



THE MARSHALL TOWNSHIP
MUNICIPAL SANITARY AUTHORITY

April 28, 2021

Hand Delivered

Mr. Dan Santoro
Manager, Cranberry Township
2525 Rochester Road
Cranberry Township, PA 16066-6499

RE: Plant Capacity and Sewage Facilities Planning Module Agreement

Dan,

This is to advise you that the Board of The Marshall Township Municipal Sanitary Authority (“MTMSA”) has voted to accept the terms of the Plant Capacity and Sewage Facilities Planning Module Agreement as submitted by Cranberry Township on April 8, 2021.

I have included two copies of the Agreement signed by MTMSA. If the terms of the Agreement set forth herein are acceptable to Cranberry Township, please have an authorized person sign this Agreement on behalf of Cranberry Township and return an original copy to me.

MTMSA looks forward to continuing its working relationship with Cranberry Township. Please feel free to me if you have any questions.

Sincerely,

Bill Campbell
MTMSA Manager

Cc: Scott Dismukes, Eckert Seamans Cherin & Mellott, LLC, MTMSA Solicitor
Michael Palombo, Campbell Durrant, P.C., Cranberry Township Solicitor

**PLANT CAPACITY AND SEWAGE FACILITIES
PLANNING MODULE AGREEMENT**

This Plant Capacity and Sewage Facilities Planning Module Agreement (the "Agreement"), effective as of _____, 2021 (the "Effective Date"), by and between **CRANBERRY TOWNSHIP**, a body politic and corporate organized and existing under the laws of the Commonwealth of Pennsylvania ("Cranberry") and **THE MARSHALL TOWNSHIP MUNICIPAL SANITARY AUTHORITY**, a body politic and corporate organized and existing under the laws of the Commonwealth of Pennsylvania ("MTMSA"). This Agreement refers to Cranberry and MTMSA individually as a "Party" and collectively as the "Parties."

WHEREAS, Cranberry and MTMSA are parties to an Intermunicipal Sewage Service Agreement dated June 1, 1989, as amended by an August 1, 2001 First Amendment to Intermunicipal Sewage Service Agreement and a January 31, 2019 Second Amendment to Intermunicipal Sewage Service Agreement (collectively, the "Intermunicipal Agreement"); and

WHEREAS, subject to the terms and conditions of the Intermunicipal Agreement, Cranberry accepts for transmission and treatment at its Brush Creek Water Pollution Control Facility (the "Plant") flows originating from the Brush Creek Sewer shed of MTMSA's Service Area ("MTMSA Flows"); and

WHEREAS, pursuant to the Parties' March 31, 2015 Plant Expansion and Upgrade Agreement, MTMSA acquired an additional 550,000 gallons per day of capacity in the Plant, for a total of 1.3 million gallons per day ("MGD") of capacity, which Cranberry agreed to reserve for treatment of MTMSA Flows; and

WHEREAS, the Parties desire to set forth in this Agreement, among other things, terms according to which Cranberry will resume certifying on Component 3 of sewage facility planning module ("SFPM") applications that available capacity exists for proposed developments in the Brush Creek Sewer shed of MTMSA's Service Area and terms specifying certain rights and obligations in the event of excess MTMSA Flows.

NOW, THEREFORE, in consideration of the following mutual promises and covenants and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Cranberry and MTMSA agree as follows:

ARTICLE 1: DEFINITIONS

1.01 In addition to other defined terms used throughout this Agreement, when used herein, the following capitalized terms have the meanings specified in this Section 1.01:

Discharge Limit: 1.35 MGD upon MTMSA's payment of the sum referenced in Section 2.01 of this Agreement. The Discharge Limit shall be increased to 1.4 MGD if MTMSA purchases an additional 50,000 gallons per day as provided below in Section 2.03. The Discharge Limit shall be further increased to 1.45 MGD if MTMSA purchases a second additional 50,000 gallons per day as provided below in Section 2.04.

