

CAPACITY RIGHTS AGREEMENT

THIS AGREEMENT, for the purchase of capacity is entered into this _____ day of _____, _____ by and between the LOWER PERKIOMEN VALLEY REGIONAL SEWER AUTHORITY (“Authority”), with offices located at 101 Station Avenue, P.O. Box 297 Oaks, PA 19456, the LOCAL MUNICIPALITY OR LOCAL SEWER AUTHORITY where the property is located, and

_____, of _____.
(Applicant) (Mailing Address)

The Applicant has applied to the Authority for the right to purchase sewer capacity pursuant to the Authority’s Capacity Rights Program, in order to serve the parcel of land located at _____ within _____,
(Property Address) (Township/Borough)

Montgomery County, identified as Tax Parcel No. _____ and specifically described in Application No. _____, which is made a part hereof; and

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

1. The Authority grants to the Applicant the right to _____ EDU(s) for the property as described in the Application.

If the applicant, after purchasing EDUs, uses more capacity than the EDUs purchased in this Agreement, the Applicant agrees to pay for additional EDUs at the then current rate. If additional EDUs are not available, the Applicant must immediately reduce its usage to comport with and confine its usage to the amount of EDUs purchased in accordance with this Agreement. The Authority shall have the right, at Applicant’s expense, to require metering or other studies and investigations in order to assess and monitor the amount of EDUs used by the Applicant at its facility. If Applicant refuses to comply with the monitoring requirements or the investigative activities of the Authority or purchase the necessary additional EDUs in accordance with this paragraph, then the Applicant agrees to pay an additional \$350.00 per day to the Authority for each day of noncompliance until full compliance by Applicant with this paragraph is accomplished. The foregoing provision shall not exclude or limit any other remedies the Authority may have to enforce its rules, regulations or the provisions of this Agreement.

2. Simultaneously with the execution of this Agreement, Applicant shall pay the Authority the sum of \$ _____ in the form of a **certified bank check**, in exchange for said capacity rights as well as for the promises and terms set forth herein. In the event that additional EDUs must be purchased as is more fully set forth in Paragraph 1 above, Applicant agrees to immediately make payment for each additional EDU required by the Authority. Applicant agrees and acknowledges that the price for each additional EDU is

not fixed by this Agreement, nor is additional capacity guaranteed nor reserved until payment is received and an additional Capacity Rights Agreement is executed.

3. Applicant understands and acknowledges that at the current time the Authority has set aside and will not sell the EDUs reserved for Applicant. Applicant also acknowledges and waives any rights regarding intervening regulation, moratorium, or other items outside the Authority's control, which preclude or prohibit the use of the EDU(s). In the event the EDU(s) are not available at the time of building permits for the above reasons, the Authority will suspend the periodic sewer rentals until building permits can be obtained.
4. Applicant acknowledges that it is obligated to pay its Local Authority or Municipality the amount of the Regional Authority's periodic User Fees in addition to any Local User Fees times the applicable number of User Fee Units held by the property via a purchase of capacity under this agreement. In addition to the purchase price paid hereunder, Applicant is responsible for any and all other application procedures, sewer construction, connection and inspection charges, periodic sewer rentals and costs of any necessary collection and transmission facilities, or any other charges imposed by the Authority or local municipality.
5. This Agreement incorporates herein by reference, and the parties agree to be bound by, all provisions of the Lower Perkiomen Valley Regional Sewer Authority Capacity Rights Program, the LPVRSAs Policy on Billing of User Fees and the LPVRSAs Policy on Return of Base Capacity Allocation.
6. The Authority has the unrestricted right to use all payments from Applicant for construction, capital expansion and additions, maintenance and/or operation.
7. All applications received by Authority under the Capacity Rights Program shall be treated on a first come, first served basis, based upon written application filed with the Authority, execution of this Agreement, payment for the capacity rights and acceptance by the Authority.
8. Applicant is not guaranteed and does not acquire any vested right in any zoning or land use approval of any kind whatsoever nor in the issuance of any permits, approvals or building permits for the property which is the subject of this Agreement.
9. All capacity purchased under this agreement for a designated property remains with the property and cannot be transferred to any other property.
10. The additional capacity provision set forth in the Capacity Rights Program for flows in excess of capacity purchased under the Sewer Access Rights Program applies to all residential and non-residential uses.

11. Applicant agrees that it will begin to pay user fees or rental charges immediately upon hook-up or within two (2) years of the date of this Agreement in accordance with the LPVRSA Policy on Billing of User Fees.
12. Applicant agrees that the purchase price is final and agreed upon between the parties; and the Authority agrees that it will not raise the rate for the purchase of the EDU(s) for Applicant during the purchase period. Applicant agrees that it will forbear from challenging, protesting, appealing or commencing suit upon the purchase price, and hereby waives its rights, if any, to do so, the purchase price being the final, agreed-to price. Applicant's waiver includes, but is not limited to, the Applicant's acknowledgement of the accuracy and legality of the Authority's current Act 203 of 1990 study. Applicant hereby releases, and forever discharges the Authority from all actions, causes of action, claims, suits, appeals, rights, damages, contracts and demands whatsoever in law or equity, especially those arising from the purchase price agreed to hereunder, the Authority's capacity rights fee as well as the Authority's current Act 203 of 1990 study, which against the Authority the Applicant ever had, now has, or which it (as well as its heirs, executors, administrators, successors and assigns) hereafter can, shall or may have, for, or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date of this Agreement.
13. This Agreement and all of the obligations and terms set forth herein shall be binding upon the parties hereto, their heirs, successors and assigns.
14. As required by the context, the use of the singular shall be construed to include the plural and *vice versa*, and the use of any gender shall be construed to include all genders.
15. Applicant hereby declares that it has relied upon the legal advice of personally selected counsel and that while assisted by said counsel, it has completely read and fully understands all of the terms herein.
16. If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.
17. This Agreement sets forth the entire understanding and agreement of the parties hereto with respect to the subject matter referred to herein (including reference to the Capacity Rights Program). There are no other terms, representations, understandings, or agreements, oral or otherwise, between the parties, except as herein expressly set forth.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

APPLICANT

Print Name: _____

Attest: _____

By: _____

**LOCAL MUNICIPALITY OR
SEWER AUTHORITY**

Attest: _____

By: _____

**LOWER PERKIOMEN VALLEY
REGIONAL SEWER AUTHORITY**

Attest: _____

By: _____

Parcel # _____

Application No. _____

COMMONWEALTH OF PENNSYLVANIA :
 : ss.
COUNTY OF MONTGOMERY :

On this, the ____day of _____, 201__, before me personally appeared _____, who acknowledged himself/herself to be the owner of _____, and that he/she as such owner, executed the foregoing instrument for the purposes therein contained by signing his/her name.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: