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**TOWNSHIP OF BERKELEY HEIGHTS**  
**RFB ADDENDUM #5**

Date of Addendum: June 20, 2025

**NOTICE TO ALL POTENTIAL RESPONDENTS**

The Request for Bids for the sale of the Township of Berkeley Heights' wastewater system issued May 15, 2025 ("RFB") is supplemented/modified as set forth in this Addendum. The original RFB Documents remain in full force and effect, except as supplemented/modified by this Addendum, which is hereby made part of the RFB. Respondent shall take this Addendum into consideration when preparing and submitting its Bid. The Township reserves its right to further supplement or amend the RFB as it deems necessary in its sole discretion.

**BID SUBMITTAL DEADLINE**

The Bid submittal deadline is not altered by this addendum.

**QUESTIONS AND ANSWERS**

The following questions and answers are provided as a matter of information to clarify issues raised about the RFB.

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1. Addendum #2, Answer 1 states that all available responsive information has been provided; however, it is unclear if and how a potential Bidder should interpret the information provided given the significant fluctuation in sewer revenue in 2022-2025 and significant fluctuation in the "Average tax payer rate" provided in the annual "Sewer Costs and rate" documents from 2022-2025. Due to these factors, please provide, in a written answer, the rate a Bidder is expected to adopt at Closing and subsequently charge to wastewater system customers, subject to the 7-year rate schedule, with BPU approval.

*A. The annual rate to be established by ordinance and to be effective upon the date of Closing shall be \$281.45.*

**Exceptions to the Agreement of Sale**

1. Below are New Jersey American Water's exceptions to the proposed Agreement of Sale. New Jersey American Water has also included a mark-up of the Agreement consistent with the below comments.

- A. *All proposed markups that have not been specifically addressed by the below questions are rejected. The NJAW proposed markup is available on the FTP site.*
2. Article I Definitions – the definition of “Deposit”.
  - A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*“Deposit” shall mean a payment of money equal to ~~10%~~ five (5%) percent of the Purchase Price, which is payable to the Township upon execution of this Agreement, and which shall be held by the Escrow Agent under the Escrow Agreement attached hereto and incorporated herein by reference as Exhibit I, and together with the earnings accrued thereon shall be the Deposit.*
3. Article I Definitions – the definition of “Final Approval Order”.
  - A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*“Final Approval Order” shall mean an order of the BPU approving Municipal Consent, on terms reasonably satisfactory to the Buyer and consistent with the Bid, the approval of which will allow the Buyer and the Township to consummate the purchase of assets as contemplated by this Agreement; and as to which the time for filing an appeal as of right has expired, and as to which there are no appeals, petitions for reconsideration, petitions for re-argument, or similar petitions pending.*
4. Section 4.4 Transaction Expense.
  - A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*Section 4.4. TOWNSHIP TRANSACTION EXPENSE. Notwithstanding any obligations of the Township set forth in the Agreement to solely bear its expenses and costs in connection herewith, and in addition to the Purchase Price provided for in Section 4.3, the Buyer agrees to pay the Township up to \$150,000 for costs and expenses incurred and reasonably anticipated to be incurred by the Township in connection with the sale of the System, including, but not limited to, outside attorney, engineering, inspection, and other consultant costs (collectively the “Transaction Costs Payment”). The Buyer agrees to pay the Township \$50,000.00 of the Transaction Costs Payment upon the passing of the Township ordinance approving the execution of this Agreement for the sale of the System, which amount shall be non-refundable.*

*The Buyer agrees to pay the Township the remaining \$100,000.00 of the Transaction Costs Payment upon Closing.*

5. Section 4.5.D Additional Obligations.

*A. Proposed paragraph after section E rejected.*

*The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*(D)provide the customers of the System with ~~continuous~~, safe and reliable service in accordance with applicable laws and regulations, and the Buyer's tariff as approved by the BPU;*

6. Section 4.7.A Deliveries at the Closing.

*A. Rejected. See the below addition.*

*The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*Section 4.7. DELIVERIES AT THE CLOSING. At the Closing:*

