

EXHIBIT 1

**COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

Borough of Middletown, Jennifer Miller,	:	
Angela Lloyd, Michael Woodworth,	:	
James E. Myers, Jr., and Kay Wealand	:	C.A. No. 2018-CV-03685-CV
<i>On behalf of themselves and all others</i>	:	
<i>similarly situated</i>	:	CLASS ACTION
	:	
Plaintiffs,	:	
	:	
V.	:	
	:	
McNees Wallace & Nurick LLC and	:	
Susquehanna Group Advisors, Inc.	:	
	:	
Defendants.	:	

SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement Agreement”) is made and entered into by and among Plaintiffs Michael Woodworth, James E. Myers, Jr. and Kay Wealand (collectively “Class Representatives”), individually and on behalf of the Settlement Class (as defined herein), and Defendants McNees Wallace & Nurick LLC (“McNees”) and Susquehanna Group Advisors, Inc. (“SGA” and collectively with McNees and Class Representatives, the “Parties”), subject to the approval of the Court.

I. RECITALS

WHEREAS, the Borough of Middletown (“Borough”) entered the Concession and Lease Agreement between the Borough of Middletown and Middletown Water Joint Venture LLC (“Concessionaire”) on or about September 30, 2014 for a period of 50 years, attached as Exhibit A (the “Lease”);

WHEREAS, individual plaintiffs Angela Lloyd, Jennifer Miller, and Michael Woodworth filed a class action on June 4, 2018, under the following caption: *Borough of Middletown et al. v. McNees Wallace & Nurick, LLC, et al.*, Civil Action No: 2018-CV-03685 (C.C.P. Dauphin Cty.) (the “Action”), asserting a breach of contract claim against McNees and SGA (collectively, “Defendants”) as third party beneficiaries to the contracts between the Borough and McNees and the Borough and SGA;

WHEREAS, the Borough and individual plaintiffs filed a First Amended Complaint on August 7, 2018;

WHEREAS, SGA and McNees filed preliminary objections to the First Amended Complaint on August 23 and 27, 2018, respectively;

WHEREAS, the Borough and individual plaintiffs filed a Second Amended Complaint on September 12, 2018;

WHEREAS, McNees and SGA filed preliminary objections to the Second Amended Complaint on October 2 and 8, 2018, respectively;

WHEREAS, the Court held a hearing on both Defendants' preliminary objections to the Second Amended Complaint on January 24, 2019, and on January 28, 2019, the Court denied both Defendants' preliminary objections to the Second Amended Complaint;

WHEREAS, the pleadings in the Action were closed on March 26, 2019;

WHEREAS, individual plaintiffs filed a motion for class certification on April 23, 2019, and the Court issued an order on April 24, 2019 stating the motion would not be entertained. Instead, the Court entered a stipulated scheduling order: (1) directing the parties to complete discovery on the issue of whether any potential class member could assert a breach of contract claim against SGA or McNees as a third-party beneficiary to the contract(s) that give rise to the Borough's contract claims in this Action; and (2) establishing a schedule to allow McNees and SGA to file a summary judgment motion on this third-party beneficiary issue. If, as a matter of law, the members of the class could not be considered third-party beneficiaries to the contract(s) that give rise to the Borough's contract claims, then there could be no basis for a class action or any recovery by any class member from McNees or SGA;

WHEREAS, the Borough, individual plaintiffs and Defendants engaged in significant document discovery as well as depositions on the issue of whether there was any third-party beneficiary to the contract(s) that give rise to the Borough's contract claims in this Action;

WHEREAS, the Borough, individual plaintiffs and Class Representatives filed a motion for leave to file a Third Amended Complaint on March 12, 2020;

WHEREAS, on September 1, 2020, the Court granted the motion to file a Third Amended Complaint, which was filed on September 10, 2020;

WHEREAS, the Third Amended Complaint was substituted with a corrected version on November 5, 2020, including Michael Woodworth, James E. Myers, Jr. and Kay Wealand as representatives of the putative class ("Class Representatives"), which is the operative complaint in the Action ("Complaint");

WHEREAS, the Borough, Class Representatives and Defendants had been engaged in discovery for over 18 months focused on Class Representatives' third-party beneficiary claims when the Parties agreed to mediation with Jerry Roscoe, Esq. from JAMS;

