

EMERGENCY INTERCONNECTION AND  
WATER PURCHASE SHARED SERVICES  
AGREEMENT

Between

MERCHANTVILLE-PENNSAUKEN WATER  
COMMISSION

and

MAPLE SHADE TOWNSHIP

September 12, 2018

**THIS AGREEMENT**, constitutes an Shared Services Agreement pursuant to N.J.S.A. 40A:65-1 et seq. entered into and made effective this 12th day of SEPTEMBER, 2018, between the TOWNSHIP OF MAPLE SHADE, Burlington County, New Jersey, a municipal corporation of the State of New Jersey with its principal address at 200 Stiles Avenue, Maple Shade, New Jersey 08052 hereinafter referred to as "Maple Shade," and MERCHANTVILLE-PENNSAUKEN WATER COMMISSION, a governmental regional water authority with its principal office located at 6751 Westfield Avenue, Pennsauken, New Jersey 08110 hereinafter referred to as the "MPWC."

WHEREAS, the Water Supply Management Act Rules, N.J.A.C. 7:19-6, et seq., promulgated by the New Jersey Department of Environmental Protection (NJDEP) permit the interconnection of adjacent water supplies; and

WHEREAS, the NJDEP rules, specifically N.J.A.C. 7:19-6 (g) require that entities maintaining interconnected systems enter into a written agreement setting forth the conditions for use of the interconnection, which agreement must be filed with and approved by NJDEP; and

WHEREAS, Maple Shade and MPWC desire to enter into this Agreement in order to provide for an emergency water supply as a successor agreement to that of the parties from 2008; and

**NOW THEREFORE**, for and in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound, the parties hereto agree as follows:

1. Emergency Water Supply

The parties hereto wish to establish their mutual ability to provide for a water supply for use in times of emergency. As used herein, a "water supply emergency" shall mean a condition wherein a substantial decrease in water supply or pressure exists within either service area which endangers or potentially endangers the public health or safety as determined by mutual agreement of the MPWC and Maple Shade, subject to the agreement or authorization of NJDEP.

2. Future Emergencies

a. The parties agree to supply each other with potable water during water supply emergencies, as defined herein, through the interconnection located at Maple Ave/Main Street or at the interconnection located at Coles Road/County line (which is to be placed back into operation by April 2019) or through any other interconnection later established subject to the provisions of subpart (b) below.

b. The quantity of water to be supplied by one party and purchased by the other in any twenty-four (24) hour period shall not be subject to any minimum or maximum limits other than the determination of the supplying party as to its ability to supply the water and the permission of the NJDEP, Bureau of Water Allocation, to allow such transfer. The quantity of water to be supplied shall be that volume which the supplying party determines that it can provide to purchaser at the time of the water supply emergency taking into consideration all operating conditions and its obligations to provide safe and adequate water service to its franchise area customers for all of their uses and demands. Neither party shall be required by this agreement to supply water, flow, or pressure beyond the amount the supplying party determines to be feasible and shall not be liable to the other party or to any third party for any failure to provide water during a water supply emergency.

c. The party being requested to supply water shall have no liability to the requesting party or to any of their residents or customers for costs, expenses, damages, liability, loss, claims, suits or proceedings whatsoever in nature arising out of alleged inadequate flow rate in the requesting party's water distribution system. Nothing herein shall imply or express that any such liability or right of claim does or should exist against either party. Nothing herein shall in any way imply or infer that either party has made any guarantee,

promise or representation as to the supply to anyone or of any flow rate, pressure and duration of supply of adequate water for any service or fire protection to either their residents/customers or to those of the other party.

d. The parties agree to pay the greater of the MPWC's then- applicable retail rate for large-volume metered water service or the then-current rate being paid by MPWC for bulk water purchased from New Jersey American Water (NJAWC).

### 3. Water Quality

Each party shall comply with all applicable laws and regulations regarding treatment and delivery of potable water established by the NJDEP and USEPA and any successor government agencies or departments. The supplying party shall not be responsible for contamination or degradation in the quality of the water after it has passed beyond the interconnection. The interconnection shall for these purposes be the Maple Shade side of the meter. Maple Shade shall perform water quality tests as required by applicable NJDEP and USEPA laws and regulations at the interconnection. MPWC shall perform water quality tests as required by applicable NJDEP and USEPA laws and regulations on its side of the interconnection. All water quality tests shall be performed only by State of New Jersey certified laboratories.