*(A) The Township will execute, acknowledge (if appropriate), and deliver to the Buyer:*

- (i) a bargain and sale deed associated with the System without covenant against grantor's acts, in recordable form, duly executed by Township;*
- (ii) an assignment of easements in the form attached hereto as Exhibit F, to convey all easement rights associated with the System, subject to the Permitted Encumbrances;*
- (iii) a Bill of Sale in the form attached hereto as Exhibit C;*
- (iv) an Assignment and Assumption Agreement in the form attached hereto as Exhibit B;*
- (v) a General Assignment in the form attached hereto as Exhibit G;*
- (vi) a Settlement Statement;*
- (vii) a certified copy of the appropriate Township resolution(s) and/or ordinances authorizing the transactions contemplated hereunder;*
- (viii) a signed certification by the Township that the warranties and representations in Article II are true and correct as of the Closing Date;*

- (ix) *originals or copies of all governmental permits and licenses for the System, or any component thereof, in the Township's possession, to the extent transferable;*
- (x) *a use of proceeds certification from the Township providing that the proceeds from the sale of the System will be applied as required by N.J.S.A. 40:62-6.*
- (xi) *Any other tax information regarding the Township that the Settlement Agent (as that term is used in Section 6045 of the Code) is required to report to the Internal Revenue Service pursuant to the Code;*
- (xii) *Such other resolutions, instruments, affidavits and documents as may be reasonably necessary and requested by Buyer to effectuate the transaction.*

7. Section 5.1.K Preclosing Covenants.

*A. Rejected.*

8. Section 6.1 Title.

*A. The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, deletions noted in strikethrough):*

*(F) taxes, assessments and other public charges on real property comprising the System not due as of the Closing Date, provided, however, in no event shall Permitted Encumbrances include Monetary Liens. With respect to the real property comprising the System, Buyer ~~shall~~ may within thirty (30) days of execution of this Agreement apply for an owner's title insurance policy or policies from a reputable title insurance company licensed to do business in New Jersey (the "Commitment"). Within ten (10) business days after receipt of the Commitment, the Buyer shall notify the Township of any objections, other than the Permitted Encumbrances. Any matters set forth on the Commitment and not objected to by the Buyer within said ten (10) day period shall become Permitted Encumbrances hereunder. The Township may elect to cure any title defect by so notifying the Buyer. If the Township does not so elect within twenty (20) days after notice of the objection, or if after so electing, the Township fails to cure the defect(s) prior to the Closing, then the Buyer may at its choice, (i) continue to close provided the parties reach a mutually agreeable solution for (a) curing any title defects, and (b) obtaining easements necessary for the operation of the System that are missing or that Seller is unable to deliver; or (ii) terminate this Agreement upon notice to the Township, said notice to be delivered within ten (10) business days of the Township's failure to so elect or, if the Township elects to cure but does not, to be delivered at the Closing. If the Buyer terminates the Agreement pursuant to this section, the Township shall promptly, and in no event later than ten (10) business days after such termination, repay to the Buyer the Deposit, and upon such termination this Agreement shall be deemed*

*canceled, null and void and neither Party shall have any further obligation or liability to the other hereunder.*

*If the Township is unable to deliver easements necessary for the ownership and operation of the System prior to Closing, then the Parties may mutually agree that either: (i) the Buyer shall waive the failure to deliver the easements and shall close at the full purchase price; (ii) delay Closing until such time that the Township can deliver said easements; (iii) continue to close with a mutually agreed upon portion of the Purchase Price equivalent to the amount necessary to obtain said easements placed in escrow for the Township or the Buyer to draw upon for costs associated in obtaining said easements; or (iv) continue to close with Buyer taking responsibility for the missing easements with a mutually agreed upon purchase price adjustment equivalent to the cost of obtaining said easements. In any even the agreement between the parties to resolve inability to deliver the easements at closing shall be in a signed writing.*