WHEREAS, the Borough, Class Representatives and Defendants participated in a full day mediation with Mr. Roscoe in Harrisburg on November 16, 2021;

WHEREAS, after carefully considering the facts and applicable law and the risks, expense, and uncertainty of continued litigation, and after having engaged in extensive negotiations, the Parties agree that it is in their mutual best interests to resolve the claims in this Action on fair, reasonable, and adequate terms as set forth in this Settlement Agreement;

WHEREAS, the Parties agree that neither this Settlement Agreement nor the underlying settlement shall constitute or be construed as any admission of liability or wrongdoing on the part of Defendants, which both McNeese and SGA independently deny;

WHEREAS, the Parties are entering into this Settlement Agreement to avoid the risks, burdens, and expense of continued litigation;

WHEREAS, each Class Representative and the Defendants independently determined that it is desirable and beneficial for the Action to be fully and finally resolved in the manner and upon the terms and conditions set forth in this Settlement Agreement; and

WHEREAS, the Parties, by and through their respective undersigned counsel, have agreed to this Settlement Agreement on the terms and conditions set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Class Representatives (for themselves and the Settlement Class) and Defendants, that, subject to the approval of the Court, the Action and the Released Claims will be compromised and settled, and have judgment entered, on the terms and conditions set forth below.

II. DEFINITIONS

Whenever the following capitalized terms are used in this Settlement Agreement and in the attached Exhibits (in addition to any definitions provided elsewhere in this Settlement Agreement), they shall have the following meanings:

2.1 “Action” means this lawsuit captioned under *Borough of Middletown et al. v. McNeese Wallace & Nurick, LLC*, Civil Action No: 2018-CV-03685 (C.C.P. Dauphin Cty.).

2.2 “Administration Expenses” means the cost of the notice program relating to this Settlement Agreement and the costs of administering and processing of claims, disbursements of consideration and other necessary and reasonable expenses associated with administering the Settlement, including the fees of the Settlement Administrator for Notice and distribution of the Settlement Amount to the Settlement Class.

2.3 “Attorneys’ Fees and Expenses” means the amount awarded by the Court to Class Counsel to compensate them for all attorneys’ fees, costs, and expenses of any kind in connection with the Action.

2.4 “Bar Date” means the date identified in the Preliminary Approval Order by which a Class Member must submit a written request for exclusion or objections, if any, to the Settlement. The Bar Date shall be no earlier than 45 days after the Notice Date and no later than 30 days prior to the Final Approval Hearing, or as the Court may otherwise direct.

2.5 “Borough” refers to the Borough of Middletown, a borough organized pursuant to 8 Pa.C.S. § 101, *et seq.*, situated in Dauphin County, Pennsylvania, with its principal office at 60 West Emmaus St., Middletown, PA 17057.

2.6 “Class Counsel” means the law firm of Saltz Mongeluzzi & Bendesky, P.C.

2.7 “Class List” means the list of the names and last known address for each Class Member provided to the Settlement Administrator by the Concessionaire.

2.8 “Class Representatives” means Plaintiffs Michael Woodworth, James E. Myers, Jr. and Kay Wealand.

2.9 “Complaint” refers to the corrected Third Amended Complaint filed in the Action on November 5, 2020.

2.10 “Concessionaire” refers to Middletown Water Joint Venture LLC and its successors, heirs, executors, administrators, and assigns.

2.11 “Court” refers to the Court of Common Pleas, Dauphin County, Pennsylvania.

2.12 “Defendants” refers collectively to McNeese Wallace & Nurick LLC and Susquehanna Group Advisors, Inc.

2.13 “Effective Date” means the later of (a) the date upon which the time for seeking appellate review of the Final Approval Order and Judgment (by appeal or otherwise) shall have expired; or, if any appeal thereof is filed, (b) upon receipt of an order and opinion affirming approval by the highest appealable court or dismissal of any appeal with prejudice by the highest appealable court.

2.14 “Escrow Account” means the bank account established by the Settlement Administrator where the Settlement Amount paid by Defendants is deposited and maintained for distribution pursuant to the terms of this Agreement as administered by the Settlement Administrator and Class Counsel.

