

WASTEWATER CONVEYANCE AGREEMENT

agreed 9/12/3

THIS AGREEMENT is made on the _____ day of _____, 2003, among PENNSYLVANIA-AMERICAN WATER COMPANY (“PAWC”), SADBURY TOWNSHIP, Chester County, Pennsylvania (“Township”), ALL COUNTY PARTNERSHIP AND CALNSHIRE ESTATES, LLC (together sometimes hereinafter referred to as the “Developers”).

WHEREAS, PAWC is a public utility corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, and owns and operates a wastewater treatment plant for service providing public wastewater service to various municipalities in Chester County, Pennsylvania; and

WHEREAS, the Township is a municipal corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, and provides wastewater collection service to residential, commercial and industrial users within the Township, connecting its collection system to PAWC’s wastewater treatment plant so that wastewater and industrial wastes discharged by said users may be received in said plant for treatment and disposal; and

WHEREAS, All County Partnership and Calnshire Estates, LLC have each undergone a land development plan approval proceeding in West Caln Township, Chester County, Pennsylvania for developments to be located there (together hereinafter sometimes referred to as the “Developments”) which Developments are intended to be served with public wastewater service by PAWC; and

WHEREAS, PAWC’s predecessor, the City of Coatesville Authority (“CCA”), and the Township entered into a Sewage Treatment Agreement dated July 7, 1997 (“Sewage Treatment Agreement”), which Sewage Treatment Agreement has been assigned to PAWC upon its purchase of substantially all of the assets of CCA, and which Sewage Treatment Agreement provides, among other things, that should PAWC desire to convey wastewater from points outside of the Township into and through the Township’s wastewater collection system to a point of connection to the existing PAWC wastewater collection system, the Township and PAWC will enter into a separate agreement setting forth the terms and conditions governing such conveyance; and

WHEREAS, in order to most expeditiously provide wastewater service to the Developments, PAWC will construct a force main carrying flows from the Developments which will connect to the Township wastewater collection system and convey waste from the Developments through the Township system to a point of reconnection to the PAWC collection and treatment system; and

WHEREAS, the Township and PAWC desire to set forth the terms and conditions herein governing wastewater conveyance through the Township to serve the Developments.

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

ARTICLE I - DEFINITIONS.

The terms defined in this Article, wherever used or referred to in this Agreement, shall have the following respective meanings unless a difference clearly appears from the context.

Average Daily Flow - Average number of gallons per day of wastewater determined by taking the total quantity of flow delivered to a point during a calendar year, and dividing by three hundred sixty five (365) days.

Capacity Fee - The onetime Township charge for conveyance into and through the Township's wastewater collection system to a point of connection to the existing PAWC wastewater collection system. The capacity fee charged by the Township is \$1,141.15 per equivalent dwelling unit (EDU).

Conveyance - For purposes of this Agreement, a term defined as the transportation of wastes in and through Township owned collection lines and other wastewater facilities from the Point of Connection to the Treatment Plant.

Domestic Waste – Customary wastes from residential dwellings which include kitchens, water closets, lavatories and laundries, but excluding industrial waste, hazardous waste and waste determined to be qualitatively inimical to the safe and efficient operation of the sewage treatment plant or wastewater conveyance facilities.

Industrial Waste - The liquid waste or liquid borne waste resulting from the processing employed by an industrial user, whether treated or untreated, and discharged into the wastewater facilities and Treatment Plant.

Point of Connection - Point at which PAWC connects to the Township system to convey wastewater from the Developments through Sadsbury's system for treatment or disposal, this point being Sanitary Sewer Manhole Number 4 (SSMH No. 4) at station 9+00 on Sheet 2 of 13 as shown on the plans prepared by Commonwealth Engineers, Inc. titled "Sanitary Sewer Forcemain Plan for Lawrence Development, Calnshire West & Sandy Hill Subdivisions," dated 12-03-2001, last revised 06-10-03.

Reimbursement Fee – The one time charge for conveyance into and through the Township's

wastewater collection system to a point of connection to the existing PAWC wastewater collection system for the purpose of reimbursing the Sadsbury Sewer Corporation (SSC) for a portion of SSC's cost for the construction of the Township's wastewater collection system,

pursuant to a certain Agreement dated July 7, 1997, by and between the Township and SSC. The reimbursement fee is \$1,178.00 per equivalent dwelling unit (EDU).