Actual Metered Flow: The flow measured and recorded by Cranberry flow meters at or near each point of connection between the Marshall collection system and the Cranberry collection system according to the terms of Article V of the 1989 Intermunicipal Agreement, including any adjustments pursuant to Section 5.03 thereof.

Average Flow: 30-day rolling average of the Actual Metered Flow.

Base Flow: Equals the highest Average Flow over the previous six months.

Reserved Flow: The current amount of MTMSA's approved, but not yet connected, Planning Module EDU Flow, measured using 400 GPD per equivalent dwelling unit ("EDU"). This value is the total number of approved SFPM EDUs minus the number of approved SFPM EDUs that have been assigned an MTMSA Tap Permit and connected to the MTMSA system. An EDU shall be considered connected after inspection and approval of the sanitary sewer lateral by MTMSA.

Projected Flow: Equals the Average Flow plus the Reserved Flow.

Available MTMSA Capacity: Equals the Discharge Limit minus the Base Flow minus the Reserved Flow.

Capacity Allocation Dates: The biannual dates by which Cranberry Township shall perform its evaluation and calculate the Available MTMSA Capacity for the upcoming Allocation Period, which dates shall be January 1 and July 1.

Allocation Periods: A six-month period from January 1 to June 30 and from July 1 to December 31.

Force Majeure: Has the meaning set forth in Article 6.

Change in Law: Means any amendment, modification, deletion, addition, or change, which occurs after the Effective Date, in or to the laws, statutes, ordinances, regulations, orders, decrees, licenses, permits, approvals, or rules of, or the practice of enforcing any of the foregoing by, any governmental body having jurisdiction over the Parties, the Plant, the Parties' collection and conveyance systems, the Parties' sewage transmission and treatment services, or the performance of any portion of this Agreement, the Intermunicipal Agreement, or any other agreement between the Parties.

MTMSA Flows: The flow of Approved Wastes originating within the Brush Creek Sewer shed of MTMSA's service area, which Cranberry agrees to accept for transmission and treatment, as further referenced in Section 2.01 of the Intermunicipal Agreement.

ARTICLE 2: PURCHASE OF ADDITIONAL PLANT CAPACITY

2.01 Within 20 days of executing this Agreement, MTMSA agrees to pay Cranberry \$628,000.00 in order to acquire an additional 50,000 gallons per day of Plant capacity for MTMSA Flows. Upon MTMSA's acquisition of the additional 50,000 gallons per day of Plant

capacity referenced in this Section 2.01, Cranberry's obligation under Section 2.01 of the Intermunicipal Agreement shall be limited to the transmission and treatment of not more than 1,350,000 gallons per day.

2.02 Once MTMSA increases its capacity to 1.35 MGD by making the payment identified in Section 2.01 of this Agreement, the Parties will begin implementing the Sewage Facilities Planning Module Approval Process identified in Article 3 of this Agreement.

2.03 MTMSA will have the option to purchase an additional 50,000 gallons per day of capacity at any time before the 15-year anniversary of the Effective Date of this Agreement (the "Option Period"). Once MTMSA pays for the additional 50,000 gallons per day of Plant capacity as required in this Section 2.03, the Discharge Limit will become 1.4 MGD, and Cranberry's obligation under Section 2.01 of the Intermunicipal Agreement shall be limited to the transmission and treatment of not more than 1,400,000 gallons per day. The price that MTMSA shall pay for the additional 50,000 gallons per day of Plant capacity as provided for in this Section 2.03 shall be \$12.56 for each gallon per day of Plant capacity acquired, with such baseline price-per-gallon value subject to upward adjustment using the ratio of the ENR construction cost index for Pittsburgh as of the Effective Date to the ENR construction cost index for Pittsburgh in effect at the time of MTMSA's purchase pursuant to this Section 2.03.

