

SURPLUS WATER SALE AGREEMENT

THIS SURPLUS WATER SALE AGREEMENT (hereinafter the "Agreement") is made as of March 1, 2012, by and between the **VILLAGE OF PAINTED POST, STEUBEN COUNTY, NEW YORK**, having an address at 261 Steuben Street, Painted Post, New York 14870 (the "Seller" or "Village") and **SWEPI LP**, having an address at 200 N. Dairy Ashford Street, Houston, Texas 77079 (the "Purchaser" or "SWEPI LP").

WITNESSETH:

WHEREAS, the Village currently has the capacity in its water system and within its Susquehanna River Basin Commission ("SRBC") permitted capacity to supply surplus water in the amount of 1,000,000 gallons per day (gpd) beyond the needs of the current water users within its municipal boundaries (the "Seller System Surplus Capacity") and the Village has the right to sell such surplus water;

WHEREAS, SWEPI LP desires to purchase surplus water from the Seller in accordance with the terms and conditions contained herein.

NOW, THEREFORE, the parties hereto, in consideration of the payment upon the execution hereof of Two Hundred and Thirty Thousand Dollars (\$230,000.00) by SWEPI LP to the Village, the terms and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do agree as follows:

1. SWEPI LP may purchase and take delivery of up to 1,000,000 gallons per day (the "SWEPI LP Allocation") of the Seller System Surplus Capacity from the filling/metering station and transloading facility to be constructed and located in the vicinity of 450 West Water Street in the Village of Painted Post, Steuben County, New York (the "Delivery Point"). This Agreement shall be subject at all times to the availability of the Seller System Surplus Capacity. In addition, the Seller shall not be required to supply SWEPI LP with such water in the event of a drought restriction, emergency, unforeseen operational problem requiring the suspension of surplus water sales, a refusal of Seller's water supplier to renew Seller's supply agreement, restriction on the sale of surplus water by the SRBC or other applicable governmental agency, or in the event of "force majeure" beyond the control of the parties ("force majeure" shall include, but is not limited, to (i) an act of God; (ii) an act of war, rebellion, civil commotion, sabotage, acts of terrorism or damage resulting there from; (iii) a fire, flood, explosion, accident; (iv) a riot, strike, labor dispute or (v) a federal or state law, or a rule regulation or order of any public body or official exerting or purporting to exercise authority or control concerning the operations covered hereby).

2. It is understood and agreed that the Seller makes no guarantee as to the pressure, quantity, or continuity of service and shall not be held liable for loss or damage from a deficiency or failure in the supply of water, whether caused by shutting off the water in case of accident, or for alterations, extensions, connections or repairs, or for any cause whatever. In the event of an emergency or other necessity, the Seller shall have the right

to shut off or reduce the flow of water for such periods as is reasonably necessary. The Seller shall restore service and make water available as soon as it can reasonably do so.