2.15 “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to the Settlement Class in accordance with this

Settlement, and where the Court will: (a) determine whether to grant final approval to the certification of the Settlement Class; (b) determine whether to finally designate Class Representatives as the representatives of the Settlement Class; (c) determine whether to finally designate Class Counsel as counsel for the Settlement Class; (d) determine whether to grant final approval to the Settlement; (e) rule on Class Counsel's Application for a Fee and Expense Award; (f) rule on the Class Representatives' Application for Class Representative Service Awards; and (g) consider whether to enter the Final Approval Order.

2.16 "Judgment" or "Final Approval Order" means the order to be entered by the Court in the Action finally approving this Settlement Agreement and dismissing the Action with prejudice.

2.17 "McNees's Counsel" means the law firms of Kane, Pugh, Knoell, Troy & Kramer, LLP and Cozen O'Connor, who are the attorneys representing McNees.

2.18 "Notice" means the Short-Form Notice and/or Long-Form Notice and/or Published Notice, substantially in the same form as Exhibits B-C.

2.19 "Notice Date" means the date by which the Settlement Administrator completes the mailing of the Short and/or Long Form Notices by first class mail, postage prepaid, to each Class Member after first running the addresses of the Class Members through the National Change of Address database, and the Settlement

Administrator commences publication of the Published Notice. The Notice Date shall be no earlier than 14 days after the Court enters the Preliminary Approval Order, or as otherwise directed by the Court.

2.20 “Preliminary Approval Order” means the order entered by the Court certifying the class for settlement purposes, preliminarily approving the Settlement and directing that the Notice be given to the Class Members, which Preliminary Approval Order shall be proposed and submitted to the Court by the Parties substantially in the form attached hereto as Exhibit D.

2.21 “Released Claims” means any and all manner of claims, disputes, actions, liabilities, causes of actions, suits, set-offs, counterclaims, demands, contracts, costs, expenses, fees, or damages, whatsoever, based on any legal or equitable theory, right of action or otherwise, foreseen or unforeseen, known or unknown, matured or unmatured, accrued or not accrued, contingent or not contingent, regardless of any legal theory, existing now or arising in the future, relating to the facts, acts, events, transactions, contracts, occurrences, courses of conduct, representations, omissions, circumstances or other matters that in any way relate to the subject matter of the Action that were alleged in the Action, could have been alleged in the Action, or could be alleged at any point during the full term of the Lease, including, but in no way limited to, the negotiation and/or terms of the Lease,

the Shortfall Recovery Amount and Major Capital Improvements and Capital Cost Recovery Charge related to the Lease during the term of the Lease, any capital expenditures under the Lease, and/or the performance or enforcement of any term of the Lease, whether arising under statute, rule, regulation, common law or equity, and including, but not limited to, any and all claims, causes of action, rights or entitlements under any federal, state, local or other statute, law, rule and/or any consumer protection, consumer fraud, unfair business practices or deceptive trade practices laws, any legal or equitable theories, any claims or causes of action in tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi contract, unjust enrichment, express warranty, implied warranty, secret warranty and/or any injuries, losses, damages or remedies of any kind, in law or in equity, under common law, statute, rule or regulation, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, restitution, recovery of attorneys' fees or litigation costs, or any other legal or equitable relief.

2.22 "Releasees" shall mean each Defendant's respective future, present, and former direct and indirect parents, subsidiaries, affiliates, divisions, predecessors, successors, assigns, dealers, distributors, agents, principals, suppliers, vendors, issuers, insurers, licensees, and joint ventures, and its respective future, present, and

former officers, directors, employees, partners, general partners, limited partners, members, managers, agents, shareholders (in their capacity as shareholders) and attorneys, legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this paragraph, “affiliates” means entities controlling, controlled by, or under common control with a Releasee.

2.23 “Retail Water Customers” means all users of the Water Plant and Distribution System (as defined in the Lease), exclusive of Municipal Customers (as defined in the Lease) that purchase water pursuant to a Municipal Service Agreement (as defined in the Lease).

2.24 “Retail Sewer Customers” means all users, exclusive of Municipal Customers (as defined in the Lease), that discharge into the Wastewater Utility System (as defined in the Lease) pursuant to the Wastewater Service Agreements (as defined in the Lease).

