

NUTRIENT CREDIT PURCHASE AGREEMENT

BETWEEN

[NAME OF BUYER]

AND

THE PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY

DATED AS OF _____, 20__

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This AGREEMENT is made this [%DAY OF SETTLEMENT%] day of [%MONTH OF SETTLEMENT%], [%YEAR OF SETTLEMENT%], by and between [%BUYER LEGAL ENTITY NAME%], an entity organized and existing under the laws of the Commonwealth of Pennsylvania or duly authorized to do business in the Commonwealth of Pennsylvania, with an address of [%BUYER LEGAL ENTITY ADDRESS%] (“Buyer”), and the PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania, with an office at 22 South Third Street, Harrisburg, Pennsylvania (“Authority”).

WHEREAS, Buyer desires to purchase Credits (as hereinafter defined) from the Authority and the Authority desires to sell Credits to Buyer on the terms and conditions set forth herein.

NOW, THEREFORE, the Authority and Buyer, with the intention of being legally bound, hereby agree as follows:

A. DEFINITIONS

The following words and phrases shall have the meanings given to them in this Section when used in this Agreement. Certain terms are defined elsewhere in the Agreement.

1. “AUCTION” shall refer to an auction held by the PENNVEST Clearinghouse which serves to establish a single auction-specific Credit price such that validly binding offers to sell Credits to the Authority posted by sellers and validly binding offers to buy Credits from the Authority posted by buyers will be equal in the aggregate at that price. The auctions will initially be uniform price auctions.

2. “AUCTION RULES” shall mean the terms and conditions Enrolled Participants agree to in participating in an Auction under the PENNVEST Clearinghouse, as more particularly described in Appendix 4 of the Rulebook.

3. “BUYER NOTIFICATION LETTER” shall mean the letter provided to the Buyer by the Authority setting forth the terms and conditions of Buyer’s successful purchase of Credits, including the number and type of Credits purchased by Buyer during the Auction and the schedule for payment.

4. “CERTIFIED CREDITS” shall mean Credits that have been or will be generated by a proposed or implemented pollutant reduction activity that has been certified to generate Credits.

5. “CLEARINGHOUSE RULES” shall mean the governing procedures and operational guidelines for the PENNVEST Clearinghouse, as set forth in this Rulebook, the Auction Rules, any advisories, circulars, notices, directives or decisions adopted or made by the Authority in accordance with the PENNVEST Clearinghouse, and any and all contracts by and between the Authority and the Enrolled Participant relative to the PENNVEST Clearinghouse.

6. "COLLATERAL" shall mean the collateral provided by the Buyer to the Authority to secure the Buyer's performance of its obligations hereunder, as more particularly set forth in the Transaction Specific Terms, attached hereto as Exhibit A.
7. "COMMONWEALTH" shall mean the Commonwealth of Pennsylvania.
8. "COMPLIANCE YEAR" shall mean the year long period starting October 1 and ending September 30 in which credits may be used to meet NPDES permit effluent limitations. The Compliance Year will be named for the year in which it ends. Example: The period of October 1, 2010 through September 30, 2011 is Compliance Year 2011.
9. "CREDIT" shall mean a tradable unit of compliance that corresponds with a unit of reduction of a Nutrient or of Sediment as recognized by DEP which, when certified, verified and registered may be used to comply with NPDES permit effluent limitations.
10. "CREDIT PURCHASE DOCUMENTS" shall mean the Buyer Notification Letter, this Agreement, together with all other documents, certifications and other instruments executed and delivered to the Authority by the Buyer, pursuant to this Agreement.
11. "DEP" shall mean the Pennsylvania Department of Environmental Protection.
12. "ENROLLED PARTICIPANT" shall mean an entity, individual or organization that has established eligibility in the PENNVEST Clearinghouse.
13. "EVENT OF DEFAULT" shall mean any of the events set forth in Paragraph H.1. herein.
14. "NPDES" shall mean the National Pollutant Discharge Elimination System.
15. "NUTRIENT" shall mean nitrogen or phosphorus.
16. "ORGANIZATIONAL DOCUMENTS" shall mean all documents which provide evidence of the organizational status of the Buyer (*e.g.*, articles of incorporation, bylaws, operating agreements, partnership agreements, etc.)
17. "PAYMENT SCHEDULE" shall mean the schedule for submission of payments from the Buyer to the Authority as set forth in the Transaction Specific Terms, attached hereto as Exhibit A.
18. "PENNVEST CLEARINGHOUSE" shall mean the Credit exchange maintained by the Authority whereby the agency becomes a counterparty to each party of Credit trading transaction by acting as the buyer to each seller trading in the exchange and the seller to each buyer trading in the exchange.

19. "PERSON" shall mean a municipality, municipal authority, or other form of government, including a governmental subdivision, agency or other instrumentality, an individual, any form of corporation or partnership, a business trust, an estate, a trust, a cooperative, an association, two or more individuals or entities having a joint or common interest, or any other legal or commercial entity.

20. "REGISTERED CREDITS" shall mean Credits to which DEP has assigned a registration identification number in DEP's tracking system, which identifies all Credits that may be used to comply with NPDES permit effluent limits.

21. "REGULATED POINT SOURCE" shall mean any entity, individual or organization, including wastewater treatment works owned or operated by municipalities or municipal authorities, developers and others that are responsible to comply with an NPDES permit.

22. "RULEBOOK" shall mean the PENNVEST Nutrient Credit Clearinghouse Rulebook in existence as of the Settlement Date.

23. "SEDIMENT" shall mean soils or other erodible materials transported by stormwater as a product of erosion.

24. "SETTLEMENT" shall mean the closing of the transaction between the Buyer and the Authority contemplated hereby, including execution of the Credit Purchase Documents.

25. "SETTLEMENT DATE" shall mean the effective date of this Agreement.

B. PURCHASE OF CREDITS

1. TRANSACTION SPECIFIC TERMS.

Buyer hereby agrees to purchase and the Authority hereby agrees to sell Credits in the quantities and at the prices set forth in the Transaction Specific Terms, attached hereto as Exhibit A and incorporated herein by reference. Buyer shall submit payment to the Authority in accordance with the Payment Schedule outlined in Exhibit A and subject to the terms and conditions set forth herein.

2. CLEARINGHOUSE RULES AND BUYER NOTIFICATION LETTER SURVIVAL .

The terms and conditions of the Clearinghouse Rules and the Buyer Notification Letter are incorporated herein by reference and made a part hereof. Buyer hereby agrees that the obligations set forth in the Clearinghouse Rules and the Buyer Notification Letter shall survive Settlement on the purchase of Credits and shall be continuing obligations of the Buyer until all required payments, including applicable interest and fees, have been made in full and all other obligations of the Buyer under the Credit Purchase Documents have been fully completed and

discharged.

3. CREDIT PURCHASE DOCUMENTS

In addition to this Agreement, Buyer shall execute or cause to be executed the following documents, as appropriate, prior to Settlement:

a. Collateral

As security for the Buyer's obligations hereunder, Buyer agrees to execute and deliver or cause to be executed and delivered to the Authority the Collateral identified in the Transaction Specific Terms, attached hereto as Exhibit A.

Buyer shall execute and deliver such additional documents and instruments as the Authority shall reasonably require in order to perfect and continue the perfection of the Authority's interest in any of the Collateral.

C. BUYER REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants the following to the Authority, which representations and warranties shall survive until all payment obligations of the Buyer hereunder have been satisfied and shall be deemed to be made as of the Settlement Date and the date of each payment for Credits:

1. COMPLIANCE WITH RULEBOOK/AUCTION RULES

The Buyer has complied with the terms and conditions of the Rulebook and the Auction Rules in all actions taken through the date of execution of this Agreement.

2. FORMATION; EXISTENCE; COMPOSITION

Buyer is duly organized and existing under the laws of the Commonwealth of Pennsylvania or is duly authorized to do business in the Commonwealth of Pennsylvania; has the power and authority to carry on its business as now conducted; has furnished, as of the Settlement Date only, correct and complete copies of its Organizational Documents to the Authority; and provided, as of the Settlement Date only, a correct and complete list of its directors and officers, direct shareholders or direct members, or other management structure, as may be applicable, in the List of Officer and Directors, attached hereto as Exhibit B and incorporated herein by reference.