2.04 In addition to its option rights under Section 2.03 above, MTMSA will have the option to purchase a second additional 50,000 gallons per day of capacity at any time during the Option Period. Once MTMSA pays for the second additional 50,000 gallons per day of Plant capacity as required in this Section 2.04, the Discharge Limit will become 1.45 MGD, and Cranberry's obligation under Section 2.01 of the Intermunicipal Agreement shall be limited to the transmission and treatment of not more than 1,450,000 gallons per day. The price that MTMSA shall pay for the additional 50,000 gallons per day of Plant capacity as provided in this Section 2.04 shall be \$12.56 for each gallon per day of Plant capacity acquired, with such baseline price-per-gallon value subject to upward adjustment using the ratio of the ENR construction cost index for Pittsburgh as of the Effective Date to the ENR construction cost index for Pittsburgh in effect at the time of MTMSA's purchase pursuant to this Section 2.04.

2.05 If MTMSA elects to purchase an additional 50,000 gallons per day of capacity under the terms of Sections 2.03 or a second additional 50,000 gallons per day of capacity under the terms of 2.04 of this Agreement, payment must be received within sixty (60) days of Cranberry's receipt of notification from MTMSA of a request to purchase the additional capacity.

2.06 If MTMSA does not exercise its option to purchase additional capacity under the terms of Sections 2.03 and/or 2.04 within the Option Period, then MTMSA's unexercised option to purchase shall expire at the end of the Option Period, and Cranberry shall retain the capacity that MTMSA opted not to purchase.

ARTICLE 3: SEWAGE FACILITIES PLANNING MODULE APPROVAL PROCESS

3.01 No later than thirty (30) days following each Capacity Allocation Date, MTMSA agrees to provide Cranberry Township: (1) a summary of the I&I related maintenance, inspection, testing, monitoring, repairs, and construction that MTMSA plans to undertake during

the ensuing Allocation Period (the “Periodic I&I Plan”); (2) support that MTMSA has funds in its annual budget to perform the I&I related activities that are identified in its Periodic I&I Plan; and (3) a summary of the I&I related activities identified in its prior Periodic I&I Plan that it has performed.

3.02 No later than seven (7) days following each Capacity Allocation Date, Cranberry Township shall provide written notice to MTMSA of its calculation of the Available MTMSA Capacity for the upcoming Allocation Period, being the ensuing six months. The written notice shall also include all digital and other data and calculations used by Cranberry Township to determine the Available MTMSA Capacity. MTMSA will then have 30 days to review and advise Cranberry Township whether it agrees or disputes the calculation. If MTMSA disputes Cranberry Township’s calculation of the Available MTMSA Capacity, the parties will promptly meet to seek to pursue the dispute in good faith. If the dispute cannot be resolved within 30 days, MTMSA may pursue the dispute pursuant to Article VIII of the Intermunicipal Sewage Service Agreement.

3.03 The Available MTMSA Capacity shall be guaranteed for the entire ensuing Allocation Period, unless Planning Module approval is suspended due to exceedance of the Discharge Limit by MTMSA as expressly set forth below in Section 4.02.

3.04 Cranberry Township shall continue to provide the biannual calculation of the Available MTMSA Capacity specified in Section 3.02, and MTMSA shall continue to provide the Periodic I&I Plan, budget information, and report on completed I&I activities specified in Section 3.01, indefinitely.

ARTICLE 4: EXCESS MTMSA FLOWS

4.01 If MTMSA’s Projected Flow exceeds the Discharge Limit for three consecutive days during an Allocation Period, Cranberry may suspend Sewage Facilities Planning Module approval on the next-occurring Capacity Allocation Date. If MTMSA then has no instance on which its Projected Flow exceeds the Discharge Limit for three consecutive days during the subsequent Allocation Period, Sewage Facilities Planning Module approval shall resume on the next-occurring Capacity Allocation Date.

4.02 If MTMSA’s Projected Flow exceeds the Discharge Limit for seven consecutive days during an Allocation Period, Cranberry may immediately suspend Sewage Facilities Planning Module approval for the remainder of the Allocation Period. If MTMSA then has no instance on which its Projected Flow exceeds the Discharge Limit for three consecutive days during the subsequent Allocation Period, Sewage Facilities Planning Module approval shall resume on the next-occurring Capacity Allocation Date.