Sanitary Sewage (Wastewater) - All water-carried domestic waste from residences, offices, hotels, stores, restaurants, commercial, industrial and institutional establishments and similar users within the Township.

Sewer Use Charge – A charge reflecting the share of conveyance cost of jointly used sewage facilities in the Township attributable to waste flow from the Developments, as determined in accordance with the formula set forth in Article VI, Section 1 of this Conveyance Agreement, including all costs incident to the operation of wastewater collection lines, pumping stations and other wastewater facilities and appurtenances which are jointly used by the parties for the conveyance of wastewater from and by the Township as well as the conveyance of wastewater through the Township from the Developments. Specifically, such costs shall include the cost of all maintenance, labor, repairs as may be necessary, all utilities, taxes, engineering, legal and superintendence expenses and casualty and other insurance premiums actually paid and documented.

Treatment Plant - Existing wastewater treatment plant and facilities owned and operated by PAWC, together with any additions, modifications and/or improvements thereto.

ARTICLE II - STATEMENT OF INTENT

The parties hereto agree that it is the intent of this Agreement to provide for the conveyance of domestic waste from a wastewater conveyance system operated by PAWC, to serve the Developments, through a portion of the Township's wastewater system to the PAWC wastewater system in Pomeroy, and from there to the Treatment Plant for treatment and disposal of those wastes, in common with other wastes flowing through the PAWC system, and to provide for payment to the Township of Capacity Fees, Reimbursement Fees and Sewer Use Charges for the jointly used conveyance facilities of the Township. It is the intention of the parties that the discharge of any waste emanating from outside the Developments in West Caln Township through the Township's wastewater system will be the subject of a separate agreement between PAWC and the Township. It is further the intention of the parties that additional flow to be discharged by PAWC to the Township's system beyond the maximum average daily flow provided for in this Conveyance Agreement will likewise be the subject of a separate agreement.

ARTICLE III - TERMS OF AGREEMENT

Section 1 - This Agreement shall be effective as of the date specified in Article VII, Section 5 of this Conveyance Agreement and shall continue for an indefinite period from said date, provided, however, that the Sewage Treatment Agreement now existing between the Township and PAWC shall affect this Agreement in that, should PAWC terminate the Sewage Treatment Agreement, this Conveyance Agreement between PAWC and the Township shall be subject to renegotiation at the time of such termination, but the Township shall have no obligation to continue this Conveyance Agreement. Should the Township terminate the existing Sewage Treatment Agreement, this Conveyance Agreement between PAWC and the Township shall continue in full force and effect.

Section 2 - The Township hereby specifically grants to PAWC the right to connect a sanitary sewer line emanating from West Caln Township to the existing Township system at a Point of Connection approved by the Township and to discharge an Average Daily Flow of domestic waste of 110,000 gallons at the Point of Connection, and to convey wastewater through the Township wastewater system in accordance with plans prepared by Commonwealth Engineers, Inc. and dated 12-03-2001, last revised 06-10-03, approved by the Township and attached hereto as Exhibit "A" and incorporated herein by reference (the "Plans"). The Township's agreement to permit PAWC's conveyance of wastewater through the Township shall be limited under this Agreement to flows emanating from the Developments and shall be subject to the Developers' agreement to pay Capacity Fees, Reimbursement Fees and Sewer Use Charges as set forth and described in Article VI, Sections 1 and 2 of this Agreement, to the Township to provide for the conveyance and operation and maintenance of the jointly used wastewater facilities as provided herein. Wastewater flows conveyed through the Township system from the Developments, shall be deducted from, and not included in, metered flow used for PAWC's billing of the Township pursuant to the Sewage Treatment Agreement. Such PAWC flows conveyed through the Township shall have no impact upon the Township's right or limitation on the Township's right to discharge wastewater as provided in the parties' Sewage Treatment Agreement. A flow meter shall be installed as shown on the Plans at the pump station, which shall be used for the purpose of determining the quantity of wastewater conveyed from PAWC's system through the Township wastewater system. Maintenance of such a meter and responsibility for determining the flows registered on the meter shall be as provided hereinafter.