### 4. Terms of Payment

The terms of payment for water provided to the purchaser pursuant to this agreement shall be as follows:

a. There shall be no meter charges or fixed service charges except during the time that water is provided by either party through the interconnection.

b. There shall be no connection fee charged to any such emergency purchases of water pursuant to this Agreement.

c. All meter charges, fixed service charges and charges for water supplied pursuant to this Agreement shall be based on the schedule of charges for retail, large-volume metered water service adopted by MPWC as revised from time to time unless as set forth in 2.d. above.

d. The meter(s) at the Interconnection(s) shall be read by the parties at the conclusion of each water supply emergency or not less than once per calendar month if the duration of the water supply emergency exceeds thirty (30) days.

e. Payment will be made no later than 45 days after the receipt date of an undisputed invoice.

f. If the receiving party disputes a bill in good faith, it must, on or before the bill due date, (i) pay the undisputed portion of the bill, and (ii) notify the billing party in writing of the basis for the dispute. If the dispute is regarding accuracy of the reading or meter, a meter test will be performed, at the sole cost of the requesting party by any qualified firm acceptable to both parties. If established by the manufacturer of the meter that the meter test proves that the meter is not within the accuracy limits established by the manufacturer of the meter, a billing adjustment will be made in accordance with such regulations and the meter will be replaced or recalibrated at the MPWC's options.

g. Meters may be tested periodically by the MPWC, at its option. Copies of test results will be furnished to Maple Shade. If requested in writing by Maple Shade, Maple Shade shall have the right to be present when meter testing is performed. Maple Shade may obtain access to inspect metering facilities upon written request made to the MPWC. Meter tests requested by Maple Shade, not in connection with bill disputes pursuant to paragraph (e) hereof, shall be performed at the sole expense of Maple Shade.

### 5. Interruptions in Service- Force Majeure Event

a. "Force Majeure" is the inability of a party to perform due to acts of God; orders of the Government of the United States or the State of New Jersey, or any agency or instrumentality thereof; acts of terrorism; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; explosions breakage or accidents to machinery, pipeline, dams or canals or partial or entire failure or contamination of water supply, not due to negligence of the party claiming such occurrence

as the reason for the inability to perform; arrests; civil disturbances; acts of any public enemy; and any other causes not reasonably within the control of the party claiming such inability to perform.

b. If by reason of Force Majeure, either party shall be rendered unable, wholly or in part, to satisfy its obligations under this agreement, then the obligations of such party, to the extent affected by such Force Majeure, shall be suspended or reduced during the continuance of the inability to perform hereunder, but for no longer period. Telephonic notice of the Force Majeure will be given to the other party at the earliest possible time and will be described subsequently in writing to such party within three (3) working days after the occurrence of the Force Majeure event. The party experiencing the Force Majeure event shall use its best efforts to remove or overcome such Force Majeure as soon as possible. The party experiencing the Force Majeure shall not be liable for damages to the other party or any of such party's customers due to act, omission or circumstance occasioned by or in consequence of a Force Majeure occurrence.

#### 6. Responsibilities and Indemnifications

a. Each party agrees that the other has no responsibility either by this agreement or by any other reason to provide water service to its customers or at any "adequate" flow rates or pressures and that each shall have no liability to the other, or any customer of theirs or the others, for any costs, expenses, damages, liability, loss, claims, suits, or proceedings of whatsoever nature arising out of alleged inadequate water flow, rate or pressure in theirs or the others system.

b. Maple Shade agrees to indemnify, protect, and hold harmless MPWC from any and all liability, loss, damages costs or expense (including, without limitation, reasonable attorney's fees) arising out of claims alleging that MPWC failed to provide water to Maple Shade at a flow rate or pressure sufficient to afford adequate service within Maple Shade's system, or arising out of claims wherein contamination or degradation in water quality occurred on Maple Shade's side of the Interconnection.

c. Except as limited in subparagraphs above, Maple Shade agrees to indemnify, protect, and hold harmless the MPWC from any and all liability, loss, damages costs or expenses (including, without limitations, reasonable attorney's fees) arising out of claims alleging that MPWC failed to meet its obligations under this Agreement.

d. MPWC agrees to indemnify, protect, and hold harmless Maple Shade from any and all liability, loss, damages costs or expense (including, without limitation, reasonable attorney's fees) arising out of claims alleging that Maple Shade failed to provide water to MPWC at a flow rate or pressure sufficient to afford adequate service within MPWC's system, or arising out of claims wherein contamination or degradation in water quality occurred on MPWC's side of the Interconnection.

e. Except as limited in subparagraphs above, MPWC agrees to indemnify, protect, and hold harmless the Maple Shade from any and all liability, loss, damages costs or expenses (including, without limitations, reasonable attorney's fees) arising out of claims alleging that Maple Shade failed to meet its obligations under this Agreement.

