

Cheltenham Township, believing that public input is appropriate on any items coming before the Commissioners, will recognize any citizen wishing to address a specific item prior to the vote on that issue. In order to be recognized, please raise your hand.



AGENDA
COMMISSIONERS' MEETING
Wednesday, September 17, 2014
Curtis Hall
7:30 p.m.

1. Pledge of Allegiance.
2. Roll Call.
3. Approval of the Board of Commissioners' Regular Meeting Minutes dated August 20 and Special Meeting Minutes dated September 3, 2014.
4. Acceptance of the Executive Summary Financial Report of the Manager/Secretary for the month of August, 2014.
5. Acceptance of the Accounts Paid Report for the month of August, 2014.
6. Presentation of a Certificate and Pin to Sgt. Jesse Tyler upon the completion of 20-years of service with the Cheltenham Township Police Department.
7. Swearing-in of Police Officer Rahiem Todd by Magisterial District Judge Christopher Cerski.
8. Review and acceptance of the Public Works Committee Regular Meeting Minutes dated September 10, 2014.
 - a. Approval of Land Development Application No. 14-0511-01, Calvary Assembly of God, 7910 Washington Lane, Wyncote, PA.
 - b. Approval of a Change Order to the Sanitary Sewer Replacement Project.
 - c. Approval of the Wastewater Service Agreement with Abington Township (see attached).
9. Review and acceptance of the Public Safety Committee Regular Meeting Minutes dated September 3, 2014.
 - a. Adoption of an Ordinance amending Chapter 285 of the Traffic Code entitled "Vehicles and Traffic".

AGENDA – BOARD OF COMMISSIONERS’ MEETING
September 17, 2014
Page Two

10. Review and acceptance of the Public Affairs Committee Regular Meeting Minutes dated September 3, 2014.
 - a. Adoption of a Resolution authorizing a grant application for the Tookany Creek Pedestrian Trail, Phase III.
 - b. Adoption of a Resolution authorizing the filing of a grant application for retrofitting restroom facilities at the Elkins Park Library.
 - c. Recommendation to table Public Hearing scheduled for September 17, 2014 to consider the adoption of an Ordinance amending the Code of the Township of Cheltenham, establishing Chapter 175, entitled “Local Landmarks”; providing criteria for qualification as Local Landmarks; providing for Certificates of Appropriateness; and providing for penalties for violation of the Ordinance.

11. Review and acceptance of the Building and Zoning Committee Regular Meeting Minutes dated September 3, 2014.
 - a. Concurrence with the Parking Analysis for 2 Roberts Block.

Review and acceptance of the Parks and Recreation Committee Regular Meeting Minutes dated September 10, 2014.

 - a. Award of a Construction Contract for the Rowland Community Center Roof Replacement Project.
 - b. Rejection of bids for the Glenside Memorial Hall Floor Replacement Project.
 - c. Approval of a Field Permit and Fee Policy for the use of the Township’s fields.

12. Old Business.

13. New Business.
 - a. In accordance with the Home Rule Charter, Article VII, Section 702(b), the Township Manager requests the advice and consent of the Board for the appointment of Alyson E. Elliott to the position of Assistant Township Manager effective September 24, 2014.

14. Citizens’ Forum.

15. Adjournment.



Bryan T. Havir
Township Manager

WASTEWATER SERVICE AGREEMENT
BETWEEN CHELTENHAM TOWNSHIP AND ABINGTON TOWNSHIP

The Agreement (“Agreement”) is made this _____ day of September, 2014, (“Effective Date”) by the Township of Cheltenham, Montgomery County, Pennsylvania (“Cheltenham”) a body corporate and politic organized under the laws of the Commonwealth of Pennsylvania, having a principal place of business at 8230 Old York Road, Elkins Park, Pennsylvania, and the Township of Abington, Montgomery County, Pennsylvania, (“Abington”), a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, having a principal place of business at 1176 Old York Road, Abington, Pennsylvania (collectively referred to as the “Parties”).

BACKGROUND

WHEREAS, Cheltenham owns and operates wastewater collection and conveyance facilities providing service to convey Wastewater (“Wastewater Conveyance Services”); and

WHEREAS, the Parties have entered into prior Wastewater Agreements whereby Cheltenham agreed to provide Abington with Wastewater Conveyance Services; and

WHEREAS, the Parties are subject to revised conditions contained in the Agreement between Cheltenham and Philadelphia; and,

WHEREAS, the Parties desire to rescind all previous Agreements prior to the effective date of the Agreement; and

WHEREAS, a revised Agreement between Cheltenham and Abington is required in order to update the regional PA Act 537 Sewage Facilities Plan; and

WHEREAS, Abington desires to continue to procure Wastewater Conveyance Services from Cheltenham to ensure conveyance to the City of Philadelphia (“City”) for wastewater treatment for Abington; and

WHEREAS, the Parties desire to enter a new Wholesale Wastewater Agreement, which shall address, but is not limited to, Abington’s Flow Limits at its Points of Interconnection with Cheltenham’s Conveyance System, Conveyance Fees, Pass-Thru City Wastewater Treatment Fees, Exceedance Fees, and Management and Administration Fees.

