*This document is just a sample of a contract between a credit generator and credit buyer that contains all the elements that DEP will be looking for when reviewing a registration request. All \*text\* that is highlighted and surrounded by ‘\*’ needs to be replaced with appropriate names, dates, addresses, etc. There may be additional elements that would need to be included for the specific situation related to the buyer and seller of credits.*

**AGREEMENT OF SALE**

THIS **AGREEMENT OF SALE** (the “Agreement”) is made this \*Day\*th day of \*Month\*, \*Year\*, by and between,

The **\*SELLER\* (“SELLER”)**, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, with an address of **\*FULL ADDRESS\***;

**AND**

The **\*BUYER\* (“BUYER”)**, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, with an address of **\*FULL ADDRESS\***.

**WITNESSETH:**

**WHEREAS**, SELLER is located in \*TWP\* Township, \*COUNTY\* County, Pennsylvania, and governed by the Municipality Authorities Act, 53 Pa.C.S.A. §5601 et seq. (the “Authorities Act”); and

**WHEREAS**, SELLER owns and operates a certain wastewater treatment facility (the “\*SELLER\*WWTP”) located at \*FULL ADDRESS\*; and WHEREAS, the \*BUYER\* WWTP was issued NPDES Permit No. \*PERMIT NUMBER\* by the Pennsylvania Department of Environmental Protection (“DEP”); and

**WHEREAS**, the BUYER is located in \*TOWN\*, \*COUNTY\* County, Pennsylvania and governed by the Municipality Authorities Act, 53 Pa.C.S.A.§5601 et seq. (the “Authorities Act”); and WHEREAS, BUYER owns and operates a certain wastewater treatment facility located at \*FULL ADDRESS\*, (the “\*BUYER\* WWTP”); and

**WHEREAS**, the BUYER was issued NPDES Permit No. \*PERMIT NUMBER\* (the “Permit”) by DEP to operate the \*BUYER\* WWTP; and

**WHEREAS**, the Permit requires the BUYER to meet certain “Chesapeake Bay Nutrient Requirements” with respect to the \*BUYER\* WWTP, including nitrogen and phosphorus, as more particularly described in the Permit (the “Requirements”); and

**WHEREAS**, the \*NAME1\* WWTP has been operated in such a manner that has allowed SELLER to verify and certify nitrogen and/or phosphorus water quality nutrient credits (“Credits”) within the Susquehanna Basin of the Chesapeake Bay Watershed; and

**WHEREAS**, the BUYER desires to purchase from SELLER, and SELLER desires to sell to the BUYER, certain Credits generated during the \*20##-20##\* water year on the terms and conditions hereinafter provided.

**NOW, THEREFORE**, in consideration of mutual promises set forth herein, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**1. SALE AND PURCHASE OF THE CREDITS.**

1.1. SELLER hereby agrees to sell, and BUYER hereby agrees to purchase the Credits identified in '1.2 and '1.3, upon the terms and conditions set forth hereinafter.

1.2. NITROGEN CREDITS generated by SELLER during water year \*20##-20##\* and verified by PA DEP in the amount of and at the unit credit purchase price as follows:

1.2.1. Amount: \*AMOUNT WRITTEN OUT AND (NUMERICAL)\*

1.2.2. Unit Price: \*COST WRITTEN OUT AND (NUMERICAL)\* PER CREDIT

1.3. PHOSPHOROUS CREDITS generated by SELLER during water year \*20##\* and verified by PA DEP in the amount and at the unit credit purchase price as follows:

1.3.1. Amount: \*AMOUNT WRITTEN OUT AND (NUMERICAL)\*

1.3.2. Unit Price: \*COST WRITTEN OUT AND (NUMERICAL)\* PER CREDIT

1.4. The purchase price set forth in '1.2 and '1.3 is exclusive of all sales, use, excise, or similar taxes, which to the extent applicable, shall be paid solely by the BUYER.

1.5. The BUYER agrees to remit full payment for all purchased Credits to SELLER within thirty (30) days of BUYER’s receipt of notification by DEP of the registration of the Credits purchased pursuant to this Agreement and as required by 25 Pa.Code § 96.8 et seq.

1.6. The BUYER acknowledges and agrees that:

1.6.1. The Credits may only be used for the \*BUYER\* WWTP, and may not be assigned, conveyed, or transferred in any fashion (whether by operation of law or otherwise) by the BUYER without SELLER’s prior written consent, which consent may not be unreasonably withheld by SELLER;

1.6.2. SELLER is not making any, and has made no, representation, warranty, or covenant regarding:

1.6.2.1. The suitability of the Credits for the \*BUYER\* WWTP, and

1.6.2.2. The likelihood of the Credits satisfying the requirements of the \*BUYER\* NPDES Permit (or any successor permit); and

1.6.3. SELLER has, and shall have, no duty, liability, or responsibility in any way relating to or arising out of the \*BUYER\* WWTP.

1.7. Within a reasonable time following the Verification of Nutrient Reduction Credits as issued by DEP (“Verification”), SELLER shall provide the BUYER a true, correct, and complete copy of the Verification that verifies the Credits to be sold hereunder, a copy of which shall be attached hereto and incorporated herein by reference as \*Exhibit “A”\*.

1.8. SELLER consents to DEP transmitting a copy of said Verification directly to the BUYER. SELLER consents to the BUYER transmitting a copy of this Agreement to DEP for the purpose of Credit registration.

1.9. Each party agrees to execute any and all documents and take such other actions as the other party may reasonably request in order to consummate the transaction provided for herein and to accomplish the purposes of this Agreement.

