



(Bill No. 1129)

AN ORDINANCE

Authorizing the Water Commissioner, on behalf of the City of Philadelphia (the "City"), to terminate certain existing Agreements including but not limited to those with the City's current wastewater treatment customers Bucks County Water and Sewer Authority and the Townships of Lower Moreland and Springfield and to enter into Agreements with the City's current fresh water customer Bucks County Water and Sewer Authority and the City's current wastewater treatment customers, the Townships of Abington, Cheltenham, Lower Merion, Springfield and Lower Moreland in Montgomery County; the Lower Southampton Municipal Authority; the Bensalem Township Authority; the Bucks County Water and Sewer Authority; the Township of Upper Darby, Delaware County; the Delaware County Regional Water Quality Control Authority; and other municipalities, townships, authorities and entities outside the limits of the City to provide wastewater treatment services or the sale of fresh water to the aforementioned customers in accordance with the standards set forth in this Ordinance; and repealing prior ordinances concerning the sale of fresh water and wastewater services to the aforementioned customers to the extent such ordinances are inconsistent with this Ordinance.

APP. NO. 152-1

The Council of the City of Philadelphia hereby ordains:

SECTION 1. The Water Commissioner, on behalf of the City of Philadelphia (hereinafter referred to as "the City") and for the purpose of replacing existing Agreements for wastewater treatment service and the sale of fresh water with Bucks County Water and Sewer Authority and the Townships of Lower Moreland and Springfield with new, long-term financial and service commitment Agreements, is hereby authorized to terminate with the consent of both parties the aforesaid Agreements.

SECTION 2. The Water Commissioner, on behalf of the City of Philadelphia (hereinafter referred to as "the City"), is hereby authorized to enter into Agreements with municipalities, townships, authorities and entities outside the limits of the City (hereinafter referred to as "Wholesale Purchasers") to provide for the sale of fresh water or the receipt, conveyance, treatment and disposal of wastewater and its by-products in accordance with Section 5-802 of the Philadelphia Home Rule Charter, which Agreements shall be drafted pursuant to the standards set forth in exhibits A and B attached hereto and made a part hereof.

SECTION 3. The City Solicitor is hereby authorized to include in the Agreements such terms and provisions as he shall deem necessary or appropriate to protect the interests of the City, and to provide for any other circumstances consistent with the terms of this Ordinance.

SECTION 4. All ordinances enacted prior to the effective date of this Ordinance including but not limited to Ordinances No. 2172 (1979 Ordinances, p. 1705) and 1382 (1965 Ordinances, p. 1353) regulating the sale of fresh water and the receipt, conveyance, treatment and disposal of wastewater and its by-products to Wholesale Purchasers are repealed insofar as they are inconsistent with any provisions of this Ordinance.

SECTION 5. The Chief Clerk of City Council should keep on file and make available to the public for inspection during regular office hours exhibits A and B referred to in Section 2 of this Ordinance.

APP. NO. 152-4

CERTIFICATION: This is a true and correct copy of
the original Ordinance approved by the Mayor on

MAY 20, 1987

A handwritten signature in cursive script, reading "Charles H. Sawyer Jr.", positioned above the title "Chief Clerk of the Council".

Chief Clerk of the Council

EXHIBIT A
STANDARDS FOR THE CONTRACTS OF THE
WATER DEPARTMENT OF THE CITY OF
PHILADELPHIA WITH WHOLESALE PURCHASERS
FOR WASTEWATER TREATMENT SERVICE

Agreements by the Water Commissioner on behalf of the City of Philadelphia with outlying municipalities, townships, authorities, and entities [hereinafter referred to as "Wholesale Purchaser(s)"] shall be drafted pursuant to the following standards:

RECITALS

WHEREAS the City owns and operates wastewater collection and treatment facilities (hereinafter referred to as "Facilities") which have a design capacity to convey, treat and dispose of wastewater and its by-products (including sludge) collected from retail customers within the City (hereinafter referred to as "Retail Customers") and from Wholesale Purchasers; and

WHEREAS there are currently in existence Agreements between the City and Wholesale Purchasers through which the City provides wastewater collection and treatment and sludge disposal services to Wholesale Purchasers [hereinafter referred to as "Agreement(s)"]; and

