

**OPERATION AND MAINTENANCE AGREEMENT
FOR A SMALL FLOW TREATMENT FACILITY**

THIS AGREEMENT made this 21st day of August, 2006, by and between NEWTOWN TOWNSHIP, DELAWARE COUNTY, PENNSYLVANIA, (hereinafter the "Township") and RICHARD W. AND NANCY M. BORKOWSKI and successors in title (hereinafter the "Property owner").

WITNESSETH:

WHEREAS, Property owner is the legal or record owner of a certain tract of land located in Newtown Township, Delaware County, Pennsylvania identified as 3653 Wyola Drive, and further described in Deed Book 2182, Pages 303-305, Recorder of Deeds Office, Delaware County, Pennsylvania.

WHEREAS, Property owner has requested the Board of Supervisors of Newtown Township to execute this agreement for the use of a Small Flow Treatment Facility (the "System") to be installed and operated upon the aforementioned property of the Property owner; and

WHEREAS, THE System shall include such items as Building Sewers, Treatment Tanks, Filtration Equipment, Disinfection Equipment, Pumps, Piping, Wiring, Conduits, and all necessary and appurtenant electrical power supplies, that require routine scheduled maintenance to ensure proper operation; and

WHEREAS, the Township is willing to allow the installation of the System upon the property provided the Property owner agrees to install, operate, and maintain the System upon certain terms and conditions more particularly set forth herein; and

WHEREAS, the Township and the Property owner desire to memorialize the agreement reached between them with respect to the installation, operation and maintenance of the aforementioned System as to insure the safe and orderly operation of same.

NOW, THEREFORE, for and in consideration of the covenants contained herein, the parties hereto do agree as follows:

1. No improvements, hereinafter referred to, in connection with this Project and Building Permit applications shall commence until the System has been approved and permitted by the Newtown Township Sewage Enforcement Officer (SEO), and/or the Pennsylvania Department of Environmental Protection (PADEP).
2. Contractor and Property owner shall certify to the SEO providing Township with a copy of the said certification that the System has been constructed and installed in compliance with the System as permitted by the SEO and/ or the PADEP, and the plans and specifications upon which the SEO/PADEP issued the permit. Thereafter,

Contractor and Property owner shall notify SEO for a start up inspection of the System providing Township with a copy of such notice. Property owner shall effect any necessary corrections prior to the start up of the System and shall thereafter operate the System in accordance with the permit.

3. During the first year of operation of the System, Property owner will arrange for an inspection of the System at least semi-annually by a qualified Sewage Enforcement Officer (“SEO”), an authorized Factory Representative, or a qualified Professional Engineer (“Engineer”) as retained by the Property owner. The first year shall begin at the start up inspection or at occupancy of first resident whichever occurs last. The first testing shall occur on or about two (2) months after above date and then every six (6) months for a total of two (2) samplings and testing,. Upon reasonable prior notice and at their expense, the Township and/or SEO shall have the right to inspect the System on an annual basis or other times as deemed reasonable to assure a pollution free System operation. After the first year of operation, inspection shall be completed on an annual basis for Newtown Township. This testing shall remain in effect for as long as the System is in use.
4. Property owner agrees to forward copies of all test report readings from the System to Newtown Township. Upon reasonable prior notice, Township, at its expense, may inspect the System to assure that the System is properly maintained and functioning in accordance with the permit. Property owner agrees to pump the treatment tank by a licensed sewage hauler at least one time every three (3) years or whenever inspections of the tank reveal the presence of excess solids. Property owner agrees to provide the Township notice of the pump date and the name of the hauler within thirty (30) days of the pumping.
5. If any inspection conducted by the Property owner, Township or PADEP indicated a need to repair or replace any component part or all of the System, Property owner shall complete such repair and obtain a permit from the Township SEO to the standards required PADEP. Nothing in this section, however, shall preclude or foreclose the right of Property owner to contest any finding made by PADEP or Township concerning the operation of the System, its compliance with applicable PADEP regulations or the nature and extent of repairs or replacement of the System into compliance with applicable PADEP regulation.
6. In the event that the Property owner fails or refuses to conduct the inspection as required by this Agreement or to comply with reasonable recommendations of its Engineer, SEO or Factory Representative, or PADEP with respect to the repair and/or replacement of the System or any part thereof, Township shall have the right to enter upon the Property, conduct said inspections, and to perform any repairs or replacements with respect to the System, all of which shall be made at the cost and expense of the Property owner. Prior to entering upon the premises and conducting its own inspection or performing any repairs or replacements of the System or its