It is hereby agreed that once the Developments' sewer line is connected to the Township system, no flow emanating from the Developments shall thereafter be disconnected from and then diverted by PAWC from the Point of Connection unless mutually agreed upon in writing, subject, however, to the terms of Section 1 hereof.

Section 4 - Subject to the terms of the Sewage Treatment Agreement, if the Township, at any future time, shall transfer title to its wastewater system to any municipality or authority

organized and existing under the Pennsylvania Municipality Authorities Act, by deed or otherwise, it shall assign all its rights and interests in and under this Agreement to its assignee and the assignee shall be subject to all obligations and entitled to receive all the rights and benefits of this Agreement. In the event of transfer of title of the Township system to a private, non-municipal party, in addition to the requirements stated above, such transfer shall be subject to the express written approval of PAWC. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of any party to this Agreement.

Section 5 - PAWC and the Township have adopted rules and regulations for making of connections and use of their respective wastewater systems in conformity with the parties' Sewage Treatment Agreement. PAWC agrees that such rules and regulations shall apply to the wastewater connections contemplated in West Caln Township. PAWC also agrees to enforce the provisions of its rules and regulations at all necessary times, and PAWC agrees that the Township or its duly authorized representative shall have the right, at all times, to inspect sewage systems connected to the Township for conveyance and to, as otherwise legally permitted, compel the discontinuation of any connection which it finds to be in violation of this Agreement.

Section 6 - The parties hereto agree to comply with all applicable present and future Pennsylvania or federal laws, as well as any rules, regulations, permits, orders and requirements lawfully made by any governmental body having jurisdiction and all applicable grant agreements, unless the same are being contested in good faith by appropriate proceedings.

ARTICLE IV - CONSTRUCTION OF COLLECTION AND CONVEYANCE FACILITIES - INTERCONNECTION

Section 1 - The parties hereto understand and agree that it will be necessary for PAWC to design, lay out and cause to be constructed sanitary sewers within the PAWC certificated service territory in West Caln Township as well as in the Township, as shown on the Plans.

Section 2 - The sanitary sewer line from the Sadsbury Township/West Caln Township line through Sadsbury Township shall be constructed or caused to be constructed by PAWC in accordance with the Plans. This sanitary sewer line constructed from the Sadsbury Township/West Caln Township line to the Point of Connection shall be owned by PAWC and the remaining gravity sewer main will be owned by the Township. Prior to commencement of work within the Township, PAWC will obtain a grading permit from the Township for all such work to be performed. The construction of the gravity sewer main within Sadsbury Township shall be subject to the inspection of the Township Engineer to assure construction according to the Plans, and PAWC agrees to reimburse the Township the reasonable costs of such inspections. Said gravity sewer main shall be subject to a continuing offer of dedication to

Sadsbury Township. Prior to activation of the gravity sewer main within Sadsbury Township, PAWC shall submit to the Township the formal offer of dedication in a form acceptable to the Township Solicitor, for acceptance by Sadsbury Township.

Section 3 - At or before the commencement of actual sewage disposal service under this Conveyance Agreement, PAWC shall cause to have installed and thereafter at all times maintain the flow meter referred to in Section 2, Article III above. The expense of procurement, installation and maintenance thereof shall be borne by PAWC. Said meter shall employ a flow recorder using seven-day charts, shall be capable of recording electronically the instantaneous flow and daily flow totals to a seven day circular chart recorder/totalizer which the Township shall have access to.

A. The meter shall be inspected and calibrated and tested for accuracy on an annual basis by a person or entity competent in the inspection and testing of such devices. Reports of such inspections shall be mailed directly to the Township. The cost of such inspection and the cost of any repair or replacement shall be borne by PAWC. All repairs of meters of any type shall be accomplished within thirty (30) calendar days of receipt of the inspection company's report attesting to the meter's malfunction.

