations of capital reserves, calculated based

upon estimated useful life and estimated replacement costs reduced to present value for depreciable items in the Water Facilities.

“Operating Deficit Period-Water” shall mean the period from the dedication of the Water Facilities until the close of the second consecutive calendar quarter when no Operating Deficit-Water exists.

“Project Engineer” shall mean Ebert Engineering, Inc., the engineer selected by Developers to design and to oversee construction of the Sewage Facilities and Water Facilities.

“Project Costs” shall mean the cost of designing, permitting, and constructing all of the Sewage Facilities.

“Project Costs-Water” shall mean the cost of designing, permitting, and constructing all of the Water Facilities.

“Shop Drawings” shall mean drawings prepared to illustrate in greater detail the construction of parts or components of the Sewage Facilities and/or Water Facilities, which drawings shall require the approval of the Project Engineer and the Authority Engineer, which approval by the Authority Engineer shall not be unreasonably withheld, delayed, or conditioned.

“Substantially Complete” or “Substantial Completion” shall mean when the Sewage Facilities and/or Water Facilities have been completed to the point at which

they can be operated as designed and the only remaining work to be completed consists of punch list items.

“Treatment Capacity” shall mean the maximum capacity of sewage the Treatment Plant can treat or 400,000 GPDS, which is the aggregate volume of wastewater which can ultimately be treated by the Sewage Facilities as planned. The present intention of the Developer is to phase the construction of the Treatment Plant as set forth in the Background to this Agreement. The Authority shall have the right to increase the Design Capacity of the Treatment Plant from time to time as additional demand for public sewer service arises.

“Treatment Plant” shall mean the buildings, pumps, pipes, equipment, and access ways necessary for the operation of SBR mechanical treatment systems to be constructed by Developers pursuant to this Agreement and in accordance with the plans prepared by the Project Engineer and approved by the Authority Engineer, which shall be located on the Treatment Plant Easement Area. The Treatment Plant shall include all personal property and components necessary for the operation and maintenance of a sewage system to the design standards identified in the permits and approvals issued by DEP.

“Water Design Capacity” shall mean 100 gallons of water per day, which is the aggregate volume of Water which the Project Engineer has estimated will ultimately be produced by the initial Production Wells and treated by the Water

Facilities as planned. The present intention of the Developers is to develop the initial Production Wells at the same time that the initial buildings are constructed in the Industrial Parks. As additional water capacity, beyond the capacity of the initial Production Wells is needed in either the Industrial Parks or in areas of the Township which are not owned by the Developers, the Authority and the Developers will attempt to acquire and develop additional sources of water. The said additional Capacity shall be included in the term "Water Design Capacity."

ARTICLE I - SEWER SYSTEM

A. PADEP/DRBC PERMITS

All permits and approvals from Pennsylvania Department of Environmental Protection ("PADEP"), and the Delaware River Basin Commission ("DRBC") (collectively the "PADEP/DRBC Permits") shall be applied for to permit the treatment of sewage by the type of treatment facility that the Project Engineer determines to be appropriate for the type of sewage anticipated to be conveyed to the Treatment Plant, the initial cost thereof, the anticipated life expectancy thereof, the anticipated cost to operate, and the reliability of the technology. Such applications shall provide for disposal of treated effluent by drip irrigation on the Disposal Fields owned or controlled by the Authority.

B. ACT 537 APPROVAL

The Township shall initiate (or continue) all necessary actions to amend its Act 537 Sewage Facilities Plan by planning module, in order to obtain planning approval for the construction and use of the Sewage Facilities as contemplated herein. The Authority and/or Township, as may be required, shall also execute such documents and applications, and otherwise cooperate with Developers, as reasonably necessary, to apply for and obtain the PADEP/DRBC Permits.

C. DESIGN AND CONSTRUCTION OF THE SEWAGE FACILITIES

1. The Project Engineer shall prepare the plans for the Sewage Facilities (“**Design Plans**”) and the Sewage Facilities shall be constructed or installed in accordance with the Design Plans and applicable PADEP design standards. The Design Plans shall generally comply with the specification set forth on Exhibit “E” which is attached hereto FRED TO SUPPLY SPECIFICATIONS and shall be subject to review and approval by the Authority prior to submission to PADEP, which approval shall not be unreasonably withheld, delayed, or conditioned. If the Authority has not commented on Design Plans, within fifteen (15) days of receipt, the submitted Design Plans shall be deemed to have been approved by the Authority.

2. The Developers shall construct the Sewage Facilities in accordance with the following requirements:

a. Construction shall be in accordance with the Design Plans.

b. The Authority shall have the right, from time to time, to inspect the construction of the Sewage Facilities. Such inspections shall be conducted during regular business hours, and the Authority shall make all reasonable efforts to avoid interference with the progress and conduct of the work. The Authority shall give the Developers written notice of intent to inspect at least 24 hours before the scheduled time of inspection

c. During active construction of the Sewage Facilities, the Developer shall conduct monthly construction meetings with the Project Engineer, Contractor, and Authority Engineer.

d. Copies of all Shop Drawings prepared by or for the Contractor or any subcontractor and approved by the Project Engineer, shall be submitted to the Authority Engineer for review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned. If the Authority has not commented on shop drawings submitted to it for approval within six (6) business days of receipt, such shop drawing shall be deemed approved.

e. In the event of any discrepancy or dissatisfaction with work in progress discovered by the Authority, or in the event of any dispute raised by either party regarding the obligations and duties arising under this agreement, written notice of such dispute shall be promptly communicated to the other party, and the Parties shall consult with each other and attempt to resolve the dispute. If the Parties

are unable to agree upon a resolution of any dispute within six (6) business days of the date written notice is received from the objecting party, the dispute shall be referred to _____ ("**Third-Party Engineer**"). The Third-Party Engineer's decision concerning any such dispute shall be final and binding upon Developers, the Township, and the Authority. If the services of the Third-Party Engineer are utilized by the Parties, all fees for the services of the Third-Party Engineer shall be paid for equally by Developer and the Authority or Township.

f. No sewage shall be processed in, or discharged from, the Sewage Facilities until the same are substantially completed in accordance with the Design Plans, in operational condition, and any required operating approvals have been issued by PADEP.

g. Modification of the Design Plans after commencement of construction shall take place in accordance with the following procedure:

(1) The Contractor or Project Engineer shall deliver copies of each proposal for modification of the Design Plans, including substitutions of materials or equipment, to the Authority Engineer for approval, prior to Developer performing or installing work which differs from the Design Plans. The request for the change shall be in the form of a proposed Field Order.