2.25 “Service Awards” means the amount that must be paid from the Escrow Account to each Class Representative in the Action, upon approval by the Court. The Parties agree that Class Representatives shall not seek a payment in excess of \$2,500 (“Two Thousand Five Hundred Dollars”) per person.

2.26 “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Settlement Agreement and attached exhibits.

2.27 “Settlement Administrator” means the third-party entity who has been selected by Class Counsel and the Class Representatives, and appointed by the Court, to provide Notice to the Settlement Class, maintain a qualified settlement fund for the Settlement Amount, administer the Settlement and distribute the Settlement Amount as set forth in this Agreement and approved by the Court.

2.28 “Settlement Class” means all Retail Water Customers and Retail Sewer Customers who have paid, or shall pay, the Shortfall Recovery Amount for a Water Sales Test Period during the entire term of the Lease. The Settlement Class excludes: Defendants; any current affiliate, parent, or subsidiary of Defendants; the Borough; any entity in which Defendants currently have a controlling interest; any current officer, director, or employee of Defendants; any successor or assign of Defendants; and any judge to whom this Action is assigned, his or her spouse; and individuals and/or entities who validly and timely opt-out of the settlement by submitting a request for exclusion.

Individual members of the Settlement Class shall be referred to as a “Class Member.”

2.29 “Settlement Amount” shall mean the total amount of \$4,800,000 (Four Million Eight Hundred Thousand Dollars).

2.30 “Settlement Website” shall mean the website created and maintained by the Settlement Administrator that will contain, among other things, the documents related to the settlement.

2.31 “Shortfall Recovery Amount” means the amount of money that would have been collected from Retail Water Customers and Retail Sewer Customers from the imposition of Service Charges (as defined in the Lease) during a Water Sales Test Period if an amount of water equal to a Water Sales Shortfall had been sold to Retail Water Customers.

2.32 “SGA’s Counsel” means the law firm of O’Hagan Meyer, who are the attorneys representing SGA.

2.33 “Water Sales Shortfall” means, for any Water Sales Test Period, the amount (if any) expressed in gallons per day by which the sum of (A) the actual average daily volume of metered water sales to all Retail Water Customers over the entire Water Sales Test Period and (B) the Bulk Sales Surplus (as defined in the Lease) (if any) over the entire Water Sales Test Period was less than 639,340 gallons per day.

2.34 “Water Sales Shortfall Report” means the report generated by Concessionaire or its designee for each Water Sales Test Period pursuant to Section 3.22 of the Lease setting forth the Shortfall Recovery Amount.

2.35 “Water Sales Test Period” means each successive period of three consecutive Reporting Years with the First Water Sales Test Period being 2015-2017 and the Second Water Sales Test Period being 2018-2020 and continuing on for the full term of the Lease.

III. SETTLEMENT CONSIDERATION

In consideration for the Settlement, entry of Judgment, and dismissal of the Action, the Confidential Supplemental Agreement Regarding Termination, and for the Release provided herein, Defendants agree to provide the following consideration to the Settlement Class:

Creation and Distribution of the Escrow Account

3.1 Defendants will collectively pay the Settlement Amount of \$4,800,000.00 (Four Million Eight Hundred Thousand Dollars) to the Settlement Administrator to be deposited in the Escrow Account and distributed as set forth in this Agreement. The distribution of the Escrow Account shall pay all related costs of Notice, Administration Expenses, the payment of all Attorneys’ Fees and Expenses and Service Awards, and the reimbursements of the Class Members’

payments of the Short Fall Recovery Amounts as set forth below. No further monies or other consideration shall be provided by Defendants. For the avoidance of doubt, no portion of the Settlement Amount will be advanced to cover any costs or fees, regardless of when those costs or fees may arise unless expressly authorized in this Agreement. The distribution of the Escrow Account funds shall occur as follows and as approved by the Court:

3.1.1 Within three (3) business days of the Effective Date, Defendants shall tender the full payment of the Settlement Amount to the Settlement Administrator for deposit into the Escrow Account. If the Effective Date occurs on December 25 or 26, 2023, Defendants shall, within three (3) business days of the Effective Date, tender payment of the Settlement Amount in two parts: (i) Defendants shall tender payment of the amounts approved by the Court as set forth in Sections 3.1.3 and 3.1.4 directly to Class Counsel pursuant to written instruction provided by Class Counsel; and (ii) Defendants shall tender payment of the balance of the Settlement Amount to the Settlement Administrator for deposit into the Escrow Account;