WHEREAS, Cheltenham may at times be managing a Corrective Action Plan (“CAP”) mandated by the Pennsylvania Department of Environmental Protection (“PADEP”), which requires Cheltenham to maximize the conveyance capacity in its sanitary sewer system and to minimize the volume and duration of discharges from Sanitary Sewer Overflows (“SSOs”), and a Connection Management Plan (“CMP”) mandated by PADEP, which defines and restricts the number of new connections to its sanitary sewer system; and

WHEREAS, Cheltenham, in order to eliminate and prevent SSOs, must limit the inflow and infiltration from sanitary sewer systems within Cheltenham and from its tributary customers, including Abington; and

WHEREAS, Cheltenham desires to provide and Abington desires to utilize Wastewater Conveyance Services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

I. DEFINITIONS

For the purposes of this Agreement, the following terms and phrases shall have the following meanings:

- A. Act 537 Plan: A comprehensive plan for the provision of adequate sewage systems adopted by a municipality or municipalities possessing authority or jurisdiction over the provision of the systems, and submitted to, and approved by, the PADEP, as required by the Pennsylvania Sewage Facilities Act.
- B. BOD₅ – Biochemical Oxygen Demand: The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees Celsius, expressed in terms of milligrams per liter (mg/l)
- C. City: City of Philadelphia
- D. Days: Days shall be Calendar Days.
- E. DRBC: Delaware River Basin Commission.
- F. EDU: Equivalent Dwelling Unit, equal to 262.5 gallons per day.
- G. Effective Date: The date that this intermunicipal Agreement is fully executed.
- H. EPA: United States Environmental Protection Agency.
- I. Fiscal Year: A fiscal year shall be the year beginning on January 1st of any given year and ending on December 31st of the same year.
- J. Flow Limit: The maximum amount of Wastewater that may be discharged by Abington to Cheltenham as measured in Millions of Gallons per Day (“MGD”) and/or Cubic Feet per Second (“CFS”) for treatment as specified in Exhibit 1.
- K. Flow Exceedance: The condition in which sewage flow through any point of connection exceeds the low Limit at that point of connection.
- L. Industrial User: Any person that introduces an indirect discharge regulated under the Clean Water Act, state or local law to the POTW.
- M. Loading Limits: The maximum Biochemical Oxygen Demand (“BOD₅”) and Total Suspended Solids (“TSS”) loadings that may be discharged to Cheltenham’s conveyance system and the City for treatment.

- N. NEWPCP: Northeast Water Pollution Control Plant.
- O. Non-domestic User: Commercial, industrial or municipal users who discharge to the POTW.
- P. PADEP: Commonwealth of Pennsylvania Department of Environmental Protection
- Q. PCB: Polychlorinated Biphenyls.
- R. Prohibited Exceedance: Any exceedance of the Flow and/or Loading Limits established in this Agreement and Exhibits.
- S. POTW – Publically Owned Treatment Works. The treatment works, as defined by Section 212 of the Clean Water Act (33 U.S.C. 1251), which is owned by the City, including any devices and systems used in the storage, treatment, recycling, or reclamation of municipal sewage and industrial waste. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewer or other conveyances not connected to a facility providing treatment. POTW shall also include any sewers that convey wastewater to the POTW from persons outside the City who are, by contract or agreement with the City, users of the City’s POTW.
- T. Significant Industrial User (“SIU”): (1) any Industrial User subject to any national Categorical Pretreatment Standard; or (2) any Industrial User that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blow-down wastewater) or contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (3) any Industrial User that is found by the City, PADEP, or EPA to have a reasonable potential, either alone or in conjunction with other discharges, to adversely affect the POTW, the Collector system, the Solid Waste By-Products of the POTW, or air emissions from the POTW.
- U. TSS: The total suspended matter that floats on the surface of, or is suspended in water, wastewater or liquids, and which is removable by laboratory filtering expressed in terms of concentration (milligrams per liter (mg/l)).
- V. Wastewater: The liquid waste and associated by-products conveyed by a sewer and may include domestic, commercial and industrial discharges.

II. TERM

- A. This Agreement shall become Effective on the Date this Agreement is fully executed and shall continue in force and effect unless terminated earlier as provided herein, through and until June 30, 2025 at which time it shall expire.

- B. Either Party shall have the right to terminate this Agreement as per terms and conditions of PADEP, for “cause” at any time, but only after twelve (12) months written notice. “Cause” shall mean:
- (1) Continuing exceedances of any of the Flow Limits contained in Exhibit 1, attached hereto and fully incorporated by reference. However, as long as Abington remains in full compliance with Section III, Paragraph C, the Township's existing exceedances shall not be deemed "cause" under this paragraph".
 - (2) Failure by Abington to meet its financial obligations under this Agreement for a period of three (3) consecutive billing periods.
 - (3) Failure by Either Party to comply with a final decision or determination of an Arbitration Panel or court of competent jurisdiction rendered under this Agreement within three (3) months of the date the decision or determination became final, unless otherwise specified by the Arbitration Panel or court competent jurisdiction.
 - (4) Failure by Cheltenham to provide conveyance and treatment access as provided in this Agreement.

III. SCOPE OF SERVICES/WASTEWATER LIMITS

- A. Quantity: Cheltenham shall convey all wastewater and its by-products delivered by Abington from approved points of interconnection identified in Exhibit 1 of this Agreement.
- B. Flow and Loading Limits: The wastewater delivered by Abington to Cheltenham shall not exceed the Flow Limit as set forth in Exhibit 1 of this Agreement (“Flow Limits”). Any BOD and/or TSS exceedances noted by the City, upon determination of the source, will be allocated to, and paid for, by the source whether Cheltenham, Jenkintown, Abington and/or City, in proportion to the source’s exceedance of the total BOD and/or TSS exceedance noted by the City. If the source is not determined, the BOD and/or TSS exceedance shall be paid for by Cheltenham, Jenkintown, Abington and City in proportion to the flow allocation percentages and locations set forth in Exhibits 2A and 2B attached hereto.
- C. Prohibition on Discharges that Exceed the Flow Limit:
- (1) Abington’s wastewater flow from each point of connection shall not exceed the corresponding Flow Limit for the connection point as set forth in Exhibit 1 of the Agreement. In the event Abington exceeds any of its Flow Limits, no sewer extensions or modifications that will cause or contribute to an exceedance of Abington’s Flow Limits shall be permitted without the prior written approval of Cheltenham unless required by a regulatory agency with jurisdiction or contained in an approved CMP. Abington shall be

responsible for all of Cheltenham's costs and damages caused by Abington's exceedances of the stated Flow Limits.