(2) When minor field changes are required, the Contractor shall first review these changes in the field with the Field Inspector. If it is

determined that the Field Inspector cannot make a field decision on the issue, the Contractor will notify the Project Engineer in writing that the issue requires Project Engineer involvement. The Project Engineer will then determine whether the issue must be submitted to the Authority Engineer in the form of a Field Order

(a) Field Order. A copy of each Field Order shall be submitted to the Authority Engineer for review and approval prior to implementing the change. The Field Order shall identify each change to the Design Plans and/or Shop Drawings and include any required Design Plans and/or Shop Drawings and shall be in the same detail as that part of the Design Plans and/or Shop Drawings to be changed.

(3) The Authority Engineer shall have five (5) business days for a Field Order, from receipt of a Field Order in which to:

- (a) review the Field Order;
- (b) approve or reject the Field Order; and
- (c) notify the Project Engineer in writing as to its decision and the reasons therefor.

Failure of the Authority Engineer to timely respond to a Field Order shall result in a deemed approval of the proposed modification unless unexpected or unforeseen circumstances justifiably prevent the Authority Engineer from providing a response that is compliant with subsections (a)-(c) of this section within the timeframes set

forth herein. The Authority Engineer (or representative of same) shall notify the Project Engineer in writing of any such unexpected or unforeseen circumstances as soon as practicable within the relevant timeframes set forth herein and request a reasonable extension of time to provide a response that is compliant with subsections (a)-(c) of this section. The absence of a such a request shall result in a deemed approval. Construction may proceed in accordance with the Design Plans and Shop Drawings, as modified by a Field Order, at the expiration of the applicable approval period, or upon approval, if the modification is approved.

(4) The Authority Engineer shall approve every Field Order, which is submitted with a written statement from the Project Engineer or from any other professional engineer licensed in the Commonwealth of Pennsylvania engaged by the Project Engineer stating that the proposed modification to the Design Plans and/or Shop Drawings will not impair the performance, capacity, or useful life of the Sewage Facilities or any part thereof. Unless the Authority Engineer disagrees with such assertion and states in writing to the Project Engineer that, in the Authority Engineer's professional opinion, the change identified in the Field Order will impair the performance, capacity, or useful life of the Sewage Facilities or any part thereof and explains, in detail, the basis for such opinion, approval of the proposed modification to the Design Plans and Shop Drawings by the Authority Engineer shall not be withheld. In approving a Field Order, whether by failing to timely reject or

by express approval, the Authority Engineer shall have the right to rely on any statement or certification given by the Project Engineer or other licensed professional engineer licensed in the Commonwealth of Pennsylvania engaged by the Project Engineer.

(5) In exigent circumstances where delays associated with obtaining the Authority Engineer's approval of a Field Order would result in substantial increased costs resulting from delays in construction, the five (5) business day period set forth subparagraph (3) above shall be reduced to two (2) days. If no decision is rendered by the Authority Engineer within that time period, Developers may implement such Field Order without the approval of the Authority Engineer; provided, however, that a copy of such Field Order shall be delivered to the Authority Engineer by 5:00 P.M. on the date on which the construction of the modification proceeds, with the Project Engineer's written statement that the change meets the requirements of a Field Order and a brief explanation of the reason for proceeding without approval of the Authority Engineer.

D. PUMP AND HAUL OR HOLDING TANKS

1. If, for any reason the completion of the Sewage Facilities (or a component thereof) does not occur prior to the completion of any part of the Planned Industrial Parks that will connect to the system, or if the sewage to be generated by the first buildings to be constructed is not sufficient to properly operate the

Treatment Plant then the Township and/or the Authority will, subject to PADEP approval, permit temporary waste disposal for any completed portions of the Planned Industrial Parks by pump and haul or by holding tanks or by other approved method to be implemented by the Developers until the Sewage Facilities are completed and able to accommodate the treatment needs of those particular users.

2. Developers and the Township and/or the Authority shall cooperate in Developer's efforts to obtain pump and haul permits, or a permit for holding tanks from PADEP and other applicable governmental agencies. Pump and haul permits or holding tank permits will be obtained in the name of the Developers (unless otherwise required by PADEP). The Township or the Authority (as applicable) will cooperate in obtaining such permits. The Township will not withhold or delay issuing building permits and certificates of occupancy provided that pump and haul permits or holding tank permits have been permitted.

3. In addition, and subject to the provisions of this section, Developers shall be permitted to pump and haul sewage effluent from any portion of the Planned Industrial Parks prior to completion of the Sewage Facilities and up until such time that portion of the Planned Industrial Parks can be connected to the Sewage Facilities. During the continuation of pump and haul or holding tank disposal, the Authority will charge the property owner of that section of the Planned Industrial Parks either the actual cost of providing the pump and haul service together with a

component for the Authority's expense in processing the billing ("**Authority Component**") or a quarterly fee that shall be based on the estimated fee that the property owner would be charged if the Sewage Facilities were completed and the property owner was being charged for that use, together with the Authority Component. The Authority and Developers shall mutually determine the appropriate billing process prior to the issuance of the first pump and haul bill. Said fee (absent the Authority Component) will be remitted to Developers as reimbursement for pump and haul costs.

