

## **Appendix E**

### **Model Developer's Agreement**

*[Under no circumstances shall this template be deleted or modified in any way. Any questions shall be directed to the Authority's Staff Engineer]*

CAPACITY ALLOCATION AND DEVELOPER'S  
ON-TRACT AND OFF-TRACT AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_ by and between:

THE FRANKLIN TOWNSHIP SEWERAGE AUTHORITY, a public body corporate and politic of the State of New Jersey, with offices at 70 Commerce Drive, Somerset, New Jersey 08873-3470 (hereinafter referred to as the "Authority" or "FTSA")

and

(hereinafter referred to as the "Developer")

W I T N E S S E T H

WHEREAS, The Developer is the owner of parcels of land located within the Township of Franklin designated as Block(s)\_\_\_\_, Lot(s)\_\_\_\_on the Official Tax Map of the Township of Franklin ("Property") consisting of \_\_\_\_\_  
\_\_\_\_\_ and;

WHEREAS, the Developer has submitted to the Authority for approval, Plans and Specifications for the construction of certain sanitary sewer facilities to be located on Block \_\_\_\_, Lot \_\_\_\_of the Official Tax Map of the Township of Franklin for providing sanitary sewer service to that development known as "\_\_\_\_\_" (The "Development") consisting of \_\_\_\_\_on approximately\_\_acres, more particularly described on plans entitled "\_\_\_\_\_", prepared by\_\_\_\_\_, dated \_\_\_\_\_, latest revision dated\_\_\_\_\_ and consisting of\_ sheets, as approved by the Authority ("Approved Plans and Specifications") and any other governmental entity having jurisdiction thereover; and shall [✓] one of the following:

WHEREAS, the Development consists of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as more fully set forth in a resolution adopted by the Board on\_\_\_\_\_; Resolution #:\_\_\_\_\_;  
or

WHEREAS, the proposal consists of \_\_\_\_\_

WHEREAS, the Developer and the Authority desire to enter into an agreement setting forth the rights, duties and obligations of the parties in connection with the construction of the sanitary sewer utility improvements related to said Development, including off-tract improvement obligations of the Developer.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises, covenants and representations herein contained, the parties hereto, for themselves, their heirs, successors and assigns agree as follows:

#### I. ALLOCATION OF SANITARY SEWER CAPACITY

1. Allocation. An allocation of sanitary sewer capacity within the Authority's conveyance facilities is hereby granted in accordance with the Authority's Sanitary Sewer Allocation Policy dated January 12<sup>th</sup>, 1999 and adopted by the Authority on January 12<sup>th</sup>, 1999 ("Allocation Policy") and the Rates, Rules and Regulations adopted thereunder. The Developer is hereby granted a wastewater conveyance capacity allocation of \_\_\_\_\_ gallons per day to be utilized in connection with the Approved Plans and Specifications for \_\_\_\_\_.

2. Reversion of Allocation upon Re-application. Any change, modification or amendment to the Approved Plans and Specifications for this Development by Developer which is of such type or magnitude that the Approving Board should determine that the same can only be approved as a new application for development (as that term is defined within the Municipal Land Use Law) and not as an amendment to the existing Development, and which is approved by that Board as a new Development, shall likewise be deemed by the Authority to be a new Development, whereupon any allocation of wastewater conveyance capacity granted herein shall become null and void and shall revert to the Authority. In that event, a new application for wastewater conveyance capacity shall be submitted to the Authority for that new Development. The Authority shall utilize the resolution of the Approving Board, including the date of its adoption, to implement the Allocation Policy and to establish the priority of the new Development thereunder. Developer and the Authority acknowledge and agree that any abandonment of this Development or any modification to it which is so extensive that for all intents and purposes this Development is superseded or fundamentally changed shall void the allocation granted herein, while minor and customary amendments and modifications to the Approved Plans and Specifications which do not intrinsically change this Development shall neither void this allocation nor change the priority of this Development under the Authority's Allocation Policy.

3. Duration of Allocation. The allocation of capacity set forth herein shall remain valid and effective for the same period that the Developer maintains a valid Treatment Works Approval (TWA) with the New Jersey Department of Environmental Protection ("NJDEP") for this Development. In

the event that circumstances arise resulting in the Developer's inability to proceed (whether or not beyond the control of the Developer), the Authority retains the right to revoke the assigned gallonage allocation subject to applicable law and administrative practice in accordance with the Allocation Policy and the Rules and Regulations adopted thereunder if the Developer fails to achieve reasonable progress toward utilization of the gallonage allocation as measured by issuance of certificates of occupancy. For this development, reasonable progress shall be 100% utilization of the gallonage allocation within\_\_years of the execution of this Agreement, subject to any tolling permitted by law.