- (2) Within sixty (60) days of the effective date of this Agreement Abington shall submit a report to Cheltenham detailing the inflow and infiltration ("I/I") reduction work performed in the Township, future planned I/I work, and a schedule for implementation; and within sixty (60) days of any request for such issued in writing by Cheltenham, Abington shall develop and implement an I/I reduction program, which will employ I/I reduction technologies and implementation of I/I reduction strategies consistent with Cheltenham's Corrective Action Plan ("CAP") mandated by PADEP.
 - (a) If, notwithstanding the implementation of the program under Section III.C(2), Abington is exceeding its Flow Limits and/or Loading Limits, a report shall be submitted to Cheltenham within sixty (60) days of notice that Abington is exceeding any of its Flow and/or Loading Limits which includes a description and proposed timeline for an I/I reduction program in the Tookany Basin within Abington Township. The report shall address the reasons for the flow exceedance(s), level of exceedance(s), corrective action(s) to eliminate the exceedance(s), milestone dates for each corrective action to eliminate the exceedance(s) and flow data from remedied areas, including additional flow metering if reasonably needed. A quarterly update shall be submitted to Cheltenham by the fifteenth day of the month following the end of the quarter.
- (3) Within thirty (30) days of receipt of the report referred to in section III C (2) (a), authorized representatives of Abington and Cheltenham shall meet to discuss the content of Abington's I/I reduction program, including any revision to be required to conform with Cheltenham's Corrective Action Plan prior to implementation of the program. Unless Cheltenham submits written amendments to the program to Abington no more than forty-five (45) days after the meeting, the I/I reduction program shall be deemed to be approved.

If Cheltenham is subject to charges by the City for failure to submit a written plan of action to eliminate prohibited exceedances and Abington has exceeded its Flow Limit during any part of the time period the prohibited exceedances occurred, then Abington will pay as follows:

- (4) (a) If neither municipality submits a plan to the City which is approved, or if a joint plan developed by both municipalities is not approved by the City, Abington shall pay its share of the charges imposed by the City corresponding to the ratio of Abington's exceedance of its Flow Limit to the total amount of prohibited exceedances for which notice has been provided by the City; or,
 - (b) If only one municipality fails to submit an approvable plan, that municipality shall be responsible for the full amount of the charges to the City. Should Abington and Cheltenham agree to challenge such

charges imposed by the City, all legal costs and attorneys' fees will be apportioned to each municipality in accordance with the ratio of each municipality's respective exceedance of its Flow Limit to the total amount of prohibited exceedances for which notice has been provided by the City.

- (5) In the event of a Flow Exceedance by Abington, nothing herein shall require Cheltenham to certify the availability of, and/or make available, conveyance capacity within the Cheltenham sanitary sewer system for Abington for additional connections, except as provided under a PADEP Connection Management Plan (CMP), until Flow Exceedance have been eliminated, or abated sufficiently for PADEP to approve each connection. If PADEP proposes to restrict or expand EDUs for Cheltenham by way of a CMP, Abington shall be included in all such discussions with PADEP. Provided Abington is not exceeding its Flow Limits, in the event that EDUs in Cheltenham are increased via a CMP, Cheltenham shall assign a share of the EDUs approved by PADEP to Cheltenham, Jenkintown, and Abington in proportion to each party's cost sharing percentage, except for EDUs released due to specific I & I reduction as the result of work performed and/or financed by a particular party or parties; provided, however, if allocation by PADEP is a requirement of the release of EDUs under a CMP, then the allocation need not be made unless PADEP approves it.
- (6) Under no circumstances whatsoever shall the additional flow from any new or enlarged sanitary sewer, should such be built by Abington, cause or contribute, by virtue of its flow exceedance, to the unpermitted discharge of sewage from anywhere within Cheltenham or the City.

D. Exceedance Charges:

Exceedances of the Abington's Flow Limit can cause serious environmental and operational problems for Cheltenham. Exceedances can cause localized sections of Cheltenham's sewer system to become surcharged and result in unpermitted discharges of sewage within Cheltenham. Exceedances can increase or contribute to the volume and duration of SSOs contrary to Cheltenham's CAP and CMP. Exceedances can cause operational and maintenance issues, as well as make future sewage facilities planning much more difficult. Finally, such exceedance can result in, or contribute to, Cheltenham being required to significantly increase its capital and operating expenditures, pay significant environment fines, and/or pay Exceedance Charges to the City as per Cheltenham's Agreement with the City.

Therefore, to ensure exceedances of Flow Limits will not occur, Cheltenham imposes Exceedance Charges on its Wastewater Conveyance Services customers. Should Abington exceed any of its Flow Limits contained in Exhibit 1, Abington shall pay Exceedance Charges, as set forth below, in full, as part of their next billing statement.

Any exceedance charges which Cheltenham chooses to advance to the City for Abington flow exceedances by Abington will be reimbursed to Cheltenham by Abington. Such charges shall be paid in accordance with the charge formula in place for Cheltenham exceedances in the City. Any flow exceedance by Abington for which no exceedance charge is paid by Cheltenham to the City shall be assessed flow exceedance charges as follows: for each 30 minute period recorded flow rate where the 30 minute average flow at any point of connection exceeds the Flow Limit for that point of connection as set forth in Exhibit 1, Abington shall pay Cheltenham \$110 for each CFS of exceedance or portion thereof.

During 2015, and for each calendar year thereafter, the Exceedance Charges stated above will be adjusted in accordance with the changes in the Consumer Price Index for the prior calendar year, upon the availability of the Consumer Price Index for January of each subsequent year. The index to be used for this adjustment shall be the Consumer Price Index published by the U.S. Bureau of Labor Statistics for all urban consumers ("CPIU") for the Northeast region of the U.S., all items.