B. In the event of faulty meter registration or other malfunction resulting in missing flow records, an estimate of flows will be made for the purposes of determining volume of wastewater discharged. This estimate will be based on an evaluation of past flow records, bearing in mind conditions existing at the time of the estimate which would typically have an effect on flows, such estimate to be reviewed and agreed upon by the engineers for both PAWC and the Township.

C. Meter records and the meter installation shall be made available and accessible to the Township. The record of wastewater flow through recording meters operated and maintained by PAWC will be read by PAWC on or about the first days of January, April, July and October, showing the total sewage flows discharged during the previous three-month period.

Section 4 - Maximum flow rates at the Point of Connection shall not exceed 4.0 times the average daily flow rate at any time. Maximum flow rates equal to 4.0 times the average daily flow rate shall be limited to a duration of not more than 60 consecutive minutes.

ARTICLE V - MAINTENANCE, SAVE HARMLESS AGREEMENT, INSURANCE

Section 1 - PAWC and the Township agree, in regard to their respective collection systems, to operate continuously and keep and maintain the same at all times in first-class repair and order, and in good and efficient operating condition, and to meet the standards prescribed by the Pennsylvania Department of Environmental Protection or of any other governmental authority

having jurisdiction thereof.

Section 2 - The Township agrees to indemnify to the fullest extent permitted by law and save harmless PAWC against all losses, costs or damages on account of any injury to persons or property occurring in the performance of this Agreement because of the negligence of the Township, its servants, agents or employees, or resulting from the failure of the Treatment Plant and lines leading thereto to function properly because of such negligence. Nothing herein contained shall be construed to waive governmental immunity or limitation of liability otherwise provided by law.

Section 3 - PAWC agrees to indemnify to the fullest extent permitted by law and save harmless the Township against all losses, costs or damages on account of any injury to persons or property occurring in the performance of this Agreement because of the negligence of PAWC, its servants, agents or employees, or resulting from the failure of the Treatment Plant and lines leading thereto

to function properly because of such negligence. Nothing herein contained shall be construed to waive governmental immunity or limitation of liability otherwise provided by law.

Section 4 - The Developers, jointly and severally, agree to indemnify to the fullest extent permitted by law and save harmless PAWC and the Township against all losses, costs or damages on account of any injury to persons or property occurring in the performance of this Agreement because of the negligence of Developers, their servants, agents or employees. Nothing herein contained shall be construed to waive limitation of liability otherwise provided by law.

Section 5 - PAWC and the Township shall insure or cause to be insured their respective facilities (i.e., including but not limited to the Treatment Plant, capital additions and interceptors) in a responsible company or companies authorized and qualified to do business under the laws of the Commonwealth of Pennsylvania against loss or damage by fire and against such other risks in such amounts as customarily are carried upon, or with respect to, like property in Pennsylvania. Immediately after any loss or damage to either parties' facilities or any part thereof, the affected party will commence and duly prosecute the repair, replacement or reconstruction of the damaged or destroyed portion of its facilities, all according to the provisions as previously defined. Both parties will also maintain liability insurance against any loss or injury to third persons or property of third persons as a result of fire, explosion and other risk and casualty occurring to their respective facilities.

ARTICLE VI - CHARGES AND PAYMENTS.

Section 1 – Sewer Use Charge (Developers) - Upon execution of this Agreement, the Developers shall pay to the Township the sum of \$26,000.00, representing total Sewer Use Charges for the

cost of conveyance of wastewater from the Developments through the Township's wastewater system from the effective date of this Agreement through December 31, 2006. The amount of \$10,738.00 shall be paid by All County Partnership and the amount of \$15,262.00 shall be paid by Calnshire Estates, LLC.

Sewer Use Charge (PAWC) - For all quarters after December 31, 2006, the Township shall bill PAWC for a quarterly Sewer Use Charge for the cost of conveyance of wastewater from the Developments through the Township's wastewater system. Billings shall be delivered by the Township to PAWC on or about the twenty-fifth day of January, April, July and October of each year and shall be payable to the office of the Township by the twenty-fifth day of the month following delivery of bills. The quarterly bills shall be calculated by multiplying the annual Sewer Use Charge by the actual quarterly flow.