WHEREAS the City has expanded and improved its Facilities in accordance with orders, guidelines and regulations of the Delaware River Basin Commission, the Pennsylvania Department of Environmental Resources and the United States Environmental Protection Agency (hereinafter referred to as "EPA"); and

WHEREAS expansion and improvement of the City's Facilities enable the City to accommodate additional flows of wastewater beyond those required by Retail Customers and under Agreements with Wholesale Purchasers; and

WHEREAS the City is now able to project its design capacity to provide wastewater treatment services to Retail Customers and Wholesale Purchasers; and

WHEREAS certain current Agreements shall terminate and must then be re-negotiated and re-executed between the City and Wholesale Purchasers; and

WHEREAS the City and certain current Wholesale Purchasers desire to enter into new long-term Agreements in which Wholesale Purchasers shall agree to make capital contribution payments or pay connection fees in lieu of current payments for depreciation and return on Facilities in consideration of the City's commitment to reserve and allocate wastewater capacity on a long-term basis; and

WHEREAS these long-term Agreements are necessary to facilitate planning, ensure the most efficient use of resources and Facilities, and provide full recompense to the City; and

WHEREAS the City of Philadelphia is desirous of fully utilizing its wastewater treatment capacity and receiving full and fair compensation for its capital and operating costs in order that the Retail Customers of Philadelphia enjoy the lowest possible wastewater rates.

ARTICLE I

WASTEWATER SERVICE CHARGES AND PAYMENTS

1.01 Wastewater Service Charge

a) Wholesale Purchaser shall pay periodically to the City a Wastewater Service Charge (hereinafter referred to as "Charge") for the conveyance, treatment and disposal of its wastewater. The Charge shall be periodically reviewed by the City and shall be determined in accordance with past and estimated future

costs of conveying and treating wastewater and disposing of resultant sludge and shall reflect charges applicable to quantity and quality of the wastewater delivered by the Wholesale Purchaser.

The Charge shall include but not be limited to: (1) depreciation and return on investment in City Facilities; (2) costs of operation, maintenance, repairs, replacement and renewal of City Facilities; and (3) appropriate shares of employee benefits, departmental overhead and other non-direct expenses.

b) City and Wholesale Purchaser may agree to the payment by Wholesale Purchaser of connection charges representing deferred depreciation and return, plus interest, on investments in City Facilities. Connection charges shall be made in consideration of a long-term commitment by the City to reserve and allocate wastewater treatment and conveyance capacity required by the Wholesale Purchaser, and shall represent a full and fair return to the City for investment costs of Facilities required for such reservation.

d) City shall add to the Charge a management fee which shall fairly compensate the City for its services involved in the general administration of the Agreement.

d) At the commencement of the contract, the City shall render billings to the Wholesale Purchaser on a quarterly basis. Any lump sum charges shall be prorated over four quarters of the year. The billings shall be based upon actual quantity and quality and/or contractual capacities or, when necessary, upon estimates thereof. The City reserves the right to bill on a more or less frequent basis in the future.

e) Billings shall be payable to the City by Wholesale Purchaser within thirty (30) days. In no event and for no reason may Wholesale Purchaser withhold part or all of any billing charged: any disputed Charge must be timely

paid, subject to late fees.

f) The City shall notify Wholesale Purchaser of any change in rates at least ninety (90) days in advance of effective date.

1.02 Capital Contributions Payments

a) In lieu of a periodic payment representing depreciation and return on investment in Facilities, lump sum capital contributions shall be made by Wholesale Purchaser [hereinafter referred to as "capital contribution payment(s)" or "capital contribution contract(s)"]. The capital contribution payment shall be made in consideration of a long-term commitment by the City to reserve and allocate wastewater treatment and conveyance capacity required by the Wholesale Purchaser, and shall represent a full and fair return to the City for investment costs of Facilities required for such reservation. Capital contribution payments shall be payable at times designated by contract without regard as to whether the whole of the reserved plant capacity is actually required.

b) Additionally, in capital payment contracts Wholesale Purchaser agrees to pay the City its full pro rata share of all future costs including but not limited to: 1) capital expenditures involved with maintenance or expansion of Facilities; 2) costs associated with any renewal or replacement Facilities; and 3) costs of replacement, supplementary or additional equipment, all of which costs shall be determined by the City in its sole discretion as being necessary or desirable to meet environmental, legal, or engineering requirements or to replace casualty loss or for any other reason.

