



**Summary Response and Statement to the New Jersey Local Finance Board**  
**Following the March 23, 2022 Public Hearing**

**PRELIMINARY STATEMENT**

The City of Pleasantville, in the County of Atlantic, State of New Jersey (“City” or “Pleasantville”), in accordance with the requirements of the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. 58:27-1 to -27 (“WTPPCA”), desires to enter into a long-term lease agreement, or “public-private partnership,” with a private firm for the provision of wastewater treatment services. A “private firm” is defined as “any privately or publicly held company qualified to do business in the State of New Jersey that is financially, technically, and administratively capable of providing wastewater treatment services to a public entity under the terms of a contract entered into pursuant to [the WTPPCA].” N.J.S.A. 58:27-21. In a public-private partnership, a public entity may receive a concession fee from the firm that will provide the service. The concession fee is “a payment from the contracting firm to the public entity that, regardless of when it is received, is exclusive of or exceeds any contractually specified reimbursement of direct costs incurred by the public entity.” N.J.S.A. 58:27-21.

By way of summary the City initially pursued the possible sale of its wastewater system with New Jersey American Water for \$12 million, but these negotiations were terminated in mid-2019. In August 2019, the City began to explore other ways to possibly lease or “concession” out with wastewater system. After thorough review of the options available, City Council resolved to issue a request for proposals for the concessioning of the wastewater system. A formal Notice of Intent to contract and request for proposals was published in October 2020 and responses were due by mid December 2020. The City received two bids at that time. One bid which was submitted by the New Jersey American Water Company, did not comply with the bid specifications for the Concession Arrangement and was, therefore, withdrawn. The only other conforming bid that the City received was from an intended partnership involving Bernhard Capital Partners Management, LP, Suez Water Environmental Services (“Suez”) and IGWT Construction. Their bid was for the operation, management, maintenance and improvements of the City’s sanitary sewer system.

By Resolution No. 48-2021, adopted on February 1, 2021, the City authorized the commencement of negotiations with Bernhard Capital Partners Management, LP, Suez and IGWT Construction (collectively, “Bernhard-Suez Partnership”), regarding the operation, management, maintenance and improvement of sanitary sewer system within the City of Pleasantville (the “Wastewater System”) pursuant to the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. 58:27-19, et seq. (the “Act”). These negotiations between the City and Bernhard-Suez Partnership resulted in the preparation of a Summary of Proposed Concession Agreement Terms (the “Term Sheet”), which Term Sheet, while not binding, contained key and material terms to be included in a final concession agreement to be negotiated between the City

and Bernhard-Suez Partnership. The Bernhard-Suez Partnership, or an entity either affiliated with or successor-in-interest thereto (“BCP”), requested that the City enter into a Memorandum of Understanding (the “MOU”) incorporating the Term Sheet and setting forth the material terms and conditions to be included in a final concession agreement for the Wastewater System. By Resolution No. 146-2021, adopted on September 20, 2021, City Council of the City (“City Council”) authorized the execution of the MOU and proceeding with negotiations of a final concession agreement with BCP in accordance with the terms of the MOU and the Term Sheet, subject to compliance with all requirements of the Act. This MOU was executed on or around September 22, 2021. A copy of the September 22, 2021 MOU is enclosed with this correspondence as **Attachment A**.

On December 6, 2021, the City conducted an initial public hearing on the proposed concession agreement and submitted an application for approval of the proposed concession agreement to the Local Finance Board and to the New Jersey Department of Environmental Protection for their review in accordance with the requirements of N.J.S.A. 58:27-24 and N.J.S.A. 58:27-25. At the time of December 2021 hearing, testimony was introduced regarding Bernhard Capital Partners Management, LP, and Suez and IGWT Construction as the parties to the Concessionaire Agreement with the City. Suez was identified as the proposed sewer operator. A copy of the December 6, 2021 public hearing transcript is enclosed with this correspondence as **Attachment B**. The WTPPCA, specifically N.J.S.A. 58:27-24(c), also requires that the record of the public hearing must remain open for a period of seven (7) days following the conclusion of the public hearing. During this time, interested parties have an opportunity to submit written statements to be included in the hearing report. No public comments were made during the December 6, 2021 public hearing and no written submissions were made during the public comment period.

