

**ROADWAY MAINTENANCE AND IMPROVEMENT CONTRIBUTION AGREEMENT**

THIS ROADWAY MAINTENANCE AND IMPROVEMENT CONTRIBUTION AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date"), by and between the BOROUGH OF POTTSTOWN, a municipal corporation of the Commonwealth of Pennsylvania (the "Borough") and POTTSTOWN BOROUGH AUTHORITY, a municipal authority organized under the Pennsylvania Municipality Authorities Act, as amended (the "Authority").

BACKGROUND

A. The Borough incorporated the Pottstown Borough Authority for the purpose, among other purposes, of acquiring, holding, constructing, improving, maintaining, owning and operating sanitary sewage and industrial waste collection and treatment system facilities and other projects, and the undertaking of all activities related thereto (the "Sewer System").

B. In pursuance of its purposes, the Authority has acquired and owns the Sewer System which it leases to the Borough for operation pursuant to an Agreement of Lease dated as of May 1, 1989 (the "Lease"), for the benefit of the health and welfare of, *inter alia*, the residents of the Borough.

C. The Borough and Authority have entered into a Sewer System Agreement dated as of July 12, 2011, pursuant to which the Borough confirmed its commitment to operate the Sewer System on behalf of the Authority in accordance with the terms of the Lease and the Sewer System Agreement.

D. The Authority has determined that certain Sewer System operations involving the hauling of septage and sludge wastes by truck to the Authority's sewage treatment plant have resulted in inordinate wear and tear to certain Borough roadways providing access to the plant, namely Moser Road, Center Avenue, Wilson Street, Industrial Highway and North Keim Street, which wear and tear would not occur but for the trucks.

E. The Authority's consulting engineer has undertaken a study to determine the cost impact of the truck traffic on the aforesaid roads, and has calculated an increase to the bulk wastewater/septage fees in the amount of \$0.0018 per gallon of hauled septage or sludge in order to offset the additional roadway maintenance and improvement costs incurred by the Borough resulting from the use of the sewage treatment plant by the haulers (the "Roadway Maintenance and Improvement Fee").

F. The Authority and the Borough are entering into this Agreement in order to provide for the imposition, collection and use of the Roadway Maintenance and Improvement Fee by the Borough.

NOW THEREFORE, in consideration of the foregoing premises, the parties hereto, intending to be legally bound hereby agree as follows:

1. Incorporation of Background. Background paragraphs A through F are incorporated as if set forth fully herein.

2. Roadway Maintenance and Improvement Fee. The Authority hereby directs the Borough to impose by ordinance and collect the Roadway Maintenance and Improvement Fee.

3. Segregation of Roadway Maintenance and Improvement Fee. The Authority hereby directs the Borough to segregate the Roadway Maintenance and Improvement Fee receipts collected by the Borough from other monies collected by the Borough in respect of the use and operation of the Sewer System and deposited into its Sewer Revenue Account, to be held for the purposes set forth in this Agreement.

4. Use of Roadway Maintenance and Improvement Fee. The Borough may from time-to-time apply the receipts collected by the Borough from the Roadway Maintenance and Improvement Fee to maintenance, repair and improvement expenses incurred by the Borough for Moser Road, Center Avenue, Wilson Street, Industrial Highway and North Keim Street, including but not limited to the maintenance, repair and/or improvement of road base, pavement, drainage, culverts, bridges and traffic control facilities. From time-to-time, as the Authority and Borough mutually shall agree but at least once every calendar year, the Borough shall prepare and submit to the Authority a statement setting forth the actual amounts of the Roadway Maintenance and Improvement Fee applied by the Borough along with the specific work undertaken by the Borough to which the Borough applied the Roadway Maintenance and Improvement Fee.

5. Term of Agreement. This Agreement shall continue in full force and effect for a period of five (5) years from Effective Date, and automatically renew for additional five year periods unless written notice is provided by either party to the other party of its intent to terminate the Agreement no later than ninety (90) days prior to the date of any five year renewal; provided that (1) the amount and use of the Roadway Maintenance and Improvement Fee shall be reviewed by the parties at least once every five years; and (2) the Agreement may be mutually reopened by the parties at any time in order add any new Borough roadway or bridge not included in this Agreement.

6. Amendments. The terms and provisions of this Agreement may not be modified, changed, amended or terminated except in writing by both parties.

7. Severability. In case any section or provision of this Agreement or any covenant, stipulation, obligation, or action, or any part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is for any reason held to be illegal or invalid or is at any time inoperable, such illegality or invalidity or inoperability shall not affect the remainder thereof or any other provision of this Agreement or any other covenant, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, each of which shall be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.