3.1.2 Within (5) five days of the Effective Date, the Settlement Administrator shall be authorized to recover the costs of providing Notice to the Settlement Class from the Escrow Account;

3.1.3 Within (5) five days of the Effective Date, the Settlement Administrator shall pay Class Counsel, by wire transfer, the full amount of the Court awarded Attorneys' Fees and Expenses from the Escrow Account, unless the Effective Date occurs on December 25 or 26, 2023 and Defendants pay that amount directly to Class Counsel pursuant to 3.1.1;

3.1.4 The Settlement Administrator shall pay from the Escrow Account to Class Counsel, the amount of any Service Award granted by the Court when the Attorneys' Fees and Expenses are paid pursuant to 3.1.3, and the Service Awards are understood to be in addition to any Court awarded Attorneys' Fees and Expenses.

3.2 The Settlement Administrator shall distribute the remaining balance of the Escrow Account pursuant to the terms of this Agreement as set forth below:

3.2.1 For each Water Sales Test Period, the Settlement Administrator shall pay 15% of the Shortfall Recovery Amount set forth in the Water Sales Shortfall Report, not to exceed \$300,000.00, directly to the Settlement Class Members on a pro rata basis;

3.2.2 The Settlement Administrator shall reimburse Class Members on a pro rata basis pursuant to the formula set forth in Section 3.2.1 for payments made to the Concessionaire for the First Water Sales Test Period (2015-2017);

3.2.2.1. The Concessionaire will provide Class Counsel the amounts paid by each Class Member for the Shortfall Recovery Amount for the First and Second Water Sales Test Periods through February 2023, including the Shortfall Recovery Amounts Class Members paid for 2022, as soon as practicable after the Court's entry of the Preliminary Approval Order, but no later than fifteen days prior to the Bar Date;

3.2.2.2. A pro rata reimbursement for each Class Member shall be calculated by Class Counsel from the data provided by the Concessionaire based on the Shortfall Recovery Amounts for the First Water Sales Test Period paid by each Class Member;

3.2.2.3. The payments to each Class Member for the Shortfall Recovery Amount established by the First Water Sales Test Period will be set forth in the final Plan of Allocation prepared by Class Counsel and submitted to the Court for approval with the motion for entry of the Final Approval Order.

3.2.2.4. The payments set forth in the final Plan of Allocation approved by the Court will be distributed from the Escrow Account and tendered to each Class Member by the Settlement Administrator within 60 days of the Effective Date.

3.2.3 The Settlement Administrator and/or Class Counsel shall repeat the same process set forth in Section 3.2.2 for each Water Sales Test Period where the Water Sales Shortfall Report establishes a Shortfall Recovery Amount owed by the Settlement Class;

3.2.3.1. The Concessionaire will provide the final Water Sales Shortfall Report for each Water Sales Test Period to Class Counsel and/or the Settlement Administrator within 30 days of its completion along with the amounts paid by each Class Member for the corresponding Water Sales Test Period;

3.2.3.2. Class Counsel and/or the Settlement Administrator shall prepare a plan of allocation for each Water Sales Test Period pursuant to the same procedure approved by the Court for the First Water Sales Test Period;

3.2.3.3. The plan of allocation for reimbursements to the Settlement Class need only be approved by the Court pursuant to its continuing jurisdiction over this Agreement where a deviation from the procedure approved by the Court for the Plan of Allocation for the First Water Sales Test Period occurs;

3.2.3.4. The Settlement Administrator will continue these payments pursuant to the terms of the Settlement Agreement for the duration of the Lease, or until the Escrow Account is exhausted. The final payment by the Settlement Administrator to Settlement Class Members shall be for the balance of

the Escrow Account when it has a balance that is less than the payments owed to Settlement Class Members.

3.3 No other payment from the Escrow Account shall be authorized absent leave of Court, and no further monies or other consideration shall be provided by Defendants.

IV. NOTICE TO THE CLASS

4.1 **Notice Deadline.** No later than the Notice Date, the Settlement Administrator shall cause Notice to the Settlement Class to be disseminated by U.S. mail and the dedicated Settlement Website.