3. POWER AND AUTHORITY; AUTHORIZATION; ENFORCEABILITY

The Buyer has the full power, authority and legal right to execute, deliver and comply with the Credit Purchase Documents and has taken all actions necessary or appropriate for the execution and delivery of and compliance with the Credit Purchase Documents. The Buyer has delivered to the Authority copies of all documents demonstrating that the Buyer has the corporate

authorization or authority to enter into the transaction with the Authority. The Credit Purchase Documents constitute valid and legally binding obligations of the Buyer enforceable against the Buyer in accordance with their respective terms.

4. APPROVAL OF CREDIT PURCHASE DOCUMENTS

No consent, approval or other authorization of or by any court, administrative agency or other governmental authority is required in connection with the execution and delivery of or the performance of the Buyer's obligations under this Agreement or any of the Credit Purchase Documents, except as disclosed on the List of Permits/Approvals, attached hereto as Exhibit C and incorporated herein by reference.

5. CONFLICT; BREACH

The execution and delivery of and compliance with the Credit Purchase Documents will not conflict with or result in a breach of any applicable law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority, or the Organizational Documents, or of any agreement or other document or instrument to which the Buyer is a party or by which it or its properties are bound, and such action by the Buyer will not result in the creation or imposition of any lien, charge or encumbrance upon the Credits in favor of anyone other than the Authority.

6. LITIGATION

No action, suit or proceeding is pending or, to the knowledge of the Buyer, is threatened, against or affecting the Buyer, the Credits or the Collateral before or by any court, administrative agency or other governmental authority, which questions the validity of the transaction contemplated hereby, or which could result in a material adverse change in the financial condition or business of the Buyer or the Collateral, except as disclosed in the List of Litigation, attached hereto as Exhibit D and incorporated herein by reference.

7. FINANCIAL STATEMENTS

The most recent audited annual financial statements of the Buyer, a copy of which has been furnished to the Authority, have been prepared in accordance with generally accepted accounting principles and practices, or generally accepted governmental accounting principles and practices, consistently applied, as may be applicable, and fairly and accurately present the financial condition of the Buyer in all material respects as of the date thereof and for the fiscal period then ended. No material adverse change in the financial condition or business of the Buyer has occurred between the end of the fiscal year covered by such financial statements and the Settlement Date, except as disclosed by the Buyer in the Statement of Change in Financial Condition/List of Liens, attached hereto as Exhibit E and incorporated herein by reference. The timeliness of the financial statements submitted to the Authority shall comply with the requirements set forth in the Subsection entitled "Financial Statements" in Section D herein.

8. STATUS OF PERSONAL PROPERTY

To the extent personal property is pledged as Collateral, such personal property is free and clear of all liens, encumbrances, security interests and other equitable charges, except as identified in the Statement of Change in Financial Condition/List of Liens, attached hereto as Exhibit E.

9. STATUS OF PRIOR AUTHORITY TRANSACTIONS OR FUNDING

To the extent that the Buyer has previously entered into an agreement with the Authority for the purchase or sale of Credits or to the extent the Buyer has previously received any project financing from the Authority, the Buyer is in compliance with all obligations under the prior credit purchase or sale documents or funding documents and is not delinquent on its obligations.

10. GOVERNMENTAL APPROVAL OF APPLICABLE PERMITS

All necessary permits, approvals and licenses from governmental or quasi-governmental authorities having jurisdiction over the system for which the Credits will be used, including but not limited to National Pollutant Discharge Elimination System permits, have been obtained and such permits, approvals and licenses are final and in full force and effect, and the time for filing all appeals has expired with no appeals having been taken therefrom, except as otherwise disclosed to the Authority on the List of Permits/Approvals, attached hereto as Exhibit C. Exhibit C contains a correct and complete list of all permits, approvals and licenses required for operation of the system for which the Credits will be used, the date each permit, approval or license was issued, the date any appeal period expired, and the status of any appeals filed.

11. COMPLIANCE WITH LOCAL LAND DEVELOPMENT PLANS

To the extent the Buyer is purchasing Credits to offset discharges from a new or expanded development project, the development project satisfies and is consistent with local land development plans and requirements.

12. BANKRUPTCY; INSOLVENCY

The Buyer has not applied for or consented to the appointment of a receiver, conservator, trustee or liquidator for itself or any of its property; admitted in writing its inability to pay its debts as they mature; made a general assignment for the benefit of creditors; been adjudicated a bankrupt or insolvent or filed a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; and no action has been taken by it for the purpose of effecting any of the foregoing. No order, judgment or decree has been entered by any court of competent jurisdiction approving a petition seeking reorganization of the Buyer or all or a substantial part of the assets of the Buyer, or appointing a receiver, conservator, sequestrator, trustee or liquidator of it or any of its property.

13. PUC APPROVAL OF RATES

In the event that any Collateral consists of a pledge of revenues or a pledge of accounts, the List of Liens, attached hereto as Exhibit B, correctly states the extent to which the PUC regulates the rates used to generate Collateral. To the extent the PUC regulates any rates used to generate the Collateral, then: a) the Buyer has requested or caused to be requested approval of rates that will provide revenue sufficient to pay the amounts due hereunder, to amortize all other indebtedness secured by such revenues and to fund all operational expenses associated with the system for which the Credits will be used; and b) the PUC has granted final and unappealable approval of such rates or can be reasonably expected to grant final approval pursuant to Section 7518 of the Water Facilities Restoration Act, 32 Pa.C.S. § 7518; and c) a copy of the PUC rate request, together with copies of the requestor's most recent annual PUC filing, have been provided to the Authority.

14. RESPONSIBILITY PROVISIONS

a. No one receiving funds by virtue of this Agreement is under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority.

b. The Buyer is not delinquent in the payment of any tax liabilities or other obligations to the Commonwealth, taking into account the right to contest or appeal such payment as may be permitted by the Commonwealth.

15. INTEGRITY PROVISIONS

a. For purposes of this Paragraph only, the following terms shall have the meanings set forth below:

(i) "Confidential Information" shall mean information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Authority or the Commonwealth.

(ii) "Consent" shall mean written permission signed by a duly authorized officer or employee of the Authority, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Authority shall be deemed to have consented by virtue of execution of this Agreement.

(iii) "Gratuity" shall mean any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

b. The highest standards of integrity in the performance of this Agreement have been maintained and no action has been taken in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

c. No Confidential Information gained by virtue of this Agreement has been disclosed to others.

d. No pecuniary benefit has been conferred in connection with this Agreement or any other agreement with the Authority, directly or indirectly, on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

e. No Gratuity has been offered, given or promised to anyone in connection with this Agreement or any other agreement with the Authority, directly or indirectly, for the benefit of or at the direction or request of any officer or employee of the Commonwealth.

f. No Gratuity has been accepted from or given to anyone in connection with the performance of work under the Agreement.

g. The Buyer, upon being informed that any violation of these provisions has occurred or may occur, has immediately notified the Authority in writing.

i. The Buyer, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, has provided, or if appropriate, has made promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Buyer's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Buyer's business or financial records, documents or files of any type or form, which refer to or concern the Agreement. Such information shall be retained by the Buyer for a period of three years beyond the termination of the Agreement unless otherwise provided by law.

j. For violation of any of the above provisions, the Authority may terminate this Agreement and any other agreement with the Buyer, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining complete performance hereunder, and debar and suspend the Buyer from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Authority may have under law, statute, regulation, or otherwise set forth in this Agreement.

16. CONFIDENTIAL INFORMATION

The Buyer has made every effort not to include confidential or proprietary information or trade secrets as part of any submission to the Authority, except as otherwise specified in the Rulebook. If the Buyer has determined that it must divulge such information as part of any submission to the Authority, the Buyer has submitted to the Authority a signed written statement to that effect in accordance with 65 P.S. § 67.707(b), and additionally has provided a redacted version of its submission, which has removed only the confidential or proprietary information and trade secrets

for public disclosure purposes.

17. RIGHT-TO-KNOW LAW

a. The Pennsylvania Right-to-Know Law (hereinafter referred to as the “RTKL”), 65 P.S. §§ 67.101-3104, applies to this Agreement. For the purpose of administering the matters relating to the RTKL set forth in this Section, the applicable “Commonwealth agency” as provided in the RTKL shall be the Authority. Capitalized terms used but not otherwise defined herein shall have the same meaning as set forth in the RTKL.

b. If the Authority needs the Buyer’s assistance in any matter arising out of the RTKL, the Authority shall notify the Buyer using the legal contact information provided in this Agreement. The Buyer, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Authority.

c. Upon written notification from the Authority that it requires the Buyer’s assistance in responding to a request under the RTKL for information that may be in the Buyer’s possession, constituting, or alleged to constitute, a Public Record in accordance with the RTKL, Buyer shall:

(i) Provide the Authority, within ten (10) calendar days after receipt of such notification, access to, and copies of, any document or information in the Buyer’s possession arising out of this Agreement that the Authority reasonably believes may be a Public Record under the RTKL (“Requested Information”), to permit the Authority to evaluate whether such Requested Information is, in fact, a Public Record within the scope of the subject RTKL information request; provided, however, that providing such Requested Information not previously in the Authority’s possession shall not be considered an admission by the Buyer that such records are Public Records under the RTKL; and

(ii) Provide such other assistance as the Authority reasonably may request, in order to comply with the RTKL.