In January 2022, BCP informed the City that Pleasantville Environmental Partners, LLC (“PEPLLC”) should be named as a successor-in-interest to BCP in the MOU. To the City’s knowledge, Pleasantville Environmental Partners, LLC registered as a New Jersey business entity in December 2020. Pursuant to the proposed Pleasantville Wastewater Concession Agreement, the Pleasantville Environmental Partners, LLC will become the “Concessionaire” as defined in the agreement. See **Attachment C**, *infra*.

The City was informed in January 2022 that Suez would no longer become part of Pleasantville Environmental Partners, LLC, as the proposed sewer operator. Specifically, on around January 21, 2022, Suez was acquired by its market competitor, Veolia. See <https://www.veolianoorthamerica.com/suez-na>. By correspondence dated February 8, 2022, the City received information regarding the newly-proposed sewer operator, Natural Systems Utilities, LLC (“NSU”).

On February 7, 2022 and February 23, 2022, respectively, the City voted to adopt an ordinance (first and second readings) approving the execution of the proposed Pleasantville Wastewater Concession Agreement between the City and Pleasantville Environmental Partners, LLC as the Concessionaire. A copy of the proposed Pleasantville Wastewater Concession Agreement is enclosed with this correspondence as **Attachment C**.

**MARCH 23, 2022 PUBLIC HEARING AND PUBLIC COMMENT**

On March 9, 2022, the City published notice for a second public hearing scheduled for March 23, 2022, in accordance with N.J.S.A. 58:27-24. The primary purpose of the March 23, 2022 public hearing was to discuss the proposed replacement of NSU as the sewer operator. The following individuals made public comments during the March 23, 2022 public hearing:

1. William Christmas
2. Dale Archie
3. Bob Carlson
4. Sandra Acevedo (Cumberland)
5. Melanie Brozaski
6. William Christmas
7. Anna Cantada
8. Tim Jones
9. Renee Brown
10. Jason Helm (Pinelands Preservation Alliance)
11. Renee Brown
12. Anna Cantada

The March 23, 2022 public hearing transcript is enclosed with this correspondence as **Attachment D**.

As previously noted, the WTPPCA, specifically N.J.S.A. 58:27-24(c), requires that the record of the public hearing must remain open for seven (7) days after the public hearing. The following individuals submitted written public comment for the public hearing report:

1. Andrew Kricun – March 29, 2022 at 12:55 AM
2. Councilman Stanley Swan – March 30, 2022 at 3:27 PM
3. Anonymous – March 30, 2022 at 11:56 AM
4. Councilman Tony Davenport – March 30, 2022 at 11:17 AM
5. Robert Carlson, Jr. – March 30, 2022 at 10:01 AM
6. Jeanne Fox - March 28, 2022 at 9:48 PM

The written comment period ended on March 30, 2022. As required by the provisions of the WTPPCA, all written comments are included with the correspondence as **Attachment E**.

## SUMMARY OF MAJOR ISSUES AND CITY'S RESPONSE

Also pursuant to N.J.S.A. 58:27-24(c), a statement is to be prepared by the City summarizing the major issues raised at the public hearing and the City's specific responses to those issues. Below are the major issues raised during the public comment period:

### **1. Information Regarding the Tariffs (Rates Schedules) and Related Indexes**

The proposed Pleasantville Wastewater Concession Agreement defines "tariffs" as "the rates and charges which may be charged by the Concessionaire." The Tariffs are further outlined in Schedule 2 and Exhibit 1 of the proposed Pleasantville Wastewater Concession Agreement. In this case, the term tariff is interchangeable with user rates, sewer rents, etc.