E. COST OF COMPLETING THE SEWAGE FACILITIES:

1. Developers shall pay all of the costs of the design and construction of the of Sewage Facilities. Developers shall be entitled to a credit in the amount of tapping fees and connection fees otherwise applicable for connection to and utilization of the Sewage Facilities by the Planned Industrial Parks as partial reimbursement for the Project Costs, subject to the limitation set forth in subparagraph 2 of this section.

2. The Parties acknowledge that based on projected sewage flows, Developers will consume approximately seventy-five percent (75%) of the total capacity of the Treatment Plant and that, as a result, the Authority Capacity in the Treatment Plant will be approximately twenty-five percent (25%) of the Design Capacity. The Developers shall be entitled to be reimbursed for twenty-five percent

(25%) of the Project Costs. The reimbursement of the said twenty-five percent (25%) of the Project Cost (“**Reimbursement**”) shall be paid to the Developers by the Authority as it collects the appropriate tapping fee from each entity (other than the Developers and their successors in title to the lots located in the Planned Industrial Parks) which connect to the Sewage Facilities. The Reimbursement will be paid to the Developers until the Developers have recouped twenty-five percent (25%) of the Project Costs.

3. Within thirty (30) days after the Township grants final approval of a Subdivision/Land Development Plan for any development which will be utilizing the Authority Capacity or a portion thereof, the Authority shall collect from such applicant a tapping fee, which fee shall have been calculated pursuant to the requirements of 53 PA C.S.A. §5607(d)(24). No later than sixty (60) days after receipt by the Authority of any tapping fees from those utilizing the Authority Capacity or a portion thereof, the Authority shall promptly remit to Developers the amount of the Reimbursement until such time as twenty-five percent (25%) of Project Costs are reimbursed to the Developers.

4. The Authority shall have the right to set uniform rates for sewage service to be charged to users of the Sewage Facilities, based upon water usage, equivalent dwelling units, or such other non-discriminatory methods as may be established by the Authority, but such fees and charges shall not exceed the fees and

charges that the Authority is permitted to charge under the Pennsylvania Municipal Authorities Act.

5. 300,000 GPDS of the Treatment Capacity (i.e. Developers Capacity), less the amount of Treatment Capacity actually consumed by Developers by connecting buildings and other structures to the Treatment Plant, shall continue to be allocated to Developers until Developers use or dispose of Developers Capacity by assigning it to other potential users of such Treatment Capacity. Developers shall be free to sell or dispose of Developers Capacity to any third party.

F. DEVELOPER'S SECURITY FOR CONSTRUCTION OBLIGATIONS

To secure Developers' obligation to construct the Sewage Facilities, Developers and the Authority shall enter into a Sewage Facilities Escrow Agreement which Agreement shall adhere to the provisions of 53 PA C.S.A. § 5607(d)(23) regarding the posting of security and the release of same.

G. DEDICATION OF SEWAGE FACILITIES

1. The Developers shall offer the Sewage Facilities for Dedication within sixty days after (a) the construction of the Sewage Facilities have been completed and approved by the Authority Engineer, (b) the Sewage Facilities have been operated on a positive cash flow basis for at least two consecutive months and such positive cash flow operations have been certified by the Authority's Certified Public Accountant, and (c) the Developers have completed the construction of buildings on

nine of the 13 lots depicted on the Master Plan for the Planned Industrial Parks and connected the said Buildings to the Sewage Facilities. The Authority shall accept dedication of the Sewage Facilities within 60 days of the date that the Developers offer to dedicate the Sewage Facilities to the Authority and the conditions to dedication have been satisfied by the Developers as provided for in this Agreement.

2. Before offering the Sewage Facilities not currently owned by the Township for dedication:

a. Developers shall provide the Authority with sixty (60) days' notice of its intention to dedicate, together with a financial statement prepared by a Certified Public Accountant certifying all Project Costs to the date of substantial completion and the payment of same ("**Dedication Date**")

b. During this sixty (60) day period, the Authority' Engineer shall inspect the Sewage Facilities being offered for dedication.

c. If the Sewage Facilities have not been completed in accordance with the Design Plans, the Authority shall provide to the Developers, within this sixty (60) day period, a punch list of incomplete or unsatisfactory items as determined by the Authority Engineer. The Developers shall then have thirty (30) days, or such other reasonable period of time as may be necessary in the situation as determined by the Authority Engineer after consultation with Developers, to correct

the punch list items before re-inspection by the Authority. The Dedication Date shall be automatically extended until the correction of the punch list items.

d. The Authority may accept dedication of the Sewage Facilities while the Developers continue to correct punch list items and the acceptance by the Authority of same will not be deemed a waiver of the obligation of the Developers to complete the punch list items.

e. The Authority shall formally accept dedication of the Sewage Facilities no later than the Dedication Date. If there is a dispute regarding the satisfactory completion of punch list items, said dispute shall be submitted to the Third-Party Engineer for final, binding, and unappealable determination. The Authority shall accept dedication within thirty (30) days of the Third-Party Engineer's determination that all disputed punch list items have been satisfied.

f. At the time of dedication, Developers shall deliver to the Authority a Deed of Dedication in compliance with subparagraph 3 below. The Developers shall provide any and all releases, waivers, affidavits, and security required to ensure the conveyances against mechanic's liens and claims.

