

**PRESENTATION TO LONG HILL TOWNSHIP  
REGARDING SALE OF TOWNSHIP  
WASTEWATER TREATMENT SYSTEM**

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# Options for Sale of Wastewater System

- Old (and still existing) Law (Public Referendum Process)
  - N.J.S.A. 40:62-4 and -5
- Newly enacted Water Infrastructure Protection Act
  - N.J.S.A. 58:30–1 through -9

## N.J.S.A. 40:62-4 and 40:62-5

### Public Referendum Process

- Resolution determining intent to sell or lease
- Advertise the request for bids (“RFB”) at least six times (once per week) in one or more newspapers in the municipality, and at least once, not less than thirty days prior to the receipt of bids, in a newspaper or magazine devoted wholly or partly to municipal matters
- Adopt an ordinance providing for the sale or lease of the property and setting forth the terms and conditions of the lease or sale

N.J.S.A. 40:62-4 and 40:62-5  
Public Referendum Process

- Public referendum in general election
- If majority of voters that vote at election vote to approve, then the governing body may accept the bid of the highest responsible bidder and carry out such lease or sale as authorized by the election
- Contract execution with closing subject to BPU approval of Municipal Consent and DEP transfer of permits

# Timeline for Public Referendum Process

- Discussions regarding procurement structure and Township requirements, identification and preparation of information necessary to support RFB, and vendor sounding meetings – March 1 – April 13
- Preparation of RFB – April 14 – May 27
- Resolution authorizing issuance of RFB – May 27
- RFB Advertised – at least 6 weeks
- Receive Bids – July 10
- Review of Bids and identification of highest bidder – July 17
- Finalization of Sales Contract – Prior to August 14

## Timeline for Public Referendum Process

- Ordinance Providing for Sale Adopted at Township Meeting - Prior to August 14
- Public Question Submitted to County Clerk – August 14
- Public Information Meetings
- Public Referendum – November 3<sup>rd</sup> Election
- Contract Execution – November 10
- Contract Implementation Subject to Specified Conditions including BPU Approval and DEP Permit Transfer
- Transaction Closing – April 2016

N.J.S.A. 58:30–1 through -9  
Water Infrastructure Protection Act  
Process

- The mayor and a licensed engineer must certify that an “emergent conditions” exists:
  - a. the system is located in an area of designated by the DEP as an “Area of Critical Water Supply Concern”
  - b. the municipality is a significant noncomplier of the Water Supply Management Act, has been the subject of a formal action by the DEP, or is substantially out of compliance with an order or agreement entered into with the DEP
  - c. there is a present deficiency or violation of the Safe Drinking Water Act’s maximum contaminant levels concerning the distribution or treatment of wastewater
  - d. there is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by the DEP or material damage to the infrastructure system
  - e. the municipality lacks the financial, technical, or managerial capacity to adequately address any of the foregoing on a sustainable basis in a way or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.

# Water Infrastructure Protection Act Process (cont.)

- Procure an independent financial advisor
- Financial advisor prepares report on system including financial needs and appraisal
- Report transmitted to Division of Local Government Services, BPU, DEP, and made available to public
- Public hearing on emergent conditions determination and financial advisor's report
- Pass a resolution by a 2/3 majority, certifying that an emergent condition exists and that the municipality intends to sell or long-term lease the system

# Water Infrastructure Protection Act Process (cont.)

- DEP review and approval of resolution
- Issuance of public notice of DEP approval, starting 45 day period for petition by at least 15% of voters who voted in last general election to require public referendum of sale on next general election ballot
- If no petition is filed, issue a Request for Qualifications
- Issue a Request for Proposals to Short-listed Respondents
- Clarify and evaluate Proposals
- Designate the Most Advantageous Proposer by a 2/3 majority of governing body

# Water Infrastructure Protection Act Process (cont.)

- Negotiate and finalize contract with Most Advantageous Proposer
- Governing body resolution (2/3 majority) to submit negotiated contract to BPU and use of proceeds to Division of Local Government Services
- Division approval of use of proceeds and BPU approval of negotiated contract
- Governing body resolution (2/3 majority) to execute contract
- Contract execution with closing subject to specified conditions including DEP Transfer of Permits