1.10. This Agreement may be declared null and void at the BUYER’s sole option in the event that \*20##-20##\* Credits are not verified by DEP or registered to the \*BUYER\* NPDES Permit prior to November 27, \*20##\* or the end of the \*20##-20##\* water year true-up period.

**2. ADDITIONAL REPRESENTATIONS AND WARRANTIES.**

2.1. BUYER hereby represents and warrants to and with SELLER that:

2.1.1. BUYER has power and authority to enter into this Agreement and to consummate the transactions contemplated hereby;

2.1.2. BUYER has complied with all requirements of the Buyer Code and other applicable laws, rules, and requirements in entering into and delivering this Agreement;

2.1.3. BUYER is entering into this Agreement and purchasing the Credits due to the necessity of securing a source for Credits;

2.1.4. The customers of \*BUYER\* WWTP will be benefited by BUYER entering into this Agreement and securing a source for Credits;

2.1.5. BUYER entering into this Agreement and securing a source for Credits involves and constitutes a legislative or governmental function;

2.1.6. \*BUYER\* WWTP is located on land owned by BUYER and is located in \*TOWN\*, \*COUNTY\* County, Pennsylvania;

2.1.7. Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate any contract, agreement or other understanding to which BUYER is party or by which it is bound; and

2.1.8. This Agreement, when executed and delivered by BUYER, shall constitute a valid and legally binding obligation of BUYER enforceable in accordance with its terms, except to the extent that the same may generally be rendered unenforceable by reason of any bankruptcy, reorganization or insolvency laws generally affecting creditors’ rights and remedies.

2.2. SELLER hereby represents and warrants to and with BUYER that:

2.2.1. SELLER has power and authority to enter into this Agreement and to consummate the transactions contemplated hereby;

2.2.2. Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate any contract, agreement or other understanding to which SELLER is party or by which it is bound; and

2.2.3. This Agreement, when executed and delivered by SELLER, shall constitute a valid and legally binding obligation of SELLER enforceable in accordance with its terms, except to the extent that the same may generally be rendered unenforceable by reason of any bankruptcy, reorganization or insolvency laws generally affecting creditors’ rights and remedies;

2.2.4. SELLER owns and operates a wastewater treatment facility in \*TOWNSHIP\*, \*COUNTY\*, and that the Credits sold hereunder were generated from activities located within the \*RIVER\* Basin of the Chesapeake Bay Watershed; and

2.2.5. SELLER shall supply to BUYER such information, certificates, and verifications as may be necessary or convenient to allow BUYER to assure that the Credits are in compliance with the applicable laws, rules, and regulations.

**3. MISCELLANEOUS.**

3.1. This Agreement contains the entire agreement and understanding between the parties concerning the subject matter hereof, and supersedes any and all prior understandings or agreements, written or oral, between the parties respecting the subject matter hereof.

3.2. This Agreement may not be amended, modified, superseded, cancelled, renewed or extended, nor may any term or condition hereof be waived, except by a written instrument or document signed by all-parties hereto or, in the case of a waiver, signed by the party sought to be charged therewith. No waiver by any party of the breach of any provision hereof shall be deemed to constitute a waiver of any continuing or subsequent breach of such provision or any other provision hereof. Except as otherwise provided herein, the rights and remedies expressly granted hereunder shall be cumulative with respect to, and shall not be deemed to exclude, any other rights and remedies to which any party shall be entitled at law or in equity.

3.3. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, but shall not be assigned by any party without the prior written consent of the other parties (which consent shall not be unreasonably withheld or delayed), as well as any necessary consents or approvals of the applicable regulatory authorities

3.4. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The parties agree that jurisdiction and venue for any questions or disputes hereunder shall only be in the Court of Common Pleas in and for \*COUNTY\*County, Pennsylvania, and/or the United States District Court serving such County.

3.5. Headings have been set forth for convenience of reference only and shall not be used in construing this Agreement. References to persons or things shall be deemed to refer to such persons or things in the singular or plural and in the masculine, feminine or neuter gender as the context shall require.

3.6. This Agreement shall be deemed to be severable, so that if any provision hereof shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall continue to remain valid and enforceable in accordance with their terms.

3.7. All notices shall be in writing, shall be sent to the address contained in the introductory section and shall be considered as delivered:

3.7.1. On the next business day, if sent by telex, telecopy, telegram or overnight carrier; or;

3.7.2. Three (3) days after the postmark, if sent by first class mail.

3.8. Nothing in this Agreement shall be deemed to create any agency, partnership, joint venture, or fiduciary relationship (or duties) between the parties.

3.9. BUYER and SELLER acknowledge and understand that this Agreement may be subject to the Pennsylvania Right to Know Law, 65 P.S. § 67.101 et seq. The duties of BUYER and SELLER regarding the Right to Know Law are continuing duties that survive the expiration of this Agreement.

3.10. This Agreement may be executed in any number of counterparts (and delivered by overnight express mail, or by fax with confirmation in writing delivered by overnight express mail), each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected on this Agreement as the signatories.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, intending to be legally bound, this Agreement of Sale has been duly executed by the parties hereto as of the day and year first above written.

**SELLER:**

**\*SELLER\***

WITNESS/ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*NAME\* DATE

\*TITLE\*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*NAME\* DATE

\*TITLE\*

**BUYER:**

**\*BUYER\*:**

WITNESS/ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*NAME\* DATE

\*TITLE\*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*NAME\* DATE

\*TITLE\*

**\*EXHIBIT A\***

**PA DEP NUTRIENT CREDIT VERIFICATION**