3. Deed Of Dedication. Developers' offer of dedication of the Sewage Facilities shall include:

a. Deed of Dedication which conveys fee simple title, or a perpetual, exclusive easement, to the land upon which the Sewage Facilities being offered for dedication are located.

b. Grants of easements over such portion of the RPL Property, New Demi Property, and RPL East Property as are necessary for the use, repair, maintenance, and replacement of the Sewage Facilities.

c. A title insurance policy issued by a reputable title insurance company, insuring title to any real property, or easements, free and clear of any liens, encumbrances, restrictions, and easements, except such as will not interfere with Authority's intended use and operation of the Sewage Facilities; such insurance is to be based on the fair market value of the real property being dedicated, and the premium shall be paid for by Developers.

d. A bill of sale to any portion of the Sewage Facilities which constitute(s) personal property.

e. A UCC search certificate evidencing that title to any personal property to be transferred to the Authority is free of any security interests, liens, or claims of record.

f. Assignment of all warranties applicable to all equipment and operating components of the Sewage Facilities.

g. Payment of any and all transfer taxes.

h. Record Drawings (those drawings which include any changes made to the approved for construction drawings) in Auto CADD format, which shall include, at a minimum, survey locations of sanitary manholes including elevations of rims and inverts; survey locations of any sewage pump stations and valve chambers including invert elevations; survey locations of sewer mains referenced to road center lines and offsets; survey locations of the Treatment Plant including pipe invert elevations, weir elevations, and all other elevations necessary to confirm hydraulic profiles; survey locations of disposal field dimensions; and survey locations of control and maintenance buildings including finished floor elevations. The Record Drawings shall be signed and sealed by a Registered Professional Land Surveyor licensed in the Commonwealth of Pennsylvania.

i. PADEP Discharge Monitoring Reports for two consecutive periods evidencing compliance with permit conditions.

4. Upon dedication of the Sewage Facilities, the Developers shall deliver to Authority a maintenance bond ("**Maintenance Bond**"), pursuant to 53 PA C.S.A. §5607(d)(23), to secure Developer's guaranty of the structural integrity, proper function, and operation of the Sewage Facilities. The Maintenance Bond shall extend from the Dedication Date for a period of 18 months thereafter.

5. If the Authority does not accept dedication of the Sewage Facilities within the time period set forth above, the Developers shall have the right of specific performance to compel the Authority to accept dedication of the Sewage Facilities.

H. FUNDING OF OPERATING DEFICIT

1. It is acknowledged by the Parties that the Sewage Facilities will incur operating deficits for some period of time (“**Operating Deficit Period**”). Developers shall pay for the Operating Deficit during the Operating Deficit Period in the following manner and subject to the ability to seek reimbursement of a portion of these costs in the manner set forth below:

a. Developers shall advance to the Authority on a quarterly basis the projected quarterly Operating Deficit for the next calendar quarter based upon the budget that has been reviewed by the Developers and Authority and adopted and adjusted as necessary to reflect either additional or reduced net revenues resulting from the preceding quarter. The Authority and Developers shall cooperate in developing such projections. The contributions of Developers to the Operating Deficit shall be included in the Project Costs.

b. The Authority and Developers shall have the right to contract with third parties to haul sewage to be processed by the Treatment Plant, and the revenues received as a result of the same shall reduce the portion of the Operating Deficit otherwise payable by Developers. Such hauling will be permitted subject to

the approval of the Treatment Plant operator and compliance with conditions of any applicable PADEP Permit. For this purpose, the Parties agree that hauled sewage may include holding tank waste but not septage, grease trap waste, sludge, or other waste incompatible with Treatment Plant design.

c. The Authority shall not charge any user of the Treatment Plant's Treatment Capacity any service fees or sewer rental charges substantially in excess or below those fees or charges that the Authority estimates in good faith would be necessary to operate the Treatment Plant without incurring any Operating Deficit if the entire Design Capacity were being utilized, taking into account the establishment from revenues of such reasonable reserves for replacement of equipment as the Authority may consider appropriate.

d. The Authority shall prepare a preliminary Operating Budget and deliver same to Developers to review and provide input. Developers shall have the right to object to budget items and management practices that it believes are inconsistent with sound management objectives otherwise utilized in the industry for the operation of treatment plants similar to the Treatment Plant. The Parties agree that the calculation of the Operating Deficit shall exclude any such disputed items. Failing Agreement, the Parties shall submit the disputed matter to the Third-Party Engineer and the Developers shall pay to the Authority such amounts as are

required by the disputed preliminary Operating Budget until such time, if any, as the Third-Party Engineer may rule otherwise.

e. As set forth in Article I, Section E.2, *supra*, the Parties acknowledge that based on projected sewage flows, Developers will consume approximately seventy-five percent (75%) of the total capacity of the Treatment Plant and that, as a result, the Authority Capacity in the Treatment Plant will be approximately twenty-five percent (25%) of the Design Capacity. The Developers shall be entitled to be reimbursed for twenty-five percent (25%) of the Operating Deficit after it has recouped the Reimbursement amount in full. The reimbursement of the said twenty-five percent (25%) of the Operating Deficit (“**Operating Deficit Reimbursement**”) shall be paid to the Developers by the Authority as it collects the appropriate tapping fee from each entity (other than the Developers and their successors in title to the lots located in the Planned Industrial Parks) which connect to the Sewage Facilities. The Operating Deficit Reimbursement will be paid to the Developers after Developers have fully recouped the Reimbursement and until the Developers have recouped twenty-five percent (25%) of the Operating Deficit.

f. The Developers shall have the right, upon reasonable prior notice, to inspect the books and records and all supporting detail with respect to the operation of the Sewage Facilities. Developers may also order an audit of same, at its expense. However, if the audit determines that items have been included in the

calculation of the Operating Deficit that should not have been included, under either the terms of this Agreement or generally accepted accounting principles, then the Authority shall promptly reimburse Developers for the cost of the audit.