At the conclusion of each calendar year beginning December 31, 2006, the Township shall determine the Sewer Use Charge for the upcoming year based upon actual costs incurred and

flows metered during the calendar year just concluded and by applying such data to the following formula:

$$\text{Sewer Use Charge} = [(\text{OM}_{\text{collection}} + \text{Administrative Cost}) L_1/L_2] F_1/F_2 + \text{OM}_{\text{pump station}} \times F_1/F_2 = \text{\$/gallon}$$

$\text{OM}_{\text{collection}}$ is the annual cost of operation and maintenance for the prior calendar year for wastewater collection facilities in Sadsbury Township.

$\text{OM}_{\text{pump station}}$ is the annual cost for the prior calendar year of utilities and pump station operation and maintenance for the facility located on Valley Road.

F_1 is the annual volume of flow for the prior calendar year into Sadsbury Township from the Developments as metered by PAWC. F_1 shall be determined by PAWC meter readings.

F_2 is the annual total flow for the prior calendar year in the commonly used lines. F_2 shall be calculated by the Township, such calculation subject to review and approval by PAWC, using, where appropriate, metering records at the downstream Township Point of Connection with the PAWC system.

L_1 is the total length of commonly used lines.

L_2 is the total length of all wastewater collection lines in Sadsbury Township.

L_1 and L_2 shall be determined from the mapping of the Township wastewater system.

Administrative Cost is the annual administrative cost for the prior calendar year for wastewater collection facilities in Sadsbury Township, which shall include, without limiting the generality of the foregoing, recurring or customary administrative costs associated with the Township wastewater collection facilities but shall, in no event, include administrative costs associated with discrete capital projects or matters such as developers' collection system administrative costs or matters of litigation associated with the Township wastewater collection facilities.

Promptly upon each end of year determination of the annual Sewer Use Charge, the Township shall submit its determination and copies of any and all records and documents used by the Township in arriving at the amount of the annual Sewer Use Charge to PAWC. Quarterly Sewer Use Charges will be invoiced in the amount of one-fourth of the total annual Sewer Use Charge to PAWC.

In the event of a dispute as to the annual Sewer Use Charge or of any amount billed to PAWC, the parties may resolve any disputed annual amount or portion of a bill pursuant to the dispute resolution provisions of ARTICLE VII, Section 6 of this Conveyance Agreement. PAWC shall pay any portion of any bill not in dispute, pending resolution of the disputed amount.

In addition to the annual Sewer Use Charge, PAWC will be responsible to pay to the Township PAWC's proportionate share of capital costs, including without limitation, engineering, legal and administrative costs, incurred by the Township for capital upgrades and/or replacement of the commonly used wastewater facilities at such time in the future as such replacement shall be necessary.

Section 2 – Prior to commencement of discharge of PAWC wastewater into the Township system, the Developers shall pay to the Township, at the Township municipal office, all Capacity Fees and Reimbursement Fees owed to the Township and SSC based on EDU's connected to the PAWC System and which will produce flows into the Township system. The Township shall, thereafter, forthwith pay the Reimbursement Fees collected from the Developers to SSC. Once discharge of PAWC wastewater into the Township system commences, and, thereafter, Developers shall, each for its respective Development, prior to connecting to PAWC's wastewater system, pay to the Township Capacity Fees and Reimbursement Fees for each connection which will provide flows through the Point of Connection. The Township shall forthwith pay the Reimbursement Fees collected from the Developers to SSC.

Section 3 – The Developers acknowledge and agree that the Developers shall provide proof to West Caln Township of payment of all Sadsbury Township Capacity Fees and Reimbursement Fees due under this Conveyance Agreement at the time of application for building permits for residences in the Developments, and that no building permits will be issued by West Caln

Township in connection with the Developments except upon proof provided that all such Sadsbury Township fees and charges under this Conveyance Agreement have been paid. A letter to such effect issued by West Caln Township is attached hereto as Exhibit "B". Further, all applications submitted to PAWC for water or wastewater service to units in the Developments shall be accompanied by proof of payment to the Township of all applicable Capacity Fees and Reimbursement Fees. PAWC agrees that, if a unit within the Developments is connected to the Sadsbury system without payment of a Capacity Fee and/or Reimbursement Fee, as applicable, PAWC shall pay such unpaid fee(s) directly to the Township within thirty (30) days of written notice from the Township of nonpayment. The Township shall forthwith pay any Reimbursement Fee(s) collected from PAWC to SSC. The Developers agree to indemnify and save harmless PAWC from any and all claims, including all costs and reasonable attorneys' fees, arising out of actions taken by PAWC or service withheld under this section.

