

**FAWN GROVE BOROUGH
YORK COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2013-1

**AN ORDINANCE OF FAWN GROVE BOROUGH, YORK COUNTY, PENNSYLVANIA
AUTHORIZING AN AGREEMENT OF SALE FOR A SEWAGE TREATMENT PLANT
WITH SOUTH EASTERN SCHOOL DISTRICT AND PROVIDING SEWER SERVICES
TO SOUTH EASTERN SCHOOL DISTRICT**

WHEREAS, Fawn Grove Borough (“Borough”) is a borough duly organized under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, South Eastern School District (“District”) is a school district organized and existing under and pursuant to the Pennsylvania School Code; and

WHEREAS, the District is the owner and operator of a sewage treatment plant located on District property within the Borough (the “Plant”); and

WHEREAS, the Borough desires to enter into an Intergovernmental Cooperation Agreement as authorized by the Act of December 19, 1996, P.L. 1158, 53 Pa. C.S.A. Section 2301 *et seq.*, known as the Intergovernmental Cooperation Act for the purpose of purchasing and operating the Plant, and thereafter providing sewer services to the District.

NOW THEREFORE, be it ordained and enacted, as follows:

SECTION 1: Intergovernmental Cooperation Agreement. The Borough Council agrees to enter into an agreement to purchase and operate the Plant to provide sewer services to the District substantially in the form as the Agreement of Sale for A Sewage Treatment Plant attached hereto and incorporated herein as Exhibit “A”. The President of Borough Council and the Borough Secretary are hereby authorized to execute the Agreement on behalf of the Borough.

SECTION 2: Purpose. The intent and purpose of the Agreement is to purchase and operate the Plant to provide sewer services to the District.

SECTION 3: Plant. The Borough will become owner of the Plant upon receipt of all DEP, government approvals and adequate financing. The District will provide a ninety-nine (99) year ground lease to the Borough. The Borough will receive a Right-of-Way for the access drive for access to the Plant.

SECTION 4: District as Customer. The District will become a customer upon completion of the sewer system and will be billed quarterly.

SECTION 5: Severability. If any section, subsection, sentence or clause of this ordinance is held, for any reason to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6: Effective Date. This Ordinance shall become effective five (5) days after enactment.

ORDAINED AND ENACTED this 4th day of June 2013

ATTEST:

FAWN GROVE BOROUGH COUNCIL

Cathy E. Kirkwood
Secretary

BY: Robert McFadden
President

Approved this the 4th day of June 2013

By: Brody M. Fry
Mayor

EXHIBIT "A"

**AGREEMENT OF SALE FOR
A SEWAGE TREATMENT PLANT**

AND NOW, this ____ day of _____, 2013, this Agreement of Sale and Lease for a Sewage Treatment Plant (“Agreement”) is made by and between the South Eastern School District, a school district organized and existing under and pursuant to the Pennsylvania School Code, as amended, with offices at 377 Main Street, Fawn Grove, Pennsylvania (“District”) and Fawn Grove Borough, a municipal corporation organized and existing under and pursuant to the Pennsylvania Borough Code, as amended, with address of P.O. Box 131, Fawn Grove, Pennsylvania (“Borough”).

WITNESSETH:

WHEREAS, the District previously constructed and operates a sewage treatment plant (“Plant”) with a treatment capacity of 50,000 gallons per day to serve District’s school buildings; and

WHEREAS, the Plant is located on lands of the District; and

WHEREAS, the Borough has completed a preliminary Act 537 Plan for submission to and comment from the Pennsylvania Department of Environmental Protection (“DEP”); and

WHEREAS, the Borough’s Act 537 Plan proposes to provide public sewer service to the residents of the Borough; and

WHEREAS, DEP has strongly urged the Borough to work with the District to allow the Borough to connect to the Plant to treat sewage generated by those residents to be served by sewer mains (“Sewer System”) to be constructed by the Borough; and

WHEREAS, the District and the Borough have reached an agreement as to the terms and conditions under which the Borough shall become the owner and operator of the Plant to serve the Borough residents and the District.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and intending to be bound legally hereby, the parties hereto agree:

1. This Agreement outlines and describes the process and terms upon which the Borough has agreed to acquire the Plant from the District and thereafter operate the Plant. Both the District and the Borough agree that the obligation of the District to transfer the Plant to the Borough and the obligation of the Borough to accept the Plant from the District shall be conditioned on the following:

a. The Borough being able to obtain adequate financing (to be determined at the Borough's sole discretion) to enable the Borough to design, obtain approvals for and construct the Sewer System; and

b. The Borough's satisfactory inspection of the Plant, which in the Borough's sole opinion finds the Plant not to have mechanical issues or defects; and

c. DEP's approval of the Borough's Act 537 Plan and the Borough's obtaining all other necessary government permits and approvals required by DEP and/or any other governmental authority enabling of the Borough to operate the Sewer System and become the Plant Owner and Operator, such permits and approvals including, but not limited to Part II permit required for construction of the Sewer System and the transferred NPDES (Part I and I) permit from the District. In the event any of the aforementioned approvals are denied by DEP and any applicable appeals of such denials are exhausted, this Agreement shall become null and void and of no further effect.