1.03 Security

As and for security, the City may require Wholesale Purchaser to furnish an irrevocable bond or to establish an escrow account to secure Wholesale Purchaser's future obligations to the City.

ARTICLE 2

CONSTRUCTION, OPERATION AND MAINTENANCE OF WHOLESAL
PURCHASER'S WASTEWATER CONVEYANCE SYSTEM AND
RELATED MATTERS

2.01 Design and Construction

Wholesale Purchaser shall design, construct, own, operate and repair at its sole cost and expense sanitary sewers and connections to the City system necessary to convey its wastewater to the City, subject to the approval of the City. The locations of approved points of connection shall be fully described in the Agreement.

No additional points of connection shall be made without prior written approval from the City Water Commissioner.

2.02 System Modification

In the event that the City in its sole discretion determines that significant problems exist in the design and operation of Wholesale Purchaser's current sanitary sewers and connection to the City's system, the City reserves the right to inspect and demand modifications to the system. Operations modifications must be made promptly after a written demand by the City or late compliance fees shall be assessed against Wholesale Purchaser.

Wholesale Purchaser shall be responsible for the full costs associated with the design, construction, operations, maintenance and repair of the connection.

2.03 Allowable Quantities

City shall have the right to establish quantities, qualities and flow rates of wastewater received from Wholesale Purchaser. If Wholesale Purchaser

fails to comply with the quantities, qualities or flow rates set by the Agreement, the City shall have the right to impose exceedance charges.

2.04 Metering and Sampling

a) At its sole discretion, the City may require Wholesale Purchaser to place metering and sampling chambers including meters, telemetry equipment and/or automatic sampling equipment at any point of connection from the Purchaser's to the City's system. The cost of all chambers and equipment and installation thereof shall be Wholesale Purchaser's sole responsibility.

b) The City shall record, meter and sample Wholesale Purchaser's wastewater, and shall send flow data utilized in the billing to Wholesale Purchaser with each billing. However, where the City in its sole discretion determines that it is impractical or uneconomical to meter and/or sample wastewater, the City shall prepare standardized flow and/or strength figures for wastewater to be used for billing.

2.05 Wastewater Quality Monitoring

The City reserves the right to monitor and test the quality of wastewater for regulated pollutants at such times, places and intervals as the City deems necessary. Wholesale Purchaser shall fully cooperate in such monitoring and testing.

The City further reserves the right to inspect individual industries which are within Wholesale Purchaser's area and subject to federal categorical limitations upon the City's belief that any such industry may be causing poor wastewater quality.

2.06 Odor Emissions

a) Wholesale Purchaser shall adopt and maintain, subject to the

approval of the City, rules and regulations governing the generation and emissions of sewer odors. The rules and regulations shall address wastewater quality and age, limits on concentrations of hydrogen sulfide in solution, limits on odor-causing industrial and commercial discharges, and submission and subsequent approval of Wholesale Purchasers' plans to dispose of septic waste from private haulers.

b) At any connection to the City's collection system, the Wholesale Purchaser may be required to build a ventilating station providing negative air pressure in the sewer to ventilate any odors to the Wholesale Purchaser.

ARTICLE 3

OPERATION, MAINTENANCE, OWNERSHIP, and CONTROL OF CITY WASTEWATER FACILITIES

3.01 Design, Construction, Operation and Maintenance of City Facilities.

The City shall operate, maintain, repair and improve City Facilities pursuant to the guidelines of and with the cooperation of the Delaware River Basin Commission, the Pennsylvania Department of Environmental Resources and the United States Environmental Protection Agency and other responsible governmental agencies.

3.02 Sole Ownership and Responsibility

The City retains sole ownership with respect to any and all City Facilities. No provision of the Agreement shall be construed to create any type of joint ownership with respect to any and all City Facilities. No provisions of the Agreement shall be construed to create any type of joint ownership of any property, any partnership or joint venture, or any other rights or liabilities except as expressly set forth in the Agreement.

3.03 Sole Right of Management and Control of Plant Facilities

The City retains exclusive, full and final control with respect to any and all City Facilities, and further retains the sole and exclusive right to make all managerial and other decisions as to Facilities, including but not limited to decisions regarding operations, maintenance, upkeep, expansion, or replacement of all or a portion of the Facilities.