4. Transfer of Gallonage. The Developer agrees that the wastewater conveyance capacity allocation for this Development cannot be traded, sold, or otherwise reallocated by the Developer, unless the Property to which the gallonage is allocated is sold to a new owner in which case the wastewater conveyance capacity allocation, together with all off-tract improvement obligations set forth or incorporated by reference herein, shall run with the land and be transferred to the new owner. All unused or excess wastewater conveyance capacity not needed by this Development shall automatically revert to the Authority with no credit issued. The Authority must be notified in writing prior to the sale of the Property that is the subject of this Developer Agreement. Such prior written notice shall be at least thirty (30) days prior to any sale. The failure of the Developer to provide such notice shall be a breach of this Agreement. In addition, upon sale, any and all obligations of the Authority under this Agreement shall be cease to exist unless the Authority agrees otherwise by a vote and resolution of its Board of Commissioners.

## II. AGREEMENT AS TO SANITARY SEWER FACILITIES

1. Sanitary Sewerage Collection System. The Developer shall install at its sole cost and expense a complete on-tract sanitary sewerage collection system consisting of sanitary sewer mains, together with all appurtenances, manholes and other accessories, all in accordance with the Approved Plans and Specifications and in accordance with the Rates, Rules and Regulations of the Authority.

2. Connection to Existing Facilities. The Developer shall connect said sanitary sewer collection system to the Authority's existing sanitary sewer facilities at the Developer's sole cost and expense as set forth on the Approved Plans and Specifications and as required by the Authority. The Developer acknowledges that such existing facilities of the Authority may not be contiguous to the Property which comprises this proposed development.

3. Permits. The Developer shall, at its sole cost and expense, obtain all necessary permits, including but not limited to a Treatment Works Approval Permit from the NJDEP and any other governmental entity having jurisdiction thereover. The Developer shall comply with all terms and conditions thereof.

4. Construction in Accordance with Plans and Specifications. All construction of said sanitary sewerage collection system shall be in accordance with the Approved Plans and Specifications above mentioned and as directed and approved by the Authority.

5. Revenues, Fees and Charges. Upon operation of the sanitary sewer collection system, or any portion thereof, irrespective of whether the same has yet been conveyed to or accepted by the Authority, all revenues, fees, and other charges thereafter derived shall belong to the Authority.

6. Service Connections. The construction of the sanitary sewer collection system shall include the installation of\_\_\_\_\_service connection(s) to the edge of the right-of-way to service\_\_\_\_\_, all to be done at the Developer's sole cost and expense and in accordance with the Rates, Rules and Regulations of the Authority.

The Developer, at its sole cost and expense, shall install service connections to the edge of the right-of-way for each improved or unimproved lot along the route of any sanitary sewer line installed by the Developer off-site, but associated with this development.

7. Permit and Approval to Operate. Prior to the operation of the sanitary sewer system installed by the Developer, the Authority, upon written request of the Developer and with the Developer's cooperation, shall secure a "Permit to Operate" or its equivalent from the New Jersey Department of Environmental Protection ("NJDEP"), if applicable, and obtain such other formal approval(s) as may be required in order to operate said sanitary sewer collection system. All costs associated with obtaining such Permit and/or approvals shall be borne by Developer.

### III. AGREEMENT AS TO OFF-TRACT IMPROVEMENTS

1. Off-Tract Improvement Obligation. The Developer acknowledges that in addition to on-tract and off-tract improvements required to connect the Development to existing Authority systems, the Development also poses an impact upon existing Authority facilities. The Authority and Developer agree that the Authority has power and authority pursuant to the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-1 et seq.), New Jersey case law and other legal precedent, including the Authority's Rates, Rules and Regulations, to install or require the Developer to install both on-tract and off-tract facilities and infrastructure necessary to secure adequate service from the common sanitary sewer facilities of the Authority. To the extent that the capacity of such existing facilities is exceeded, Developer acknowledges the need for relieving or expanding those existing facilities or providing new facilities. The Authority shall determine the extent to which the Developer will be required to pay an Off-Tract Improvement Fee ("OTIF") or construct certain off-tract improvements in lieu of such payment, based in part upon the findings as contained in the Infrastructure Master Plan and Impact Analysis, dated December 1998, and as may be from time to time amended.

2. Off-Tract Improvement Fee. The Developer agrees to remit to the Authority the sum of \$\_\_\_\_\_ as the full amount of the Developer's proportionate share of the costs of the off-tract improvement(s) as determined by the Authority on\_\_\_\_\_, in accordance with the Authority's Rates, Rules and Regulations concerning OTIF requirements. Such off-tract fee shall be paid as follows:

Fifty (50%) percent within 90 days of the execution of this Agreement, the balance being due one (1) year after the execution of this Agreement, or unless otherwise stated here. If the Impact Fee is not paid on schedule then a late penalty of 1.5 percent per month will be charged on the unpaid balance.