4.2 Individual Class Notice.

4.2.1 The Concessionaire will provide the Settlement Administrator and Class Counsel the names and last known address for each Class Member (“Class List”) within 10 days of the Court’s entry of the Preliminary Approval Order.

4.2.2 Following the Court’s entry of the Preliminary Approval Order, and no later than the Notice Date identified therein, the Settlement Administrator shall send the Short-Form Notice (substantially in the form set forth in Ex. C) by direct U.S. mail to all reasonably identifiable Class Members on the Class List.

4.2.3 For all Class Members for whom the Notice is returned with forwarding address information, the Settlement Administrator shall re-mail the

Notice to the new address indicated. For all Class Members for whom the Notice is returned without forwarding address information, the Settlement Administrator shall perform an advanced address search and re-mail the Notice to the best-known address resulting from that search.

4.3 **Published Class Notice.** The Settlement Administrator shall publish a summary notice substantially in the form set forth in the Short-Form Notice (Ex. C), or as otherwise approved by the Court, in *The Patriot-News*, print and website for a period of 7 (seven) consecutive publication days beginning on the Notice Date.

4.4 **Settlement Website.** The Settlement Administrator shall further set up and maintain a Settlement Website where Class Members can access the Long-Form Notice, a copy of this Settlement Agreement, the operative Complaint, and additional information about the Action and Settlement. The Short-Form Notice will include the address of the Settlement Website, as well as a toll-free number for an interactive voice recording service that allows Class Members to leave a request for a paper copy of the Long-Form Notice.

4.5 In the event the Court does not enter the Final Approval Order, any Administration Expenses, including the costs of the Notice program outlined in Section 4.1, shall be reimbursed to the Settlement Administrator by the Defendants

except as otherwise provided in this Agreement or the Confidential Supplemental Agreement Regarding Termination.

V. ATTORNEYS' FEES AND SERVICE PAYMENTS

5.1 The Parties agree that Class Counsel may apply to the Court for an award of reasonable attorneys' fees up to one-third of the Settlement Amount (\$1,600,000), plus reimbursement of all litigation costs, and Class Counsel shall do so no later than the date on which the Parties submit the motion seeking final approval of the Settlement.

5.2 The Parties agree that Class Counsel may apply to the Court for Service Awards not to exceed \$2,500 (two thousand five hundred dollars) per person, \$7,500 total, for service as a Class Representative, and Class Counsel shall do so no later than the date on which the Parties submit the motion seeking final approval of the Settlement.

VI. RELEASE

6.1 Upon entry by the Court of the Final Approval Order and Judgment as contemplated by Paragraph 7.9 below, and Defendants' payment of the Settlement Amount, pursuant to Paragraph 3.1, Class Representatives and Class Members irrevocably release, waive, and discharge any and all past, present, and future

Released Claims (as defined in Paragraph 2.21) against McNees, SGA, and each of their Releasees.

6.2 Upon entry by the Court of the Final Approval Order and Judgment as contemplated by Paragraph 7.9 below, SGA and McNees each irrevocably and mutually release, waive, and discharge any and all past, present and future Released Claims against each other and each other's Releasees.

6.3 Class Representatives and Class Members recognize that, even if they later discover facts in addition to or different from those that they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and Judgment, they fully, finally, and forever settle and release any and all past, present and future Released Claims against Releasees. The Parties acknowledge that this waiver and release were bargained for and are material elements of the Settlement.

6.4 By this Settlement Agreement, Defendants release the Class Representatives, Class Members and Class Counsel from all claims or causes of action that were, or could have been, asserted by Defendants pertaining to this Action or Settlement. Defendants recognize that, even if they later discover facts in addition to or different from those that they now know or believes to be true, they nevertheless agree that, upon entry of the Final Approval Order and Judgment, Defendants, fully, finally, and forever settle and release any and all such claims. The Parties

acknowledge that this waiver and release were bargained for and are material elements of the Settlement.

6.5 This Settlement and the release in the preceding paragraph do not affect the rights of Class Members who timely and properly request exclusion from the Class.

6.6 The administration and consummation of the Settlement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement. The Court retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement, including, but not limited to, orders enjoining Class Members and/or Class Counsel from prosecuting claims that are released pursuant to the Settlement and allowing for discovery related to objectors.