These Exceedance Charges provisions continue in full force and effect for as long as Cheltenham provides Wastewater Conveyance Services to Abington.

Exceedance Charges shall not be assessed, however, for those storm events that are so severe that the PADEP has waived fines and penalties across the region for such events, where such fines are waived by PADEP for both Abington and Cheltenham.

- E. Certification of Sewer Capacity. Cheltenham, in its sole, absolute and complete discretion, may determine that Cheltenham does not have adequate sewer capacity to permit additional sewer connections to any part of Abington's system that will discharge to Cheltenham if Abington has exceeded a Flow Limit set forth in Exhibit 1 and has failed to comply with Section III C (6) (c) or failed to submit an appropriate Corrective Action Plan as provided under Section D of this Agreement.
- F. Polychlorinated Biphenyls Minimization. DRBC's Water Quality Regulation and Water Code Section 4.30.9 require the City to implement a Pollutant Minimization Plan ("PMP") at its Northeast Water Pollution Control Plant ("NEWPCP") to reduce its contribution of PCBs to the Delaware Estuary. As a system contributing wastewater to the City, Cheltenham must comply with this requirement. In order to insure Cheltenham's compliance with this requirement, Abington shall:
- (1) Within ninety (90) days of the Effective Date of this Agreement, supply the City and Cheltenham with complete information regarding PCBs sources within Abington that can potentially be discharged to sanitary sewers or are present in wastewater conveyed by sanitary sewers.
 - (2) Provide to the City and Cheltenham an annual update regarding PCB sources within Abington that can potentially be discharged to sanitary

sewers or are present in wastewater conveyed by sanitary sewers for City's annual PMP report. The update shall be submitted at least thirty (30) days prior to the due date of City's report to DRBC.

- (3) Implement any and all new and/or more stringent PCB requirements or reductions that may be imposed upon the City's NEWPCP. Abington agrees upon sixty days' advance notification, to implement these requirements simultaneously with the City's implementation of these new requirements."
- (4) Accept a not-to-exceed numeric limit for PCB discharge into the NEWPCP which shall be consistent with Abington's proportionate flow into the NEWPCP in both dry and wet weather situations in the event a numeric limit for PCBs is imposed upon discharges from the City's NEWPCP.
- (5) Upon request by the City and/or Cheltenham, implement a PMP throughout the entire drainage area of Abington that contributes flow to the NEWPCP through Cheltenham in order to achieve that maximum practicable reduction, as defined in DRBC's regulation, of PCBs into the NEWPCP.

IV. BILLING, PAYMENTS AND CHANGE IN RATES

- A. Cost of Treatment. Abington shall pay its share of the cost of treatment of wastewater at the City's facilities as determined and charged by the City per Section IV.A.(1) below and as allocated by Cheltenham in proportion to Abington's wastewater capacity in accordance with generally accepted wastewater rate methodologies; provided, however, that if any of Abington's points of connection listed in Exhibit I are surcharging, Abington shall also pay treatment charges for the amount of the surcharge.
 - (1) Treatment charges to be paid by Abington shall be in proportion to Abington's capacity (in addition to payment for treatment charges for any surcharging as referred to in Section IV.A. above) consisting of the Annual Lump Sum charge, the actual cost of the volume charge, the actual cost of the capacity charge, the actual cost of the BODs and TSS charges, and management fees of Twelve Percent (12%) of all of the foregoing as allocated by Cheltenham in compliance with this Agreement.
- B. Operation and Maintenance Charges. Abington shall pay to Cheltenham a portion of the cost of maintaining and keeping in repair the sewer systems of Cheltenham and the City used by Abington, said cost to be apportioned in accordance with the following formula: (costs of repair and maintenance) x [(allocated flows from Abington at point of connection to City) / (total flows at point of connection of Abington to City)]. Cheltenham shall present to Abington as part of the quarterly bills sent to Abington by Cheltenham throughout the year, a statement of the cost of maintenance and repairs and Abington's share thereof in accordance with the formula set forth in this Sub-Section B. Examples of sewer system maintenance and repair include point repairs, televising and grouting, and flushing.

- C. Capital Improvement Charges. If it is determined at any time in the future that an upgrade, new conveyance system, or appurtenances are necessary within the interceptor transporting Abington's wastewater flows within Cheltenham or the City, and the project conveys or affects Abington's wastewater flow including, but not limited to, an equalization tank or tanks within Cheltenham, then Abington shall be responsible for its pro-rata share of the construction costs for such in accordance with its cost sharing percentage based on Exhibit 1, including, but not limited to, engineering, permitting, financing, flow evaluation, I&I reduction effectiveness and design services cost of the project. Each year, beginning with the Year 2014, Cheltenham agrees to inform Abington of any such projects proposed for the following year and agrees to submit to Abington an engineer's report to include an estimate and project schedule during preliminary design and again during final design by September 15 of the given year. Abington has thirty (30) days to respond and comment. Cheltenham and/or its engineering consultant shall provide a cost allocation analysis which defines Abington's share of construction costs including, but not limited, engineering, permitting, financing, flow evaluation, I&I reduction effectiveness and design services cost of the project to Abington in accordance with the terms set forth in this paragraph.
- D. Fines: If at any time Cheltenham should experience an SSO within the Conveyance System in which it serves Abington, and it is demonstrated that wastewater flows from Abington were in exceedance of its Flow Limit and contribute to the SSO, Abington shall be responsible for its proportionate share of the cleanup and any fine associated with the SSO event that are levied by PADEP and/or EPA. Such allocation shall be determined by the Cheltenham Engineer. If any party does not agree with the allocation of cost shares, Abington shall pay its share, as allocated by the Cheltenham Engineer, to Cheltenham if and when Cheltenham is called upon to make payment and such disputing party shall resort to the dispute resolution procedures set forth in Section VIII following payment. Abington shall pay its share based on its exceedance of its Flow Limits all exceedance charges imposed by the City, if any, in addition to any sewage flow quantities for which it pays fines or cleanup costs.
- E. Long Term Control Plan of City. Abington agrees to pay Abington's share of all capital projects, all operation and maintenance expenses, depreciation, and return on investment for the capital portion of the Long Term Control Plan ("LTCP") costs necessary for the City to comply with and implement the City's LTCP throughout the City of Philadelphia in accordance with the applicable table(s) labeled "Maximum Allowable Flow Rate 18 CFS*" and "Maximum Allowance Flow Rate 29 CFS*" in Exhibit 1 and "Percent Contribution Calculations" set forth in Exhibit 2A and the "Percent Contribution Map" set forth in Exhibit 2B attached hereto. Therefore, facilities allocated to Abington for which Abington agrees to pay its proportionate share of LTCP costs shall include both those facilities related to the City's POTW as well as those facilities necessary for the City to comply with and implement the LTCP throughout the City of Philadelphia.