ARTICLE 4

WASTEWATER QUALITY RESTRICTIONS

4.01 Uniform Quality Standards for Wholesale Purchaser

Wholesale Purchaser shall adopt and maintain rules, regulations and resolutions governing sewer connections and the admission of wastewater into the sewers of Wholesale Purchaser which shall bar from the sewers of Wholesale Purchaser such substances as are barred by the City from its sewers according to federal, state or local laws or regulations.

Wholesale Purchaser agrees to submit documentation to demonstrate enforcement and compliance with all appropriate rules, regulations and resolutions to City pursuant to City's National Pollutant Discharge Elimination System permits, Sludge Disposal Permits, the EPA-approved City pretreatment program, or any other required program.

4.02 Damages Due to Barred or Harmful Substances

Any costs or damages incurred by the City as a result of Wholesale Purchaser's Facilities not complying with Article 4, Section 4.01 shall be billed to Wholesale Purchaser and shall be paid timely to the City by Wholesale Purchaser or late charges shall accrue.

ARTICLE 5

WASTEWATER SLUDGE DISPOSAL

5.01 Utilization and Disposal of Wastewater Sludge Generated by City Facilities

Wholesale Purchaser recognizes the importance and urgent need to utilize sludge in a timely and proper manner and shall cooperate fully with City in any environmentally-sound sludge utilization or disposal program meeting federal, state and local standards.

ARTICLE 6

MISCELLANEOUS

6.01 Inspect and Audit

Complete records and accounts relating to each party's responsibilities under this Agreement shall be kept. Each party shall at all times have the right to examine and inspect said records and accounts and the other's physical facilities and if required by any law or regulation Wholesale Purchaser shall make said records and accounts available to federal and state grant auditors.

6.02 Arbitration of Dispute

If any dispute shall arise between the parties hereto, touching the terms, conditions or covenants of the Agreement the same shall be submitted to a Board of Arbitration. The decision of such arbitrators shall be final and binding upon the parties.

6.03 Claims, Insurance and Related Matters

a) Wholesale Purchaser agrees to defend and/or join in defending and also indemnify City and save it harmless from and against all claims, actions, causes, suits, demands, losses, interest, penalties and liabilities pursuant to

performance of the Agreement by reason of:

- (1) The City's inability, due to causes beyond its control, to perform any of the provisions of the Agreement;
- (2) Injury (including death) to persons and damages to property, resulting from any operations under the Agreement, whether due to the negligence of the City, Wholesale Purchaser, or either of their employees, or servants or the inherent nature of said operations;
- (3) EPA or Pennsylvania Department of Environmental Resources action of any kind whatsoever, direct or indirect, for any work undertaken by Wholesale Purchaser, its contractors or consultants, necessary and required by this Agreement, due to rejection of said work by the EPA or Pennsylvania Department of Environmental Resources;
- (4) Any grant fund, or any portion thereof, received by Purchaser and later determined to be ineligible for reimbursement by the appropriate regulatory agency or grant auditors.

b) Nothing hereinabove set forth shall limit or debar the City from resorting to any appropriate remedy in law or equity, or any combination or remedies for non-compliance with this Agreement.

6.04 No Transfer of Rights Without Express Prior Written Consent

The Wholesale Purchaser shall not confer, transfer, convey, assign or license any third party rights obtained under the contract without the express prior written consent of the City.

6.05 Term

- a) This agreement shall become effective immediately upon execution

and shall not exceed forty-five years.

b) Early Termination of Capital Contribution Agreement

The Agreement may be terminated by either party with the consent of the other on predetermined written notice of intent to terminate. If the City elects to terminate the agreement without cause and without the consent of the Purchaser, the City shall be liable to the Wholesale Purchaser for the appraised pro rata fair value of the Facilities financed by Wholesale Purchaser's capital contribution payments. Otherwise, Wholesale Purchaser forfeits the capital contribution payments as and for liquidated damages to cover costs and expenses associated with reservation of capacity.

