

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

This **THIRD AMENDMENT TO MUNICIPAL WATER AND WASTEWATER UTILITY SYSTEM CONCESSION AND LEASE AGREEMENT** (this "Amendment"), made as of the 18th day of December, 2014, 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 the Agreement (as defined below)

W I T N E S S E T H:

WHEREAS:

- (a) The Authority and the Concessionaire have entered into that certain Municipal Water and Wastewater Utility System Concession and Lease Agreement between the Authority and the Concessionaire effective September 30, 2014, as amended by the First Amendment thereto, dated as of September 30, 2014, and the Second Amendment thereto, dated as of October 31, 2014 (the "Agreement"); 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. RESERVED.
- 3. Notwithstanding anything in the Agreement to the contrary, the Concessionaire agrees that the Authority and the Borough may record documentary evidences of the Dissolution Transfer in the Office of Recorder of Deeds of Dauphin County, Pennsylvania, at any time after Closing provided fifteen (15) days' prior written notice is given to the Concessionaire.
- 4. The definition of "Collective Bargaining Agreement" in Section 1.1 of the Agreement is amended and restated as: "'Collective Bargaining Agreement' means the collective bargaining agreement between the Borough and the Teamsters Local Union No.

776 effective January 1, 2009, as attached hereto as Exhibit E, or any successor agreement thereto entered into by and between the Concessionaire or Operator and Teamsters Union Local No. 776."

5. The definition of "Escrow Agent" in Section 1.1 of the Agreement is amended and restated as: "Escrow Agent" means a party mutually agreed by the Authority and Concessionaire; provided, however, that with respect to the Capex Fund, Escrow Agent means a bank, trust company or national banking association selected by the Authority to hold the Capex Fund under the terms of the Capex Fund Escrow Agreement provided the Concessionaire during the bid process."

6. The definition of "Permitted Encumbrances" in Section 1.1 of the Agreement is amended by deleting: "and (xii) any amendment, extension, renewal or replacement of any of the foregoing to the extent effected in accordance with the terms of the Agreement," and replacing it with: ", (xii) any other Encumbrances shown on the Title Insurance Policy issued by First American Title Insurance Company to the Concessionaire at the Closing, and (xiii) any amendment, extension, renewal or replacement of any of the foregoing to the extent effected in accordance with the terms of the Agreement."

7. RESERVED.

8. Section 2.5(e) of the Agreement is amended by adding a new paragraph (iv) as follows:

"(iv) The Borough and the Authority will consent to, and execute such applications, documentation and requests, as necessary or required by DEP to modify any NPDES permit to allow for the operation of the System after the Closing by the Concessionaire or the Operator."

9. The second sentence of Section 2.5(j)(i) of the Agreement is amended and restated as: "On or before December 17, 2014, the Concessionaire shall designate any Terminable System Contracts that it wishes to assume as Terminable System Contracts to be assigned to the Concessionaire by the Authority or the Borough, as applicable, on the Closing Date."

10. The first sentence of Section 2.5(k)(ii) is deleted in its entirety and the following is substituted therefor: "Prior to the Time of Closing, either the Concessionaire or the Operator shall offer employment to each of the non-Union Employees whose employment primarily relates to the operation of the System and who are active and in good standing."

11. The following is added as new subsection (d) to Section 3.3:

"(d) *Operations Committee*. The Concessionaire and the Authority (or its successor) shall establish an Operations Committee for purposes of promoting communication, discussing issues related to the System as they arise, receiving and reviewing reports, and conferring generally in the best interests of the System. The Operations Committee shall be comprised of two representatives selected by each of the Operator, the Concessionaire and the Authority (or its successor) and shall

meet from time to time as appropriate. During the first year of the Term of the Concession Agreement, the Operations Committee shall meet monthly.”

12. Part B, Section 5.3 of the Operating Standards is deleted, and Section 5.3 is marked “[RESERVED]” in the Agreement as well as its table of contents.

13. Section 20.1(a) is amended to include Sections 2.1, 2.5(e)(iv), 3.2(c)(ii)(G), 3.21(a), and 9.1(d) in the list of section references in the first sentence of Section 20.1(a); *provided that* the Borough’s joinder to Section 2.1 is solely for the purpose of leasing to the Concessionaire hereunder the portions of the System owned or leased by the Borough.

14. Section 20.1 is amended by adding a new subsection (g) as follows:

“(g) If the Authority is not terminated before April 1, 2015, in conformity with the Municipal Authorities Act and other applicable Law, then, in addition to the joinder of the Borough set forth in Section 20.1(a) above, the Borough shall be hereby joined to this Agreement as of such date for the purpose of agreeing to be bound by, and shall be jointly and severally liable for, each of the obligations of the Authority (i) to perform and complete the Uncompleted Work pursuant to Section 3.2(c)(ii)(G) and (ii) to pay funds, indemnities, compensation, damages, or other amounts to the Concessionaire as set forth in the Agreement, including without limitation, such obligations set forth in Article 12 (Indemnification), Article 14 (Adverse Action), Article 15 (Delay Events; Concession Compensation); Section 16.2(b) (Remedies of Concessionaire Upon Authority Default); the final proviso of Section 3.7(a), Section 3.9 (Withholding Payments), Section 5.1 (Authority Directives), Section 6.3(b) (Modified Operating Standards), and Section 7.3 (PUC Regulation).”

15. Schedule 4 of the Agreement is amended as set forth on Exhibit A.

16. Schedule 2B of the Agreement is amended to include the Water Service Agreement, dated August 18, 2014, but effective as of January 1, 2015, between the Middletown Borough Authority and the Borough of Middletown, parties of the first part, and the Borough of Royalton and the Royalton Borough Authority, parties of the second part.”

17. Schedule 7 of the Agreement is amended and restated in full as set forth on the attached Exhibit B.

18. RESERVED.

19. RESERVED.

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

[Signatures to be provided on following page.]

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

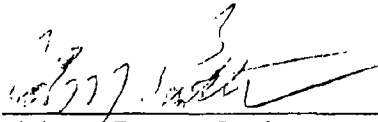
By: *B. Freiman*
(Name) Brandon Freiman
(Title) Vice President

BOROUGH OF MIDDLETOWN, PENNSYLVANIA

By: _____

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)

BOROUGH OF MIDDLETOWN, PENNSYLVANIA

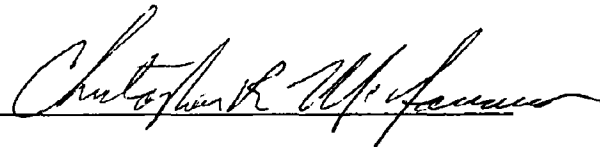
By: 

Exhibit A
(Certain Amendments to the Operating Standards)

1. In the fourth line of Part A, Section 6.15, the phrase "used in the WTP and pumped to" is hereby deleted, and the word "entering" is inserted in lieu thereof.
2. In Part B, Section 3.2.3, the reference to "Performance Standards in Table B-2" is hereby modified to refer to the "Performance Standards in Table B-1."
3. The fourth and fifth sentences of Part B, Section 3.3 are hereby deleted, and the following is inserted in lieu thereof: "Sample sampling and monitoring requirements for the wet-end treatment processes are summarized in Exhibit J. Sample sampling and monitoring requirements related to the sludge management process are summarized in Exhibit K."
4. The reference to "2 hours" in the first line of the last paragraph of Part B, Section 10.0, is hereby revised to refer to a period of "12 hours."
5. Exhibit J to the Operating Standards is hereby deleted in its entirety, and Exhibit J attached hereto is inserted in lieu thereof.