component parts, the Township shall provide Property owner thirty (30) days advance written notice of its intention to enter upon the premises for these purposes. The property owner shall have the right to comply with the terms of this agreement within that thirty (30) day period. Any notice required by the terms of this Agreement shall be sufficient if sent to Property owner's last known address or to such address as Property owner shall designate to Township from time to time.

7. During the period of time when the System is inoperable and/or incapable of treating the discharged effluent so as to meet and/or exceed those standards of the PADEP as aforesaid, Property owner shall make the necessary arrangements to remove said effluent and arrange for the appropriate disposition of same at a properly certified and licensed sewage disposal facility. In the event Property owner shall fail to make the necessary arrangements for the removals of said effluent, The Township shall have the right, upon forty-eight (48) hours written notice to Property owner, to enter upon the premises and cause said effluent to be removed. Property owner agrees to continue hauling effluent until such time as the System has been properly certified as being operable by PADEP or Newtown Township SEO.
8. Property owner shall provide a bond with premium to be established by the Property owner with a Bond value of fifty percent (50%) of cost or escrow as required by Title 25, PA Code, §71.21(a)(1) in an amount equal to 50% cost of the System, which amount shall be forfeited to Township upon continuing non-compliance of the System with the operation and maintenance of the System to cover the costs of repair or future operation and maintenance of the system over its design life or until the System is in compliance of being properly operated and maintained. After two (2) years of operation, the bond amount shall be automatically reduced to ten percent (10%) of the cost of the equipment and installation of the System. The reduced amount of the bond shall be maintained by Property owner subject to forfeiture to Township upon notice of continuing non-compliance with the operation and maintenance standards as established through a condition in the permit.
9. It is expressly understood and agreed that nothing contained herein shall be construed to waive, affect or alter any requirements of the Zoning, Land Development and Subdivision or other Ordinances of the Township and nothing contained herein empowers any Township Officer or employee to waive any requirements of such Ordinances. It is expressly understood and agreed that installation of the System upon the property does not constitute approval for any land development of the property,
10. Property owner agrees to provide to the Township a complete set of "as-built" plans for the aforesaid System as finally approved by Newtown Township SEO or any other governmental agency having jurisdiction thereof.
11. It is expressly understood and agreed that nothing contained herein shall be construed to require Township to enforce this Agreement. It is expected that the local

agency (Newtown Township SEO) will oversee and enforce regulations concerning sewage discharges which are nuisances and health hazards. The Township's obligation shall be limited to the requirement that the Township shall be required to ensure that at least a triennial pump-out occurs, in accordance with PADEP regulations by exercising all nuisance abatement and other power reasonably available to the Township and that the Applicant shall reimburse the Township for any costs incurred thereby.

12. It is expressly understood and agreed that this Agreement of a Memorandum thereof may be recorded in the Recorder of Deeds Office by the Township in the County of Delaware, Pennsylvania and that this Agreement shall be binding upon Property owner's successor in title to the aforesaid lot which is the subject of this agreement, it being the express understanding of the parties that any and all duties and obligations of Property owner with respect to the operation of the system set forth in this agreement would also "run with the land" and remain that obligation of the Property owner's successors in title.

Date: 8/21/06

Richard W. Borkowski
Richard W. Borkowski
Property Owner

Date: 8/21/06

Nancy M. Borkowski
Nancy M. Borkowski
Property Owner

Date: 8/21/06

James Sheldrake
Newtown Township
James Sheldrake
Township Manager