2. Within twelve (12) months of execution of this Agreement by the parties hereto, the Borough shall, at its sole cost and expense, complete and finalize its Act 537 Plan and submit the same to DEP for approval.

3. Following submission of the Act 537 Plan to DEP, and upon approval by same, the Borough, at its sole cost and expense, shall commence to design a Sewer System to provide sanitary sewer service to those Borough properties within the service area identified in the Act 537 Plan.

4. Concurrent with the design of the Sewer System the Borough shall prepare and submit the necessary applications for a NPDES Part II permit for the construction of the Sewer System, as well as any other permits required by governmental authorities with jurisdiction over any aspect of the project, including but not limited to Fawn Township, the Borough and the Pennsylvania Department of Transportation.

5. Upon receipt of the final approval of the Act 537 Plan from DEP and the issuance of all necessary permits to commence construction, the Borough shall bid and award the project to construct the Sewer System for connection to the Plant.

6. The Borough shall, at its sole cost and expense obtain any rights-of-way and/or easements required to construct the Sewer System.

7. The District shall convey and grant unto the Borough a permanent easement or easements reasonably necessary for the Borough to connect the Sewer System to the Plant and to maintain such Sewer System in perpetuity as well as to use the access drive to the Plant; provided, however that the District shall maintain the access drive at its own expense.

8. Prior to completion of construction of the Sewer System, the Borough

shall, at its sole cost and expense, apply for a NPDES Part II Permit to operate the Plant. The District shall cooperate with the Borough to execute any and all documents necessary to transfer its NPDES Part I Permit and its Part II Permit to the Borough.

9. Within thirty (30) days of the later of the completion of the Sewer System, including, but not limited to connection to the Plant, or transfer of the NPDES Part I and Part II Permits to the Borough, the District shall convey by a Bill of Sale to the Borough the Plant, any sewer mains or lines from the Plant to the Sewer System (which after conveyance shall be considered herein as part of the Sewer System), and any appurtenances thereto including, but not limited to the District's shed at the Plant. The consideration stated in the Bill of Sale shall be \$1.00. Until such time as the District conveys the Plant to the Borough, the District shall continue to maintain and operate the Plant at its sole cost and expense. Further, the District shall continue to own and maintain any sewer mains, laterals and appurtenances thereto on District property up to the point of connection of the Sewer System. In addition, the District shall install at its expense on its sewer line at or near the point of connection to the Sewer System a sewage flow meter.

10. The District shall execute a ground lease for a term of 99 years with the Borough to permit the Borough to operate, maintain, repair and inspect the Plant during the term. The Lease rate shall be \$1.00 per annum. In addition, the ground lease shall be for an area which would permit further expansion of the Plant and the leased area would include the area in which the District's current shed at the Plant is located. A drawing identifying the proposed leased premises is attached hereto and incorporated herein as Exhibit "A."

11. From and after the date the District conveys the Plant to the Borough via

Bill of Sale, the Borough shall be and remain the sole, absolute and permanent owner of the Plant, free and clear of any lien, subject to the aforementioned lease as if the Borough has constructed the Plant with its own labor and at its own expense. Borough shall thereafter operate, repair and otherwise maintain the Plant as its own cost and at its sole expense, and District shall have no further obligation or responsibility for such Plant except as otherwise provided in the Lease between the District and the Borough and in this Agreement.

12. The District shall reserve the capacity of 20,000 gallons per day of treatment capacity within the Plant in order to accommodate current and future needs of the District. Once the Plant is conveyed to the Borough, the Borough shall possess the remaining 30,000 gallons per day of treatment capacity and shall have the sole discretion to distribute such treatment capacity as it deems necessary to serve its then current and future needs.

