

ORDINANCE NO. 29-2008

AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE GRANTING PERMISSION AND CONSENT TO APPLIED WASTEWATER MANAGEMENT, INC. (AWWM) TO CONSTRUCT, INSTALL AND OPERATE EQUIPMENT, WELLS, PIPES AND MAINS FOR A WATER SUPPLY SYSTEM WITHIN THE TOWNSHIP OF MOUNT OLIVE IN THE DEVELOPMENT COMMONLY REFERRED TO AS “MORRIS CHASE” AND “MORRIS HUNT” AND RESCINDING THE OBLIGATION OF TOLL BROTHERS, INC. (TOLL) TO CONVEY TO THE TOWNSHIP THE WATER SYSTEM BEING DEVELOPED BY AWWM

WHEREAS, the Planning Board of the Township of Mount Olive, on February 3, 2002, adopted a resolution granting final subdivision approval and amended preliminary major final site plan approval to Toll Bros., Inc. (Toll), to construct a development of single family detached dwellings and townhouse units within Block 4400, Lot 79 on the Tax Map of the Township of Mount Olive, which development is commonly referred to as “Morris Chase”; and

WHEREAS, Toll has previously secured subdivision approvals to construct a detached single-family subdivision within Block 4400, Lots 86 and 108 as shown on the Tax Map of the Township of Mount Olive (prior to filing final maps therefore), which development is commonly referred to as “Morris Hunt”; and

WHEREAS, the resolution of the Mount Olive Township Council dated July 9, 2002 authorized execution of a Developer’s Agreement embodying certain obligations to be discharged by Toll, including provision for construction and installation of water and sewerage utilities, and requiring the developer to provide said utilities and to secure all necessary government approvals for the construction of said utility systems; and

WHEREAS, Toll and the Township of Mount Olive entered into a Developer’s Agreement dated March 18, 2004, which authorized the Township to consent to a **revocable** franchise for the water system (the “Franchise”) so that Toll’s assignee, Applied Wastewater Management, Inc., (hereinafter “AWWM”), might develop and operate the water system under a

tariff approved by the New Jersey Board of Public Utilities (the “BPU”) until such time as the Township shall determine the system should be owned and operated by the Township and become part of the Township’s water system; and

WHEREAS, the Toll/AWWM public community water system is the subject of the NJDEP permit PWSID No. NJ1427018 and Permit Application No. WCP03003 (the “System”) and will serve the Morris Chase/Morris Hunt developments; and

WHEREAS, Toll and the Township have negotiated for a long period of time relative to the issue as to when Toll/AWWM would be required to turn the entire system over to the Township as required by the March 18, 2004 developer’s agreement, but the parties could not agree as to appropriate wording for the turn over provisions; and

WHEREAS, within the context of these negotiations, Peter Alles, Vice President of Toll, conveyed to Council President Ray Perkins, an offer to purchase from the Township the Township’s right and Toll’s obligation to turn the system over to the Township for the payment to the Township of \$560,000; and

WHEREAS, the Township initially refused to accept the sum of \$560,000 and Toll threatened litigation seeking the return of the sum of \$350,000 previously paid to the Township in accordance with a cost avoidance business transaction involving the reduction in the size of a water storage facility authorized by a resolution adopted on July 9, 2002; and

WHEREAS, the Township Council, after deliberations, has decided to accept the Toll proposal i.e., to cancel Toll’s obligation to turn the system over to the Township upon the payment of \$560,000 to the Township in two equal payments and the release of any and all claims against the Township; and

WHEREAS, the franchise for the potable water system shall NOT be subject to the Township's right to take ownership and operation upon the completion by Toll of its obligations set forth in this ordinance; and

WHEREAS, the Township Council of the Township of Mount Olive has determined that it has the authority to consent to the grant of the utility franchise herein requested to privately owned utility companies as part of the Township's responsibility to provide for the general health, safety and welfare of the community.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Mount Olive as follows:

SECTION I. Toll shall do the following:

A. It shall pay to the Township the sum of \$560,000 as follows:

- (1) The sum of \$280,000 upon the adoption of this ordinance by the Township Council and approval by the Mayor;
- (2) The sum of \$280,000 one year subsequent to the adoption of this ordinance;
- (3) It shall execute a Promissory Note, the form of which is attached hereto, to guarantee the payment of the sum of \$280,000 set forth in A(2) above;
- (4) Toll and AWWM shall execute a General Release, the form of which is attached hereto, releasing and waiving any and all claims of whatsoever nature against the Township at the time of the adoption of this ordinance and approval by the Mayor.

