

**BUCKS COUNTY WATER AND SEWER AUTHORITY**

**RESERVATION OF CAPACITY AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the **BUCKS COUNTY WATER AND SEWER AUTHORITY**, a Pennsylvania municipal authority maintaining a principal place of business at 1275 Almshouse Road, Warrington, PA 18976 (hereinafter referred to as “Authority”) and \_\_\_\_\_, a limited liability company maintaining a principal place of business at \_\_\_\_\_, (herein referred to as “Applicant”).

**WITNESSETH:**

WHEREAS, the Authority provides sanitary sewer service to portions of Bucks and Montgomery Counties, including \_\_\_\_\_ (Township/Borough) located in \_\_\_\_\_ County, Pennsylvania;

WHEREAS, Applicant is the legal or equitable owner of a certain parcel of real property identified as \_\_\_\_\_ County Tax Parcel \_\_\_\_\_, located in \_\_\_\_\_ (Township/Borough), \_\_\_\_\_ County, Pennsylvania (the “Property”), wherein the Applicant desires to construct \_\_\_\_\_ (the “Project”);

WHEREAS, the Applicant desires to acquire from the Authority \_\_\_\_ (#) EDUs of sanitary sewer capacity in order to provide adequate sanitary sewer service for the Project;

WHEREAS, the Applicant has secured preliminary land development and/or preliminary subdivision approval for the Project;

WHEREAS, the Authority presently has available capacity to serve the Project, but the available capacity is limited;

WHEREAS, the Authority will agree to provide the Applicant with \_\_\_\_ (#) EDUs of sanitary sewer capacity, pending receipt of all local and state permits and approvals; and

WHEREAS, Applicant desires to reserve \_\_\_\_\_ (#) EDUs of capacity for utilization at the Property, and the Authority is willing to reserve that capacity for the Applicant, all of which shall be in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, intending to be bound and for other good and valuable consideration, the parties hereto agree as follows:

1. Recitals. The aforementioned recitals noted in this Agreement are deemed part of this Agreement and are incorporated into the terms and conditions of this Agreement.

2. Reservation of Capacity. The Authority agrees to reserve and make available to the Applicant \_\_\_\_ (#) EDUs of sanitary sewer capacity to be utilized for the Property located at \_\_\_\_\_, \_\_\_\_\_ (Township/Borough), \_\_\_\_\_ County, Pennsylvania. The capacity being reserved pursuant to this Agreement may not be used at any other location and/or for any other purpose other than for the purposes set forth in this Agreement. The treatment capacity for the project will be at the \_\_\_\_\_ Treatment Plant (“WWTP”), owned and operated by \_\_\_\_\_.

3. Tapping Fees. For the purposes of this Agreement, an EDU is measured at 250 gallons per day of effluent. The parties acknowledge that the tapping fee for an EDU is fixed at \_\_\_\_\_ (\$0.00) Dollars per EDU for a total of \_\_\_\_\_ (\$0.00) Dollars for the Project.

4. Reservation of Capacity Fee. The Applicant agrees to pay to the Authority the amount of \_\_\_\_\_ (\$0.00) Dollars to reserve the EDUs for the Property, as set forth in Paragraph 2 of this Agreement. Upon execution of both a Sewer Service Agreement and Sewer Facilities Escrow Agreement, this charge will be credited to the EDU costs imposed by the Authority upon the Applicant for the \_\_\_\_\_ (#) EDUs of sanitary sewer capacity. If the Applicant,

in the future, desires to acquire additional EDUs of sewer capacity for this Project, the availability of same shall be dependent upon whether or not additional EDUs are available and whether or not EDUs were purchased for other projects, thus not affording any additional EDUs for this Project. The payment noted in this paragraph shall be made contemporaneously with the execution of this Agreement.

5. Time Limitation. The \_\_\_\_\_ (#) EDUs of sanitary sewer capacity, referred to in Paragraph 2, shall be considered reserved by the Authority upon receipt of payment and execution of this Agreement by the Authority in accordance with the terms set forth herein. However, Applicant must execute a Sewer Service Agreement and fund the Sewer Facilities Escrow Agreement within twenty-four (24) months of written notice from the Authority that it is able to accept flows from the Property for treatment at the WWTP owned by \_\_\_\_\_. If the Applicant fails to enter a Sewer Service Agreement and execute and fund the Sewer Facilities Escrow Agreement within that twenty-four (24) month period, then this Agreement shall terminate and the Applicant shall immediately forfeit its reservation of EDUs. Upon the forfeiture of such reservation of EDUs, the Authority shall refund the sum of \_\_\_\_\_ (\$0.00) Dollars to the Applicant, less any costs incurred by the Authority for legal, engineering and other expenses associated with this Agreement and the Project.

