

**ORDINANCE NO. 35-2008**

**AN ORDINANCE GRANTING PERMISSION AND CONSENT TO APPLIED WASTEWATER MANAGEMENT, INC., TO CONSTRUCT, INSTALL, AND OPERATE EQUIPMENT, WELLS, PIPES AND MAINS FOR A WATER SUPPLY SYSTEM WITHIN CERTAIN DESIGNATED AREAS OF THE TOWNSHIP OF MOUNT OLIVE COMMONLY KNOWN AS “MORRIS CHASE” AND “MORRIS HUNT”**

**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., 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 Bros., Inc., has previously secured subdivision approvals to construct 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 Bros., Inc., 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**, the Township of Mount Olive owns and operates existing public water supply systems presently serving approximately 2,500 customers within the Township; and

**WHEREAS**, Toll Bros., Inc., and the Township of Mount Olive entered into a Developer’s Agreement dated March 18, 2004, which authorizes the Township to consent to a **revocable** franchise for the water system (the “Franchise”) so that Toll Bros., Inc.’s assignee,

Applied Wastewater Management, Inc., (hereinafter “AWWM”), may 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 Bros./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**, the Township deems the System to be a valuable asset both as an addition to the Township’s water supply facilities when the System is fully integrated into the Township’s existing water supply systems, and in its own right. Therefore, the Developer’s Agreement requires that this Franchise is specifically subject to revocation and the requirement that when the Township elects to have the System transferred to it, AWWM/Toll will take all necessary steps to effectuate the transfer to the Township, including obtaining BPU approval, at no cost to the Township for either the System, or the proceedings before the BPU in connection with AWWM’s operation, tariffs and transfer; and

**WHEREAS**, Toll NJ II, LP, the successor in interest to Toll Bros., Inc., (together hereinafter “Toll Bros.”) agrees to have the water and sewer utilities constructed by AWWM, a company which has significant experience in such construction and significant experience as the operator of water and sewer utilities which have been approved by the BPU in various municipalities, including the water and sewer systems for the “Country Oaks” subdivision in Mount Olive Township; and

**WHEREAS**, AWWM agrees to own and operate the water utilities, subject to the terms and conditions of this Ordinance and acknowledges and agrees that AWWM shall secure the transfer of the System to the Township at some future point in time hereinafter provided; and

**WHEREAS**, AWWM has made application to the Township for municipal consent to a franchise to provide a water supply system for Morris Chase and Morris Hunt developments, and a wastewater system for collection, treatment and disposal to service the above referenced Morris Chase development (hereinafter referred to as the “Water System”); and

**WHEREAS**, the franchise for the potable water system shall be subject to the Township’s right to take ownership and operation therefore, at the election of the Township after written notice, as herein provided; 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 franchises 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.**

(a) **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. It is expressly subject to: (i) the right of the Township to require transfer of ownership and operation of the water supply system, in its sole discretion, in accordance with the procedure set forth in Section I (b), without any obligation by the Township to pay AWWM compensation therefore, or to assume any obligations AWWM may have incurred to its customers or imposed by the BPU; (ii) such additional approvals, endorsements of consents as the law may require; and (iii) AWWM's obligation to comply with all existing Ordinances or regulations of Township including these related to street openings, repairs and maintenance and the like.

1. During the term of this Franchise, AWWM shall operate the System in accordance with the laws of the State of New Jersey and regulations of the BPU and the New Jersey Department of Environmental Protection (the "DEP").
2. AWWM shall be entitled to collect from its customers rates and charges approved by the BPU and in exchange shall provide current and ongoing maintenance for the system as required by the BPU and DEP regulations and best engineering practices, except that, during the term of the franchise, the Township will not be obligated to pay hydrant or inch-foot charges for public fire protection service.
3. During the term of the Franchise, Toll Bros. shall indemnify AWWM and the Township as to any and all required capital expenditures as required by Section I (c).

4. Within one (1) year (365 days) after receipt of written notice from the Township, AWWM and Toll shall transfer ownership and operation of the System to the Township as provided in Section I (b).
5. This franchise may only be revoked in accordance with the provisions of Section I(b).

(b) Acquisition by Township. At such time as the Township, in its sole discretion, determines that it wishes to acquire the System providing water supply service within the Franchise Area defined in Section 2 of this Ordinance, it shall serve written notice of such intent upon AWWM and Toll NJ II, LP. Promptly following receipt of such written notice, AWWM shall file and pursue to conclusion a Petition with the BPU seeking authority to discontinue water supply service within the Franchise Area and to transfer the System to the Township, together with the dedication and conveyance of the water supply system and all related assets to the Township. The Township shall cooperate with any such application and transfer of operation to assure the smooth continuation of service following receipt of necessary approvals from the BPU, which AWWM shall diligently pursue. AWWM shall complete the process and deliver the System to Township within one (1) year. In the event that AWWM and Toll shall not complete the transfer of the system within the period of one (1) year, the Township reserves the right to seek judicial relief for either specific performance or damages, provided the failure to effectuate the turn over is not the result of actions or inactions by the Township and the Township may rely upon the Indemnification Agreement provided by Toll.

(c) Indemnification by Toll. During the term of the Franchise, Toll Bros. shall indemnify AWWM and the Township as to any and all capital expenditures required for the System such that the capital costs are not borne by the customers of AWWA. Toll also agrees to

indemnify the Township relative to the transfer of the water system pursuant to a certain agreement attached hereto as Exhibit B.

**SECTION II.**

(a) 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 III.**

(a) 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. If the provisions relative to the transfer of the system to the Township are in any way limited by Order of the BPU, this ordinance shall be null and void and of no effect.

**SECTION IV.**

(a) Compliance with law. AWWM as the case may be, 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 V.**

(a) 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 on account of its 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 VI.** The Township reserves the right at any time to connect the Goldmine Water System of 89 customers, to the water storage facility located on Township-owned property as a back up to the current supply for the Goldmine Water System and to pay approved BPU rates for the water drawn.

**SECTION VII.**

(a) **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.**

(a) **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.**

(a) Acceptance. Within fourteen (14) 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.

**SECTION X.**

(a) 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.**

(a) 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.**

(a) Effective date. This Ordinance shall take effect upon final passage and publication by law and upon receipt from Toll Brothers of a General Release as to any and all claims relative to the water system.

**ATTEST**

**TOWNSHIP OF MOUNT OLIVE**

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**Lisa Lashway**  
**Mount Olive Township Clerk**

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**Ray Perkins**  
**Council President**