Schedule 2 / Exhibit 1 of the proposed Pleasantville Wastewater Concession Agreement sets forth the Base Case Revenue Requirement in present value dollars. The transaction is structured as a revenue path model, meaning the Concessionaire must hit annual revenue targets, which are subject to change based on the Adjustment Index (as defined below) and the set schedule of sewer rate increases. The agreed upon schedule of sewer rate increases is: (i) 0% in Year 1; (ii) 4.00% in Year 2; (iii) 5.00% in Years 3-15; and (iv) the Adjustment Index in Years 16-39. Note that the above referenced rate increases include a 2.00% Adjustment Index. For example, in Year 2 if the Adjustment Index was 3.00%, the resulting rate increase would be 5.00%. The Adjustment Index will not be less than 2.00% for the duration of the term. Further, the Concessionaire has built in an annual 0.50% natural growth rate from new customers.

The proposed Pleasantville Wastewater Concession Agreement also provides for various pass-through expenses that may ultimately increase rates further than the agreed upon schedule, if such expenses are incurred. Notwithstanding the above, the revenue path model and tariff regime contemplated in the proposed Pleasantville Wastewater Concession Agreement is designed to pass through most, if not all, future costs to the ratepayers or the City, as applicable.

The proposed Pleasantville Wastewater Concession Agreement further defines the "Adjustment Index" as an measurement comprised of the following components (a) U.S. Department of Labor, Consumer Price Index ("CPI") for all urban consumers in the Northeast Area, ID CUUR0100SA0 and (b) the U.S. Department of Labor, Bureau of Labor Statistics, Employee Cost Index (ECI), Series D – CIU2010000000001, Compensation – Total Compensation, Northeast Sector Private Industry, Industry Occupation – All Workers. Consumer Price Index ("CPI") is defined by the U.S. Bureau of Labor Statistics as "is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services." <https://www.bls.gov/cpi/>. The proposed Pleasantville Wastewater Concession Agreement outlines that for all purposes under this Agreement, the percentage change, if any, in the Adjustment Index during any Concession Year during the Term shall be not less than 2%.

The proposed Pleasantville Wastewater Concession Agreement further establishes certain accounts for the benefit of ratepayers, namely a Capex Surplus Account and Stabilization Fund Account:

**Capex Surplus Account.** In any year, if the amount of capital improvements is less than the agreed upon Base Capex Program, the amortized cost of such amount will be deposited annually in the Capex Surplus Account. These funds can be utilized to offset future capital improvement in excess of the Base Capex Program or can be deposited in the Stabilization Fund Account. Conversely, if the amount of capital improvements is more than the agreed upon Base Capex Program, the amortized cost of such amount will be added to the annual Revenue Requirement going forward.

**Stabilization Fund Account.** In any year, if the amount of revenue exceeds the Revenue Requirement, such excess funds are deposited in the Stabilization Fund Account. These funds can be utilized to offset future rate increases or provide funds to meet the various pass-through expenses described in the CA.

The proposed Pleasantville Wastewater Concession Agreement provides, however, that:

The Concessionaire shall maintain a reserve account held in the name of the Concessionaire and shall deposit amounts into such account as set out in Sections 4.2(c) and 4.3(f) (the Capex Surplus Account), except to the extent that the City and the Concessionaire agree to deposit such amounts into the Stabilization Fund Account.

[Section 4.4(a).]

This account will be either be an escrow account or subject to equivalent controls pursuant to BCP's financing arrangements, as stated in footnote 12 of the proposed Pleasantville Wastewater Concession Agreement.

Additionally, as noted in Section 4.4(a) regarding the Stabilization, or Surplus Account, Section 4.2(c) provides:

If, at the end of the first six (6) Concession Years, the Concessionaire's aggregate actual expenditure incurred in the implementation of the Base Capex Program (the Actual Base Capex) is less than the Base Capex Threshold, the Concessionaire shall pay an amount equal to the difference between the Base Capex Threshold and the Actual Base Capex into the Capex Surplus Account.

Section 4.3(f) further provides:

If, in respect of any Concession Year (other than the first six (6) Concession Years), the Concessionaire's actual expenditure incurred in the implementation of the Incremental Capex Program during such Concession Year (the Actual Incremental Capex) is (i) less than the Incremental Capex Threshold for such Concession Year, the Concessionaire shall, following the end of such

Concession Year, deposit an amount equal to the difference between the Incremental Capex Threshold and the Actual Incremental Capex into the Capex Surplus Account, or (ii) greater than the aggregate of the Incremental Capex Threshold for that Concession Year and any credit balance of the Capex Surplus Account at the end of such Concession Year, this shall constitute a Revenue Requirement Adjustment Event.