If the Buyer fails to provide the Requested Information within ten (10) calendar days after receipt of such request, the Buyer shall indemnify and hold the Authority harmless for any damages, penalties, detriment or harm that the Authority may incur under the RTKL as a result of the Buyer’s failure, including any statutory damages assessed against the Authority.

d. If the Buyer considers the Requested Information not to be a Public Record, or exempt from production due to the inclusion of trade secret, confidential proprietary information, or any other reason for exemption from production as a Public Record under the RTKL, the Buyer shall provide a written statement to the Authority within seven (7) days of receipt of the Authority’s request for the Requested Information. This statement shall be signed by a representative of the Buyer, explaining why the Buyer considers the Requested Information exempt from public disclosure.

e. If such a written statement is timely provided, the Authority will rely upon it

in denying a RTKL request for the information. However, if the Authority reasonably determines that such written statement is patently flawed or the Requested Information is, on its face, clearly not protected from disclosure under the RTKL, the Buyer shall, subject to its rights of appeal, provide the Requested Information within five (5) business days of notification of the Authority's decision.

If the Buyer fails to provide the Requested Information within the five (5) business days, the Buyer shall indemnify and hold the Authority harmless from any damages, legal fees, penalties, detriment or harm, including statutory damages assessed against the Authority that the Authority may incur under the RTKL as a result of the Buyer's failure to provide the records.

f. The Buyer shall be entitled to challenge or appeal any decision of the Authority, the Commonwealth Office of Open Records ("OOR") or any applicable court mandating the release of any record to the public which the Buyer believes is not properly subject to disclosure under the RTKL; provided, however, that (i) the Buyer shall be solely responsible for all costs related to such action; and (ii) the Buyer shall indemnify and hold harmless the Authority from and against any and all legal fees, damages, penalties, detriment or harm that the Authority may incur under the RTKL as a result of such action, including any statutory damages assessed against the Authority, regardless of the outcome of such legal challenge. If the Buyer does not appeal or is not successful after final appeal from a determination by the OOR or Pennsylvania courts, the Buyer agrees to waive all rights or remedies that may be available to it as a result of the Authority's subsequent disclosure of Requested Information pursuant to such a decision by the OOR or Pennsylvania courts. The Authority will reimburse the Buyer for any costs associated with complying with this provision, but only to the extent allowed under the fee schedule established by the OOR, or as otherwise provided by the RTKL, if the fee schedule is inapplicable.

g. Notwithstanding the foregoing, nothing set forth herein is intended, nor shall it be construed, to expand the Buyer's obligations, or the Authority's authority, beyond those obligations and authority, respectively, as are set forth in the RTKL, and the sole remedy for any failure by the Buyer to perform any obligation arising hereunder, or under the RTKL, shall be limited to those specifically provided for pursuant to the RTKL, and the failure of the Buyer to comply with the provisions of this Section shall not constitute a default or Event of Default under the Agreement.

D. BUYER COVENANTS

All representations and warranties stated in Section C that continue to apply to the Buyer's performance under this Agreement, are incorporated into this Section as if restated in their entirety. In addition, the Buyer covenants and agrees to the following until the Buyer's obligations hereunder have been satisfied in full:

1. PAYMENT

The Buyer shall make or cause to be made all payments in accordance with the Payment Schedule set forth in the Transaction Specific Terms set forth in Exhibit A. In no event shall the date for payment extend beyond the scheduled payment date set forth in Exhibit A without the express written consent of the Authority, as further provided in Section E, Paragraph 1. In the

event the Buyer anticipates that it will not be able to make a scheduled payment, it shall notify the Authority immediately. In the event the Buyer fails to make payment in accordance with the Payment Schedule, such amounts shall become immediately due and payable to the Authority and any subsequent payment received by the Buyer will be applied first to any accrued or unpaid amounts up to the date of such payment in the inverse order of their due date. Buyer may not prepay at any time all or any portion of the payments due hereunder without the express written consent of the Authority.

2. PAYMENT PROCEDURE; AUTOMATIC CLEARING HOUSE PROCEDURES

Buyer shall submit all payments due under the Transaction Specific Terms, attached hereto as Exhibit A, in accordance with the Payment Schedule in the form of a check, made payable to the “Commonwealth of Pennsylvania”, or by wire transfer to an account designated by the Authority. The check must be received by the Authority, or its agents, by the due date set forth in Exhibit A. All checks should be mailed to the following address:

Nutrient Credit Trading Program
Bureau of Commonwealth Accounting
9th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101

Notwithstanding the foregoing, the Buyer shall participate and follow any automatic clearing house procedures implemented, or to be implemented, by the Authority in order to facilitate the collection of payments in accordance with the Payment Schedule. The Buyer will provide any necessary information or written consent requested by the Authority upon receiving written notification that the Authority is implementing new or revised automatic clearing house procedures.

3. COMPLIANCE WITH RULEBOOK/AUCTION RULES

The Buyer shall comply with the terms and conditions of the Rulebook and the Auction Rules until all obligations under this Agreement have been satisfied in full.

4. MAINTENANCE OF EXISTENCE

All actions required to maintain the Buyer’s existence as an entity duly organized and existing under the laws of the Commonwealth of Pennsylvania, or authorized to do business in the Commonwealth, shall be taken. The Authority shall be advised of the nature of any changes in Organizational Documents promptly after any such changes are made, and neither the Organizational Documents nor the Buyer’s fiscal year shall be changed in any manner that would adversely affect performance of any obligation under the Credit Purchase Documents, without in each case obtaining the prior written approval of the Authority, which shall not be unreasonably withheld or delayed.

5. MERGER; DISSOLUTION

The Buyer shall not be a party to any merger or consolidation or sell all or substantially all of its assets without the prior written consent of the Authority, which upon receipt of all requested information shall not be unreasonably withheld, conditioned or delayed. The Buyer shall not enter into any dissolution or liquidation proceedings.

6. CONTROL; OWNERSHIP

If applicable, control or ownership of the Collateral, shall not be transferred, directly or indirectly, voluntarily or involuntarily, without the prior written approval of the Authority, which upon receipt of all requested information shall not be unreasonably withheld, conditioned or delayed, except as may otherwise be required by court order. Except as otherwise permitted hereby, no lien, encumbrance or security interest shall be created or permitted to exist in favor of any third party with respect to the Collateral, other than (a) liens in connection with worker's compensation, unemployment insurance or other social security obligations, (b) the liens of taxes not yet due and payable, and (c) liens of mechanics, materialmen, warehousemen, carriers and other similar liens, securing obligations incurred in the ordinary course of business, which are not yet due and payable, d) liens of taxes, if the validity or amount thereof is being contested in good faith by appropriate and lawful proceedings, so long as any applicable judgment is discharged within ten (10) days of entry and e) liens disclosed to the Authority in the Statement of Change in Financial Condition/List of Liens, attached hereto as Exhibit E.

7. COMPLIANCE WITH LAWS, REGULATIONS AND LOCAL LAND DEVELOPMENT PLANS

The Buyer's performance of its obligations under the Credit Purchase Documents shall be in accordance with the requirements of all applicable laws, ordinances, rules, regulations, judgments, injunctions, orders and decrees (federal, state or local, judicial, governmental or administrative). To the extent the Buyer is purchasing Credits to offset discharges for a new or expanded development project, the development project will satisfy and be consistent with local land development plans and requirements.

8. FINANCIAL STATEMENTS

Within one hundred eighty (180) days after the end of each fiscal year, or such other time period as may be acceptable to the Authority, until all Buyer's obligations hereunder are satisfied in full, the Buyer shall transmit a copy of its financial statements for such fiscal year to the Authority using the Authority's facsimile procedure on the Authority's website under the Annual Financial Statement/Audit Report Submission link. The Buyer's financial statements shall consist of a balance sheet, income statement and statement of source and application of funds. Such financial statements:

- a. Shall be prepared by an independent public accounting firm, or such other entity, as may be acceptable to the Authority;

b. Shall be prepared in accordance with generally accepted accounting principles and practices consistently applied or generally accepted governmental accounting principles and practices consistently applied, as may be applicable;

c. Shall be in a form satisfactory to the Authority; and

d. Shall be certified as true and correct by the chief financial officer of the Buyer.