Section 4 – The Developers agree to pay to the Township all engineering and legal fees incurred in connection with this Conveyance Agreement and review of Plans hereunder. Developers shall make payment to the Township within ten (10) days of delivery of an invoice from the Township to the Developers. Calnshire Estates, LLC shall pay 58.7% of such fees; All County Partnership shall pay 41.3% of such fees.

Section 5 – The Developers, PAWC and the Township agree that notwithstanding any payments by the Developers to the Township under this Conveyance Agreement, the Developers, their successors and assigns, shall be and remain at all times the direct customers of PAWC.

ARTICLE VII - MISCELLANEOUS

Section 1 - The failure of any party hereto to insist upon strict performance of this Agreement or any of the terms or conditions thereof shall not be construed as a waiver of any of its rights hereunder.

Section 2 - This writing constitutes the entire Agreement between the parties, and there are no other representations or agreements, verbal or written, other than those contained herein.

Section 3 - Whenever a notice is required to be given by mail, the following addresses shall be used unless a different address is specifically called for:

Pennsylvania-American Water Company
4 Wellington Boulevard
Wyomissing, PA 19610

Sadsbury Township
P.O. Box 261

Sadsburyville, PA 19369

All County Partnership
2500 High Street
Suite 610
Pottstown, PA 19464

Calnshire Estates, LLC
476 West Street Road
Warminster, PA 18974

Section 4 - This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts. Each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. This Agreement shall be deemed to have been executed when counterparts have been executed by all parties listed on the signature lines below.

Section 5 - This Agreement shall become effective thirty (30) days after PAWC has filed a copy thereof with the Pennsylvania Public Utility Commission or, in the event that the said Commission institutes an investigation, at such time as the said Commission grants its approval thereof.

Section 6 - In the event that the Pennsylvania Department of Environmental Protection, or any other regulatory body or governmental agency shall fail or refuse to issue any permits for conveyance which may be necessary to accomplish the intent and purpose of this Agreement, the parties shall be relieved from further compliance with the terms of this Agreement until such time when such permit or permits shall be issued.

Section 7 - In the event that any disputes shall arise relative to the interpretation and/or application of the terms of this Agreement, the parties hereto do hereby agree to the following procedure to settle such matters:

A. The parties, operators and/or managers will attempt to discuss and solve the problem.

B. If Step "A" does not prove satisfactory, a joint committee comprised of three members, one selected by PAWC, one selected by the Township, and one selected by the other two, will meet to attempt to solve the problem. C. If neither step "A" nor "B" proves satisfactory, neither party shall be precluded from asserting any or all legal and/or equitable rights and remedies available to it in the Chester County Court of Common Pleas and as permitted by the regulations of the Pennsylvania Public Utility Commission.

Section 8 - The provisions of this Conveyance Agreement and the respective rights and

obligations of the Developers, PAWC and Township hereunder shall be binding upon, and shall inure to the benefit of, their respective successors, grantees and assigns. Any successor, grantee or assignee of Developers shall accept the terms and obligations of this Agreement in writing prior to the Developer's being released from its obligations under the Agreement.

Section 9 – The Developers expressly agree to the recordation of a memorandum of this Agreement setting forth the obligation and terms of payment of the Capacity Fees and Reimbursement Fees to Sadsbury Township, against all lands comprising the Developments, in the Office of Recorder of Deeds for Chester County.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officers and their respective seals to be hereunto affixed on the day and year first above written.

PENNSYLVANIA-AMERICAN WATER COMPANY

Attest: _____ By: _____

SADSBURY TOWNSHIP

Attest: _____ By: _____

ALL COUNTY PARTNERSHIP

Witness: _____ By: _____

CALNSHIRE ESTATES, LLC

Witness: _____ By: _____