

MEMORANDUM OF UNDERSTANDING

BETWEEN: Raritan Township Municipal Utilities Authority
("RTMUA"), having offices at:
365 Old York Road,
Flemington, New Jersey, 08822

and: Borough of Flemington ("Flemington"),
having offices at:
38 Park Avenue,
Flemington, New Jersey, 08822
(collectively, the "Parties").

DATED: August __, 2021 (this "MOU").

WHEREAS, RTMUA is a public body corporate and politic organized under the laws of the State of New Jersey pursuant to N.J.S.A. 40:14B-1 et seq., and owns and operates a wastewater treatment plant (WTP) located at 365 Old York Road, Flemington, New Jersey, and a wastewater system located in the Township of Raritan, Hunterdon County, New Jersey; and

WHEREAS, Flemington is a body corporate and politic organized under the laws of the State of New Jersey and owns and operates a wastewater collection system serving the Borough of Flemington, and a portion of Raritan Township, located predominantly in the Borough of Flemington, Hunterdon County, New Jersey; and

WHEREAS, RTMUA also owns and operates the Flemington Wet Weather Facility (FWWF), located at 30 Flemington Junction Road, Flemington, New Jersey, into which all wastewater from the Borough of Flemington, and a portion of Raritan Township, is connected; and

WHEREAS, Flemington and the RTMUA executed a Wastewater Service Agreement (WSA) dated August 27, 2013, which, among other things, established Flemington's payment obligations, Paragraph 6 entitled, "Flemington Obligations," and established limitations upon Flemington's payment obligations at Paragraph 3; and

WHEREAS, pursuant to Paragraph 6, Subparagraph (A)(2), of the WSA, Flemington's financial obligation with respect to the WTP Operational and Maintenance Capital Costs is equal to the ratio of Flemington's Reserved Treatment Capacity (1.08 MGD) to the total design capacity of the WTP (3.8 MGD), or 28%, except that, pursuant to Paragraph 3, costs, expenses, fees, fines or payments of any kind attributable to any facility of the RTMUA Wastewater System that does not serve Flemington shall not be the responsibility of Flemington;" and

WHEREAS, pursuant to Paragraph 6, Subparagraph (B)(2) of the WSA, Flemington shall pay Eighty (80%) percent of the WWTF Operational Maintenance Capital Costs; and

WHEREAS, prior to the execution of the WSA, the parties utilized the following formula to develop repayment schedules establishing Flemington's financial obligations relevant RTMUA debt offerings, whereby the costs of projects that did not benefit Flemington were not the responsibility of Flemington, Flemington was responsible for eighty (80%) percent of the costs of capital projects associated with the FWWF, and the costs of all other capital projects varied on a case by case basis as negotiated by the Parties; and

WHEREAS, in 2010 the RTMUA issued Revenue Bonds for certain capital projects. Flemington's percentage was determined to be 22.59%. This percentage was subsequently revised to 23.30% and then to 24.82% in 2014 to reflect final project costs. This final percentage was applied retroactively to previous payments and Flemington has made payments in accordance with the Repayment Schedule at a Flemington share of 24.82% since May 1, 2011; and

WHEREAS, in 2012, the RTMUA secured a loan from the New Jersey Environmental Infrastructure Trust (now the New Jersey I-Bank) for certain capital projects. Flemington's percentage was determined to be 12.39%. Flemington has made payments in accordance with the loan Repayment Schedule at a Flemington share of 12.39% since August 1, 2012; and

WHEREAS, final Repayment Schedules for repayment of debt service for the 2010 Reserve Bond and 2012 NJEIT Bond issues had been developed after numerous, protracted discussions between the Parties wherein complex technical issues were discussed for years and were finally resolved and are reflected in the Repayment Schedules; and