EXHIBIT B

STANDARDS FOR THE CONTRACTS OF THE WATER DEPARTMENT
OF THE CITY OF PHILADELPHIA WITH WHOLESALE
PURCHASERS FOR THE SUPPLY OF FRESH WATER

Agreements by the Water Commissioner on behalf of the City of Philadelphia with outlying municipalities, townships, authorities and entities (hereinafter referred to as "Wholesale Purchasers") for the sale of fresh water shall be drafted and executed pursuant to the following standards:

Recitals

WHEREAS, certain outlying municipalities, townships, authorities and entities [hereinafter referred to as "Wholesale Purchaser(s)"] need and require a wholesale source of water to be distributed to retail water users within the area to be served by them and have requested the City to furnish them a certain quantity of water; and

WHEREAS, the City owns and operates freshwater treatment and conveyance facilities (hereinafter referred to as "Facilities") which have a design capacity to treat and convey fresh water for retail customers within the City (hereinafter referred to as "Retail Customers") and for Wholesale Purchasers; and

WHEREAS, the City is now able to project its design capacity to provide freshwater treatment and conveyance services to Retail Customers and Wholesale Purchasers; and

WHEREAS the City and prospective Wholesale Purchasers may desire to enter into Agreements in which Wholesale Purchasers may agree to make capital contributions or pay connection fees in lieu of current payments for depreciation and return

on Facilities in consideration of the City's commitment to reserve and allocate fresh water treatment and conveyance capacity on a long-term basis; and

WHEREAS the City of Philadelphia is desirous of fully utilizing its fresh water treatment and conveyance capacity and receiving full and fair compensation for its capital and operating costs in order that the Retail Customers and citizens of Philadelphia enjoy the lowest possible water rates.

1. Conveyance Facilities

(a) Facilities necessary to convey fresh water from the City to Wholesale Purchaser including but not limited to water mains; water connections; transmission facilities; and measuring, transmitting, receiving, and recording devices (hereinafter referred to as "Facilities") shall be constructed and/or installed by the City or the Wholesale Purchaser, pursuant to the Agreement and subject to the approval of the City.

(b) The Wholesale Purchaser agrees to provide all necessary facilities to receive and distribute fresh water supplied by the City.

2. Water Service Charge

a) Wholesale Purchaser shall pay periodically to the City a Water Service Charge (hereinafter referred to as "Charge") for the supply of fresh water to the Wholesale Purchaser. The Charge shall be periodically reviewed by the City and shall be determined in accordance with past and estimated future costs of treating and conveying fresh water and such charges shall be revised as appropriate.

The Charge shall include but not be limited to: (1) depreciation and return on investment in City Facilities; (2) costs of operations, maintenance, repairs, replacement and renewal of City Facilities; and (3) appropriate shares of employee benefits, departmental overhead and other non-direct expenses.

b) City and Wholesale Purchaser may agree to the payment by Wholesale Purchaser of connection charge(s) representing deferred depreciation and return plus interest on investments in City Facilities. The connection fee shall be made in consideration of a long-term commitment by the City to reserve and allocate fresh water treatment and conveyance capacity required by the Wholesale Purchaser, and shall represent a full and fair return to the City for investment costs of Facilities required for such reservation.

c) City shall add to the Charge a management fee which shall fairly compensate the City for the general administration of treatment and conveyance of fresh water to Wholesale Purchasers.

d) At the commencement of the contract, the City shall render billings to the Wholesale Purchaser on a quarterly basis. Any lump sum charges shall be prorated over four quarters of the year. These billings shall be based upon actual quantities or, when necessary upon estimates thereof. The City reserves the right to bill on a more or less frequent basis in the future.

e) Billings shall be payable to the City by Wholesale Purchaser within thirty (30) days. In no event and for no reason may Wholesale Purchaser withhold part or all of any billing charged; any disputed Charge must be timely paid, subject to late fees.

f) The City shall notify Wholesale Purchaser of any change in rates at least ninety (90) days in advance of the effective date.

3. Capital Contribution Payments

a) In lieu of a periodic payment representing depreciation and return on investment in Facilities, lump sum capital contributions shall be made by Wholesale Purchaser. The capital contribution payment(s) shall be made in consideration of a long-term commitment by the City to reserve and allocate water

treatment and conveyance capacity required by the Wholesale Purchaser, and shall present a full and fair return to the City for investment costs of Facilities required for such reservation. Capital contribution payment(s) shall be payable at times designated by contract without regard as to whether the whole of the reserved plant capacity is actually required.

b) Additionally, in capital payment contracts Wholesale Purchaser agrees to pay the City its full pro rata share of all future costs including but not limited to: 1) future capital expenditures involved with maintenance or expansion of the Facilities 2) costs associated with any renewal or replacement Facilities; and 3) costs of replacement, supplementary or additional equipment, all of which costs shall be determined by the City in its sole discretion as being necessary or desirable to meet environmental, legal, or engineering requirements or to replace casualty loss or for any other reason. The City agrees to give Wholesale Purchasers as much notice as is practicable of additional assessed pro rata expenditures, and Wholesale Purchaser agrees to pay timely as agreed or incur late charges.

