

**FIRST AMENDMENT TO MUNICIPAL WATER AND WASTEWATER
UTILITY SYSTEM CONCESSION AND LEASE AGREEMENT**

This **FIRST AMENDMENT TO MUNICIPAL WATER AND WASTEWATER UTILITY SYSTEM CONCESSION AND LEASE AGREEMENT** (this "Amendment"), made as of the 29th day of September, 2014 between by and between the **Middletown Borough Authority**, a body corporate and politic (the "Authority"), duly organized under the Pennsylvania Municipality Authorities Act, Act of June 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.* (the "Municipal Authorities Act") and incorporated by appropriate legal action of the Borough, and **Middletown Water Joint Venture LLC**, a Delaware Limited Liability Company (the "Concessionaire"). This Amendment is subject to a joinder, for certain purposes, by the **Borough of Middletown, Dauphin County Pennsylvania** (the "Borough"), a duly organized and validly existing political subdivision of the Commonwealth of Pennsylvania under the Borough Code, Act of Apr. 18, 2014, P.L. 432, 8 Pa.C.S. §101 *et seq.* (the "Borough Code") as more fully described in Article 20 of that certain Municipal Water and Wastewater Utility System Concession and Lease Agreement between the Authority and the Concessionaire bearing even date herewith (the "Agreement").

W I T N E S S E T H:

WHEREAS:

- (a) The Authority and the Concessionaire have entered into the Agreement effective the date hereof; and
- (b) The Authority and the Concessionaire, with the consent and joinder of the Borough, wish to amend further the Agreement as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. All capitalized terms used in this Amendment and not otherwise defined shall have the respective meanings set forth in the Agreement.

2. The Reference to "Exhibit D – Guarantee Agreement" in the Agreement is deleted and replaced throughout with the notation "[Reserved]."

3. Section 1.1 is amended by deleting the references to the following defined terms: "Borough Payment Reserve Fund," "Borough Payment Reserve Requirement," and "Guarantee Agreement."

4. Section 1.1 of the Agreement is further amended by amending restating the definition of "Annual Borough Payment" to read as follows:

"Annual Borough Payment" means (i) for the Reporting Year commencing on January 1, 2016 and each of the next four (4) Reporting Years, an amount of money equal to \$725,000 in 2016 dollars; (ii) for the Reporting Year commencing on January 1, 2021 and each of the next four (4) Reporting Years, an amount of money equal to \$630,000 in 2016 dollars; (iii) for each Reporting Year after the 2025 Reporting Year (excluding the final Reporting Year), an amount of money

equal to \$590,000 in 2016 dollars; and (iv) for the final Reporting Year, an amount of money equal to \$590,000 in 2016 dollars, multiplied by a fraction the numerator of which is the number of days in the final Reporting Year and the denominator of which is 365. All of the foregoing dollar amounts expressed in 2016 dollars shall be Adjusted for Inflation from January 1, 2016 to December 31 of the applicable Reporting Year of payment.

5. Section 1.1 of the Agreement is further amended by amending and restating the definition of "Escrow Agent" to read as follows:

"Escrow Agent" means Pennsylvania School District Liquid Asset Fund, a local government investment pool.

6. Section 1.1 of the Agreement is further amended by amending restating the definition of "Index" to read as follows:

"Index" means the "Consumer Price Index –for all Urban Consumers (CPI-U), Northeast Region" – (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics (the "CPI-U Index").

7. Section 2.1 of the Agreement is amended by replacing the blank spaces therein as follows: "Forty Three Million United States Dollars (\$43,000,000.00)".

8. Section 2.4, subparagraphs (d) and (e) of the Agreement are amended and restated to read as follows:

(d) *Termination.* This Agreement may be terminated at any time prior to the Closing:

(i) in the event the Authorizing Ordinance is vetoed, at 5:00 pm (Eastern Time) on October 22, 2014 unless the Escrow Agent receives a prior notice that Borough Council, by appropriate action, has overridden said veto;

(ii) by mutual consent of the Parties in a written instrument;

(iii) by either Party, upon notice to the other Party, if (a) any Governmental Authority of competent jurisdiction (other than the Borough) shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction, and such order, decree, ruling or other action has become final and nonappealable, or (b) any action is taken, or any law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction (other than the Borough) that made consummation of the Transaction illegal; *provided, however*, that the right to terminate this Agreement under this Section 2.4(d)(ii) shall not be available to the Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, such action;

(iv) by the Concessionaire, upon notice to the Authority, if any condition set forth in Section 2.4(a) or (c) is not satisfied at the Time of

Closing; *provided, however*, that the Concessionaire shall not have the right to terminate this Agreement under this Section 2.4(d)(iii) if the Concessionaire's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied;

(v) by the Authority, upon notice to the Concessionaire, if any condition set forth in Section 2.4(b) or (c) is not satisfied at the Time of Closing; *provided, however*, that the Authority shall not have the right to terminate this Agreement under this Section 2.4(d)(iv) if the Authority's or the Borough's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or

(vi) by either Party, if Closing has not occurred by December 31, 2015.