3. Seller agrees to sell, and SWEPI LP agrees to take delivery of and/or purchase 314,000,000 gallons from the Seller System Surplus Capacity over the term of this Agreement (the "Gross SWEPI LP Commitment"); provided, however, that upon execution of this Agreement, SWEPI LP shall pay the Seller \$154,840.00 as an advance purchase for the first 14,000,000 gallons of water (the "SWEPI LP Prepayment of Commitment") at the price set forth in Section 7 below and which SWEPI LP Prepayment of Commitment shall be credited towards the first 14,000,000 gallons delivered and invoiced hereunder and credited against the Gross SWEPI Commitment (the Gross SWEPI LP Commitment less the SWEPI LP Prepayment of Commitment equals 300,000,000 gallons over the term of this Agreement which shall be the net Gross SWEPI LP Commitment and shall hereafter be referred to as the "SWEPI LP Commitment"). The SWEPI LP Commitment to "take or pay" for this water will commence once all required permits for the Delivery Point are obtained and the facilities necessary to load the water at the Delivery Point are in place and available for use (the "Commencement Date").
4. The water delivered by Seller to SWEPI LP hereunder shall be surplus municipal water which has been treated at Seller's municipal water treatment plant, and the Seller makes no representation or warranty, either express or implied, as to the condition or quality of the surplus water delivered by Seller to SWEPI LP hereunder, or that it is or will be suitable for SWEPI LP's purposes or needs.
5. In the event that Seller acquires an additional 500,000 gpd surplus water capacity in the future beyond the current Seller System Surplus Capacity (in such case the Seller System Surplus Capacity as defined herein shall be increased by 500,000 gpd), Seller shall promptly notify SWEPI LP of the availability of such additional 500,000 gpd surplus water capacity, and SWEPI LP shall have a first right of refusal to acquire such additional 500,000 gpd surplus water capacity under the terms set forth herein (the "Additional SWEPI LP Allocation"). SWEPI LP shall reply in writing to Seller as to whether or not it so elects to exercise this first right of refusal within thirty (30) days of receiving notification from Seller. Any election by SWEPI LP to exercise its right of refusal and take the Additional SWEPI LP Allocation shall be subject to (i) an increase to the SWEPI LP Commitment by such amount as shall be agreed to by the parties hereto and evidenced by a written amendment of the parties hereto to account for the Additional SWEPI LP Allocation and (ii) any modifications to the Delivery Point (subject to any governmental approvals) to accommodate delivery of the Additional SWEPI LP Allocation. Subject to the foregoing and upon any such election, the SWEPI LP Allocation shall be increased by the Additional SWEPI LP Allocation.
6. SWEPI LP will schedule its daily water loadings a minimum of three (3) working days in advance by (i) telephone to the Village Superintendent of Public Works at 607-962-8724 and (ii) e-mail confirmation to the Village Superintendent of Public Works at ppdpw@stny.rr.com. Any portion of the SWEPI LP Allocation not so scheduled by

SWEPI LP for delivery on a given day may be sold by Seller to other purchasers on such day at such prices as may be established by the Seller. Either party shall have the right to test the meter for accuracy upon fifteen (15) days' notice to the other party. The non-testing party shall have the right to witness the meter test. If the meter is found to be inaccurate by more than 1%, the meter shall be recalibrated by the party furnishing the meter.

7. SWEPI LP agrees to pay \$0.01106 per gallon for any water provided from the SWEPI LP Allocation, billed on a monthly basis, net thirty (30) days. This price will be honored for a period of five years (5) from the Commencement Date.
8. Notwithstanding any other provision contained herein, in the event that, at the end of the term of this Agreement, the actual total quantity of water taken by SWEPI LP in excess of the first 14,000,000 gallons during the term of this Agreement (collectively, the "Delivered Water") shall be less than the SWEPI LP Commitment, then SWEPI LP hereby guarantees to Seller the payment of a fee (the "Take or Pay Fee") equal to:

$$(\text{SWEPI LP Commitment} - \text{Delivered Water}) \times \$0.01106$$

In the event there are any Non-Qualifying Days (as defined below) over the term of this Agreement, the Take or Pay Fee shall be reduced by the Non-Qualifying Day deduction (the "Non-Qualifying Day Deduction") which shall be equal to:

$$(\text{Non-Qualifying Days} \times 164,384 \text{ gpd}) \times \$0.01106$$

"Non-Qualifying Days" shall mean, collectively, any day during the term of this Agreement whereby the loading or taking of the water from the Delivery Point is prohibited or enjoined by a court or governmental agency having competent jurisdiction, or is rendered impossible by an event of force majeure, or in the event that Seller's system cannot provide water at a rate equal to 164,384 gpd (i.e. the SWEPI LP Commitment divided by 5 divided by 365) over a twelve hour period during any day during this Agreement. The Take or Pay Fee (less any Non-Qualifying Day Deduction) shall be due within 30 days from the end of the term of this Agreement upon receipt of an invoice which is correct, proper, and prepared in accordance with the terms herein.

9. Seller shall bill SWEPI LP on a monthly basis. Payment shall be due 30 days from receipt of an invoice which is correct, proper, and prepared in accordance with the terms herein. Each invoice shall include the following data:
 - a. Shell's contract number and/or purchase order number
 - b. The quantity of water sold and the dates of service (including the number of Non-Qualifying Days, if any)
 - c. The amounts and dates of any penalties for not taking the minimum water quantity
 - d. Invoice number and date
 - e. Requestor's name & phone number
 - f. The payment address

g. The invoice payment terms

Invoices shall be sent by email to: HOU-IC-POBox301440@shell.com.