[Alternate if Commercial Development:

The fee shall be paid in its entirety within 90 days of the execution of this Agreement by all parties. If the Impact Fee is not paid on schedule then a late penalty of 1.5 percent per month will be charged on the unpaid balance.]

[Alternate if House of Worship or Affiliate:

Inclusive of Connection Fee, User Fee, and Off-Tract Improvement Fee. The Developer agrees to remit to the Authority the sum of \$\_\_\_\_\_ as the full amount of the Developer's proportionate share of the costs of the off-tract improvement(s) as determined by the Authority on\_\_\_\_\_, in accordance with the Authority's Rates, Rules, and Regulations. In addition, the Developer agrees to remit to the Authority the sum of \$\_\_\_\_\_ as the full amount of the

connection fee as determined by the Authority on \_\_\_\_\_, in accordance with the Authority's Rates, Rules, and Regulations. Said fees may be paid in twenty percent (20%) installments per year over a span of 5 years. Separate checks are to be made payable to the "Franklin Township Sewerage Authority" with a description of each payment. The first payment is due within 90 days of the execution of this Agreement and shall be required prior to a recommendation of a C/O to the Township. On the anniversary of the execution of this Agreement, the next installment of twenty percent (20%) is to be due to the Authority. The Developer's Annual User Fee shall increase incrementally on the anniversary of the execution of this Agreement in correlation with the number of Connection Fee Units paid to date. If the aforementioned payment schedule is not adhered to then a late penalty of 1.5 percent per month will be charged on the unpaid balance.

Example: if the facility is assessed 100 EDU's the fees will be as follows:

Year 1: 20 Connections, 20 User annual EDU's.

Year 2: 20 additional Connections, 40 User annual EDU's.

Year 3: 20 additional Connections, 60 User annual EDU's

Year 4: 20 additional Connections, 80 User annual EDU's

Year 5: 20 additional Connections, 100 User annual EDU's]

3. Satisfaction of Developer's Off-Tract Improvement Obligations. Satisfactory completion of the Developer's obligations in accordance with the terms and conditions of this Agreement and the payment of the OTIF as set forth herein, shall satisfy all off-tract improvement obligations which the Developer has to the Authority.

4. Time of the Essence. The Developer acknowledges that the payment of the OTIF or the construction of the off-tract improvements are important components of the Authority's program for the continued operation of its sanitary sewer system. Therefore, the Developer acknowledges that time is of the essence in connection with the obligations of the Developer herein, and accordingly, the Developer shall be required to undertake all actions and submit all OTIFs as set forth herein in a timely fashion, without any further demand by the Authority.

5. Obligation to Run with the Land. Developer agrees that satisfaction of the off-tract improvement obligation set forth herein constitutes a part of the consideration for the grant by the Authority of the wastewater conveyance capacity set forth in this Agreement, and performance of all off-tract improvement obligations shall be a condition of this Agreement which shall be deemed to run with the land, and which shall be binding not only upon Developer, but also upon all heirs, successors and/or assigns of Developer's interest in the Development.

#### IV. COLLECTION SYSTEM MAINTENANCE AGREEMENT

1. The Owner of the Property shall undertake a preventative maintenance program which shall include of routine sewer cleanings, visual manhole inspections, Pump Station maintenance, appropriate odor and corrosion control on a consistently monitored basis, I&I investigations, etc. so as to retain the effective utilization of the sewerage facilities for the collection of the sanitary sewers as designed. Should the Owner fail to properly maintain the sewerage facilities, then said Owner shall be considered in default and in that event, the Authority reserves the absolute right to retain immediate ownership and maintenance of the sewerage facilities for purposes of securing overall public health and safety and shall further retain the right to charge against the Owner any outstanding maintenance costs which shall be subject to a lien being filed against the Property.

2. Inflow & Infiltration (I&I). The Township of Franklin Ordinance No. 3484 prohibits the introduction of substances which are not normal sanitary sewage and specifically prohibits

infiltration. The Authority is authorized by Statute, regulation, and ordinance to enforce an investigation of a system for the presence of inundation following storm events and to further require the removal of such infiltration. The Owner shall commence an investigation at its own expense once every five (5) years or at such other times as may be deemed by the Authority. All findings shall be submitted to the Authority and updated in the Owner's Operations and Maintenance Manual (see section 3 below).