WHEREAS, contrary to these Repayment Schedules, in late 2016, the RTMUA began charging Flemington 25.61% for the 2010 Revenue Bonds and 28% for the 2012 NJEIT Loan, ostensibly relying upon Paragraph 6, Subparagraph (A)(2) of the WSA. Flemington formally objected to these changed repayment percentages; and

WHEREAS, the Parties desire to continue the existing partnership to the benefit of both Parties and have conducted a series of meetings and discussions to resolve these issues.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth and of the undertakings of each party to the other, the parties hereto, each binding itself, its successors and assigns, do mutually covenant, promise and agree as follows:

General Terms

1. The Parties hereby enter into this MOU to evidence the following agreement with regard to the 2010 Revenue Bonds and 2012 NJEIT Loan Repayment Schedules.
2. The Parties hereby agree that the Repayment Schedules attached hereto shall constitute Flemington's payment obligations to RTMUA with regard to the RTMUA's 2010 Revenue Bond and 2012 Revenue Bond, and that this MOU shall establish the intent of the Parties, and clarify any alleged conflicting interpretations of the terms or conditions of the Wastewater Service Agreement dated August 27, 2013, relative to the aforementioned Repayment Schedules.
3. Further, the Parties agree that the RTMUA 2010 Revenue Bond and 2012 Revenue Bond Repayment Schedules shall be calculated as follows:
 - (a) The RTMUA 2010 Revenue Bond calculation of 25.61% for Flemington's percentage erroneously included participation in \$200,000.00 worth of closed-circuit television equipment, when in fact this equipment was entirely to the benefit of the RTMUA. A recalculation of the Flemington percentage resulted in a revised Flemington share of 24.14%. A Revised 2010 Revenue Bond Repayment Schedule is attached at Exhibit A.
 - (b) Reconsideration of the components of the 2012 NJEIT Loan establish that a fair and equitable Flemington percentage is 23.33%. A Revised 2012 NJEIT Loan Repayment Schedule is attached at Exhibit B.
 - (c) With regard to the RTMUA 2010 Revenue Bond Repayment Schedule, Flemington has paid over to RTMUA more than Flemington is obligated based upon the agreed upon repayment percentage recalculation established herein, therefore, Flemington shall be credited for the amount of such overpayment, and the same shall be applied to future payments until the amount of the overpayment is exhausted, as reflected in Schedule A. With regard to the 2012 NJEIT Loan Repayment, Flemington has underpaid RTMUA utilizing the prior repayment schedule, therefore, Schedule B reflects the payment of the amount of such underpayment divided into two equal instalments, with the first instalment added to the

February, 2022 payment, and the second added to the August, 2022.

Miscellaneous Terms of this MOU

1. **Effective Date:** This MOU shall be effective upon full execution by the Parties, subject to the adoption of an authorizing Resolution by the Parties' governing bodies.
2. **Entire Agreement:** The terms hereof constitute the entire agreement between the Parties with respect to the subject matter herein and cannot be changed or modified orally. This MOU may be supplemented, amended or revised only by a writing which is authorized and duly signed on behalf of each of the Parties.
3. **Execution:** This MOU may be executed in one or more counterparts. This MOU shall become binding upon the Parties and such counterparts shall constitute one and the same instrument, upon the Effective Date of this Agreement. Additionally, the execution and delivery of this MOU may be conducted by electronic means in accordance with the Uniform Electronic Transmissions Act, N.J.S.A. 12A:12-1.
4. **Severability:** If any part of this MOU shall be held to be unenforceable, the rest of the MOU shall nevertheless remain in full force and effect.

[Page intentionally blank - MOU - SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused these presents to be signed by their proper officers, the day and year first above written.

Borough of Flemington

ATTEST

Borough Clerk

By: _____
Betsy Driver, Mayor

**Raritan Township Municipal Utilities
Authority**

Board Secretary

By: _____
John Tully, Chairperson

EXHIBIT A

Revised 2010 Revenue Bond Repayment Schedule

DRAFT

EXHIBIT B

Revised 2012 NJEIT Loan Repayment Schedule

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