

COMMON INTEREST AGREEMENT

This Common Interest Agreement (“Agreement”) is entered into as of the 8th day of June, 2023, by and among Pennsylvania-American Water Company (“PAWC”), the Township of Towamencin (the “Township”) and the Towamencin Municipal Authority (the “Authority”). For purposes of this Agreement, PAWC, the Township and the Authority shall be referred to collectively as the “Parties” and, individually, as a “Party.”

WHEREAS, the Authority and the Township own and operate a wastewater collection and treatment system (the “System”);

WHEREAS, the Township and the Authority negotiated and entered into an Asset Purchase Agreement (the “APA”) with NextEra Water Pennsylvania, LLC (“NextEra”), dated as of June 14, 2022, pursuant to which the Township would convey the System to NextEra and NextEra would begin providing wastewater service in the territory served by the System;

WHEREAS, the Township and the Authority negotiated and entered into a First Amendment to Asset Purchase Agreement (“First Amendment”) with NextEra modifying the APA;

WHEREAS, the Township, the Authority, NextEra and PAWC negotiated and entered into an Assignment and Assumption of Asset Purchase Agreement (“Assignment”), by which the rights and obligations of NextEra pursuant to the APA, as amended, were assigned to and assumed by PAWC (the “Proposed Transaction”);

WHEREAS, the Parties worked together to prepare an application, which was filed with the Pennsylvania Public Utility Commission (“PUC”) on May 15, 2023, seeking all required approvals for the Proposed Transaction (along with all matters, efforts and endeavors related to the application, the “PUC Proceeding”), in which each Party expects to participate as an applicant or intervenor;

WHEREAS, the Parties acknowledge the possibility that opponents of the Proposed Transaction may file actions in the Montgomery County Court of Common Pleas, and/or other civil courts, challenging the Proposed Transaction (the “Civil Proceedings”) (the Civil Proceedings and the PUC Proceedings are collectively referred to herein as the “Proceedings”);

WHEREAS, the Parties have joint and common legal interests in the Proceedings, and cooperation and coordination between and among the Parties will offer the best chance of success with respect to the Proceedings;

WHEREAS, the Parties recognize that they have a common interest in assuring that their communications, and the documents they exchange, in connection with the Proceedings are fully protected from disclosure to third parties, including other parties to the Proceedings;

WHEREAS, until now, the Parties’ joint efforts in connection with the Proceedings have been subject to an oral agreement that the documents they exchange, and their communications, would be privileged under the joint defense, common interest, and community-of-interest doctrines (“Oral Agreement”); and,

WHEREAS, the Parties now wish to memorialize their agreement in writing.

NOW THEREFORE, in consideration of the mutual understandings and covenants set forth in this Agreement, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby memorialize in writing this Agreement and the Oral Agreement for their common legal interests, effective as of the date upon which they first started to exchange documents and communicate regarding the Proceedings (“Effective Date”), as follows:

1. “Privileged Materials” means documents exchanged between the Parties, and communications between the Parties, in any form, whether oral or written, relating to the Parties’ efforts in connection with the Proceedings.

2. To facilitate the identification and protection of Privileged Materials, the Parties agree to mark Privileged Materials with the legend “Privileged and Confidential;” nevertheless, all materials relating to the Proceedings (including but not limited to drafts of pleadings and other submissions, and communications concerning strategy with respect to the Proceedings), that are exchanged between the Parties shall be deemed Privileged Materials unless a Party specifies that the particular materials are not exchanged pursuant to this Agreement.

3. To ensure the confidentiality of Privileged Materials and to preserve any and all of the privileges belonging to each Party, each Party agrees not to give, show, make available, or communicate in any way any such Privileged Materials to anyone other than: the signatories to this Agreement, their employees, counsel (including outside counsel), and consultants in connection with the Proceedings; *except* as permitted by this Agreement or with the express consent of the other Party.