3. Maintenance Schedule and Supplemental Procedures. The aforementioned maintenance program shall be performed in accordance with the maintenance schedule and procedures outlined in the submitted and approved Operations and Maintenance Manual. The Operations and Maintenance Manual shall be furnished to the Authority and kept by the property Owner in a safe and known location. Maintenance and repair activity logs shall be maintained by the property Owner and shall be provided to any appropriate governing authority upon their request.

4. Licensed Operator. N.J.A.C. 7:10A which is authorized by N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., 58:11-64 et seq., and 58:12A-1 et seq. requires that a system that serves more than 250 people or which conveys more than 25,000 gallons of wastewater per day shall be overseen by a licensed operator. Notwithstanding the applicability of the aforesaid statutory and regulatory requirements, a Licensed Operator will be required to submit monthly status reports to the Authority for [the collection system as well as the pump station] via email at the expense of the Owner. A status report template will be provided to the Owner by the Authority. Prior to the issuing of a CO, the Owner shall verify a Licensed Operator was acquired.

5. Right of Access for Facility Inspection. The Owner hereby grants permission for authorized personnel of the Authority to enter the Property upon which the sewerage facilities are located for the purpose of inspecting such Facilities. Such inspections shall be made by Authority personnel at such times as deemed appropriate by Authority staff and may be conducted without prior notification. The Owner further hereby grants the Authority the right to request and obtain any and all documents, records and reports from the Owner's vendors and Licensed Operators with respect to the sewerage facilities. The Owner or Owner's vendors (as the case may be) will have thirty (30) days to provide the requested documentation.

6. Emergency Maintenance and Repairs. In the event that an emergency situation arises that makes it impractical to serve written notice upon the Owner and to provide Owner with a reasonable period for completion of necessary maintenance and repairs, then, and in that event, the Authority may immediately enter upon the Property and perform or cause to be performed such emergency maintenance. Any and all such maintenance costs that are incurred by the Authority shall be deemed to be included as part of the Sewer User Fees to be charged to the Owner and shall be due and payable upon the issuance of an invoice to the Owner by the Authority. Unpaid maintenance costs shall be subject to tax lien in the same manner as ordinary Sewer User Fees and other municipal charges.

7. Reasonable Exercise of Rights. All rights of the Authority herein above set forth shall be exercised by the Authority in a reasonable fashion and in the event of dispute in respect to the foregoing, the issue shall be decided by a court of competent jurisdiction.

a. Danger to Public. In the event that the sewerage facilities become a danger to public safety or public health, or if the sanitary sewerage facilities are in need of maintenance, the Owner will be notified in writing. Upon receipt of such notice, the Owner shall have fourteen (14) days to implement maintenance and repair of the Sanitary Sewer Facilities in a manner that is approved by the Authority's staff; provided, however, that if the repairs or maintenance are of an emergent nature, the

Owner may be notified by telephone, facsimile, overnight delivery or hand delivery to implement immediate maintenance and repair of the sewerage facilities. If the Owner fails or refuses to perform such maintenance and repair, the Authority may immediately enter upon the Property with vehicles and equipment and proceed to perform such maintenance and repair and bill the cost thereof to the Owner. In the event of such entry by the Authority, the Owner agrees to save, defend, indemnify and hold the Authority harmless from and against any loss, damage, claim, suit or expense caused by or arising from any damage or injury to property or persons arising from or in connection with any of the rights hereby granted to the Authority. All costs incurred shall become a lien against the Property which shall be collected in the same manner as property taxes or by any other available manner provided by law.

b. Notice: Except in cases of emergency as provided herein, any notice related to this Agreement to be given to the Owner or to the Authority shall be sufficient if given in writing and sent by first class mail, postage prepaid, addressed to the Owner or Authority at the address set forth at the beginning of this Agreement, unless either party delivers a substitute address to the other party by certified mail, return receipt requested, in which case the notice shall be sent to that address.

c. Successors and Assigns. Wherever in this Agreement any party shall be designated or referred to by name or general reference, such designation is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, successors and assigns" had been inserted after each and every such designation. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto and their heirs, executors, administrators, personal or legal representatives, successors and assigns, respectively.

d. Governing Law. This Agreement shall in all respects be governed and constructed in accordance with the laws of the State of New Jersey.

e. Amendment. The provisions of this Agreement may not be amended, modified or terminated without the express written consent of the Authority, and no such amendment, modification or termination shall be effective for any purpose unless set forth in writing and signed by the appropriate officials of the Authority.

## V. GENERAL PROVISIONS

1. **Contribution by Others**. The Developer shall not be entitled to any contribution by the user or users of any sanitary sewer lines, facilities or appurtenances subsequently connected to any sanitary sewer lines, facilities or appurtenances installed by the Developer arising from the fact that the Developer has paid for or installed such sanitary sewer lines, facilities or appurtenances or has paid any fees to the Authority pursuant to this Agreement and/or the Authority's Rates, Rules and Regulations.