4.03 If Cranberry has suspended Sewage Facilities Planning Module approval under the terms of Sections 4.01 or 4.02, Cranberry shall immediately resume Sewage Planning Module approval if: (i) MTMSA purchases additional capacity under Section 2.03 and/or 2.04, and (ii) such additional purchased capacity increases the Discharge Limit to such an extent that creates Available MTMSA Capacity.

4.04 If Cranberry has suspended Sewage Facilities Planning Module approval under the terms of Sections 4.01 or 4.02 and MTMSA does not purchase additional capacity under

Section 2.03 and/or 2.04, Cranberry shall resume Sewage Planning Module approval in accordance with Sections 4.01 or 4.02.

4.05 If on any individual day during a monthly billing period, MTMSA's Average Flow, calculated using a 30-day rolling average, exceeds the Discharge Limit, then MTMSA agrees to pay a surcharge (the "Surcharge") on only the portion of the Average Flow for the particular day that exceeds the Discharge Limit, based on the following:

(i) On any individual day during said monthly billing period that a portion of the Average Flow exceeds the Discharge Limit, the entire Actual Metered Flow for such day will be paid at the then-current MTMSA Rate.

(ii) Additionally, the portion of the Average Flow for said day only that exceeds the Discharge Limit (the "Overage Flow") will be charged at the then-current Cranberry Rate.

4.06 If MTMSA's Average Flow, calculated using a 30-day rolling average, exceeds the Discharge Limit for 15 consecutive days, then, beginning on the 15th day, MTMSA agrees to pay liquidated damages ("Liquidated Damages") to Cranberry in the amount of \$1,000.00 per day for each day that MTMSA's Average Flow remains in excess of the Discharge Limit. The sum of \$1,000.00 per day is a baseline, subject to upward adjustment using the ratio of the ENR construction cost index for Pittsburgh as of the Effective Date to the ENR construction cost index for Pittsburgh in effect at the time of the assessment of Liquidated Damages under this Section 4.06.

4.07 MTMSA's payment of the Surcharge and payment of Liquidated Damages shall be the exclusive and only damages to which Cranberry shall be entitled for the event(s) of MTMSA Flows having exceeded the Discharge Limit.

4.08 Notwithstanding the exclusive remedy language in Section 4.07, the Parties agree to the following exceptions to Section 4.07:

(i) Indemnification. In the event that an exceedance by MTMSA of the Discharge Limit causes bodily injury or property damage to third persons, then the sole remedy provision of 4.07 shall not limit Cranberry's right to indemnification from MTMSA for such third-party claim alleging bodily injury or property damage.

(ii) Change in Law. The measure of Liquidated Damages identified in Section 4.06 is Cranberry's reasonable forecast of the harm that Cranberry expects to suffer as a result of excess MTMSA Flows. Cranberry's forecast is based, in part, on the statutory, regulatory, and enforcement scheme existing as of the date of this Agreement. Should a Change in Law occur that materially alters the fines, penalties, remedial obligations, or other liability that may be imposed on Cranberry, and should such fines, penalties, remedial obligations or other liability actually be imposed on Cranberry as a result of excess MTMSA Flows, then, in that event, the Liquidated Damages and Surcharge shall not be Cranberry's sole and exclusive remedy for excess MTMSA Flows.

ARTICLE 5: SUPPLEMENT TO INTERMUNICIPAL AGREEMENT

5.01 The Parties acknowledge and agree that the provisions of this Agreement are supplemental to the provisions of the Intermunicipal Agreement. Thus, for the avoidance of doubt, the provisions of Articles 2 and 4 of this Agreement do not alter or restrict in any way the Parties' rights and obligations concerning future expenditures for the Plant or collection and conveyance systems servicing Cranberry and MTMSA Flows, including MTMSA's right to purchase additional Plant capacity on the terms set forth in Article 6 of the Intermunicipal Agreement and MTMSA's obligation to pay for its share of costs on the terms set forth in Article 4 of the Intermunicipal Agreement.

5.01(i) Thus, if Cranberry plans an Addition as is contemplated under Article 6 of the Intermunicipal Agreement, MTMSA shall have the right in such event to purchase additional Plant capacity according to the terms of Article 6 of the Intermunicipal Agreement.