I. **TERMINATION OF OBLIGATIONS/ASSIGNMENT**

Upon dedication by Developers of all its/their interest in the Sewage Facilities as described in this Agreement, and the acceptance of same by the Authority, and the completion by the Developers of all punch list items and the delivery by Developers of the necessary maintenance bond, Developers shall thereafter have no further obligations hereunder with respect to the construction of same. Developers shall not be liable for any claims, demands, obligations, or liabilities with respect to the ownership, operation, maintenance, or control of the Sewage Facilities incurred after the date of such dedication and acceptance. The Authority shall indemnify, defend, and hold harmless the Developers, its/their affiliates, successors, assigns, respective employees, officers, and agents from and against any such claims, demands, obligations, or liabilities. This indemnity agreement shall include the payment of attorneys' fees of counsel for the Developers chosen by the Developers as well as all reasonable costs, expenses, and other fees related to or incurred by Developers in addressing any such claims, demands, obligations, or liabilities. The indemnification obligations under this section shall not be limited in any way by any limitation on the amount or type of damages.

J. INDEMNIFICATION OF AUTHORITY/TOWNSHIP

Developers shall indemnify, defend, and hold harmless the Authority and Township from any loss, cost, liability, damage, or injury suffered or incurred due to occurrences arising out of the conduct of Developers prior to the Authority's acceptance of the Sewage Facilities. Without limiting the foregoing, the Authority and/or Township shall have no liability or obligation for disbursement of, management of, or account for the construction or other costs relating to performance of this Agreement by Developers, including without limitation, payment of subcontractors and materialmen. Developers shall indemnify, defend, and hold harmless the Authority and Township against any such liability or claims. This indemnity agreement shall include the payment of attorneys' fees chosen by the Developers as well as all reasonable costs, expenses, and other fees related to or incurred by Developers in addressing any such claims, demands, obligations, or liabilities. The indemnification obligations under this section shall not be limited in any way by any limitation on the amount or type of damages.

ARTICLE II- WATER SYSTEM

A. PADEP/DRBC PERMITS

All PADEP/DRBC Permits to construct, use, expand, and operate the Water Facilities from PADEP and DRBC shall be applied for to permit the production and treatment of water by the type of production and treatment facilities that the Project

Engineer determines to be appropriate for the projected users of the Water Facilities, the initial cost thereof, the anticipated life expectancy thereof, the anticipated cost to operate, and the reliability of the technology.

B. APPLICATION FOR PERMIT/SUBMISSION OF DOCUMENTS

The Authority shall be the applicant on any applications submitted to PADEP and/or the DRBC with respect to the PADEP/DRBC Permits. The Authority and/or Township, as may be required, shall also execute such documents and applications and otherwise cooperate with Developers, as reasonably necessary, to apply for and obtain the PADEP/DRBC Permits.

C. DESIGN AND CONSTRUCTION OF THE WATER FACILITIES

1. The Project Engineer shall prepare the plans for the Water Facilities (“**Design Plans-Water**”), and the Water Facilities shall be constructed or installed in accordance with the Design Plans-Water and applicable PADEP design standards. The Design Plans-Water shall generally comply with the specification set forth on **Exhibit “F”** which is attached hereto **FRED TO SUPPLY SPECIFICATIONS** and shall be subject to review and approval by the Authority prior to submissions to PADEP, which approvals shall not be unreasonably withheld, delayed, or conditioned. If the Authority has not commented on the Design Plans-Water within 15 days of receipt of the Design Plans-Water, the submitted Design Plans-Water shall be deemed to have been approved by the Authority.

2. The Developers shall construct the Water Facilities in accordance with the following requirements:

a. Construction shall be in accordance with the Design Plans-Water.

b. The Authority shall have the right, from time to time, to inspect the construction of the Water Facilities. Such inspections shall be conducted during regular business hours, and the Authority shall make all reasonable efforts to avoid interference with the progress and conduct of the work. The Authority shall give the Developers written notice of intent to inspect at least 24 hours before the scheduled time of inspection.

c. During active construction of the Water Facilities, the Developers shall conduct monthly construction meetings with the Project Engineer, Contractor, and Authority Engineer.

d. Copies of all Shop Drawings prepared by or for the Contractor or any subcontractor and approved by the Project Engineer, shall be submitted to the Authority Engineer for review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned. If the Authority has not commented on shop drawings submitted to it for approval within six (6) business days of receipt such shop drawing shall be deemed approved.

e. In the event of any discrepancy or dissatisfaction with work in progress discovered by the Authority, or in the event of any dispute raised by either party regarding the obligations and duties arising under this agreement, written notice of such dispute shall be promptly communicated to the other party, and the Parties shall consult with each other and attempt to resolve the dispute. If the Parties are unable to agree upon a resolution of any dispute within six (6) business days of the date written notice is received from the objecting party, the dispute shall be referred to _____ ("**Third-Party Engineer**"). The Third-Party Engineer's decision concerning any such dispute shall be final and binding upon Developers, the Township, and the Authority. In the event that the services of the Third-Party Engineer are utilized by the Parties, all fees for the services of the Third-Party Engineer shall be paid equally by Developer and the Authority or Township.

f. No Water shall be processed in, or discharged from, the Water Facilities until the same are substantially completed in accordance with the Design Plans-Water, in operational condition, and any required operating approvals have been issued by the PADEP.

g. Modification of the Design Plans-Water after commencement of construction shall take place in accordance with the following procedure:

(1) The Contractor or Project Engineer shall deliver copies of each proposal for modification of the Design Plans-Water, including substitutions of

materials or equipment, to the Authority Engineer for approval, prior to Developer performing or installing work which differs from the Design Plans-Water. Proposals for modification of the Design Plans-Water must be submitted in the form of a written Field Order.

(2) When minor field changes are required, the Contractor shall first review these changes in the field with the Field Inspector. If it is determined that the Field Inspector cannot make a field decision on the issue, the Contractor will notify the Project Engineer in writing that the issue requires Project Engineer involvement. The Project Engineer will then determine whether the issue must be submitted to the Authority Engineer in the form of a written Field Order.

(3) Field Order. A copy of each Field Order shall be submitted to the Authority Engineer for review and approval prior to implementing the change. The Field Order shall identify each change to the Design Plans-Water and/or Shop Drawings and include any required Design Plans-Water and/or Shop Drawings and shall be in the same detail as that part of the Design Plans-Water and/or Shop Drawings to be changed.