B. In the event that Toll shall default on any of the obligations set forth above, the Township shall have the right to rescind the franchise hereafter granted.

SECTION II.

Consent for Water Supply System. Municipal consent is hereby granted to AWWM for the construction, operation and maintenance of a public utility to provide water supply service within the Franchise Area defined in Section 2(a) of this ordinance, to use the public streets and roads within the Franchise Area for such purposes and to provide public fire protection service within the Franchise Area. This consent entitles AWWM to own, operate, and maintain a water supply system, including but not limited to facilities such as well, mains, treatment facilities, storage tanks, service pipes, hydrants, valves, well house, driveways, and other appurtenances within the Franchise Area.

SECTION III.

Franchise Area. The franchise area granted in Section 1(a) of this Ordinance consists of Block 4400, Lots 79, 86 and 108, as presently designated on the Mount Olive Tax Map and is further graphically represented on the attached Schedule A (the “Franchise Area”).

SECTION IV.

BPU approval. The municipal consents herein granted are conditional upon and limited by the requirement that AWWM obtain from the BPU, approval of the Franchise granted in this Ordinance, including the provisions relative to the transfer to the System to the Township.

SECTION V.

Compliance with law. AWWM, in the construction, installation, maintenance, and operation of the water supply systems and sewerage treatment and collection systems, shall comply with all applicable federal, state and local statutes, rules, regulations, and ordinances and shall obtain all necessary approvals, permits and licenses from all federal, state and local

agencies having jurisdiction over any aspect of the water supply system or the sewerage collection and treatment system.

SECTION VI.

Indemnification. AWWM shall defend, indemnify and hold the Township harmless including defense from and against any and all claims, loses, or damages of any type, arising out of the construction, installation, maintenance and operation of the water supply system or any of its component parts. AWWM shall maintain liability insurance with respect to the construction, installation, maintenance, and operation of its water supply system so as to provide coverage in amounts not less than \$3 million or such other amounts as the Township may from time to time require, and shall name the Township as an additional insured on such policies. AWWM shall provide to the Township certificates of such insurance on an annual basis showing the Township as an additional insured.

SECTION VII.

Assignment. The franchises granted herein may not be assigned by AWWM to any person or entity without the consent of the Township. Such consent, if granted, shall be by means of a duly adopted ordinance of the Township Council. All provisions of this Ordinance which are obligatory upon or inure to the benefit of AWWM shall also be obligatory upon and shall inure to the benefit of all successor and assigns of said companies.

SECTION VIII.

Binding effect. To the extent now or hereafter permitted by the statues or laws of the State of New Jersey, this Ordinance shall inure to the benefit of, and be binding upon, any city, town or other municipal corporation to which the Franchise Area of the Township of Mount Olive may hereafter be attached or annexed, or into which it may be incorporated.

SECTION IX.

Acceptance. Within five (5) days after receiving notice of the approval of this Ordinance, the terms of this Ordinance shall be accepted in writing by AWWM and Toll Bros. by filing with the Township Clerk a written acceptance thereof, signed by the executive officers of each corporation, with an appropriate acknowledgment. Failure of AWWM and Toll to execute the within acceptance shall constitute a rejection of the ordinance and the Township shall forthwith reject same.

SECTION X.

Savings clause. To the extent that any part or parts of this Ordinance are repealed or otherwise modified or voided by state statute or case law, the remaining sections of this Ordinance shall remain in full force and effect.

SECTION XI.

Approval. The terms and conditions of this Ordinance are hereby approved and accepted by Toll Brothers and AWWM as indicated by their signatures below:

APPROVED AND ACCEPTED:

Toll Brothers, Inc. and Toll II NJ, LP

By: _____

Applied Wastewater Management, Inc.

By: _____

SECTION XII.

Effective date. This Ordinance shall take effect upon final passage and publication by law.

ATTEST

TOWNSHIP OF MOUNT OLIVE

**Lisa Lashway
Mount Olive Township Clerk**

**Ray Perkins
Council President**