9. Section 6.3 Condition of the Wastewater System.

*A. Rejected.*

10. Section 6.4 Post Closing Obligations of the Township.

*A. The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*Section 6.4 POST-CLOSING COOPERATION OF THE TOWNSHIP. On or after the Closing Date, the Township shall upon reasonable request, reasonably cooperate with the Buyer to implement a proper transition. To the extent necessary, the parties may, in their individual discretion, consent to a post-closing agreement setting forth the necessary obligations to be completed post-closing. Either party may propose such an agreement for a period not to exceed ninety (90) days following the Closing. If there is no post-closing agreement reached during that period the parties shall have been deemed to waive the post-closing agreement.*

11. Section 7.2.F - Conditions to Obligation to Close.

*A. Rejected. See response to #6 above.*

12. Section 7.3 Schedule for Closing Conditions.

*A. Rejected. By providing a Bid the Bidder accepts and agrees that the liquidated damages provision of the Agreement of Sale, and the forfeiture of the Deposit under Section 7.3 does not constitute a penalty and is a reasonable forecast of the Township's damages.*

13. Section 8.1 Continuation of Services.

- A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*Section 8.1. CONTINUATION OF SERVICES. The Buyer shall continue to provide services in accordance with the Customer Service Standards and the Customer Service Plan described in Exhibit J and shall provide for ~~guarantee~~ the collection, conveyance, and treatment of wastewater to the customers of the system in a manner that meets all local, state, and federal laws and regulations relating thereto and its tariff and shall operate and maintain the System to provide safe, reliable and adequate service.*

14. Section 8.3 Rate Stabilization Covenant.

- A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*Section 8.3. RATE STABILIZATION COVENANT. On and after the Closing Date, the Buyer, subject to approval of the BPU, shall adopt and charge rates and charges to Township customers in accordance with the 2024 rates and charges as set forth in Exhibit D-1. These rates shall include the two percent increase in the first year, as outlined in the stabilization plan, to be effective as of Closing. Such rates will not be increased more than two percent (2%) in the first year following the Closing Date; ~~shall not~~ After twelve months following the Closing Date, the Buyer may propose to increase rates by no more than three percent (3%) per year, compounded annually, for years two (2) through five (5) following the Closing Date; and shall not increase by more than four percent (4%) per year, compounded annually, for years six (6) and seven (7) following the Closing Date subject only to approval by the BPU. The Buyer shall include, and support in good faith, the rate schedule as set forth herein in any base rate case filed by the Buyer with the BPU. Thereafter, the Buyer shall use good faith efforts to minimize rate increases to the Township customers by phasing rates into the Buyer's existing tariff rates over the course of several general rate cases, all to the extent permitted by law. In the event the BPU does not approve the rate stabilization covenant, Buyer agrees to work with the Township and the BPU to preserve the rate schedule to the maximum extent acceptable to the BPU ~~Any future base rate increases shall be included in Buyer's base rate cases periodically filed with the BPU. The Buyer shall use good faith efforts to minimize rate increases to Township customers by phasing rates into the Buyer's existing tariff rates over the course of several base rate cases, all to the extent permitted by law. Other than base rates addressed herein, the terms and conditions of the Buyer's tariff shall apply post-Closing, including applicable current and future wastewater surcharges.~~*

15. Section 8.4 Capital Improvements.

- A. *Rejected.*

16. Section 8.5 Service to Township Facilities.

- A. *Section 8.5. SERVICE TO TOWNSHIP FACILITIES. The Buyer shall provide, subject to BPU approval, wastewater service to Township-owned facilities identified in Exhibit L at no cost to the Township ~~for three (3) years from the Closing Date~~ until the conclusion of the Buyer's first general rate case, at the same volume levels that existed for each month during the year prior to the Closing Date. The Buyer shall submit, and support in good faith, this exemption as set forth herein in any base rate case filed by the Buyer with the BPU.*