- F. Review. Abington shall have the right, upon written request, to review Cheltenham's method of computing the charges for, and allocating the cost of providing to Abington wastewater conveyance through Cheltenham and treatment services by the City. Such review shall be subject to the provisions to Notice of Changes in rates (Section IV G).
- G. Expansion of City Sewer Line and Alternates. Abington agrees to pay Abington's share of the cost of designing (including, but not limited to, flow evaluation and I&I reduction effectiveness), financing, permitting, constructing and maintaining one of the following options: (1) a new sewer interceptor within the City or (2) an equalization tank or tanks to accommodate the 29 CFS or (3) a pump station with force main within the City, as more fully provided for all of which in the agreement between the City and Cheltenham. . Abington shall be responsible to pay its share of only one of the above mentioned options and shall do so in accordance with the applicable table(s) labeled "Percent Contribution Calculations" set forth in Exhibit 2A and the "Percent Contribution Map" set forth in Exhibit 2B attached hereto.
- H. Billing.
- (1) Abington shall provide Cheltenham with quarterly wastewater flows in CFS and computation by the 15th of the month following the end of the quarter. If the City determines that BODs and TSS from Cheltenham has upset the treatment process, then Cheltenham will review quarterly records to assist with determining a possible source.
 - (2) Cheltenham shall render bills to Abington on a quarterly basis for the charges set forth in this Agreement. Annual charges shall be divided by four (4) for purpose of billing quarterly.
 - (3) Cheltenham shall prepare a quarterly invoice in a manner which identifies the cost related to the Conveyance System as defined in Section IV. B and distinguished from the costs of operating and maintaining other Conveyance Facilities serving other areas.
 - (4) Bills shall be payable to Cheltenham by Abington within thirty (30) days of receipt of the bill by Abington. If Abington objects to any bill, in whole or in part, Abington shall notify Cheltenham in writing prior to the bill's due date. This writing shall hereinafter be referred to as the "Objection Letter". Abington waives all objections to any bill(s) where an Objection Letter in accordance with this Article is not submitted in writing prior to the bill's due date. If information would arise after 30 days that contradicts a bill, both Parties shall consider reimbursement or adjustment of the affected bill.
 - (a) The Objection Letter shall state, in detail, the exact nature of the objection and shall include any and all facts and documentation supporting the objections. Within thirty (30) days after receipt of the Objection Letter, Cheltenham and Abington shall meet to discuss the substance of the Objection Letter. In the event that no such resolution

can be reached, the Parties shall then proceed to arbitration as provided under Section VIII of this Agreement.

- (b) Within sixty (60) after receipt by Cheltenham of the Objection Letter, Cheltenham and Abington shall proceed to arbitration pursuant to Section VIII of this Agreement to resolve the specific objections made in the Objection Letter.
- (c) During the (60) day period prior to arbitration, Abington shall have the opportunity to inspect and audit Cheltenham's record provided to Abington by Cheltenham in accordance with Section XI. A of this Agreement.

All billing, (including those bills subject to an Objection Letter) shall be paid in full and by the due date. If amounts are billed but are withheld from payment by Abington, all arbitration awards in favor of Cheltenham shall include interest at the legal rate in addition to the award of the principal amount of the delinquency or any part thereof. If a refund to Abington is awarded, the arbitration award shall award interest at the legal rate to Abington in addition to the refund awarded.

I. Notice of Changes in Rates.

- (1) Cheltenham shall provide notice to Abington of any change in rates charged to Cheltenham by the City or associated billing practices at least ninety (90) days in advance of the effective date of such new rates or practices.
- (2) If Abington has an objection to the change in rates or billing practices imposed by the City, Abington shall notify Cheltenham, in writing, within sixty (60) from receipt of Cheltenham's notice as to its specific objection(s) ("Change Objection Letter").
 - (a) The Change Objection Letter shall include any and all facts or documentation supporting the specific objections contained therein.
- (3) In the event Abington fails to serve Cheltenham with a Change Objection Letter within sixty (60) days from receipt of Cheltenham's notice, the rate increase or change in billing practices shall be deemed fully accepted and approved by Abington and Abington shall have waived all rights under this Agreement or by any other legal proceeding to contest the rate increase or change in billing practices. If Abington serves a Change of Objection Letter within sixty (60) days from receipt of Cheltenham's notice about a change in rates originating from the City, Cheltenham shall have the right to assign all of its rights, if any, to contest the change in rates to Abington (and Jenkintown, if applicable) to pursue against the City at no expense to Cheltenham provided Cheltenham has filed a timely Change Objection Letter with the City.