2. **Time for Completion of Project**. It is agreed that all sewer utility improvements to be constructed by the Developer shall be completed within three (3) years of the execution of this agreement. All work to be performed by the Developer shall be completed within two (2) years of the posting of the performance guarantee.

3. **Agreement to Run With the Land and Release**. This Agreement and its covenants shall run



with the land and shall inure to the benefit of the Authority and its successors and assigns and shall be binding on any successor in title of the Developer, including, without limitation, any purchaser of the Property comprising the Development, PROVIDED HOWEVER, that bona fide purchasers of single family units from the Developer shall not be bound by the terms and conditions of this Agreement. This Agreement shall be recorded in the Office of the Somerset County Clerk by the Developer at the expense of the Developer.

4. Easements, Rights-of-Way, Record Drawings and Operation and Maintenance Manuals. The Developer agrees to obtain all necessary sanitary sewer easements, rights-of-way and any other easements for on-tract and off-tract improvements as set forth on the Approved Plans and Specifications, or otherwise required by the Authority. The Developer shall grant or have granted to the Authority by third parties, at the Authority's request, appropriate easements along the entire length of the facilities to be conveyed to the Authority not in any public street, with a width of 20 feet measured at right angles, generally extending 10 feet on each side of the center line of the length of any such pipe, sewer line or extension or part thereof, together with the power of the Authority, its representatives, agents and employees to enter upon the lands of the owner within such rights-of-way, as well as upon streets, or other easements to construct, place, repair, replace, maintain and control any pipe, sewer line, appurtenant facility or extension of any part thereof or installation therein. Any conveyance of easements shall be made by Deed or other related documents as may be reasonably required by the Authority, utilizing the form of easement document previously approved by the Authority. Prior to the Authority's acceptance of the conveyance of any such easement or right-of-way, the Developer shall furnish the Authority with a title search, satisfactory to the Authority's Legal Counsel, for any premises traversed by any such easement, whether or not the Developer is the fee owner of such premises.

The taking of said easements shall not be construed as the exercise of dominion or control by the Authority over any street or sanitary sewer located therein until such time as the street(s) is formally accepted by the Township and the Authority formally accepts the easements and the facilities located therein.

The Developer shall furnish seal record drawings to the Authority (hard copy, electronic, and CAD files) for all improvements being constructed hereunder in accordance with the requirements of the Authority and subject to the approval of the Authority. All such record drawings, plans, reviews and approvals thereof by the Authority shall be completed at the Developer's sole cost and expense.

If required by the Authority, the Developer, at its sole cost and expense, shall furnish to the Authority all operation and maintenance manuals for the improvements as applicable, along with manufacturers' catalogues, certifications, guarantees, warranties, and the like, as any of the above would apply.

5. Payment of Fees. The Developer shall pay to the Authority, at the rate which is then in effect, all sanitary sewer connection fees imposed by the Authority pursuant to its Rates, Rules and Regulations, except as otherwise provided for herein. The Developer shall comply with the Authority's Rates, Rules and Regulations with regard to obtaining a Sanitary Sewer Connection Permit for each unit within the Development which the Developer intends to connect to the Authority's facilities.

6. Project Review Fees, Permits, Inspection, and Impact (off-tract improvements cost determination) Fees; Escrow Deposits. The project review fees for the professional, staff, and administrative costs incurred by the Authority in connection with the planning, design, construction, and approval of the improvements set forth herein, shall be paid by the Developer through an escrow account to be established by the Authority. The Authority shall provide a reasonable estimate of all

such costs and the Developer shall pay the entire estimate therefore at the time this Agreement is executed. When the amount in escrow is reduced to a sum equal to twenty-five percent (25%) of its original amount, the same shall be replenished to the original amount within five (5) days written notice from the Authority to the Developer. The Developer shall be entitled to copies of any vouchers or the calculations and methodology utilized to develop the charges imposed against said escrow account. Except where specifically provided to the contrary in this Agreement, that portion of Appendix B and Appendix F of the Rates, Rules and Regulations, Specifications, Rate and Fee Schedules for Furnishing Services of the Authority, as adopted and as modified from time to time, shall apply. The Authority reserves the right to suspend activity on the improvements set forth herein if the escrow deposit is not maintained in accordance with this paragraph. All interest on said escrow shall be governed pursuant to the requirements of N.J.S.A. 40:14B-20.1.