6. Debt Service. In addition to the payment for the EDUs, as noted in the preceding paragraph of this Agreement, contemporaneously with the effective date of this Agreement, the Applicant shall pay to the Authority the equivalent of two (2) years of quarterly debt service fees for the Property at the rate of Two Hundred Dollars (\$200.00) per year per EDU, or \_\_\_\_\_ (\$0.00) Dollars per year, for a total payment of \_\_\_\_\_ (\$0.00) Dollars, remitted in full to the Authority at the onset of the two (2) year period. The debt service payment of Two Hundred (\$200.00) Dollars per EDU shall continue until such time as the dwelling units

are connected to public sewer and become customers of the Authority, at which time the obligation to pay debt service fee shall end as to each dwelling unit that is connected to the public sewer and is a customer of the Authority. Debt Service Reserve Fees, paid in accordance with this paragraph, are nonrefundable and may not be applied against any debt service payments required by a Sewer Service Agreement.

7. Deferred Upfront Payment. The Authority will permit the Applicant to defer the upfront payment in full for the EDUs that are described in Paragraph 2 of this Agreement, provided that the Applicant complies with the provisions of the Bucks County Water and Sewer Authority Policy, which is attached hereto as Exhibit “A” and incorporated by reference. Specifically, the Applicant must:

a. Pay two (2) years of debt service at the current rate at the time of the execution of this Agreement, as noted in Paragraph 6;

b. Provide a letter to be held in escrow to be delivered to the Pennsylvania Department of Environmental Protection (“DEP”) explaining that the Applicant has decided not to proceed with the Project and no longer requires sanitary sewer service for the Project (the “nonallocation letter”);

c. Provide a letter from the Municipality, Township or Borough to be held in escrow, addressed to the DEP, withdrawing the allocation of any sanitary sewer service from the Project (the “unallocation letter”); and

d. Pay a fee equal to ten percent (10%) of the total EDU cost to be held in a noninterest-bearing escrow account held by the Authority to guarantee compliance with the requirements of this Agreement and the requirements of the Bucks County Water and Sewer Policy, noted herein. Copies of the nonallocation and unallocation letters are attached hereto as Exhibits “B” and “C,” respectively, and are incorporated by reference.

8. Return of Escrows. Funds held in escrow will be released to the Applicant as of the execution of a Sewer Service Agreement and the funding of the Sewer Service Facilities Escrow Agreement or two (2) years having lapsed from the date of the execution of this Agreement. At that time, the letters will be delivered to the municipality where the project is located and to the DEP withdrawing the allocation of capacity and withdrawing any planning module approval, and the allocation of capacity to the Property that the DEP may have approved. Failure to execute the Sewer Service and Sewer Facilities Escrow Agreements within the two (2) year period from the date of this Agreement will abrogate and/or nullify the Authority's requirement to make available the EDUs of capacity referenced in this Agreement and shall constitute a withdrawal of planning module approval, which will be accomplished by confirmation of the withdrawal by the Pennsylvania Department of Environmental Protection.

9. Approvals. The Applicant agrees to proceed expeditiously with the securing of any and all approvals necessary to develop the Project, which shall be accomplished at the sole cost and expense of the Applicant.

10. No Agency. The Applicant is not an agent of the Authority, nor is the Authority conducting a joint venture with the Applicant, and the Applicant will not represent to the contrary at any time.

11. Hold Harmless. The Applicant will indemnify the Authority and hold it harmless against all losses and expenses of every kind, including reasonable counsel fees and court costs arising from this Agreement or related to injury to persons and/or damage to property caused by the construction of the Project or facility, or injury to persons and damage to property arising from or related to any defects in the Property or facilities.

12. Miscellaneous. This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania and shall be binding upon the respective parties, their

successors, heirs and assigns. It is understood and agreed that this Agreement constitutes all of the terms and conditions that have been agreed upon by the parties and this Agreement may only be modified by a written document executed by both parties hereto. If any disputes should arise pursuant to the terms and conditions of this Agreement, it is understood and agreed that jurisdiction and venue for any such disputes shall be the Court of Common Pleas of Bucks County, Pennsylvania. To the extent that a public body is executing this Agreement, it is understood and agreed that the Agreement was approved by the governing body of the governmental entity at a public meeting, which meeting was advertised in accordance with the requirements of applicable state law.

13. Entire Agreement. This Agreement contains the entire agreement of the Authority and Applicant. Any change to this Agreement shall be effective only if it is written and executed by the Authority and the Applicant.

14. Effective Date. The date of this Agreement is the date on which it is executed by the last party to do so.

**IN WITNESS WHEREOF**, the Authority and the Applicant have caused this Agreement to be executed by their appropriate representatives, all of whom have been duly authorized to do so, on the date set opposite their respective names.

**BUCKS COUNTY WATER AND  
SEWER AUTHORITY**

Dated: \_\_\_\_\_

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

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

**APPLICANT**

Dated: \_\_\_\_\_

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

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

**EXHIBIT "A" BUCKS COUNTY WATER AND SEWER AUTHORITY  
SALE OF EQUIVALENT DWELLING UNITS (EDUs) OF SEWER CAPACITY POLICY**

**EXHIBIT "B"**

**LETTER FROM APPLICANT TO DEP**

**EXHIBIT “C”**  
**CONSENT OF MUNICIPALITY TO WITHDRAW PLANNING MODULE APPROVAL**  
**AND CANCELLATION OF ALLOCATION OF EDUs**