(4) The Authority Engineer shall have five (5) business days for a Field Order, from receipt of a Field Order in which to:

- (a) review the Field Order.
- (b) approve or reject the Field Order; and

- (c) notify the Project Engineer in writing as to its decision and the reasons therefor.

Failure of the Authority Engineer to timely respond to a Field Order shall result in a deemed approval of the proposed modification unless unexpected or unforeseen circumstances justifiably prevent the Authority Engineer from providing a response that is compliant with subsections (a)-(c) of this section within the timeframes set forth herein. The Authority Engineer (or representative of same) shall notify the Project Engineer in writing of any such unexpected or unforeseen circumstances as soon as practicable within the relevant timeframes set forth herein and request a reasonable extension of time to provide a response that is compliant with subsections (a)-(c) of this section. The absence of a such a request shall result in a deemed approval. Construction may proceed in accordance with the Design Plans-Water and Shop Drawings, as modified by a Field Order, at the expiration of the applicable approval period, or upon approval, if the modification is approved.

(5) The Authority Engineer shall approve every Field Order, which is submitted with a written statement from the Project Engineer or from any other professional engineer licensed in the Commonwealth of Pennsylvania engaged by the Project Engineer stating that the proposed modification to the Design Plans-Water and/or Shop Drawings will not impair the performance, capacity, or useful life of the Water Facilities or any part thereof. Unless the Authority Engineer

disagrees with such assertion and states in writing to the Project Engineer that, in the Authority Engineer's professional opinion, the change identified in the Field Order will impair the performance, capacity, or useful life of the Water Facilities or any part thereof and explains, in detail, the basis for such opinion, approval of the proposed modification to the Design Plans-Water and Shop Drawings by the Authority Engineer shall not be withheld. In approving a Field Order, whether by failing to timely reject or by express approval, the Authority Engineer shall have the right to rely on any statement or certification given by the Project Engineer or other licensed professional engineer licensed in the Commonwealth of Pennsylvania engaged by the Project Engineer.

(6) In exigent circumstances where delays associated with obtaining the Authority Engineer's approval of a Field Order would result in substantial increased costs resulting from delays in construction, the five (5) business day time period set forth subparagraph (3). above shall be reduced to two (2) days. If no decision is rendered by the Authority Engineer within that time period, Developers may implement such Field Order without the approval of the Authority Engineer; provided, however, that a copy of such Field Order shall be delivered to the Authority Engineer by 5:00 P.M. on the date on which the construction of the modification proceeds, with the Project Engineer's written statement that the change

meets the requirements of a Field Order and a brief explanation of the reason for proceeding without approval of the Authority Engineer.

D. COST OF COMPLETING THE WATER FACILITIES:

1. Developers shall pay all of the costs of the design and construction of the Water Facilities. Developers shall be entitled to a credit in the amount of tapping fees and connection fees otherwise applicable for connection to and utilization of the Water Facilities by the Planned Industrial Parks as partial reimbursement for the Project Costs-Water.

2. If the Developers construct Water Capacity in excess of the Water Capacity required from time to time to service the domestic, production, and fire protection needs of the buildings in the Industrial Parks, the Authority may allocate such excess capacity to properties in the Township which are not located in the Industrial Parks and not owned by the Developers (“**Excess Water Capacity**”). In such event, the Developers shall be entitled to reimbursement for the proportionate cost to acquire and construct the Excess Water Capacity. Such calculation shall be made by the Certified Public Accountant for the Authority, and the Developers shall be entitled to be reimbursed for said proportion of the Project Costs-Water. The reimbursement of said amount (“**Reimbursement-Water**”) shall be paid to the Developers by the Authority as it collects the appropriate tapping fee from each entity (other than the Developers and their successors in title to the lots located in

the Planned Industrial Parks) which connect to the Water Facilities. The Reimbursement-Water will be paid to the Developers until the Developers have recouped said proportionate amount.

3. Within thirty (30) days after the Township grants final approval of a Subdivision/Land Development Plan for any development which will be utilizing the Excess Water Capacity or a portion thereof, the Authority shall collect from such applicant a tapping fee, which fee shall have been calculated pursuant to the requirements of 53 PA C.S.A. §5607(d)(24). No later than sixty (60) days after receipt by the Authority of any tapping fees from those utilizing the Excess Water Capacity or a portion thereof, the Authority shall promptly remit to Developers the amount of the Reimbursement-Water until such time as the proportionate cost to acquire and construct the Excess Water Capacity is paid in full.

4. The Authority shall have the right to set uniform rates for water service to be charged to users of the Water Facilities, based upon water usage, equivalent dwelling units, or such other non-discriminatory methods as may be established by the Authority, but such fees and charges shall not exceed the fees and charges that the Authority is permitted to charge under the Pennsylvania Municipal Authorities Act.

5. All of the Water Capacity in the Water Facilities shall be allocated to the Developers until the Developers use such Water Capacity or dispose of such

Water Capacity by assigning it to other potential users of such Water Capacity. Developers shall be free to sell or dispose of the Water Capacity to any third party.

6. If the Authority increases the capacity of the Water Facilities by adding additional production wells and required treatment and conveyance capacity, such additional capacity shall be allocated to the Authority for use by areas of the Township which are not owned by the Developers

E. DEVELOPER'S SECURITY FOR CONSTRUCTION OBLIGATIONS

To secure Developer's obligation to construct the Water Facilities, Developers and the Authority shall enter into a Water Facilities Escrow Agreement which Agreement shall adhere to the provisions of 53 PA C.S.A.. § 5607(d)(23) regarding the posting of security and the release of same.