V. CONSTRUCTION, OPERATION, AND MAINTENANCE OF CONVEYANCE SYSTEMS

- A. Design and Construction of Sewers. Abington as its sole cost and expense shall design, construct, own, operate, maintain, and repair the sanitary sewers and connection to Cheltenham's system necessary to convey its wastewater to Cheltenham's system in accordance with PADEP rules, orders and regulation and industry standards.
- B. Approved Points of Interconnection.
- (1) The approved points of interconnection are specified in Exhibit 1.
 - (2) If an approved point of connection is abandoned, that capacity may be redistributed to other Abington connections, provided the redistribution is within the capacity of the sewers downstream of the remaining connection points.
- C. Plan to Eliminate Unauthorized or Harmful Discharges.
- (1) Within ninety (90) days of written notice from Cheltenham, Abington shall submit a plan to Cheltenham outlining actions to be taken to eliminate unauthorized or harmful discharges if any of Abington's connections to Cheltenham's wastewater system are determined by Cheltenham or any governmental regulatory agency to be:
 - (a) maintenance problem, or
 - (b) sources of unauthorized discharge(s), or
 - (c) sources of discharge(s) which adversely affect Cheltenham's wastewater conveyance and/or the City's treatment system, or
 - (d) sources of discharge(s) which cause or contribute to any violation of federal, state or local laws or permits.
 - (2) Cheltenham shall promptly and reasonably approve or reject said plans, and shall notify Abington in writing, of the basis for rejection of the proposed plan. In the event that Cheltenham rejects Abington's proposed plan, the Parties agree to promptly meet and discuss the basis for Cheltenham's rejection and to attempt to negotiate in good faith terms acceptable to both Parties. If an amicable resolution cannot be met, the Parties shall proceed with Section VIII Disputes.
 - (3) Any action taken pursuant to this Section, and Section VII if necessary, taken to assess and correct unauthorized discharges within Abington shall be at the sole expense of Abington.

VI. METERING SAMPLING AND DATA

- A. Meters and Equipment. Abington shall own, operate, and maintain the meter(s) and the electronics associated with and required for the accurate measurement of

wastewater flow into the Cheltenham's sewer system at the approved points of interconnection in accordance with the PADEP rules, orders and regulation, with industry standards, and with all manufacturers' specifications and warranties. Abington shall provide Cheltenham quarterly and upon request copies of all metering and calibration test/studies performed on any Abington meter or equipment, and shall notify Cheltenham, in writing, as provided under this Agreement, of its determination to utilize temporary flow meters as provided under this paragraph. Abington shall set up its own data telemetry system at its expense. Abington shall conduct full calibration of all meters and related metering equipment at least once per quarter and conduct dye tests upon request, but no more frequently than annually, by a firm experienced with such tests, equipment and calibration capabilities and independent of both Abington and Cheltenham. Abington's meter results shall be used for purposes of billing and assessing penalties unless they are determined by mutual agreement of engineers for both municipalities to be outside the acceptable range of error or otherwise requested by City, DEP, EPA or other regulatory action, regulation or directive.

- B. Metering. Cheltenham shall measure wastewater flow and loadings by metering and sampling at the point of connections whenever Cheltenham, in its discretion, determines it to be necessary, practical and/or economical. Cheltenham, upon reasonable notice to Abington, shall be entitled to jointly inspect the metering equipment maintained by Abington. Cheltenham shall base its operation and maintenance charges on actual flow and loadings measurements whenever available and deemed accurate by Cheltenham. In the absence of actual flow and loadings measurements, Cheltenham shall estimate for billing purposes, using generally accepted engineering judgment, previously metered flow(s) and/or strength(s).
- (1) If Cheltenham elects to install and utilize permanent flow meters, then data from these meters will be utilized as additional flow data as required and the meters will be subject to the calibration and dye testing requirements of this Agreement.
- C. Sampling.
- (1) Cheltenham shall have the right, upon verbal notice to Abington, to enter the areas in Abington served by Cheltenham under this Agreement at any time to sample Abington's wastewater for billing or investigative purposes.
 - (2) Cheltenham shall have the right to enter the areas in Abington served by Cheltenham under this Agreement at any time for the following purposes:
 - (a) To sample the wastewater of an SIU; and/or
 - (b) To trace a spill into the wastewater system, if such spill is believed to originate in Abington.
 - (3) Abington shall have the right to obtain splits of wastewater samples taken by Cheltenham for billing purposes

- (4) All Cheltenham costs associated with sampling shall be the responsibility of Cheltenham.

D. Abington Data to be supplied to Cheltenham.

Abington shall make the following data available to Cheltenham and shall provide revisions and updates within 60 days of the update or upon request if in possession of such information directly or through Abington's agents, consultants or contractors:

Geographic Information Systems data in form of shapefiles, databases, and/or files compatible with Cheltenham's version of ESRI ArcGIS software, or data in a format acceptable to both Cheltenham and Abington, to include the following features and attribute data:

- The points of interconnection to Cheltenham's conveyance system; and
- Any Infiltration/Inflow studies and the data related thereto; and
- Any other engineering data or information that Cheltenham may request related to the terms and conditions of this Agreement.

E. Cheltenham Data to be Supplied to Abington.

With regard to Cheltenham's points of interconnection with Abington, Cheltenham shall make available to Abington all data specified in Paragraph D immediately above.

- F. Notwithstanding the above, where less than a minimum number of EDUs are connected into Cheltenham's Sewer System at any point from an area in Abington, Cheltenham may elect to base its sewer charges for same on water usage adjusted for infiltration (e.g. water usage x infiltration factor of 1.35). The minimum number of EDUs plus an industry standard for acceptable infiltration for this condition shall be determined upon mutual agreement in writing between Abington and Cheltenham.