4. Security

As and for security, the City may require Wholesale Purchaser to furnish an irrevocable bond or to establish an escrow account to secure Wholesale Purchaser's future obligations to the City.

5. Design and Construction

Wholesale Purchaser shall design, construct, own, operate and repair at its sole cost and expense connections to the City system necessary to convey fresh water to the Wholesale Purchaser from the City System, subject to the approval of the City. The locations of approved points of connection shall be fully described in the Agreement.

6. Average and Maximum Flow

The parties shall agree to maximum rates of flow during appropriate time periods and the City agrees to provide sufficient pumping and supply facilities to maintain such flows. However, that the City shall not be held responsible for or liable for any interruptions, fluctuations or failures in pressure or rate of flow which may occur during the term of this Agreement or any extension thereof.

The City shall operate, maintain, repair and improve City Facilities pursuant to the guidelines of and with the cooperation of the Delaware River Basin Commission, the Pennsylvania Department of Environmental Resources and the United States Environmental Protection Agency and other responsible governmental agencies.

7. Sole Ownership and Responsibility

The City retains sole ownership with respect to any and all City Facilities. No provisions of the Agreement shall be construed to create any type of joint ownership of any property, any partnership or joint venture, or any other rights or liabilities except as expressly set forth in the Agreement.

8. Sole Right to Management and Control of Plant Facilities

The City retains exclusive, full and final control with respect to any and all City Facilities, and further retains the sole and exclusive right to make all managerial and other decisions as to Facilities, including but not limited to decisions regarding operation, maintenance, upkeep, expansion, or replacement of all or a portion of City Facilities.

9. Inspection and Audit

Complete records and accounts relating to each party's responsibilities

under this Agreement shall be kept. Each party shall at all times have the right to examine and inspect said records and accounts and the other's physical facilities and if required by any law or regulation Wholesale Purchaser shall make said records and accounts available to federal and state grant auditors.

10. Arbitration of Dispute

If any dispute shall arise between the parties hereto, touching the terms and conditions or covenants of the Agreement the same shall be submitted to a Board of Arbitration. The decision of such arbitrators shall be final and binding upon the parties.

11. Claims, Insurance and Related Matters

a) Wholesale Purchaser agrees to defend and/or join in defending and also indemnify City and save it harmless from and against all claims, actions, causes, suits, demands, losses, interest, penalties and liabilities pursuant to performance of the Agreement by reason of:

- (1) The City's inability, due to causes beyond its control, to perform any of the provisions of the Agreement;
- (2) Injury (including death) to persons and damages to property, resulting from any operations under the Agreement, whether due to the negligence of the City, Wholesale Purchaser, or either of their employees or servants or the inherent nature of said operations;

b) Nothing hereinabove set forth shall limit or debar the City from resorting to any appropriate remedy in law or equity, or any combination or remedies for non-compliance with the Agreement.

12. No Transfer of Rights Without Express Prior Written Consent

The Wholesale Purchaser shall not confer, transfer, convey, assign or

license any third party any rights obtained under the Agreement without the express prior written consent of the City.

13. Term

a) The Agreement shall become effective immediately upon execution and shall not exceed forty-five years. The length of the term shall be determined according to the best interests of the City and the Wholesale Purchaser and shall reflect and be appropriate to the financial and service commitment of the City and the Wholesale Purchaser.

b) Early Termination of Capital Contribution Agreement

The Agreement may be terminated by either party with the consent of the other on predetermined written notice of intent to terminate. If the City elects to terminate the Agreement without cause and without the consent of the Wholesale Purchaser, the City shall be liable to the Wholesale Purchaser for the approved pro rata fair value of the City's Facilities financed by the Wholesale Purchaser's capital contribution payment(s). Otherwise, the Wholesale Purchaser forfeits the capital contribution payment(s) as for liquidated damages to cover costs and expenses associated with reserving the capacity.