(e) *Effect of Termination.* In the event of termination of this Agreement as provided in Section 2.4(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of either Party, the Borough, or their respective Representatives, except as set forth in Section 2.3(b), this Section 2.4(e), Article 12, Article 19 and Article 20. In the event that the Concessionaire terminates this Agreement pursuant to Section 2.4(d)(iv), as a result of the failure of the Authority or the Borough to satisfy any condition set forth in Section 2.4(a) of this Agreement, the Authority will compensate the Concessionaire for up to \$250,000 of reasonable and documented out-of-pocket costs incurred by the Concessionaire in connection with the transaction contemplated by this Agreement. In the event of termination pursuant to Section 2.4(d)(i), (ii), (iii) or (iv) or Section 2.5(i), the Cash Deposit and all investment earnings accrued thereon shall be promptly paid to the Concessionaire or the Closing LOC shall be promptly returned undrawn to the Concessionaire marked canceled, as applicable.

5. Section 2.5(g) of the Agreement is amended by replacing the blank spaces therein with the following: "on or about May 19, 2014" and changing "Concessionaire" to "United Water Inc."

6. Section 3.3(a) of the Agreement is amended by adding the following as the last sentence thereof: "The initial Operator shall be United Water Environmental Services Inc."

7. With respect to Section 3.6, subparagraph 3.6(b) is deleted and the reference to a subparagraph (a) is removed.

8. The language in Section 16.6 is deleted in its entirety and replaced with the notation "[Reserved]."

7. The first sentence of Section 20.1 of the Agreement is amended and restated to read as follows:

(a) **Limited Joinder by Borough.** By countersigning this Agreement, and any amendment hereto made pursuant to Section 21.3, the Borough hereby joins the foregoing Agreement for the limited purpose of agreeing to be bound by the provisions of Sections 2.4(a)(vi), 2.4(a)(vii), 2.4(a)(viii), 2.5(d), 2.5(e)(i) and (ii), 2.5(h), 2.5(j), 2.5(m), 3.2(c)(ii), 3.2(c)(iii), 3.5(b), 3.15(b), 3.15(c), 3.20(a), 3.20(b), 4.2, 7.2, 9.1(l), 10.2, and 17.2 and this Article 20, and any amendment as aforesaid, and in connection with said limited joinder, makes the following additional representations and warranties to Concessionaire, as a material inducement to Concessionaire to enter into this Agreement, with the understanding that Concessionaire will be relying thereon in consummating the Transactions contemplated hereby:

8. Section 21.1 of the Agreement is amended and restated to read as follows:

21.1 Notice. All notices, other communications and approvals required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be addressed as follows:

(1) in the case of the Authority and the Borough:

Middletown Borough Authority
60 West Emaus Street
Middletown, PA
Attention: Susan Layton, Secretary
with a copy to:

McNees Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, Pennsylvania 17108-1166
Attention: Michael G. Jarman
Phone: 717-237-5232
Fax: 717- 260-1705
mjarman@mwn.com

(2) in the case of the Concessionaire:

Kohlberg Kravis Roberts & Co. L.P.
9 West 57th Street
Suite 4200
New York, New York 10019
Attention: Brandon Freiman +1 (403) 775-9245


With a copy to:
Middletown Water Joint Venture LLC
165 Sagamore Road
Millburn, NJ 07041
Attention: Dan Sugarman +1 (201) 762-5298

or such other persons or addresses as a Party may from time to time designate by notice to the other Party. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by United States registered or certified mail.

9. In all other respects, the Agreement shall remain unchanged.

IN WITNESS WHEREOF, each of the parties hereto and to the Agreement has executed this Amendment as of the day and year first above written.

MIDDLETOWN BOROUGH AUTHORITY

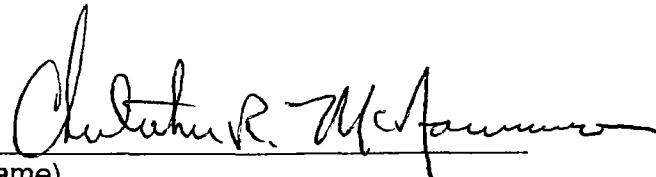
By: 
John L. Patten, Chairman

MIDDLETOWN WATER JOINT VENTURE LLC

By: _____
(Name)
(Title)

The Borough of Middletown, Pennsylvania hereby executes a limited joinder to the foregoing Amendment for the purposes more fully specified in Article 20 of the Agreement, as amended hereby.

BOROUGH OF MIDDLETOWN, PENNSYLVANIA

By: 
(Name)
(Title)

IN WITNESS WHEREOF, each of the parties hereto and to the Agreement has executed this Amendment as of the day and year first above written.

MIDDLETOWN BOROUGH AUTHORITY

By: _____
John L. Patten, Chairman

MIDDLETOWN WATER JOINT VENTURE LLC

By: BR
(Name) Brandon Freiman
(Title) Vice President

The Borough of Middletown, Pennsylvania hereby executes a limited joinder to the foregoing Amendment for the purposes more fully specified in Article 20 of the Agreement, as amended hereby.

BOROUGH OF MIDDLETOWN, PENNSYLVANIA

By: _____
(Name)
(Title)