# Water Infrastructure Protection Act

## Timeline

- Discussions regarding procurement structure and Township requirements, identification and preparation of information necessary to support RFB, and vendor sounding meetings – March 1 – April 13
- Determine emergent condition exists – April 13
- Procure independent financial advisor –April 27
- Prepare financial advisor report –June 27
- Public hearing on report and resolution certifying emergent condition and intention to sell – 30 days – July 27

# Water Infrastructure Protection Act Timeline

- DEP approval of certification – 30 days – August 26
- Public notice of DEP approval and right to petition - 45 days – October 10
- RFQ Issued – October 11
- SOQs Received – 30 days – November 10
- RFQ Evaluation – November 24
- RFP Issued– November 24
- Proposals Received – 30 days – December 24
- RFP Evaluation – January 23, 2016
- Negotiation – February 22, 2016

# Water Infrastructure Protection Act Timeline

- Resolution of 2/3 Majority to Submit Contract to BPU and Use of Proceeds to DLGS – February 22, 2016
- DLGS Approval of Use of Proceeds and BPU Approval of Contract – 90 days – May 22, 2016
- Governing Body Resolution (2/3 Majority) to Execute Contract – End of May 2016
- Transaction Closing – Upon DEP Transfer of Permits

## Discussion of Municipalities that have Outsourced/Divested Water and/or Wastewater Systems

- Haddonfield (2014) – water/wastewater - sold to New Jersey American Water – pursuant to N.J.S.A. 40:62-4 and -5
- Bloomsbury (2008) – water – sold to Aqua New Jersey – pursuant to N.J.S.A. 40:62-4 and -5
- Mount Ephraim (2006) – water - sold to New Jersey American Water – pursuant to N.J.S.A. 40:62-4 and -5
- Bayonne (2011) – water only – United Water (long term concession through Water Supply Public-Private Contracting Act)
- Allendale – water only – United Water (long term O&M contract through Water Supply Public-Private Contracting Act, considered referendum process)

## Discussion of Municipalities that have Outsourced/Divested Water and/or Wastewater Systems (cont.)

- Washington Borough (Warren County) – wastewater only – Veolia – design-build-operate contract through Wastewater Treatment Public-Private Contracting Act
- CCMUA –wastewater – long term O&M of Sludge Dryer through Wastewater Treatment Public-Private Contracting Act
- Warren Township Sewerage Authority – wastewater – long term O&M through Wastewater Treatment Public-Private Contracting Act
- Monmouth County – leachate treatment contract with NSU/Middlesex Water, long-term O&M through Wastewater Treatment Public-Private Contracting Act
- Jersey City
- Hoboken
- North Brunswick

# Recent Successful Divestiture

- Haddonfield
  - Sale for \$28.5 million to New Jersey American Water
  - Commitment to spend \$5 million in capital in first year and additional \$11 million in next 4 years
  - Water rate freeze for 3 years.
  - Sewer rates increase by 12.5% in first year, 3.5% subsequent years
  - Haddonfield to keep rents from cellular antenna contracts for 10 years (valued at \$600,000)
  - Township facilities to receive free service

# Recent Terminated Divestitures

- Sussex (2014) – voted down
- Allendale (2012) – decided private O&M instead
- Ramsey (2011) – decided bids were too low
- Trenton (2010) – voted down

# Issues to Discuss

- Confirm Sale as Best Solution to Achieve Township Goals
- Vendor sounding meetings
- Discuss potential Township Requirements
- Examine Pros and Cons of Statutory Procurement Processes
- Determine Procurement Process
- Identify Necessary Preparation Activities
- Identify Factors That Could Affect Procurement
  - Existing Contracts
  - Consent Orders
  - Permit Non-Compliance
  - Existing Wastewater System Debt
  - Existing of Planned Capital Modifications
  - Public Employee Issues