#### 7. Ownership and Maintenance of Facilities

a. MPWC owns an existing water distribution system including an interconnection with the Maple Shade distribution system at a valve on the Camden County side of the Pennsauken Creek, South Branch. Maple Shade owns a water distribution system including an 8" iron water main crossing Pennsauken Creek, South Branch.

b. The MPWC and Maple Shade agree to maintain their current Maple Avenue facilities and location for the currently updated permanent emergency interconnection facility with a MPWC manual read meter. Maple Shade may, should it choose, pay the cost of their installing facilities and a meter which would monitor their outflow in accordance with section d, below.

c. The Parties shall agree upon similar terms and facilities at their Coles Road area Interconnection. Maple Shade agrees to take necessary actions to ensure operation and test supply of water and infrastructure to Coles Ave. area interconnection no later than April 30, 2019.

d. Maple Shade at its option may choose to construct at Maple Shade's sole expense, such permanent facilities on its side of the interconnection after consultation and meeting with the MPWC

regarding the specifications to be utilized. Engineering specifications and plans will be reviewed and approved by MPWC prior to the earlier of any bid or construction of such permanent facilities.

e. The water valves in the interconnection vault shall remain closed at all times except during a water supply emergency as defined in Paragraph l or as agreed to by the parties in a separate and subsequent agreement. The valves shall be under the control of the MPWC at all times and shall not be operated without the advance knowledge and consent of both parties. Failure to notify and obtain consent prior to opening the connection will be grounds for termination of this Agreement, but not as a sole remedy.

f. At any interconnection that is not metered, the parties shall use their best estimate to reasonably estimate water volume based on estimates of time and flow across the involved lines.

8. Interruptions of Service

Planned service interruptions may be required in the course of operation of either party's facilities. Each will use reasonable efforts to minimize such occurrences, as well as the duration thereof. Reasonable advance notification of planned service interruptions will be provided to the other party.

9. Duration of Agreement

The term of this Agreement shall be for a period of ten (10) years from the effective date of this Agreement set forth above.

10. Successors and Assignment; third Party Beneficiaries

This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This agreement may not be assigned by either party without approval of the other party, which approval shall not be reasonably withheld. This agreement does not create, nor shall it be deemed to create any rights to any other party as a third-party beneficiary.

11. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, and the parties agree to the exclusive jurisdiction of the Superior Court of the State of New Jersey.

12. Pre-approval of Contractors

Any subcontract or subcontractor to be utilized by either party in regard to this agreement, or any related construction or maintenance shall require consent of the other party which consent shall not be unreasonably withheld.

13. Notices

All notice provided for herein shall be served upon the Parties by personal delivery, email, fax or certified mail, return receipt requested, at the following locations, or at such other location or locations as the Parties may from time to time designate in writing. Notices shall be deemed given when received by the Party to whom it was sent.

As to MPWC:

6751 Westfield Ave.  
Pennsauken, NJ 08110  
Attn: Chief Operating Officer  
Telecopy No. 856-324-3033  
Email:

with a copy to:

General Counsel  
c/o MPWC  
8790 Park Ave.  
Pennsauken, NJ 08109  
Email

As to Maple Shade:  
Township Manager  
Maple Shade Township  
200 Stiles Ave.  
Maple Shade, NJ 08052  
Email:

with a copy to:  
Township Clerk  
Maple Shade Township  
200 Stiles Ave.  
Maple Shade, NJ 08052  
email:

14. NJDEP Approval

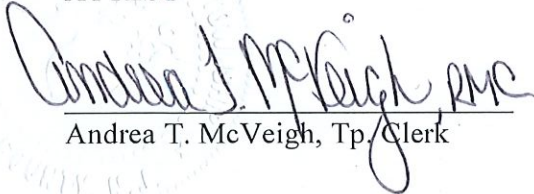
This agreement shall be void *ab initio*, and without any legal force or effect unless and until the NJDEP has approved of this agreement in writing.

15. Severability

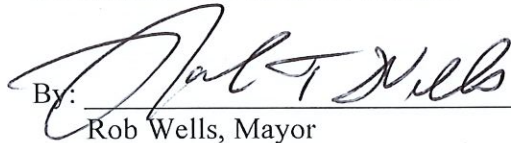
In the event that one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intent of the parties hereto that such illegality or invalidity shall not affect other provisions hereof, and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein except unless either the sale price is ruled invalid or a court of competent jurisdiction holds that such provisions are not severable from all other provisions of the Agreement or that the deletion materially alters the substance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year first written above.

ATTEST

  
Andrea T. McVeigh, Tp. Clerk

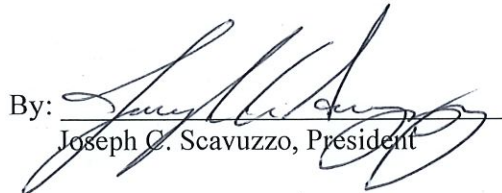
TOWNSHIP OF MAPLE SHADE

By:   
Rob Wells, Mayor

ATTEST

  
Edward F. Brennan, Assistant Secretary

MERCHANTVILLE-PENNSAUKEN WATER  
COMMISSION

By:   
Joseph C. Scavuzzo, President