4. The confidentiality obligations of the Parties under this Agreement shall not apply to specific information that:

(a) is now or hereafter becomes public knowledge or subject to public disclosure without violation of this Agreement;

(b) was already in a Party’s possession prior to disclosure to that Party under or in contemplation of this Agreement; or,

(c) comes into a Party’s possession, without violation of this Agreement, by means other than an exchange pursuant to or subject to this Agreement, except that information that is specifically covered by the provisions of a confidentiality agreement shall remain covered thereby.

5. Each Party agrees that all Privileged Materials are communicated in confidence for the purposes of securing or communicating legal advice and representation and shall not be used for any other purpose, and are therefore subject to: (a) any and all privileges belonging to the Party conveying or jointly developing the information, which privileges may not be waived without the prior written consent of such Party, which consent shall not be unreasonably withheld when requested by another Party; and (b) the terms of this Agreement. Any inadvertent or purposeful disclosure by any Party of Privileged Materials exchanged pursuant to this Agreement shall not constitute a waiver of any privilege of any other Party.

6. Each Party agrees that the sharing of Privileged Materials among the Parties pursuant to this Agreement does not waive (a) any privilege, or (b) the confidential or proprietary nature of documents or other information exchanged by the Parties that are not otherwise

privileged but that are deemed confidential or proprietary pursuant to a protective order, and further, each Party agrees that no Party may claim such a waiver. Nothing in this Agreement shall constitute a transfer or conveyance of any proprietary rights a Party may have in documents, information or other things exchanged in accordance with this Agreement.

7. The Parties agree that the Privileged Materials disclosed pursuant to this Agreement may be used solely in pursuit of the common legal interest among the Parties in connection with the Proceedings; *provided, however*, that nothing in this paragraph shall limit the rights of the originating Party with regard to its Privileged Materials.

8. If there is a request in the Proceedings for Privileged Materials applicable to a particular Party or a Party deems it necessary or desirable to provide Privileged Materials in the Proceedings, such Party shall consult with the other Party as to appropriate process for disclosure/responding to the request including, but not limited to, providing the Privileged Materials pursuant to a protective order.

9. If a demand is made for the release of Privileged Materials pursuant to the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101—67.3104, the Party to which the request or demand is addressed shall assert at its sole cost or expense all applicable privileges or legal exemptions, and shall immediately upon receiving the request or demand notify the other Party about the request or demand and indicate the Privileged Materials covered by the request or demand so as to afford each such other Party the opportunity to intervene in any proceeding to assert any applicable privilege or exemption on its own behalf and at its own cost or expense. In the event that disclosure is ordered notwithstanding the assertion of any applicable privilege, the Parties shall cooperate in seeking an appropriate protective order to limit the extent and nature of disclosure to the extent that such a protective order is available.

10. In the event any Party determines that it no longer chooses to participate in this Agreement, it shall promptly notify the other Party in writing of its withdrawal from this Agreement, and shall immediately return all Privileged Materials received from the other Party pursuant to this Agreement (and all copies of such Privileged Materials) to the originating Party, or, at the withdrawing Party's option, its counsel may supply a written statement certifying that such Privileged Materials have been destroyed, to the extent not prohibited by public record laws or other applicable law, and in any event shall not be disclosed except as specifically permitted by this Agreement. Notwithstanding the foregoing, the withdrawing Party may choose to retain (i) any Privileged Materials stored in electronic or other backup or archival media in accordance with the withdrawing Party's regular business processes and (ii) copies of such Privileged Materials as may be retained in accordance with the withdrawing Party's record retention policies or law and regulation, so long as all such retained Privileged Materials remain subject to the terms of this Agreement. This Agreement thereupon will be terminated as to the withdrawing Party; provided, however, that such termination shall in no way affect or impair the privileged status, or obligations of confidentiality with respect to, Privileged Materials previously furnished pursuant to this Agreement. The Parties further agree that, in the event that any Party withdraws from the Agreement, nothing in the Agreement shall create a conflict of interest so as to require the disqualification of any counsel from the representation of their respective clients; and counsel and their respective clients hereby waive any such conflict of interest.