10. This Agreement shall be contingent upon Painted Post Development, LLC negotiating and executing a lease (the "Transloading Facility Lease") of the Delivery Point site with Wellsboro & Corning Railroad, LLC or an affiliate (the "Railroad") which will allow the Railroad to construct a railcar siding and loading facility at said site, and upon the Railroad obtaining necessary railroad rights of way, rail interchange agreements, approvals from governmental entities regulating the construction and operation of rail lines, and any other agreements and permits necessary for the Railroad to deliver the water to SWEPI LP in Pennsylvania.
11. Seller shall obtain any permits and approvals required for Seller to deliver the water to the Railroad at the Delivery Point, including but not limited to any required approvals from the Ingersoll-Rand Company, the New York State Department of Environmental Conservation and the SRBC, provided, however, that SWEPI LP shall reimburse Seller for the cost of such permits and approvals and SWEPI LP agrees to assist the Seller in connection with obtaining any permits or approvals, if any, required by SRBC in connection with the Agreement.
12. SWEPI LP and/or its contractors including, but not limited to, the Railroad shall be responsible for obtaining any and all requisite permits and for meeting any and all rules, regulations, and permit requirements and all costs of such permits required to transport the water from the Delivery Point to SWEPI LP's facilities and to use the water at such facilities.
13. Notwithstanding any other provision contained herein or within any other agreement by and among the parties hereto, SWEPI LP hereby releases the Village from, agrees that the Village shall not be liable for, and agrees to indemnify, defend and hold the Village and their respective officers, members, directors, agents and employees, and their respective successors, assigns or personal representatives, harmless from and against any and all actions, claims, losses and expenses (including reasonable attorney fees and expenses) arising out of SWEPI LP's actions with respect to its purchase of water hereunder, including, without limiting the generality of the foregoing, arising out of transportation, use and disposal of the water purchased hereunder and used in SWEPI LP's oil and gas extraction activities and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Village, or any of their respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that, such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law. The provisions of this paragraph shall survive termination of this Agreement.

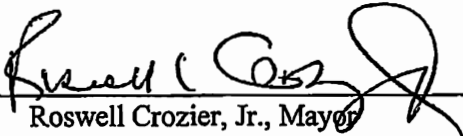
14. The term of this Agreement shall commence on the Commencement Date, and shall extend for a period of five (5) years thereafter. Prior to the expiration of the term of this Agreement, SWEPI LP shall have the right to request an extension of this Agreement and thereafter the parties hereto shall endeavor in good faith to renegotiate the terms hereof.
15. SWEPI LP shall have the right to request the Seller to exercise its rights under the Transloading Facility Lease to allow for the assignment and assumption by SWEPI LP, or its designee, of the rights and obligations of the Lessee (as defined in the Transloading Facility Lease) under the Transloading Facility Lease.
16. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York.
17. No party may assign its rights or obligations under this Agreement, unless the written consent of the other party hereto is obtained.
18. This Agreement may be amended or modified only in writing and executed by the parties hereto.
19. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any party may effect the execution and delivery of this Agreement by signing the same and sending a copy thereof to other party or their respective attorney by facsimile transmission. Such facsimile document, including the signatures thereon, shall be treated in all respects as an original instrument bearing an original signature. Any party sending an executed copy by facsimile transmission in the foregoing manner shall also send the original thereof to other party or their respective attorney within five (5) days thereafter, but failure to do so shall not invalidate or otherwise affect the legality or enforceability of the facsimile document.
20. Each party hereby represents and warrants to the other that its respective signatures set forth below have been and are on the date of this Agreement duly authorized by all necessary and appropriate action to execute this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties hereto have executed this Surplus Water Sale Agreement as of the day and year first above written.

VILLAGE OF PAINTED POST

By: 
Roswell Crozier, Jr., Mayor

SWEPI LP


By: _____
Bobby Davis, Category Manager

IN WITNESS WHEREOF, the parties hereto have executed this Surplus Water Sale Agreement as of the day and year first above written.

VILLAGE OF PAINTED POST

By: _____
Roswell Crozier, Jr., Mayor

SWEPI LP

By:  _____ *15 March 2012*
Bobby Davis, Category Manager