VII. PRETREATMENT AGREEMENT

- A. Interjurisdictional Pretreatment Agreement. Cheltenham and Abington shall enter into the contract entitled "Interjurisdictional Pretreatment Agreement" (attached hereto and incorporated herein as Exhibit 3). Abington agrees to comply with all of the provisions contained therein including, but not limited to, adoption of the City's most recent Wastewater Control Regulations and to continue to amend them in conformity with the City's amendments within 90 days of amendments by the City. Abington further agrees to require that any outside jurisdictions which contribute to Abington's sewer system tributary to Cheltenham Township also adopt and enforce the City's Wastewater Control Regulation.
- B. Ordinance. Abington acknowledges that it has adopted, agrees to maintain, and will enforce an industrial pretreatment ordinance and such other ordinances as are necessary to prohibit the discharge of any sewage in its collection system that is

prohibited by PADEP, the EPA or by the regulation of any applicable State, Federal or other governmental regulatory body as such regulations may exist from time to time, or that would prevent the NEWPCP from meeting permit requirements.

VIII. DISPUTES

- A. Arbitration of Disputes. In the event of a dispute between the Parties concerning terms, conditions, and covenants of the Agreement or upon the issuance by Abington of an Objection Letter or Change Objection Letter, Cheltenham and Abington agree to submit the dispute to an Arbitration Panel. All petitions to compel or stay arbitration shall be filed in the Court of Common Pleas of Montgomery County, and both Cheltenham and Abington agree to accept venue therein.
- B. Panel. The Arbitration Panel shall be composed of three (3) arbitrators, one appointed by Cheltenham, one by Abington, and the third by agreement of the arbitrators selected by Cheltenham and Abington within Montgomery County.
- (1) The arbitrators representing Abington and Cheltenham shall be named within five (5) days from the request for the appointment of an Arbitration Panel. If, after a period of ten (10) days from the date of the appointment, the two (2) arbitrators appointed by Cheltenham and Abington cannot agree on the third arbitrator, then either appointed arbitrator may request the American Arbitration Association, or its successor, to furnish a list of three (3) members of said Association, who are not residents of Cheltenham or Abington or any other municipality which contributes wastewater flow to Cheltenham, from which the third arbitrator shall be selected.
 - (2) The arbitrator selected by Abington shall then eliminate one (1) name from the list furnished by the American Arbitration Association within five (5) days after its publication, following which the arbitrator appointed by Cheltenham shall eliminate one (1) name from the list within five (5) days thereafter. The individual whose name remains on the list shall be the third arbitrator and shall act as chairman of the Arbitration Panel.
 - (3) Each of the Parties shall bear the costs of its own arbitrator and shall equally divide the cost of the third arbitrator and all other common costs.
 - (4) The arbitration proceedings shall commence within thirty (30) days of the selection of the third arbitrator and the arbitrators shall render their determination within thirty (30) days after the final hearing held by the Board of Arbitrators. The decision of such arbitrators shall be final and binding upon the Parties, except in the case of fraud.
 - (5) Upon mutual agreement of Cheltenham and Abington, the arbitration may be delayed for a specified period of time in order to allow the Parties additional time for a negotiated settlement. Any delay in commencement of the arbitration shall last only as long as it is agreed by the Parties.

IX. INDEMNIFICATION

- A. Abington agrees to defend, indemnify and save harmless Cheltenham from and against any and all claims, actions, cause, suits, demands, losses, interest, penalties and liabilities arising from performance of the terms and conditions of this Agreement by reason of:
- (1) Cheltenham's inability, due to causes beyond its control, to perform any of the provisions of this Agreement;
 - (2) Injury (including death) to persons and damages to property resulting from operation under this Agreement to convey Abington's wastewater through Cheltenham's sanitary sewer system, where such injury is due to the negligence of Abington or its employees, servants or agents or the inherent nature of their operation.
 - (3) EPA or PADEP action of any kind whatsoever, whether direct or indirect, for any work undertaken by Abington, its contractors or consultants, necessary and required by this Agreement due to rejection of said work by the EPA or PADEP.
 - (4) Any grant fund, or any portion thereof, received by Abington and later determined to be ineligible for reimbursement by the appropriate regulatory agency or grant auditors.
- B. Cheltenham and Abington agree that in the event of EPA or PADEP action or any other governmental regulatory action against Cheltenham of any kind whatsoever, for activities carried out under this Agreement either by Cheltenham or Abington, they shall equitably apportion responsibility for payment of any cost, fines, penalties or damages arising from such action. Should Cheltenham bill Abington pursuant to this paragraph, Cheltenham shall inform Abington as to the nature of the bill.
- C. Abington shall indemnify and save harmless Cheltenham for all injuries (including death) or property damage occurring during the course of treatment at the City's NEWPCP or any other City plant, to the extent that such injuries and damages are due to the negligence of Abington or its employees, servants or agents. Such indemnification by Abington shall not limit the source or quantity of parties from whom Cheltenham may seek indemnification, subrogation, cross-claims and/or counterclaims.
- D. Cheltenham shall not be liable for injuries (including death) or property damage occurring during the course of treatment at the City's NEWPCP or any other City plant, except to the extent that such injuries and damages are due to the negligence of Cheltenham or its employees, servants or agents and where such injuries result in a direct increase to City's operating costs. Cheltenham shall be responsible for its proportionate share of such increased costs, but not those of Abington.

- E. Nothing set forth in this Agreement shall limit or prohibit Cheltenham or Abington from resorting to any appropriate remedy in law or equity, or any combination of remedies for noncompliance with this section of the Agreement; however, jurisdiction over disputes regarding this Article shall first be subject to resolution as provided under Article VIII of this Agreement.