The approval and permit to construct the sanitary sewer systems, appurtenances, facilities and/or off-tract improvements as set forth herein shall not be issued unless and until approvals for said systems are obtained in writing from the FTSA and the NJDEP, if necessary, and any other governmental entities having jurisdiction thereover and unless and until a construction inspection fee deposit is paid to the Authority by the Developer in the initial amount as set forth in the Rates, Rules and Regulations. It is understood that the Developer shall be responsible for obtaining all such approvals from the Authority, and if necessary, the NJDEP, and any other governmental entity having jurisdiction thereover and for the payment of all fees and costs in connection therewith.

7. Incorporation by Reference. The Developer's application, all maps on file, construction plans, detailed maps, State laws, Township ordinances, Authority Rates, Rules and Regulations, Approving Board Rules and Regulations, Resolutions with respect to this development and all the terms and conditions of all previous approvals by this Authority are hereby incorporated herein by reference and made part hereof as if set forth at length.

8. Stop Work Order. In the event that the Authority determines that there is an improper installation of the sanitary sewer facilities set forth herein, either on-tract or off-tract, and/or a violation of the terms of this Agreement or of the Rules and Regulations of the Authority or any other agency having jurisdiction hereunder, the Authority may issue a Stop Work Order for said work until said violation is corrected. The foregoing remedy shall be in addition to and not in lieu of any other rights and remedies that the Authority may have to enforce the obligations of the Developer under this Agreement.

9. Rates, Rules and Regulations. The Developer shall comply with the Rules and Regulations of the Authority as from time to time revised, amended or readopted, entitled "Rates, Rules and Regulations", applicable to sewer service in the Township of Franklin, Somerset County, NJ.

10. Performance and Maintenance Guarantees. The Developer agrees to post an appropriate performance guarantee. The cost estimates for said guarantee shall be made in accordance to FTSA's Rates, Rules, and Regulations, determined from Appendix F.

Specifically, to guarantee and ensure performance of the terms and conditions of this Agreement and as a condition of final approval of the Development by the Authority, the Developer shall post a performance guarantee or other instrument as provided in the Authority's Rates, Rules and Regulations in a form acceptable to the Authority's Legal Counsel in an amount equal to one hundred and twenty percent (120 %) of the estimated cost of the improvements as determined by Appendix F, ten percent (10%) in the form of cash, with the remainder in the form of a surety bond or other collateral acceptable to the Authority and its Legal Counsel, including a letter of credit in a form so acceptable, with said guarantees expressly conditioned upon the satisfactory performance of the fulfillment of the obligations set forth in this Agreement, the construction of the improvements set

forth herein, and compliance with all applicable Rules and Regulations of the Authority, the requirements of the NJDEP and the local building codes, as well as compliance with the requirements of any other governmental entities or agencies having jurisdiction over the subject matter referred to herein.

Reduction in the amount of the performance guarantee shall be in accordance with the provisions of the Municipal Land Use Law, specifically N.J.S.A. 40:55D-53. The cash portion of the performance guarantee shall be placed in an interest-bearing account in the name of the Authority. All interest accruing on said cash amount shall be governed pursuant to the requirements of N.J.S.A. 40:14B-20.1.

Upon default of the Developer, the Authority shall be entitled to enforce the performance guarantee in accordance with its terms. The Authority shall enjoy all the rights and remedies provided by state statutes, local ordinances and case law. In the event of a default, the Authority can demand specific performance of the within Agreement, or, in the alternative, payment of all costs, expenses, fees and damages, in order to fulfill the terms of this Agreement and the requirements of the Authority, without first doing the work at its cost and expense.

At such time as the sewer utility improvements have been formally accepted by the Authority, the Developer shall post a Maintenance Guarantee made in accordance with the Rates, Rules and Regulations of the Authority, which shall be in a form acceptable to the Authority's Legal Counsel.

It is understood and agreed that the guarantees posted and deposited hereunder shall cover all obligations set forth in this Agreement, as well as compliance with all applicable Rates, Rules and Regulations of the Authority, the requirements of the NJDEP and local building codes related to this construction. The guarantees shall cover all attorneys' fees, costs of suit, and any other Authority expenses which may be incurred as a result of the enforcement of this Agreement with respect to these requirements.

To the extent that the performance/maintenance bond is provided in the form of cash or check, it can be deposited in the Developer's escrow account. However, that portion of the escrow account cannot be drawn upon until the Developer is in default of the Agreement. Should the Developer sell the Property to a new owner, provisions must be made in the Agreement of Sale with regard to the transfer of the escrow monies and the new owner satisfying the Developer Agreement performance/maintenance bond requests prior to the release of the original Developer's bonds. Likewise, the Authority must be notified in writing proper to the sale of any property subject to a Developer Agreement.