## **2. Purchase / Gross Amount Lease for the 39-Year Period**

The City has reached out to BCP for this information, and this information has not yet been provided at the time of this summary response letter.

## **3. Other Possible Funding Options**

Through its financing professionals, the City considered various funding options, such as grants and low-interest loan possibilities through agencies, including but not limited to, Federal Emergency Management Agency (“FEMA”), New Jersey Economic Development Authority (“EDA”) or New Jersey Environmental Infrastructure Trust/IBank (“NJIB”). These opportunities were considered in funding a portion of the sewer system costs. At that time, the City also considered the sale of sewer system to a private entity.

Specifically, in a memorandum prepared by Phoenix Advisors, LLC and dated July 31, 2020, Phoenix outlined the various considerations in evaluating the sale or long-term lease of the System, including: capital needs and funding sources, impacts on the City’s Current Fund budget and ratepayers, potential value of the System and the cost to defease the City’s outstanding debt. At the time, given the expected amount of the sales price and/or concession payment and projected impact to ratepayers, it was recommended that the City maintain ownership of the System and make the required capital investments and rate increases on its own. A copy of the memorandum is enclosed with this correspondence as **Attachment F**.

Ultimately, the City’s decision-making regarding a potential sale or lease of the Sewer Utility involved a number of considerations, both financial and otherwise. It was and remains the City’s goal to ensure the Sewer Utility is viable for years to come. The City determined that a long-term lease could produce greater value to the City, including the up-front payment and the City retaining a level of control over the operation of the System and user rates not available in an outright sale.

## **4. Termination Provisions**

Section 2.3(d)-(e) of the proposed Pleasantville Wastewater Concession Agreement outline the terms of termination. These terms are outlined below:

### **(d) Termination**

This Agreement may be terminated at any time prior to the Closing:

- (i) by mutual consent of the City and the Concessionaire in a written instrument;
  - (ii) by either the City or the Concessionaire, upon notice to the other Party, if (A) any Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction, and such order, decree, ruling or other action has become final and nonappealable, or (B) the Closing shall not have occurred as of 11:59 p.m. on the date that is [120 days] after the Effective Date (the Closing Deadline), unless such date is extended by mutual written agreement of the Parties; provided, however, that the right to terminate this Agreement under this Section 2.3(d)(ii) shall not be available to any Party whose actions failure to comply with any provisions of this Agreement has been the cause of, or resulted in, any order, decree, ruling or other action being imposed or becoming final and nonappealable or, in the case of subpart (B) hereof, whose actions or failure to act caused the Closing not to occur;
  - (iii) by the Concessionaire, upon notice to the City, if any condition set forth in Section 2.3(a) remains unsatisfied as of the Closing Deadline; provided, however, that the Concessionaire shall not have the right to terminate this Agreement under this Section 2.3(d)(iii) if the Concessionaire's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or
  - (iv) by the City, upon notice to the Concessionaire, if any condition set forth in Section 2.3(b) remains unsatisfied as of the Closing Deadline; provided, however, that the City shall not have the right to terminate this Agreement under this Section 2.3(d)(iv) if the City's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied.
- (e) Effect of Termination

In the event of termination of this Agreement by either the City or the Concessionaire as provided in Section 2.3(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of the City or the Concessionaire or their respective Representatives, except as set forth in this Section 2.3(e) and Article 12 and subject to and in accordance with Article 19 and Article 20 and except that no Party shall be relieved or released from any liabilities or damages arising out of its breach of this Agreement. In the event that the Concessionaire terminates this Agreement pursuant to Section 2.3(d)(iii), the City shall pay the Concessionaire an amount equal to its documented costs and expenses related to this Agreement up to a maximum amount of \$1,500,000. In the event that City terminates this Agreement pursuant to Section 2.3(d)(iv), the Concessionaire shall pay the City an amount equal to its documented costs and expenses related to this Agreement up to a maximum amount of \$1,500,000.