X. PAPER RERATES

- A. If the NEWPCP, or any other POTW servicing flows from Abington, is rerated without any physical expansion paid exclusively by the City, Abington's charges shall be adjusted accordingly to reflect Cheltenham's new proportionate share of the rerated facility.
- B. If the City requires contribution by Cheltenham to increase the rated capacity of the NEWPCP, or any other plant servicing Cheltenham's flow, and a proportion of that contribution is paid by Abington, Abington shall receive an increase in its capacity of wastewater flow and/or loading to Cheltenham proportionate to its contribution to the physical improvements to the Plant, which resulted in the increase in Plant capacity.

XI. MISCELLANEOUS

- A. Inspection and Audit. Cheltenham and Abington agree to maintain complete records and accounts concerning their responsibilities under this Agreement. Both Parties shall, at all times, have the right to examine and inspect said records and accounts upon thirty (30) days written notice. If required by law or regulation, Cheltenham and Abington shall make said records and accounts immediately available to federal and state authorities.
- B. No Transfer of Right. Abington shall not confer, transfer, convey, assign or license to any third party any rights obtained under this Agreement including, but not limited to, assignment of wastewater conveyance capacity or treatment capacity without the express prior written consent of Cheltenham and the City.
- C. Ownership, Management and Control of Collection and Conveyance Facilities. Cheltenham retains sole ownership and control of wastewater collection and conveyance facilities in Cheltenham and agrees to operate, maintain, repair, and improve its facilities associated with service to Abington. Cheltenham retains the sole exclusive right to make all managerial and other decisions regarding its wastewater facilities, including, but not limited to, those decisions regarding operation, maintenance, upkeep, expansion, abandonment or replacement of all or a portion of its wastewater facilities. This Agreement shall not be deemed to create a joint enterprise or partnership between Abington and Cheltenham.
- D. Successors and Assigns. All the covenants contained in this Agreement shall extend to and bind the respective successors and assigns of the Parties hereto with the same effect as if the words "successors and assigns" had, in each case, been specifically mentioned.

- E. Waiver. The failure of either Cheltenham or Abington to insist upon strict performance of this Agreement or of any of the terms and condition hereof shall not be construed as a waiver of any of its rights herein granted, unless specifically stated in the Agreement.
- F. Caption and Headings. The captions and heading in this Agreement are for convenience only and are not part of the Agreement. The captions do not in any way define, limit, describe, modify or amplify the provisions of this Agreement or the scope or intent thereof.
- G. Entire Agreement. This Agreement and its Exhibits, incorporated herein, represent the entire Agreement of the Parties hereto and there are no collateral or oral agreements, representations or understandings, verbal or otherwise. This Agreement may be amended or modified only in writing signed by both Cheltenham and Abington. This Agreement supersedes all previous wastewater agreements between Cheltenham and Abington, which are hereby deemed revoked and terminated.
- H. Third Party Review. Abington agrees that this Agreement is made subject to any future change or modification in the existing Agreement between Cheltenham and the City, referred to in the Background hereto, and that it will be bound by such changes or modifications as and when made. Cheltenham agrees to (a) notify Abington 30 days in advance if Cheltenham applies to PaDEP for additional EDUs under a CMP and (B) notify Abington 14 days in advance if Cheltenham intends to attend a meeting with PaDEP concerning an application for release of additional EDUs under a CMP.
- I. Severability. In the event any provisions hereof are held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then continue in full force as if such illegal or invalid provision had not been contained herein.
- J. Use of Singular and Plural. As required by the context, the use of the singular shall be construed to include the plural and vice versa.
- K. Notices. All notices, payments and communication required to be given in writing under this Agreement shall be sent by certified United States mail, postage prepaid and by email communication or delivered by hand delivery with receipt obtained, to the address below or at such other addressed as each party may designate, in writing, from time to time:

If intended for Cheltenham:

Township Manager
Township of Cheltenham
8230 Old York Road
Elkins Park, PA 19027

If intended for Abington:

Township Manager
Township of Abington
1176 Old York Road
Abington, PA 19027

IN WITNESS WHEREOF, the Township of Cheltenham has caused this Agreement to be executed by its Township Manager, Township of Abington, acting through its duly authorized officials, has executed this Agreement on behalf of Township of Abington, acting as of the day and year first above written.

TOWNSHIP OF CHELTENHAM

By: _____
Harvey Portner, President
Board of Commissioners

ATTEST:

Bryan Havir
Township Manager

TOWNSHIP OF ABINGTON

By: _____
Peggy Myers, President
Board of Commissioners

Approved as to form:

Michael LeFevre
Township Manager

WASTEWATER SERVICE AGREEMENT
BETWEEN CHELTENHAM TOWNSHIP AND ABINGTON TOWNSHIP

EXHIBIT 1

The maximum allowable flow limits for 18 CFS set forth below, including the individual flow limits for the points of interconnection, continue to be in effect, until such time that Cheltenham Township completes construction on and commences operation of: (1) a new sewer line or pump station with force main within the City or (2) an equalization tank or tanks to accommodate the 29 CFS as more fully provided in the agreement between the City and Cheltenham Township. Once the new sewer line within the City or the equalization tank or tanks is/are in operation, the maximum allowable flow limits for 29 CFS set forth below, including the points of interconnection, shall become effective.

Area	Location	Point of Interconnection	Maximum Allowable Flow Rate, 18 CFS* (6.516 CFS)	Maximum Allowable Flow Rate, 29 CFS* (11.104 CFS)
K1		Keswick	2.764	2.694
H1		Highland	0.755	2.012
S1		Stewart	1.402	3.094
F1		Fischer	0.058	0.093
C-1		Cadwalader	0.102	0.139
J-1		Jenkintown	3.682	2.809
P-1		Perry	0.061	0.263
			Total 6.516	11.104

* 18 CFS and 29 CFS amounts refer to Cheltenham Township's Maximum Allowable Flow Limit set forth in the agreement between the City and Cheltenham Township.