9. FINANCIAL CONDITION

The Buyer shall not take any action or incur additional debt or refinance existing debt which will have a material adverse change on the financial condition of the Buyer and which may jeopardize the Buyer's ability to satisfy its obligations hereunder, without the express prior written consent of the Authority. In the event the Buyer suffers a material adverse change in its financial condition, which may jeopardize the Buyer's ability to perform its obligations, hereunder, the Buyer shall notify PENNVEST immediately.

10. PROPERTY, LIABILITY AND OTHER INSURANCE

The Buyer shall maintain adequate property, comprehensive general liability insurance and such other insurance as may be necessary to provide adequate business insurance coverage on the Buyer's business assets for the term of this Agreement. In the event that the Buyer is self-insured, the Buyer alternatively shall maintain an adequate indemnity fund to provide for general liability and worker's compensation claims, and shall maintain its status as a qualified self-insurer in the Commonwealth of Pennsylvania for general liability and worker's compensation.

11. RATES AND CHARGES

In the event that the Collateral includes a lien on or a pledge of revenues, the Buyer covenants as follows with respect to such revenues pledged as Collateral:

a. Definitions

For purposes of this Paragraph only, the terms "financial consultant", "net revenues" and "operating expenses" shall have the following definitions:

(i) "Financial Consultant" shall mean a person who (1) is qualified to analyze the financial affairs of the owner of the revenues pledged as Collateral, (2) has a favorable reputation for skill and experience in conducting such financial analyses, and (3) is acceptable to the Authority;

(ii) "Net Revenues" shall mean the revenues pledged to the Authority, after deduction of Operating Expenses, other contractual allowances, and reasonable allowances for bad debts;

(iii) "Operating Expenses" shall mean all expenses required in the operation and maintenance of the system generating the revenues determined in conformity with generally accepted accounting principles, including, in each case, without intending to limit the generality of the foregoing: expenses of operation (including all utilities), maintenance, repair, alteration, insurance and inspections; salaries and expenses of professional, managerial, supervisory, administrative, engineering, architectural, legal, financial, auditing and consulting services; sums payable to any person which sums constitute expenses of operation and maintenance; and all taxes or contributions or payments in lieu thereof, assessments and charges, including without limitation income, profits, property, franchise, payroll and excise tax.

b. Coverage Requirements

Buyer shall fix, charge and collect or cause to be fixed, charged and collected rates, fees and charges associated with the revenues pledged to the Authority sufficient to provide Net Revenues at least equal to:

(i) The payments due to the Authority in such fiscal year under the Payment Schedule, attached hereto as Exhibit A; and

(ii) The payment of all amounts due under any other debt obligation secured by the revenues pledged to the Authority and coming due in such fiscal year.

c. Deficiencies

If, at any fiscal year end, Net Revenues are less than the coverage requirements set forth above ("Coverage Requirements"), the sufficiency of the revenues pledged to the Authority shall be reviewed by the Buyer and steps shall be taken as deemed necessary to correct any deficiencies. If after six (6) months following such fiscal year end, Net Revenues for such six (6) month period are not at least equal to one-half of the Coverage Requirements then due, the Buyer shall immediately employ or cause to be employed a Financial Consultant to analyze the deficiency and recommend by the then current fiscal year-end a revised schedule of rates, fees and charges, which Buyer immediately shall implement and enforce or cause to be implemented and enforced to the extent authorized by the PUC, if required, and otherwise permitted by the law. If, at the end of the fiscal year next succeeding such Financial Consultant's recommendation, Net Revenues are still not sufficient to meet the Coverage Requirements, the Buyer shall immediately transfer or cause to be transferred management of the revenues pledged to the Authority to a Financial Consultant, subject to the rights of existing lienholders as set forth in the Statement of Change in Financial Condition/List of Liens, attached hereto as Exhibit E, and such future superior lienholders as may be approved by the Authority, until there has been a period of twelve (12) consecutive months during which the Net Revenues satisfy the Coverage Requirements; and provided, however, that if the Financial Consultant or the Authority determines that the failure to meet the Coverage Requirements is caused primarily by factors outside the control of management, the Financial Consultant shall not assume management.

12. AMERICANS WITH DISABILITIES ACT

a. Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq.*, no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement, and the Buyers agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of the Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Authority as an agency of the Commonwealth through this Agreement.

b. The Commonwealth and the Authority shall be indemnified and held harmless from all losses, damages, expenses, claims, demands, suits and actions brought by any party against the Commonwealth or the Authority as a result of the Buyer's failure to comply with its obligations under the provisions of Subparagraph (a) above.

13. NONDISCRIMINATION; SEXUAL HARASSMENT CLAUSE

The Buyer shall comply, or cause its agents or representatives to comply, with the following requirements:

a. In the hiring of any employees for the performance of work, or any other activity required under this Agreement, no person who is qualified and available to perform the work to which the employment relates shall be discriminated against by reason of gender, race, creed or color.

b. No employee involved in the performance of work or any other activity required under the Agreement shall be discriminated against in any manner or intimidated on account of gender, race, creed, or color.

c. The Buyer shall establish and maintain a written sexual harassment policy providing that sexual harassment will not be tolerated and employees who practice it will be disciplined and employees shall be informed of the policy.

d. No contractor or supplier who is qualified to perform the work relating to this Agreement shall be discriminated against by reason of gender, race, creed, or color.

e. All necessary employment documents and records shall be provided and access by the Authority and the Department of General Services' Bureau of Contract Administration and Business Development to books, records, and accounts shall be permitted for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If documents or records reflecting the necessary information requested are not available, such information shall be furnished on reporting forms supplied by the Authority or the Bureau of Contract Administration and Business Development.

f. This Nondiscrimination/Sexual Harassment Clause shall be included in

contracts relating to the performance of this Agreement so that such provisions will be binding upon all parties to such contract.

g. The Authority may cancel or terminate the Agreement and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the Authority may proceed with debarment or suspension and may place the party not in compliance in the Contractor Responsibility File, a repository of information on contractors.

14 RESPONSIBILITY PROVISIONS

a. The Buyer shall inform the Authority of any delinquency in the payment of taxes, taking into account the right to contest or appeal such payment as may be permitted by the Commonwealth, or other Commonwealth obligations, or of any suspension or debarment by the Commonwealth, the federal government, or any other state or governmental entity of any party involved in the performance of this Agreement within 15 days of the date of the delinquency, suspension or debarment. The Buyer may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the following:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125

b. The Commonwealth shall be reimbursed for the reasonable costs of investigation incurred by the Office of Inspector General for investigations of the compliance with the terms of this Agreement that results in the suspension or debarment. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. Investigative costs for investigations that do not result in suspension or debarment shall not be reimbursed.

15. MINORITY AND WOMEN BUSINESS UTILIZATION

The Buyer acknowledges that the Commonwealth encourages the participation of certified minority business enterprises and women business enterprises in the performance of contracts entered into by the Commonwealth or Commonwealth agencies. To the extent Buyer can do so, Buyer is encouraged to utilize certified minority and women business enterprises in the performance of its obligations under this Agreement. For information and assistance on certified minority and women business enterprises, including a current list of the same, Buyer should contact:

Department of General Services
Bureau of Contract Administration and Business Development
Room 502, North Office Building
Harrisburg, Pennsylvania 17125

Phone: (717) 787-7830
Facsimile: (717) 787-7052

16. RECORDING OR FILING OF CREDIT PURCHASE DOCUMENTS

To the extent the Credit Purchase Documents must be recorded or filed, for example, if the Buyer gives a mortgage on real property as part of its Collateral, the applicable Credit Purchase Documents shall be recorded or filed by the Buyer in the appropriate public office and evidence of the filing shall be provided to the Authority.

E. AUTHORITY COVENANTS

1. DELIVERY OF CREDITS

The Authority covenants and agrees that it shall deliver Registered Credits as set forth in the Transaction Specific Terms, attached hereto as Exhibit A, on the Payment Schedule set forth therein. The Authority shall provide the applicable registration identification numbers to the Buyer at the time of delivery.