11. Indemnification. The Developer covenants and agrees to indemnify and hold harmless the Authority, its officers, agents, employees, servants, Consulting Engineer, Legal Counsel, and each and every one of them against and from any and all liability, suits, and costs of every kind and description, and from all damages to which said Authority or any of its officers, agents, employees, servants, Consulting Engineer or Legal Counsel may be put with respect to any personal or other injury, loss or property damage which the Authority may suffer as a result of carelessness in the performance of said work or through the negligence of said Developer or through any improper or defective machinery, implements or appliances used by the Developer in the aforesaid work or through any act of omission or commission on the part of the Developer, its agent or agents, or as a result of any claim, demand, cost or judgment that may be made against it arising out of this Agreement or performance of its obligations hereunder, unless the said liability, loss or damage is caused by, or arises out of, the negligence of the Authority, its officers, agents, employees, servants, Consulting Engineer or Legal Counsel.

12. Safety of Employees. The Developer shall take all precautions for the safety of all employees at the work site and shall comply with all provisions of Federal, State, Municipal and Authority regulations and building codes to prevent accidents or injuries to persons on or about or adjacent to the premises where the work is being performed.

13. Insurance. The Developer shall procure insurance for public personal injury liability and property damage liability including contingent liability and contractual liability which might result from the performance of the work required under this Agreement and shall provide the Authority with a Certificate of Insurance designating the Authority, its Consulting Engineer and Legal Counsel as additional named insureds under each said policy. The Developer further covenants and agrees that it will provide vehicular liability and property damage insurance coverage and will provide the Authority with a Certificate of Insurance designating the Authority and its Consulting Engineer as additional insured. Coverage shall be in not less than the following amounts:

Comprehensive General Liability (Bodily injury and property damage)	\$3,000,000.00 combined single limit
Automobile Liability (Bodily injury and property damage)	\$3,000,000.00 combined single limit
Excess Liability and Property Damage	\$5,000,000.00 combined single limit

14. Worker's Compensation Insurance. The Developer further covenants and agrees that it will provide workers' compensation insurance coverage for its employees and will require evidence of such coverage to be supplied by any subcontractor who may be employed to perform work under this Agreement.

15. Conviction of offenses. The Developer herein represents that neither the Developer nor any person owning five percent (5%) or more of the stock or equity interest in the Developer's business, has been convicted of an offense under N.J.S.A. 2C:21-34, N.J.S.A. 2C:27-2, N.J.S.A. 2C:27-3, N.J.S.A. 2C:27-5, N.J.S.A. 2C:27-9, N.J.S.A. 2C:27-10, N.J.S.A. 2C:27-11, N.J.S.A. 2C:29-4, N.J.S.A. 2C:30-2, or N.J.S.A. 2C:30-3, all as set forth in N.J.S.A. 2C:51-2.

16. Record Owner of Property. Under penalty of law, Developer herein certifies that it is or will be the owner of record of the Property which is the subject matter of this Agreement prior to commencement of construction of the improvements set forth herein and is not a contract purchaser, agent, or other representative of the true owner.

17. American Products. Pursuant to N.J.S.A. 40A:11-18 as amended by P.L. 1982, c. 107, the Developer agrees that only manufactured products of the United States, wherever available, shall be utilized in the work as set forth in this Developer's Agreement.

18. Voluntary Agreement. The Developer herein represents that it has voluntarily entered into this Agreement and the same has not been executed by the Developer under duress, coercion, or other pressure imposed by the Authority or its representatives or any representative or agency of the Township of Franklin. Accordingly, the Developer herein covenants and agrees that it will not bring any action in law or in equity against the Authority with respect to the obligations assumed by the Developer under this Agreement or the terms and conditions thereof, which have been mutually negotiated by and between the parties.

In the event of any legal action instituted by a third party or governmental agency or official challenging the validity of any provision of this Agreement, the parties hereto agree to defend and

fully cooperate in defending said action(s) to seek to uphold the validity and enforceability of this Agreement, or any portion(s) thereof. The Developer shall be responsible for the payment of any fees for professionals retained by either party in the defense of such actions.

19. Non-Reliance. The Developer acknowledges that it has not relied upon any cost estimates or opinions rendered by representatives of the Authority, including its Consulting Engineer, Executive Director, Legal Counsel, or any member or employee of the Authority, and that the Developer has satisfied itself as to the anticipated final construction costs of the improvement(s) set forth herein and its obligations hereunder prior to the execution of this Agreement.

20. Financial Ability of the Developer. The Developer represents that it is financially able to undertake and complete the obligations set forth in this Agreement and any financing which it may require is either currently available to it or can be secured subsequent to execution of this Agreement.