[See Attachment C, *supra*.]

## **5. A Referendum Regarding the Currently Proposed Concession Agreement**

Enacted in 2015, the Water Infrastructure Protection Act, N.J.S.A. 58:30-1 to -9 allows municipalities to “have the option to transfer, lease, or sell water or wastewater assets if there exist emergent conditions that threaten drinking water or the environment.” N.J.S.A. 58:30-2. In this process, municipalities are authorized to sell or lease their drinking water or wastewater systems upon approval of a ballot question in a municipal general election (public referendum), in which the process is outlined in N.J.S.A. 58:30-4 through -5. Additionally, the terms of the sale and the authorizing ordinance are subject to review by the Board of Public Utilities. N.J.S.A. 40:62-3.1. The City is not interested in the sale of its sewer system pursuant to WIPA, and therefore, the requirements of WIPA are not applicable to this proposed transaction.

Another option that allows for the lease of the City’s wastewater system is to follow the procedures of the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. 58:27-1 to -27 (“WTPPCA”). The WTPPCA authorizes a public entity to enter into a long-term lease agreement, or “public-private partnership,” with an outside firm for the provision of water supply and/or wastewater treatment services. Municipalities and counties, as well as local authorities, joint meetings or commissions charged with providing water supply and/or wastewater treatment, are defined as “public entities” authorized to enter into public-private partnerships. N.J.S.A. 58:26-21; N.J.S.A. 58:27-21. A public entity can enter into a public-private partnership with a public authority (e.g. utilities authority, sewerage authority, joint meeting) for wastewater treatment services only. N.J.S.A. 58:27-22. The City has proposed to enter into a Concession Agreement for its wastewater-sewer system with a private entity in accordance with the terms and provisions of the WTPPCA. The WTPPCA “establish[es] a comprehensive procedure designed to authorize local government units to contract with private firms for the provision of wastewater treatment services.” The WTPPCA offers a more streamlined framework through which a local unit may partner with an outside entity to operate, manage and improve its water supply and/or wastewater treatment system. The WTPPCA does not require a municipality to publish a referendum.

For more information, the Department of Community Affairs issued LFN 2017-11, dated June 8, 2017, which details the statutory options available for municipalities and other local units to privatize in full or in part their water and/or wastewater treatment systems, primarily focusing on the WIPA and WTPPCA. LFN 2017-11 is enclosed with this correspondence as **Attachment G**.

## **6. Change in Operator / Equity Owner**

Schedule 8 of the proposed Pleasantville Wastewater Concession Agreement addresses the proposed criteria (minimum administrative, financial and technical criteria) for the replacement of the sewer operator, also known as the O&M Contractor as referenced in the September 22, 2021 MOU signed by the City and Bernhard Capital Partners Management, LP.

Section N (Transfers), Paragraph 66 (Restrictions on Transfers by the Concessionaire) of the September 22, 2021 Memorandum of Understanding outlines the process in which the Concessionaire Interest can be transferred. Further criteria is set forth in Appendix C of the September 22, 2021 MOU.

### **ADDITIONAL RESPONSES FROM CITY REPRESENTATIVES**

The Mayor and City Council were also provided an opportunity to issue written comment following the public hearing. The following comments were received:

1. Councilman Stanley Swan – March 30, 2022 at 3:27 PM (also included in **Attachment E**)
2. Councilman Tony Davenport – March 30, 2022 at 11:17 AM (also included in **Attachment E**)
3. Councilwoman Joanne Famularo – April 11, 2022 at 11:37 AM
4. Council President Ricky Cistrunk – April 13, 2022

These responses are enclosed with this correspondence as **Attachment H**.

### **CONCLUSION**

As previously discussed, this Summary has been prepared in accordance with the provisions of the WTPPCA, specifically N.J.S.A. 58:27-24(c). A copy of this Statement will be published for the City's website for seven (7) days upon City Council's approval and submitted to the Local Finance Board to complete the City's application.