F. DEDICATION OF WATER FACILITIES

1. The Developers shall offer the Water Facilities for Dedication within sixty days after (a) the construction of the Water Facilities have been completed and approved by the Authority Engineer, (b) the Water Facilities have been operated on a positive cash flow basis for at least two consecutive months and such positive cash flow operations have been certified by the Authority's Certified Public Accountant, and (c) the Developers have completed the construction of buildings on nine of the 13 lots depicted on the Master Plan for the Planned Industrial Parks and connected the Buildings on said lots to the Water Facilities. The Authority shall accept

dedication of the Water Facilities within 60 days of the date that the Developers offer to dedicate the Water Facilities to the Authority and the conditions to dedication have been satisfied by the Developers as provided for in this Agreement (**"Dedication Date"**).

2. Before offering the Water Facilities not currently owned by the Township for dedication:

a. Developers shall provide the Authority with sixty (60) days' notice of its intention to dedicate, together with a financial statement prepared by a Certified Public Accountant certifying all Project Costs to the date of substantial completion and the payment of same.

b. During this sixty (60) day period, the Authority Engineer shall inspect the Water Facilities being offered for dedication.

c. If the Water Facilities have not been completed in accordance with the Design Plans, the Authority shall provide to the Developers within this sixty (60) day period a punch list of incomplete or unsatisfactory items as determined by the Authority Engineer. The Developers shall then have thirty (30) days, or such other reasonable period of time as may be necessary in the situation as determined by the Authority Engineer after consultation with Developers, to correct the punch list items before re-inspection by the Authority. The Dedication Date shall be extended until the punch list items have been corrected.

d. The Authority may accept dedication of the Water Facilities while the Developers continue to correct punch list items and the acceptance by the Authority of same will not be deemed a waiver of the obligation of the Developers to complete the punch list items.

e. The Authority shall formally accept dedication of the Water Facilities no later than the Dedication Date. If there is a dispute regarding the satisfactory completion of punch list items, said dispute shall be submitted to the Third-Party Engineer for final, binding, and unappealable determination. The Authority shall accept dedication within thirty (30) days of the Third-Party Engineer's determination that all disputed punch list items have been satisfied.

f. At the time of dedication, Developers shall deliver to the Authority a Deed of Dedication in compliance with subparagraph 3 below. The Developers shall provide any and all releases, waivers, affidavits, and security required to ensure the conveyances against mechanic's liens and claims.

3. Deed Of Dedication. Developers' offer of dedication of the Water Facilities shall include:

a. Deed of Dedication which conveys fee simple title, or a perpetual, exclusive easement to the land upon which the Water Facilities are located, and an easement or easements which will encumber the land upon which Conveyance Lines or Distribution Lines are or will be located.

b. Grant of easements over such portion of the RPL Property, New Demi Property, and RPL East Property as are necessary for the use, repair, maintenance, and replacement of the Water Facilities.

c. A title insurance policy issued by a reputable title insurance company, insuring title to any real property free and clear of any liens, encumbrances, restrictions, and easements, except such as will not interfere with Authority's intended use and operation of the Water Facilities; such insurance is to be based on the fair market value of the real property being dedicated, and the premium shall be paid for by Developers.

d. A bill of sale to any portion of the Water Facilities which constitute(s) personal property.

e. A UCC search certificate evidencing that title to any personal property to be transferred to the Authority is free of any security interests, liens or claims or record.

f. Assignment of all warranties applicable to all equipment and operating components of the Water Facilities.

g. Payment of any and all transfer taxes.

h. Record Drawings (those drawings which include any changes made to the approved for construction drawings) in Auto CADD format of the Water

Facilities. The Record Drawings shall be signed and sealed by a Registered Professional Land Surveyor licensed in the Commonwealth of Pennsylvania.

4. Upon dedication of the Water Facilities, the Developers shall deliver to Authority a Maintenance Bond, pursuant to 53 PA C.S.A. §5607(d)(23), to secure Developer's guaranty of the structural integrity, proper function, and operation of the Water Facilities. The Maintenance Bond shall extend from the Dedication Date for a period of 18 months.

5. If the Authority does not accept dedication of the Water Facilities within the time period set forth above, the Developer shall have the right of specific performance to compel the Authority to accept dedication of the Water Facilities

G. FUNDING OF OPERATING DEFICIT-WATER

1. It is acknowledged by the Parties that the Water Facilities may incur operating deficits for some period of time following the dedication of same to the Authority ("**Operating Deficit Period-Water**"). Developers shall pay for the Operating Deficit-Water during the Operating Deficit Period-Water in the following manner and subject to the ability to seek reimbursement of a portion of these costs in the manner set forth below:

a. Developers shall advance to the Authority on a quarterly basis the projected quarterly Operating Deficit-Water for the next calendar quarter based upon the budget that has been reviewed by the Developers and Authority and

adopted and adjusted as necessary to reflect either additional or reduced net revenues resulting from the preceding quarter. The Authority and Developers shall cooperate in developing such projections. The contributions of Developers to the Operating Deficit-Water shall be included in the Project Costs-Water.

b. As set forth in Article II, Section D.2, *supra*, the Parties acknowledge that Excess Water Capacity may be constructed to be allocated to properties in the Township not owned by the Developers. The percentage of total Water Design Capacity allocated as Excess Water Capacity will hereinafter be referred to as “**Excess Water Percent.**” The Developers shall be entitled to be reimbursed the Excess Water Percent of the Operating Deficit after it has recouped the Reimbursement-Water amount in full. The reimbursement of the said Excess Water Percent of the Operating Deficit-Water (“**Operating Deficit-Water Reimbursement**”) shall be paid to the Developers by the Authority as it collects the appropriate tapping fee from each entity (other than the Developers and their successors in title to the lots located in the Planned Industrial Parks) which connect to the Water Facilities. The Operating Deficit-Water Reimbursement will be paid to the Developers after Developers have fully recouped the Reimbursement-Water and until the Developers have recouped the Excess Water Percent of the Operating Deficit-Water.