17. Section 8.8 Senior Discount.

- A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*Section 8.8. SENIOR CITIZEN, DISABLED PERSON AND DISABLED VETERAN DISCOUNT PROGRAM. The Buyer will be required to continue the Township's current senior citizen, disabled person and disabled veteran discount program as set forth in Ordinance 2025-17 and Township Code Section 13.12.280 and described in Exhibit D for all residents who are eligible as of the Closing Date for a period of ten (10) years from the Closing Date. Customers that participate in the Township's senior citizen, disabled person, and disabled veteran discount program will not be eligible to participate in the Buyer's universal affordability discount program. A customer who is in the Township's discount program may leave that program to qualify for the Buyer's affordability program at the discretion of the customer.*

18. Section 8.9 Barrier Wall.

- A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

*Section 8.9. BARRIER WALL.*

*The Buyer is responsible, subject to required municipal approvals, for engineering, constructing and installing, at its sole cost and expense, a ~~minimum fifteen (15) foot~~ wall along the back of the plant that runs adjacent to the backyards of residents on Garfield Street that is of similar dimensions, design and construction of the existing barrier wall that is behind Shady Grove Lane. The Buyer is not making any representations as to the impact of the wall on noise or odor.*

19. Section 8.10 Township Employees.

- A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

***Section 8.10. TOWNSHIP EMPLOYEES. The Buyer shall offer employment to the Township's existing five (5) System employees. Each employee must be offered a position of similar job duties along with equal or better salary and benefits consistent with the Buyer's standard wage and benefit package and in the geographic vicinity of the Township. Employment shall be offered subject to the employee satisfying the pre-employment background and drug test and other physical screening requirements of the Buyer, consistent will all of the Buyer's other employees and in accordance with the Buyer's employee manual. The Buyer shall offer full-time employment for a minimum period of one (1) year from the official date of employment with the Buyer commencement of services ~~date~~ as long as the employee performs the services in a responsibly reasonably satisfactory manner, consistent will all of the Buyer's other employees and in accordance with the Buyer's employee manual.***

***The Buyer shall also offer employment to the System Director. The current System Director must be offered a position of similar job duties within the Township for the System along with equal or better salary and benefits consistent with the Buyer's standard wage and benefit package. Employment shall be offered subject to the employee satisfying the pre- background and drug test and other physical screening requirements of the Buyer, consistent will all of the Buyer's other employees and in accordance with the Buyer's employee manual. The Buyer shall offer the Director full-time employment in a position of similar job duties within the Township for the System for a minimum period of five (5) years from the official date of employment with the Buyer commencement of services ~~date~~ as long as the employee performs the services in a responsibly reasonably satisfactory manner, consistent will all of the Buyer's other employees and in accordance with the Buyer's employee manual.***

20. Section 9.1 Preclosing Default by the Buyer.

- A. Rejected. By providing a Bid the Bidder accepts and agrees that the liquidated damages provision of the Agreement of Sale, and the forfeiture of the Deposit under Section 7.3 does not constitute a penalty and is a reasonable forecast of the Township's damages.***

21. Article XII Indemnification.

- A. Rejected.***

22. Exhibit D – Municipal Rates Ordinance.

- A. The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, deletions noted in strikethrough):***

***EXHIBIT D-1 RATES: The annual rate to be established by ordinance and to be effective upon the date of Closing shall be \$281.45.***

23. Exhibit I – Municipal Rates Ordinance at the second paragraph of the recitals.



- A. *The Agreement of Sale attached to the Request for Bids as Appendix F is hereby amended as follows (additions noted in underline, ~~deletions noted in strikethrough~~):*

**EXHIBIT I ESCROW AGREEMENT:**

*WHEREAS, it is contemplated under the Agreement that the Buyer will deposit or cause to be deposited into escrow the sum of ~~10%~~ 5% of the Purchase Price (the “Escrow Amount”) in cash upon its execution of the Agreement, to be held and disbursed by the Escrow Agent in accordance with the terms herein; and*

- 24. Additional reports have been added to FTP site in the folder named “6-19-25 upload”.*