21. Non-Waiver. The failure of either party to insist upon strict performance of any of the covenants or conditions of this Agreement or to exercise any option herein conferred in any one or more instance shall not be construed as a waiver or a relinquishment for the future of any such covenant, condition or option, but the same shall be and remain in full force and effect unless amended in writing.

22. Severability/Illegal Provisions. Should any provision of this Agreement be found to be void or contrary to public policy, then such provision shall be deemed deleted from this Agreement. Such deletion, however, shall not affect the validity of the remaining provisions of this Agreement which shall remain in effect, unless the intent or purposes of this Agreement are frustrated by such deletion.

23. Captions. The captions throughout this Agreement are inserted only for reference and convenience. They in no way define or limit the scope or intent of any provision of this Agreement.

24. Entire Agreement. This instrument contains the entire Agreement between the parties with regard to the subject matter set forth herein. It may only be changed by agreement in writing, signed by both parties, and may not be orally modified.

The parties hereto agree that they shall execute, acknowledge and deliver any and all other instruments or documents and engage in any other future actions which are reasonably necessary to effectuate the purposes of this Agreement. Furthermore, each party agrees to mutually cooperate with the other to fulfill the purposes and intent of this Agreement.

25. Agreement Not Equivalent to Board Approval. The execution of this Agreement by the Authority and the Developer shall in no way constitute an approval or have any binding effect upon any pending development application or future development application which is submitted by the Developer to any board or agency of the Township of Franklin or otherwise, and nothing herein shall be so construed. The Developer shall continue to be obligated to comply with all development approval requirements within the Township of Franklin or of any other board or agency having jurisdiction.

26. Enforcement. In addition to the methods and modes of enforcement set forth in this Agreement, in the event that the Developer fails to make any payment as required under this Agreement as and when due, or to perform its obligations hereunder, the Authority, in its sole and absolute discretion, without waiving or impairing any other rights it may have under law or this Agreement, may undertake the following actions, or any combination thereof, at any time upon 10 business days written notice to the Developer, and provided that the Developer does not cure such failure within such 10 day period:

- a. Refuse to sign off on any construction permits, certificates of occupancy, or any other permits, licenses or certificates for any improvements for the proposed development;
- b. Issue a Stop Work Order to the Developer;
- c. Institute proceedings to compel compliance by the Developer with the terms and conditions of this Agreement.

27. Payment of Legal Fees. In the event that the Authority has to enforce the terms of this Agreement, the Developer shall pay all of the Authority's reasonable costs and expenses in connection therewith, including Attorneys' fees, Court costs and expert witness fees.

28. Governing Law. This Agreement shall be construed, governed and enforced in accordance with the laws of the State of New Jersey.

29. Notice. Any notices, requests, or other communications under this Agreement shall not be effective unless the same are in writing and mailed by Registered or Certified Mail, postage prepaid, or overnight delivery service, or by FAX transmission, addressed to the parties at the addresses below:

TOWNSHIP OF FRANKLIN SEWERAGE AUTHORITY  
 70 Commerce Drive  
 Somerset, New Jersey 08873-3470  
 Fax (732) 873-2038

Copy to:

Authority Attorney

and

Consulting Engineer

## VI. ADDITIONAL PROVISIONS.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their proper corporate officers and their proper corporate seals to be affixed hereto the day and year indicated on the acknowledgments attached hereto and made a part hereof.

ATTEST:

TOWNSHIP OF FRANKLIN SEWERAGE AUTHORITY:

\_\_\_\_\_(Type Name)      \_\_\_\_\_(Type Name)

\_\_\_\_\_(Signature)      \_\_\_\_\_(Signature)

Secretary-Treasurer

Chairperson

Dated:

WITNESS:

[NAME OF DEVELOPER]  
[TITLE]

\_\_\_\_\_ (Type Name)

\_\_\_\_\_(Signature)

Dated:

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ appeared before me, the subscriber, a Notary Public of the State of \_\_\_\_\_, this person acknowledged before me, under oath, and to my satisfaction, that he is the [PRESIDENT, MANAGING MEMBER, ETC.] of \_\_\_\_\_, a [CORPORATION, LIMITED LIABILITY CORPORATION, ETC.], established and operated under the Laws of the State of \_\_\_\_\_, the entity named in the within Instrument and that he/she signed, sealed and delivered the attached document as and for his/her act and deed and the authorized act and deed of \_\_\_\_\_.

Sworn and subscribed to  
before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

Notary Public

CAPACITY, ALLOCATION AND  
DEVELOPER'S AGREEMENT

Between:

FRANKLIN TOWNSHIP  
SEWERAGE AUTHORITY

-and-

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DATE