5.01(i)(a) It being the Parties' intent that the Surcharge and the Liquidated Damages specified in Article 4 of this Agreement shall be Cranberry's compensation for MTMSA Flows exceeding the Discharge Limit, the Parties further acknowledge and agree that the Surcharge and the Liquidated Damages shall apply according to their terms to exceedances of the Discharge Limit, whether the Discharge Limit in effect at the time of the exceedance(s) be a Discharge Limit referenced in Article 2 of this Agreement or some greater or different Discharge Limit applicable as a result of MTMSA purchasing additional Plant capacity under Article 6 of the Intermunicipal Agreement.

5.01(ii) Similarly, if MTMSA must pay the Surcharge or the Liquidated Damages for the reasons set forth in Article 4 of this Agreement, such payment(s) by MTMSA shall not limit MTMSA's obligations under Article 4 of the Intermunicipal Agreement to pay its portion of costs, such as sewage treatment costs and Capital Expenditures, on the terms set forth in Article 4 of the Intermunicipal Agreement.

ARTICLE 6: FORCE MAJEURE

6.01 The Parties agree that only the following events shall qualify as events of "Force Majeure": earthquakes, terrorist attacks, war, sabotage, explosions, or riot, to the extent that any such event is beyond the control of, not reasonably foreseeable by, and not caused by the Party whose performance is affected by the event. For the avoidance of doubt, Force Majeure does not include: (i) climatic conditions and seasons (including, by way of example, rain, snow, wind, temperature, and other weather conditions and events), regardless of the magnitude, severity, duration, or frequency of such climatic, weather, or seasonal condition; or (ii) equipment malfunctions or infrastructure failures, unless caused by a listed event of Force Majeure.

6.02 If an event of Force Majeure renders impossible a Party's performance of its obligations under this Agreement and/or the Intermunicipal Agreement, the affected Party shall not be liable to the other for the failure to comply with its obligations.

6.03 If MTMSA believes that an event of Force Majeure caused excess MTMSA Flows, then MTMSA shall submit a report to Cranberry that provides the following information: (i) a description of the event of Force Majeure, (ii) a summary of the available information

documenting the amount of inflow or infiltration caused by the event of Force Majeure, or other pertinent information related to it; and (iii) the corrective actions proposed and/or completed by MTMSA to address the event of Force Majeure.

6.04 Cranberry shall evaluate the information submitted under 6.03 and provide a written response to MTMSA within 30 days of receipt of the information submitted by MTMSA. If it is determined that an event of Force Majeure caused the exceedance, Cranberry shall adjust its calculation of the Projected Flow and Base Flow by substituting the Average Flow of the day prior to and the day following the peak flow associated with the event of Force Majeure for the flow recorded for the days impacted by the event of Force Majeure.

ARTICLE 7: TAP RESTRICTIONS

7.01 MTMSA agrees to place tap restrictions on its system after receiving written notice from Cranberry that the Plant has been placed under a tap restriction by PA DEP. The MTMSA tap restriction shall be lifted if PA DEP provides a tap allocation to Cranberry, and MTMSA shall receive a tap allocation proportionate to MTMSA's share of the allocated Plant capacity.

ARTICLE 8: FLOW METERS

8.01 After providing reasonable written notice to MTMSA, Cranberry shall calibrate the MTMSA flow meters on a monthly basis.

8.02 Any adjustment made to Actual Metered Flow pursuant to Section 5.03 of the 1989 Intermunicipal Agreement shall be included in Cranberry Township's Projected Flow calculations and its calculation of Available MTMSA Capacity in accordance with Section 2.03 of this Agreement.

ARTICLE 9: ARBITRATION

9.01 Any claim or controversy arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

[SIGNATURES ON FOLLOWING PAGE]

Cranberry Township

Date: _____

By: _____

Title: _____

Marshall Township Municipal
Sanitary Authority

Date: 4.29.21

By: Shirley E Long

Title: Chairman