11. Notwithstanding anything contained in this Agreement, each Party reserves the right to enforce its rights against any other Party or non-party, even if the enforcement of such rights involves matters that bear a substantial relationship to the joint defense and common interest activities furthered by this Agreement. If a dispute arises between or among the Parties in the future, no Party shall make direct use in that dispute of Privileged Materials provided to that Party under this Agreement unless expressly agreed in writing and permitted by the Parties. Nor shall any oral or written statements covered by this Agreement be deemed an admission in any civil, alternative dispute resolution, criminal, administrative, or other proceeding arising from that dispute or otherwise. However, nothing in this Agreement shall bar a Party from seeking or using in any subsequent dispute any information obtained independently or through a legitimate discovery mechanism.

12. The Parties agree that, in addition to any other remedies available for breach of this Agreement, performance of this Agreement may be specifically ordered, a breach hereof may be enjoined, or both.

13. This Agreement shall terminate upon the termination of the Proceedings. Termination shall be deemed to occur on the date that all final orders or actions in the Proceedings are no longer subject to judicial review. All Privileged Materials received from another Party pursuant to this Agreement, and all copies of such Privileged Materials, shall, if requested, be returned to the originating Party within ninety (90) days after the termination of the Agreement. Alternatively, at the returning Party's option, counsel for a Party in possession of an originating Party's Privileged Materials may supply a written statement certifying that the Privileged Materials have been destroyed, to the extent permitted by public record laws or other applicable law, and in any event will not be disclosed except as specifically permitted by this Agreement. Notwithstanding the foregoing, a Party may choose to retain (i) any Privileged Materials stored in electronic or other backup or archival media in accordance with that Party's regular business processes and (ii) copies of such Privileged Materials as may be retained in accordance with that Party's record retention policies or law and regulation, so long as all such retained Privileged Materials remain subject to the terms of this Agreement. The provisions of this Agreement restricting use of Privileged Materials shall survive the termination of the Proceedings.

14. This Agreement may not be amended, except by an instrument in writing signed by all Parties.

15. This Agreement may be signed in separate counterparts, each of which shall be binding on the Parties.

16. This Agreement shall be construed and interpreted, and the rights of the Parties shall be determined, in accordance with the substantive laws of the Commonwealth of Pennsylvania without regard to the conflict of laws principles thereof or of any other jurisdiction. Venue for any litigation concerning this Agreement shall lie in the appropriate state or federal courts in Pennsylvania according to applicable venue rules.


[Signatures appear on next page.]

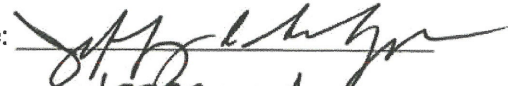
Execution Copy

IN WITNESS WHEREOF, and intending to be legally bound, the duly authorized representatives of the Parties have caused this Agreement to be executed as of the Effective Date.

For TOWNSHIP OF TOWAMENCIN

For TOWAMENCIN MUNICIPAL
AUTHORITY

Signature: 
Printed Name: H. Charles Wilson III
Title: Chairman
Address: 1090 Troxel Road
Lansdale, PA 19446

Signature: 
Printed Name: JEFFREY A. SCHOPPE
Title: CHAIRMAN
Address: 2225 KRIEBEL RD
Lansdale, PA 19446

For PENNSYLVANIA-AMERICAN
WATER COMPANY

Signature: _____
Printed Name: _____
Title: _____
Address: _____

IN WITNESS WHEREOF, and intending to be legally bound, the duly authorized representatives of the Parties have caused this Agreement to be executed as of the Effective Date.

For **TOWNSHIP OF TOWAMENCIN**

For **TOWAMENCIN MUNICIPAL AUTHORITY**

Signature:

Signature:

Printed Name:

Printed Name:


Title:

Title:

Address: _____

Address: _____

For **PENNSYLVANIA-AMERICAN WATER COMPANY**

Signature:  _____

Printed Name: Teresa Harrold

Title: Director, Corporate Counsel

Address: 852 Wesley Drive

Mechanicsburg, PA 17055