13. From and after the date of conveyance of the Plant to the Borough, the District shall become a sewer customer of the Borough. As such the District shall be subject to as applicable all Borough rules and regulations as to its Sewer System. The District shall pay, as its annual sewer rate, the higher of the sum of \$50,000.00 or the preceding two (2) year average daily flow divided by 200 multiplied by the Borough's then-annual EDU charge to its customers, said annual amount may be payable in four equal installments on or before the last day of March, June, September and December; provided, however, that the District, may, in its sole discretion, remit payment in full on or before July 15 each year. Using the flow meter data, the two (2) year average daily flow shall be calculated and provided to the District in writing, along with an invoice for the following fiscal year (July 1 – June 30), on or before April 1 of each year; provided, however, that the new annual rate shall become effective on July 1. Upon conveyance of the Plant to the Borough, the annual sewer rate due from the District shall be prorated from

the date of conveyance through the following July 1. From and after the date of execution of this Agreement and until the Plant is conveyed to the Borough, the District shall provide the annual flow data from the Plant to the Borough upon request.

14. The Borough shall, in its sole discretion and pursuant to law, calculate and determine the tapping fee, connection fee and other fees to be charged to the customers connecting to its Sewer System. In no event shall the District be obligated to pay any tapping fee, connection fee or other fee as it is connected to the Plant. Further, the District shall not pay any tapping fee, connection fee or other fee in the event the District expands its facilities and uses additional sewer capacity within the 20,000 gallons per day reserved to it hereunder. In the event the District's needs exceed the 20,000 gallons per day reserved hereunder, the District shall pay any fee (exclusive of tapping or connection fees) of the Borough for any sewage capacity connected in excess of 20,000 gallons per day. If there is insufficient capacity in the Plant to treat more than 20,000 gallons per day required, the Borough shall have no obligation to expand the Plant to meet such needs, rather that cost will be the sole responsibility of the District.

15. The Borough hereby indemnifies, defends and forever holds harmless the District, its directors, employees, agents, successors and assigns, from and against any and all damages, claims, suits, liabilities, expenses or other damages that arise, whether directly or indirectly, from the design, construction, installation and operation of the Sewer System including, but not limited to the acquisition of necessary rights-of-way or easements, enactment of ordinances or any other action taken by Borough in furtherance of the construction and installation of the Sewer System.

16. The District hereby indemnifies, defends and forever hold harmless the

Borough, its council, employees, agents, successors, contractors, successors and assigns from and against any and all damages, claims, suits, liabilities, expenses or other damages that arise as a result of the construction, operation and maintenance of the Plant through the date of conveyance of the Plant to the Borough, with the exception of any such claims that arise as a direct result of the negligence, acts or omissions of the Borough, its employees, agents, contractors, successors and assigns, negligence, acts or omissions in constructing and connecting the Sewer System to the Plant. From and after the date of conveyance of the Plant to the Borough, the Borough shall indemnify, defend and forever hold harmless the District, its directors, employees, agents, contractors, successors and assigns from and against any and all damages, claims, suits, liabilities, expenses or other damages that arise as a result of the operation and maintenance of the Plant excepting those claims that arise as a direct result of the negligence, acts or omissions of the District, its directors, employees, agents, contractors, successors or assigns.

17. This Agreement shall not be assigned by the Borough or District unless the other party provides its prior written consent, which consent shall not be unreasonably withheld.

18. This Agreement was negotiated at arm's-length and entered into freely by the parties with the advice of counsel, if so desired. In the event, an ambiguity exists in any provision of this Agreement, such ambiguity is not to be construed against the drafter of the document.

19. Each party hereto represents and warrants that the individual signing this Agreement is duly authorized to enter into and execute this Agreement and to legally bind such party to it.

20. This Agreement constitutes the entire understanding of the parties and may not be amended except in writing executed by all parties hereto.

21. In the event of a dispute regarding the interpretation or enforcement of this Agreement, the parties hereto consent to the jurisdiction of the Court of Common Pleas of York County, Pennsylvania as the sole forum for resolution of any dispute hereunder.

22. If either party shall fail to comply with any of their obligations under this Agreement and shall continue to fail to comply for a period of ten (10) days after written notice from the other party specifying such failure, then such other party may pursue all remedies available at law and equity. The prevailing party shall be entitled to recover all attorneys' fees, costs and expenses incurred in bringing such action.

23. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

ATTEST:

SOUTH EASTERN SCHOOL DISTRICT

By: _____
Susan Gibbs, Secretary

By: _____
Jane Mueller, President
Board of School Directors

ATTEST:

FAWN GROVE BOROUGH

By: Cathy E. Kirkwood
Secretary

By: J. Gordon McFadden
J. Gordon McFadden, President
Fawn Grove Borough Council