2. NON-PERFORMANCE; REPLACEMENT CREDITS

In the event the Authority does not have possession of all or a portion of the Credits scheduled to be delivered to the Buyer on a particular delivery date, the Authority shall refund the proportionate share of Buyer's payment for the portion of the Credits not delivered by the Authority, and the Authority shall attempt to secure replacement credits as set forth in Section 10 of the Rulebook by the end of the applicable Compliance Year. The Buyer will not be required to make payment for such Credits, until the Authority has secured sufficient replacement Credits to satisfy its delivery obligations as set forth in Exhibit A.

F. PLEDGE OF COLLATERAL

{INSERT PARAGRAPH ONLY IF COLLATERAL = LIEN ON REVENUES}

1. PLEDGE OF REVENUES

The Buyer agrees as follows:

a. Definitions.

For purposes of this Paragraph only, the following terms shall have the meanings set forth below:

b. "Account" means any right of the Buyer to payment related to the operation of the system whose revenues have been pledged to the Authority under the Transaction Specific Terms, attached hereto as Exhibit A, for goods sold or to be sold, leased or to be leased or for services rendered or to be rendered (whether or not yet earned by performance), which is not

evidenced by an instrument or chattel paper.

(ii) "Account Collateral" means:

(a) All of the Buyer's Accounts now existing or hereafter arising;

(b) All guaranties relating to the Buyer's existing and future Accounts and all other security held by the Buyer for the payment or satisfaction thereof;

(c) The services, the sale or lease or performance of which gave rise to any Account of the Buyer, including any return goods or other goods the sale or lease of which gave rise to any Account;

(d) All property of any nature whatsoever of the Buyer now or hereafter in the possession of or assigned or hypothecated to the Authority for the purpose of securing the Liabilities; and

(e) All Proceeds of all of the foregoing, including all Proceeds of other Proceeds.

(iii) "Account Debtor" means the Person who is obligated on an Account.

(iv) "Liabilities" means all existing and future liabilities, whether absolute or contingent, of the Buyer to the Authority of any nature and arising out of any transactions, including liabilities of the Buyer to others which the Authority may have obtained by assignment, subrogation or otherwise, and liabilities to subsidiaries and affiliates of the Authority.

(v) "Proceeds" means whatever is received when Account Collateral is sold, exchanged, collected or otherwise disposed of. The term also means the account arising in connection therewith.

b. Pledge of Revenues

Notwithstanding anything to the contrary herein, as security for its obligation to make all payments and to perform all other obligations under the Credit Purchase Documents and as security for all other Liabilities, the Buyer hereby pledges and grants to the Authority a presently existing and continuing lien on and security interest in the revenues described in the Transaction Specific Terms, attached hereto as Exhibit A, to the extent permitted by law, subject only to the prior liens set forth in the Statement of Change in Financial Condition/List of Liens, attached hereto as Exhibit E. In the furtherance thereof, this Agreement shall constitute a security agreement as that term is defined under the Pennsylvania Uniform Commercial Code. This includes a pledge, a lien, and security interest in all such revenues, but the existence of such security interest shall not prevent the expenditure, deposit or commingling of gross revenues and receipts by the Buyer, so long as all required payments under the Credit Purchase Documents are made when due. The security interest created hereby attaches upon execution of this Agreement. Upon the occurrence of an Event of

Default hereunder and the continuation thereof after any applicable notice and/or grace periods, any revenues subject to this security interest which are then on hand, not yet commingled with other funds of the Buyer and not yet deposited in a bank account of the Buyer, and any revenues thereafter received, shall not be commingled or deposited, but shall immediately, or upon receipt, be transferred to the Authority to the extent needed to make the Buyer's payment obligations current, considering all terms and conditions in the Credit Purchase Documents.

c. Assignment and Collection of Accounts

The Buyer hereby assigns its interest in the Account Collateral to the Authority to further secure its obligations under the Credit Purchase Documents and to secure all other Liabilities. The Authority hereby authorizes the Buyer to collect all Accounts from the Account Debtors until the occurrence of an Event of Default hereunder. Upon the occurrence of an Event of Default hereunder or under any of the Credit Purchase Documents and the continuation thereof after any applicable notice and/or grace periods, the Authority shall have the right, acting if it so chooses in the Buyer's name, to collect the Buyer's Accounts, to sell, assign, compromise, discharge or extend the time of payment of any Account, to institute legal action for the collection of any Account, and to do all acts and things necessary or incidental thereto, and the Buyer hereby ratifies all that the Authority shall do by virtue hereof. After such default, the Authority may, without notice to the Buyer, notify any Account Debtor that the account payable by such Account Debtor is to be paid directly to the Authority. At the Authority's request, the Buyer shall so notify Account Debtors and shall indicate on all billings to Account Debtors that payments thereon are to be made to the Authority.

d. Books and Records

The Buyer shall keep complete and accurate books and records and make all necessary entries therein to reflect the transactions and facts giving rise to its inventory, Accounts and all payments, credits and adjustments applicable thereto. The Buyer shall keep the Authority fully and accurately informed as to the location of all such books and records pertaining to its Accounts and shall permit the Authority's agents to have access to all such books and records and any other records pertaining to the Buyer's business which the Authority may request and to remove them from the Buyer's place of business or any other place where the same may be found for the purpose of examining, auditing and copying the same. Such right shall be enforceable by law or in equity, and to the extent permitted by law, the Buyer consents to the entry of orders or injunctions enforcing such right without any notice to the Buyer.

e. Other Account Liabilities

In the event that any lien, assessment or tax liability against the Collateral shall arise, whether or not entitled to priority over the security interest of the Authority in the revenues described in the Transaction Specific Terms, attached hereto as Exhibit A, the Buyer shall give prompt notice thereof in writing to the Authority. The Authority shall have the right (but shall be under no obligation) to pay any tax or other liability of the Buyer deemed by the Authority to affect its interests. The Buyer shall repay to the Authority any sums that the Authority shall have so

paid, together with interest thereon at the rate of four percent (4%). The term of such repayment shall not exceed the remaining term of the Payment Schedule and the Buyer's liability to the Authority for such repayment with interest shall be included in the Liabilities. In addition, the Authority shall be subrogated to the extent of the payment made by it to all rights of the party receiving such payment against the assets of the Buyer. The Buyer shall furnish to the Authority, at such time as the Authority may require, proof satisfactory to the Authority of the making of payments or deposits required by applicable law with respect to amounts withheld by the Buyer from wages and salaries of employees and amounts contributed by the Buyer on account of federal and other income or wage taxes and amounts due under the Federal Insurance Contribution Act and any state or federal program of unemployment compensation.

f. Federal Accounts

If any of the Buyer's Accounts arises out of a contract with the United States or any department, agency or instrumentality thereof, the Buyer will immediately notify the Authority (prior to the Settlement Date if any are then in effect) in writing and execute any instruments and take any actions required by the Authority to perfect the security interest of the Authority with respect thereto.

g. Account Instruments

If any of the Buyer's Accounts is or becomes evidenced by a promissory note, a trade acceptance or any other instrument for the payment of money or evidencing the indebtedness therefor, the Buyer shall upon the occurrence of any default hereunder or under any of the Credit Purchase Documents (subject to any applicable notice and/or grace periods), assign and deliver such instrument to the Authority appropriately endorsed to the Authority's order. Regardless of the form of such endorsement, the Buyer hereby waives presentment, demand, notice of dishonor, protest and notice of protest and all other notices with respect thereto.

h. Account Documentation

The Buyer shall submit at such intervals as the Authority may require, a schedule listing in form and detail satisfactory to the Authority of all its outstanding Accounts including the parties, nature and value of all Accounts not yet earned by performance, and as to all other Accounts, the names and addresses of the Account Debtors and the amounts of each account. The Authority may require the Buyer to submit to the Authority copies of the invoices pertaining to all or any of its Accounts.

i. Authority Notification

The Buyer shall promptly notify the Authority:

(i) Of any material adverse change in the financial condition of the Buyer, or any material adverse change in the financial condition of Account Debtor(s) or the collectability of any of its Accounts, which may result in a material adverse change in the financial condition of the

Buyer, and

(ii) Of all claims and adjustments which may result in a reduction of the liability of any Account Debtor on an Account, which will have a material adverse impact on the financial condition of the Buyer.

j. Location of Account Records

The Buyer warrants that it keeps its records concerning Accounts at [%BUYER LEGAL ADDRESS%]. The Buyer shall promptly notify the Authority in writing of any change in the location of those records, of any change in the location of any place of business and of the establishment of any new place of business.

k. Prior Liens

No liens, encumbrances, assignments or security interest exist with respect to the Buyer 's Accounts except those listed in the Statement of Change in Financial Condition/List of Liens, attached hereto as Exhibit E. The Buyer shall not transfer, assign, convey or further encumber any of the Account Collateral in any manner without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

l. Authority Expenses

The Buyer shall pay on demand all reasonable expenses incurred by the Authority as a result of the following (including reasonable attorneys' fees and legal expenses), with interest at the rate of four percent (4%), due and payable over a term not to exceed the remaining term on the Payment Schedule:

(i) Enforcing payment or other rights under any Account or enforcing any of the Liabilities, whether against an Account Debtor, the Buyer or any guarantor or surety of any Account Debtor or the Buyer; and/or

(ii) Prosecuting or defending any action growing out of or connected with the subject matter of this Agreement, the Liabilities, the Account Collateral or any of the Authority's rights therein or thereto; and/or

(iii) Managing the custody, preservation, use, operation, preparation for sale or sale of any Account Collateral.