c. The Authority shall not charge any user of the Water Facilities' Water Design Capacity any service fees or rental charges substantially in excess or below those fees or charges that the Authority estimates in good faith would be necessary to operate the Water Facilities without incurring any Operating Deficit-Water if the entire Water Design Capacity were being utilized, taking into account the establishment from revenues of such reasonable reserves for replacement of equipment as the Authority may consider appropriate.

d. The Authority shall prepare a preliminary Operating Budget and deliver same to Developers to review and provide input. Developers shall have the right to object to budget items and management practices that it believes are inconsistent with sound management objectives otherwise utilized in the industry for the operation of water systems similar to the Water Facilities. The Parties agree that the calculation of the Operating Deficit-Water shall exclude any such disputed items. Failing Agreement, the Parties shall submit the disputed matter to the Third-Party Engineer and the Developers shall pay to the Authority such amounts as are required by the disputed preliminary Operating Budget until such time, if any, as the Third-Party Engineer may rule otherwise.

e. The Developer shall have the right, upon reasonable prior notice, to inspect the books and records and all supporting detail with respect to the operation of the Water Facilities. Developer may also order an audit of same, at its

expense. However, if the audit determines that items have been included in the calculation of Operating Deficit-Water that should not have been included, under either the terms of this Agreement or generally accepted accounting principles, then the Authority shall promptly reimburse Developers for the cost of the audit.

H. TERMINATION OF OBLIGATIONS/ASSIGNMENT

Upon dedication by Developer of all its/their interest in the Water Facilities as described in this Agreement, and the acceptance of same by the Authority, and the completion by Developers of all punch list items and the delivery by the Developers of the necessary maintenance bond, Developers shall thereafter have no further obligations hereunder with respect to the construction of same other than those set forth in the Water Facilities Escrow Agreement referenced herein. Developers shall not be liable for any claims, demands, obligations, or liabilities with respect to the ownership, operation, maintenance, or control of the Water Facilities incurred after the date of such dedication and acceptance. The Authority shall indemnify, defend, and hold harmless the Developers, its/their affiliates, successors, assigns, respective employees, officers, and agents from and against any such claims, demands, obligations, or liabilities. This indemnity agreement shall include the payment of attorneys' fees of counsel for the Developers chosen by the Developers as well as all reasonable costs, expenses, and other fees related to or incurred by Developers in addressing any such claims, demands, obligations, or

liabilities. The indemnification obligations under this section shall not be limited in any way by any limitation on the amount or type of damages.

I. INDEMNIFICATION OF AUTHORITY/TOWNSHIP

Developers shall indemnify, defend, and hold harmless the Authority and Township from any loss, cost, liability, damage, or injury suffered or incurred due to occurrences arising out of the conduct of Developers prior to the Authority's acceptance of the Water Facilities. Without limiting the foregoing, the Authority and/or Township shall have no liability or obligation for disbursement of, management of, or account for the construction or other costs relating to performance of this Agreement by Developers, including without limitation, payment of subcontractors and materialmen. Developers shall indemnify, defend, and hold harmless the Authority and Township against any such liability or claims. This indemnity agreement shall include the payment of attorneys' fees chosen by the Developers as well as all reasonable costs, expenses, and other fees related to or incurred by Developers in addressing any such claims, demands, obligations, or liabilities. The indemnification obligations under this section shall not be limited in any way by any limitation on the amount or type of damages.

ARTICLE III - NOTICES

All notices or other communications required or permitted hereunder shall be in writing and shall be given by any nationally recognized overnight delivery service

or by hand delivery, in either case with proof of delivery, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee will have designated by written notice sent in accordance herewith. Unless changed in accordance with the preceding sentence, the addresses for notices are as set forth in the first paragraph of this Agreement'

Notices given by overnight delivery service shall be deemed received and effective on the first business day following such dispatch and notices given by hand delivery shall be deemed given at the time and on the date of delivery unless received after 4:00 p.m. (Eastern Time) on a business day, in which case the notice shall be deemed given on the next business day.

ARTICLE IV - MISCELLANEOUS

1. No Waiver. No waiver of any default by any party shall be implied from any omission by the other party hereto to take any action in respect to such default.

2. No Relation of Principal and Agent. Nothing contained in this Agreement, nor any act of the Parties shall be deemed and construed by any party or by any third person to create the relationship of principal and agent, partnership, or joint venture, or of any association between the Parties. Nor shall anything contained

in this Agreement, or any act of the Parties, be construed to render any of the Parties liable for the debts or obligations of the other, except to the extent expressly set forth in this Agreement,

3. Captions. The captions of the sections and paragraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretations and construction.

4. Governing Law. This Agreement shall be construed, interpreted, and implied in accordance with the laws of the Commonwealth of Pennsylvania.

5. Integration; Amendment. This agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and may not be varied by any prior or contemporaneous covenant, representation, warranty, or agreement relating thereto. This Agreement may not be altered, modified, amended, renewed, extended, or terminated unless by an instrument in writing duly executed by the Parties then bound by the terms of this Agreement.

6. Counterparts. Several copies of this Agreement shall be signed, and this Agreement shall be binding even if all counterparts are not signed by all Parties, so long as each party has executed at least one (1) counterpart and any counterpart or combination of counterparts signed by all the Parties shall be deemed an original.

-SIGNATURE PAGES FOLLOW-

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

UPPER MOUNT BETHEL TOWNSHIP

By:

Name:

Title:

UPPER MOUNT BETHEL TOWNSHIP
MUNICIPAL AUTHORITY

By:

Name:

Title:

BANGOR AREA COMMERCIAL AND
INDUSTRIAL DEVELOPMENT
AUTHORITY

By:

Name:

Title:

RIVER POINTE LOGISTICS CENTER,
LLC.

By:

Name:

Title:

RPL EAST, LLC

By:

Name:

Title:

NEW DEMI ROAD, LLC

By:

Name:

Title:

EXHIBIT "A"

MASTER SITE SKETCH PLAN