The Buyer's liability to the Authority for such repayment with interest shall be included in the Liabilities.

m. Application of Collateral

The Proceeds of any Account Collateral received by the Authority at any time

before or after default, whether from sale of Account Collateral or otherwise, may be applied to the payment in full or in part of such of the Liabilities and in such order as the Authority may elect. The Buyer, to the extent that it has any right, title or interest in any of the Account Collateral, waives and releases any right to require the Authority to collect any of the Liabilities from any other of the Account Collateral under any theory of marshalling of assets, or otherwise, and specifically authorizes the Authority to apply any of the Account Collateral in which the Buyer has a right, title or interest against any of the Liabilities in any manner that the Authority may determine.

n. Power of Attorney

The Buyer, to the extent it may lawfully do so, does hereby appoint any officer or agent of the Authority as the Buyer's true and lawful attorney-in-fact, with power, after the occurrence of any Event of Default:

(i) To endorse the name of the Buyer upon any notes, checks, drafts, money orders, or other instruments for payment of money or Account Collateral that may come into possession of the Authority;

(ii) To take all of the actions set forth in Subparagraph (c) above and to do all other acts and things incidental thereto including signing the name of the Buyer to any documents incidental thereto;

(iii) To sign and endorse the name of the Buyer upon any invoices or drafts against Account Debtors, assignments, verifications and notices in connection with Accounts, and any instruments or documents relating thereto or to the Buyer's rights therein; and

(iv) To give written notice to the United States Postal Service so that all mail addressed to the Buyer may be delivered directly to the Authority (the Authority will return all mail not related to the Liabilities or the Account Collateral).

The Buyer grants unto the Buyer's said attorney full power to do any and all things necessary to be done with respect to the above transactions as fully and effectually as the Buyer might or could do, and hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the term of this Agreement.

(INSERT PARAGRAPH ONLY IF COLLATERAL = ASSIGNMENT OF ACCOUNT)

2. ASSIGNMENT OF ACCOUNT

The Buyer agrees as follows:

a. Assignment of Account

For the purpose of securing performance of the Buyer's payment obligations hereunder, the Buyer hereby assigns, transfers and sets over to the Authority all of Buyer's respective right, title and interest in and to the account identified in the Transaction Specific Terms, attached

hereto as Exhibit A (the “Account”). The Buyer shall maintain the principal balance of the account at the amount set forth in Exhibit A unless or until the Authority draws on the Account or with the express written consent of the Authority.

b. Representations and Warranties Relating to Assignment of Account

The Buyer represents and warrants that, with respect to the Assignment of Account, the Buyer has the power and right to assign the Account, and that, except as identified in the Statement of Change in Financial Condition/List of Liens, attached hereto as Exhibit E, no other person, firm or corporation has any right, title or interest therein; and

c. Authorization for Payment; Power of Attorney

(i) Until all of Buyer’s payment obligations hereunder have been satisfied in full and a release in writing of the interest conveyed and assigned by the Buyer has been filed with the holder of the Account by the Authority, the holder of the Account is hereby authorized to pay to the Authority, its successors or assigns, upon sole demand of the Authority, all money, proceeds, and securities held in the Account, including the surrender value thereof, without regard to the amount of indebtedness owing by the Buyer to the Authority; and

(ii) Concurrently with the execution of this Agreement, the Buyer has executed and delivered to the Authority a Power of Attorney pursuant to which the Buyer grants to the Authority the power and authority on behalf of the Buyer to sell or otherwise dispose of, or grant any option with respect to the Account.

d. Other Required Action

The Buyer, upon any request by the Authority to do so, shall execute, deliver and file or record in the proper governmental offices any instrument and take any other action that the Authority may deem necessary or desirable to create, preserve, perfect or terminate this Assignment of Account or to enable the Authority to exercise or enforce any of its rights hereunder, or to otherwise carry out the intent and purpose of this assignment.

e. Validity of Assignment

Upon payment in full of all of the Buyer’s obligations under this Agreement, the Authority shall deliver to the holder of the Account a release in writing of the interest conveyed and assigned by the Buyer to the Authority herein. Upon delivery of such release, this Assignment of Account shall become void and of no effect.

(INSERT PARAGRAPH ONLY IF THERE IS COLLATERAL FOR THE TRANSACTION)

3. OTHER DOCUMENTS

The Buyer agrees to execute such documents as may be required by the Authority to adequately provide for any other Collateral identified in Exhibit A.

G. LIMITATION OF LIABILITY

1. AUTHORITY'S LIABILITY TO BUYER

The Buyer has determined the number of Credits needed by the Buyer. The Authority has not had and shall not have any responsibility whatsoever for the Buyer's determination of the number or type of Credits needed by the Buyer. The parties understand and agree that the Authority's sole function is that of a clearinghouse entity in the nutrient credit market and the only consideration passing from the Authority to the Buyer are the Credits set forth in the Transaction Specific Terms, attached hereto as Exhibit A, in accordance with and subject to the terms of this Agreement. Neither the Buyer nor any other Person shall have any right to rely on any procedures required by the Authority herein, such procedures being solely for the protection of the Authority. The Authority shall attempt to secure replacement Credits not otherwise available for delivery in accordance with Section 10 of the Rulebook. The Authority makes no guarantee that it will be able to procure replacement Credits. The Buyer assumes all risks of the acts or omissions of the Authority and the Authority shall not be liable to the Buyer or any other Person for the Authority's acts or omissions in the performance of this Agreement, except that the Authority shall be obligated to reimburse to the Buyer that portion of any payment received by the Authority for which the Authority failed to deliver Credits in accordance with the Transaction Specific Terms, attached hereto as Exhibit A, and for which the Authority failed to obtain replacement Credits in accordance with the terms set forth in this Agreement.

2. AUTHORITY'S LIABILITY TO THIRD PARTIES

The rights and benefits of this Agreement shall not inure to the benefit of any third party except as provided in Paragraph K.3 (Successors and Assigns) of this Agreement. Notwithstanding anything to the contrary contained in this Agreement or in any of the other Credit Purchase Documents or any conduct or course of conduct by the Buyer or the Authority or their respective affiliates, agents or employees, neither this Agreement nor any Credit Purchase Documents shall be construed as creating any rights, claims or causes of action against the Authority in favor of any Persons providing services or materials for or in connection with the performance of this Agreement, or their respective creditors, or any other Person other than the Buyer.

H. INDEMNITY

The Buyer, for itself and all those claiming under or through it, agrees to protect, indemnify, defend and hold harmless the Authority, its officers and employees, and any agent or consultant retained by the Authority to perform under this Agreement, from and against any and all liability, expense, or damage of any kind or nature and from any suits, claims or demands, including reasonable legal fees and expenses, in each case arising out of this Agreement or in connection therewith including, but without limitation, any disputes arising between the Buyer and any other Person on account of any act, or omission to act, or negligence of the Authority. This obligation specifically survives the performance of all obligations under this Agreement.

I. DEFAULTS

1. AUTHORITY EVENT OF DEFAULT/BUYER RIGHTS AND REMEDIES

In the event the Authority fails to deliver all Credits required to be delivered in accordance with the Payment Schedule set forth in Exhibit A, attached hereto, by 5:00 p.m. on the last day of October following the end of the applicable Compliance Year, it shall constitute an Event of Default by the Authority and the Buyer shall have the right to terminate the Buyer's obligation to purchase the Credits the Authority has failed to deliver in accordance with the Payment Schedule for the prior Compliance Year only by providing written notice to the Authority. The Buyer shall not be entitled to terminate the Buyer's obligation to purchase Credits in subsequent Compliance Years as set forth in Exhibit A.

2. BUYER EVENTS OF DEFAULT

The occurrence of any of the following events shall constitute an Event of Default by the Buyer hereunder, provided that the default has not been cured within thirty (30) days of its occurrence, or such other applicable cure period as may be set forth below:

a. Failure by the Buyer to make any payment when and where the same is due and payable in accordance with the Payment Schedule set forth in the Transaction Specific Terms, attached hereto as Exhibit A;

b. Failure by the Buyer to comply with the terms and conditions of the Rulebook or the Auction Rules, including but not limited to, furnishing false or misleading information to the Authority or engaging in anticompetitive or collusive market activity;

c. Failure by the Buyer to observe or perform any of the covenants or agreements required to be observed or performed under this Agreement or under any of the other Credit Purchase Documents, and such failure continues for thirty (30) days after notice from the Authority of such noncompliance;

d. A representation or warranty made by the Buyer to the Authority pursuant to this Agreement or under any of the Credit Purchase Documents is untrue in any material respect;

e. The Buyer applies for or consents to the appointment of a receiver, trustee, liquidator, or conservator of itself or any of its property, admits in writing its inability to pay its debts as they mature, makes a general assignment for the benefit of creditors; is adjudicated as bankrupt or insolvent, files a voluntary petition in bankruptcy; files a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, files an answer admitting the material allegations of a petition filed against it in any proceeding under any such law, or takes any other action for the purpose of effecting any of the foregoing;

f. Any order, judgment or decree is entered by any court of competent jurisdiction, approving a petition seeking reorganization of the Buyer or all or a substantial part of the assets of the Buyer or appointing a receiver, sequestrator, trustee or liquidator of the Buyer or any of its property, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) days;

g. If the Collateral includes a lien on the revenues, as set forth in the Transaction Specific Terms, attached hereto as Exhibit A, and a rate is not established in a timely manner to generate revenues pledged as Collateral, which are sufficient to allow the Buyer to satisfy its payment obligations under this Agreement, pay all of the Buyer's indebtedness secured by such revenues and fund the operation and maintenance of the Buyer's business.

3. AUTHORITY RIGHTS AND REMEDIES

a. Availability

The Authority shall, upon the occurrence of any Event of Default hereunder, in addition to any other rights or remedies available to it hereunder or under any other Credit Purchase Documents, or at law or in equity, have the right to immediately exercise any or all of the following rights and remedies, as it deems necessary or appropriate:

(i) Declare any outstanding balance due to the Authority, together with all accrued and unpaid interest thereon, and all other sums due hereunder or under any of the other Credit Purchase Documents, to be immediately due and payable in full;

(ii) Cease delivery of any remaining Credits scheduled to be delivered hereunder;

(iii) Suspend the Buyer from further participation in the PENNVEST Clearinghouse;

(iv) To the extent that the Collateral includes a lien on revenues, as set forth in the Transaction Specific Terms, attached hereto as Exhibit A, exercise any and all rights in the security interest in the Collateral, to the fullest extent provided by the Uniform Commercial Code, including the right to collect, receive, settle, compromise, adjust, sue for, foreclose or otherwise realize any of the Account Collateral pledged pursuant to Section E of this Agreement and to dispose of any such Account Collateral at public or private sale(s) or other proceedings, and the Buyer agrees that the Authority or its nominee may become the purchaser at any such sale(s); or

(v) To the extent that the Collateral includes an assignment of accounts, as set forth in the Transaction Specific Terms, attached hereto as Exhibit A, exercise any and all rights in the Account pledged pursuant to Section E of this Agreement.

b. Timing

No right or remedy conferred upon or reserved to the Authority under any of the Credit Purchase Documents is intended to be or shall be deemed exclusive of any other such right or remedy, and each and every such right or remedy shall be cumulative and concurrent, and shall be in addition to every other such right or remedy, and may be pursued singularly, concurrently, successively or otherwise, at the sole discretion of the Authority, and shall not be exhausted by any one exercise thereof but may be exercised as often as occasion therefore shall occur. No act of the Authority shall be deemed or construed as an election to proceed under any one such right or remedy to the exclusion of any other such right or remedy; furthermore, each such right or remedy of the Authority shall be separate, distinct and cumulative and none shall be given effect to the exclusion of any other. The failure to exercise or delay in exercising any such right or remedy, or the failure to insist upon strict performance of any term of any of the Credit Purchase Documents, shall not be construed as a waiver or release of the same, or of any Event of Default thereunder, or of any obligation or liability of the Buyer thereunder. Nothing herein, however, shall be construed to prevent the Authority from waiving any condition, obligation or default it should so elect. In the event of such election by the Authority, any waiver, in order to be effective, must be in writing and signed by the Authority, and any such waiver shall be strictly limited in its effect to the condition, obligation or default specified therein and shall not extend any subsequent condition, obligation or default or impair any right of the Authority with respect thereto.

c. Effect of Judgment

The recovery of any judgment by the Authority or the levy of execution under any judgment shall not affect in any manner or to any extent, liens, pledges, or any rights, remedies or powers of the Authority under any of the Credit Purchase Documents or with respect to any guaranty or any pledge, but such liens and pledges, and such rights, remedies and powers of the Authority shall continue unimpaired as before. Further, the entry of any judgment by the Authority shall not affect in any way the interest rate payable under any of the Credit Purchase Documents on any amounts due to the Authority, but interest shall continue to accrue on such amounts at the rate specified in such Credit Purchase Documents.

d. Waiver of Notice

Presentment, demand, notice of nonpayment, protest, notice of protest, or other notice of dishonor, and any and all other notices in connection with any default in or enforcement of the payment due from the Buyer under the Payment Schedule are hereby waived, except for the notices of default and opportunities to cure expressly provided herein, and all errors, defects and imperfections in any proceedings instituted by the Authority under the terms of any of the Credit Purchase Documents or any pledges are further waived and released.

e. Effect of Authority Action

The Authority may take any of the following actions without such actions in any way being construed as a waiver or release of any right or remedy of the Authority, or of any

Event of Default, or of any liability or obligation of the Buyer, under any of the Credit Purchase Documents:

- (i) Release, compromise, forebear with respect to, waive, suspend, extend or renew any of the terms of the Credit Purchase Documents (notice of any of the foregoing is hereby waived);
- (ii) Amend, supplement or modify the Credit Purchase Documents with the consent of the other signatory parties;
- (iii) Resort to any Collateral in such order and manner as the Authority deems appropriate;
- (iv) Accept the assignment, substitution, exchange or pledge of any other collateral or guaranty in place of the Collateral or release any portion of the Collateral, without in any way affecting the validity of any liens over or other security interest in the remainder of the Collateral (or the priority thereof or the position of any subordinate holder of any lien or other security interest with respect thereof), or any rights which the Authority may have with respect to any other guaranty.

f. Costs and Expenses

Following the occurrence of any Event of Default, all costs and expenses incurred by the Authority in the exercise of any of its rights, remedies or powers under any of the Credit Purchase Documents with respect to such Event of Default shall be paid upon demand (including all amounts paid to attorneys, accountants, real estate brokers, consultants, and other advisors and consultants employed by the Authority and/or to any contractors for labor and materials). Any amount not paid promptly upon demand, and interest accrued thereon at the rate of four percent (4%) from the date of such demand, shall become part of the payment obligations of the Buyer hereunder and shall be secured by the Collateral. In connection with and as part of the foregoing, in the event that any of the Credit Purchase Documents is placed in the hands of an attorney for the collection of any sum payable thereunder, the Buyer agrees to pay reasonable attorneys' fees for the collection of the amount being claimed under such Credit Purchase Documents as well as all costs, disbursements and allowances provided by law, the payment of which sums shall be secured by the Collateral.

J. PROGRAM TERMINATION; REGULATORY CHANGE

The Authority reserves the discretion to terminate this Agreement if Certified Credits become invalid due to changes in the NPDES permitting process or as a result of actions by DEP, the United States Environmental Protection Agency, a judicial order, or any other regulatory body or ruling, including but not limited to overturning the entire Credit system strategy, superseding the strategy with an alternate regulatory program, or not allowing Regulated Point Sources to purchase Credits as a method of complying with the strategy.

K. MISCELLANEOUS

1. TIME OF THE ESSENCE

All dates and times for the performance of obligations set forth herein shall be deemed to be of the essence of this Agreement. Without limiting the generality of the foregoing and notwithstanding anything to the contrary contained herein or in any of the Credit Purchase Documents, payment from the Buyer shall be made in accordance with the Payment Schedule and failure to make such payment on the scheduled dates for any reason whatsoever, other than the Authority's failure to deliver Credits in accordance with the terms of this Agreement, shall constitute a default hereunder.

2. SEVERABILITY

In the event that for any reason one or more of the provisions of this Agreement or their application to any person or circumstance shall be held to be invalid, illegal or unenforceable in any respect or to any extent, such provisions shall nevertheless remain valid, legal and enforceable in all other respects and to such extent as may be permissible. In addition, any such invalidity, illegality or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

3. SUCCESSORS AND ASSIGNS

This Agreement inures to the benefit of and binds the parties hereto and their respective successors and assigns, and the words "Buyer", and "Authority" whenever occurring herein shall be deemed to include such respective successors and assigns. However, the Buyer shall not voluntarily, or by operation of law, assign or transfer any interest which it may have under this Agreement, or any part thereof, without the prior written approval of the Authority, which upon receipt of all requested information shall not be unreasonably withheld, conditioned or delayed. To the extent the Buyer assigns or transfers any interest or obligation under this Agreement without the prior written consent of the Authority, the Buyer shall remain obligated to the Authority to perform all obligations under this Agreement.

4. NOTICES

All notices required or desired to be given to either of the parties hereunder shall be in writing and shall be deemed to have been sufficiently given for all purposes when presented personally to such party or sent by receipted mail via overnight courier, certified or registered mail, return receipt requested, or Electronic Postmark delivery through the United States Post Office to such party at its address set forth below:

Recipient: [%BUYER LEGAL ADDRESS%]

Authority: Pennsylvania Infrastructure Investment Authority

22 South Third Street
Harrisburg, Pennsylvania 17101
Attention: Executive Director

Such notice shall be deemed to be given when received if delivered personally or two (2) days after the date mailed if sent by certified or registered mail. Any notice of any change in such address shall also be given in the manner set forth above. Whenever notice is required, the party entitled to receive such notice may waive the requirement by notifying the party required to give the notice in writing.

5. DEFINITIONS: NUMBER AND GENDER

In the event the Buyer consists of more than one person or entity, the obligations and liabilities hereunder of each of such persons and entities shall be joint and several, and the term "Buyer" shall mean all or some or any of them. For purposes of this Agreement, the singular shall be deemed to include the plural and the neuter shall be deemed to include the masculine and feminine, as the context may require.

6. CONFLICT BETWEEN INSTRUMENTS

In the event of any conflict between the provisions of this Agreement and the provisions of any of the other Credit Purchase Documents, the provisions of this Agreement shall prevail.

7. CAPTIONS

The captions or headings of the paragraphs of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the terms or provisions of this Agreement.

8. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument. All signatures need not appear on the same copy hereof.

9. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

10. TERM

The term of this Agreement shall commence with the date hereof and end on the date that all obligations under the Credit Purchase Documents have been satisfied in full.

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IN WITNESS WHEREOF, the Buyer and the Authority have executed this Nutrient Credit Purchase Agreement on the date first above set forth.

PENNSYLVANIA INFRASTRUCTURE
INVESTMENT AUTHORITY

Paul K. Marchetti
Executive Director

ATTEST:

[INSERT NAME OF BUYER]

[Name, Title]

[Name, Title]

LIST OF EXHIBITS

- A - Transaction Specific Terms
- B - List of Officers and Directors
- C - List of Permits and Approvals
- D - List of Litigation
- E - Statement of Change in Financial Condition/List of Liens

EXHIBIT A

Transaction Specific Terms

The data included on this exhibit is sample data only. Actual data specific to each Buyer will be auto-populated into the Agreement based on auction results.

Auction Date: August 27, 2010

Summary of Credits Purchased

	Quantity of Credits Purchased (in credits per year)	Price of Credits (in dollars and cents per credit)	Compliance Year(s)	Percentage Upfront Payment
Susquehanna - Nitrogen	15,000	\$4.50	2011, 2012, 2013, 2014, 2015	N/A
Susquehanna - Phosphorus				
Potomac - Nitrogen				
Potomac - Phosphorus				

Payment Schedule

Payment Date	Payment Amount	Quantity of Credits Purchased	Price of Credits (in dollars and cents per credit)	Applicable Compliance Year(s)
March 31, 2011	\$16,875	3,750	\$4.50	2011
June 30, 2011	\$16,875	3,750	\$4.50	2011
September 30, 2011	\$16,875	3,750	\$4.50	2011
December 31, 2011	\$16,875	3,750	\$4.50	2011
March 31, 2012	\$16,875	3,750	\$4.50	2012
June 30, 2012	\$16,875	3,750	\$4.50	2012
September 30, 2012	\$16,875	3,750	\$4.50	2012
December 31, 2012	\$16,875	3,750	\$4.50	2012
March 31, 2013	\$16,875	3,750	\$4.50	2013
June 30, 2013	\$16,875	3,750	\$4.50	2013
September 30, 2013	\$16,875	3,750	\$4.50	2013
December 31, 2013	\$16,875	3,750	\$4.50	2013
March 31, 2014	\$16,875	3,750	\$4.50	2014

June 30, 2014	\$16,875	3,750	\$4.50	2014
September 30, 2014	\$16,875	3,750	\$4.50	2014
December 31, 2014	\$16,875	3,750	\$4.50	2014
March 31, 2015	\$16,875	3,750	\$4.50	2015
June 30, 2015	\$16,875	3,750	\$4.50	2015
September 30, 2015	\$16,875	3,750	\$4.50	2015
December 31, 2015	\$16,875	3,750	\$4.50	2015

Collateral (Insert description of collateral required to secure the Buyer’s obligations under the Nutrient Credit Purchase Agreement)

EXHIBIT B

List of Officers and Directors

	NAME	TITLE

EXHIBIT C

List of Permits and Approvals

Type of Permit/Approval	Permit/Approval Number	Date Issued	Appeal Period Expiration Date	Appeal Filed

EXHIBIT D

List of Litigation

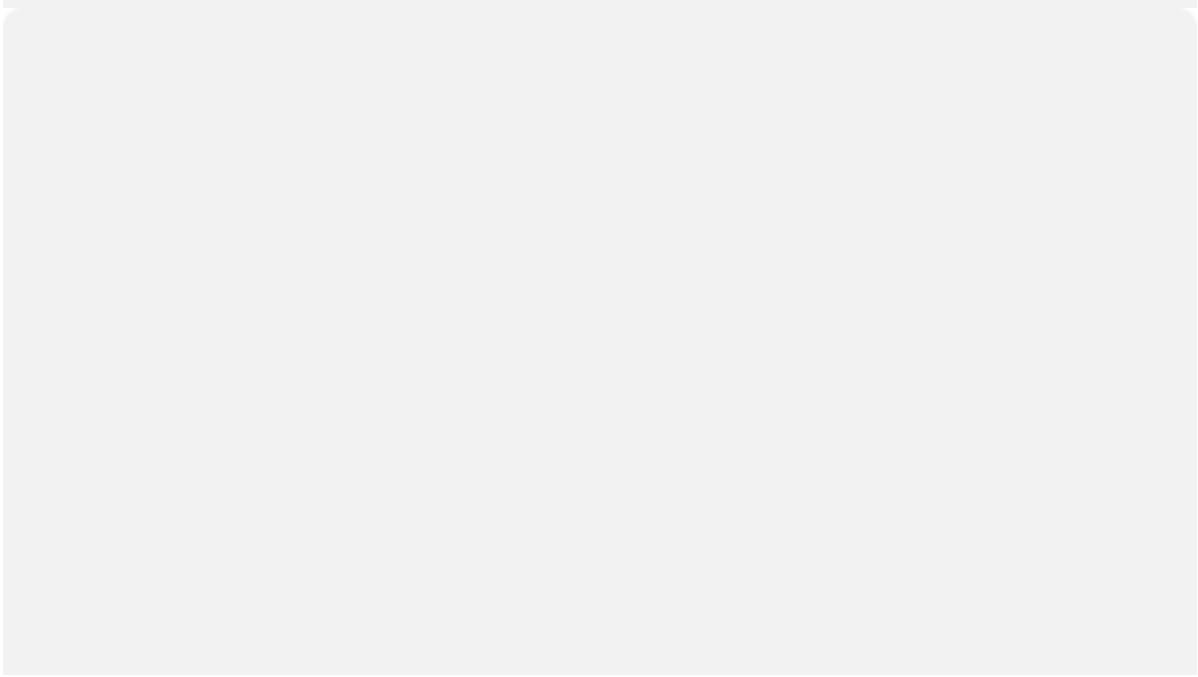


EXHIBIT E

Statement of Change in Financial Condition/List of Liens