6.7 Upon issuance of the Final Approval Order and Judgment: (i) the Settlement shall be the exclusive remedy for Class Members; (ii) Releasees shall not be subject to liability or expense of any kind to any Class Member(s) for reasons related to the Action (as set forth in the Release) or for the administration or performance of the Settlement, including, but not limited to, the provision of distributions to Class Members or the information necessary to inform such distributions; and (iii) Class Members shall be permanently barred from initiating,

asserting, or prosecuting any and all past, present and future Released Claims against the Releasees.

6.8 Class Representatives and Defendants represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any part thereof or interest therein, including but not limited to, any interest in the Action or any related action.

6.9 Class Counsel represent and warrant that they do not currently represent, and do not intend to seek to represent, any putative Class Members to participate in, or facilitate the assertion of, any claims or proceedings against Releasees relating to the facts, acts, events, transactions, contracts, occurrences, courses of conduct, representations, omissions, circumstances or other matters related to this Action, including, but in no way limited to, matters related to the Released Claims, the negotiation and/or terms of the Lease, the Shortfall Recovery Amount during the term of the Lease, any capital expenditures under the Lease, or the performance or enforcement of any term of the Lease. Class Counsel will cooperate with Defendants in good faith to supply any reasonable information regarding the administration of the Settlement Agreement to support the defense of any matter or proceeding initiated against one or both of the Defendants arising from a challenge to the Settlement Agreement or terms of the Settlement.

VII. SETTLEMENT APPROVAL PROCESS

A. Intention to Complete Settlement.

7.1 The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement and the transactions contemplated hereby. Class Representatives and Class Counsel shall prepare all preliminary approval and final approval papers, with the participation of Defendants, which will recommend approval of the Settlement by the Court as being fair, reasonable, and adequate.

7.2 If the Concessionaire does not provide to Class Counsel the Class Member information described in Section 3.2.2.1 by 15 days prior to the Bar Date, the Parties may mutually seek from the Court at least one extension of the date for the Final Approval hearing.

7.3 If the Preliminary Approval Order or the Final Approval Order and Judgment is not obtained from the Court in the form contemplated by this Settlement, or any Party exercises their contractual right to void this Settlement pursuant to the Confidential Supplemental Agreement Regarding Termination, or the Final Approval

Order and Judgment is reversed or materially modified on appeal, this Settlement shall be null and void ab initio upon election of any of the Parties and have no further force and effect with respect to any of the Parties in this Action. Nothing in this provision shall affect Defendants' obligation to pay all costs reasonably incurred by the settlement administration process.

7.4 This Settlement Agreement incorporates the attached Exhibits. The Lease, including its definitions, is Exhibit A to this Settlement Agreement, and any future modification to the Lease cannot modify the terms of this Settlement Agreement without agreement of the Parties and approval of the Court. This Settlement Agreement shall not be materially modified or terminated by a breach of any other agreement incorporated herein.

7.5 Defendants' payment of the Settlement Amount pursuant to Paragraph 3.1.1 shall constitute full and final performance of their obligations hereunder. After payment of the Settlement Amount, Defendants shall not bear any responsibility or liability for the effects of an alleged breach of the Settlement Agreement or any other agreement, including but not limited to the Lease, or the agreement with the Settlement Administrator administering the Settlement for its duration.

B. Preliminary Court Approval.

7.6 As soon as practicable after execution of this Settlement by the Parties, and no later than July 31, 2023, counsel for the Parties shall present this Settlement Agreement, together with its Exhibits, to the Court through Class Representatives' unopposed motion seeking entry of a Preliminary Approval Order that certifies the Settlement Class for settlement purposes only, grants preliminary approval of this Settlement, appoints the Settlement Administrator, directs the Settlement Administrator to provide notice of the Settlement in the manner detailed herein, and sets the date of the Final Approval Hearing. The proposed preliminary approval order shall be substantially in the form of Exhibit D attached hereto.

7.7 Class Counsel will provide the Concessionaire with a copy of the Court's Preliminary Approval Order, upon entry by the Court.

C. Final Court Approval.

7.8 No later than 15 days before the Court conducts the Final Approval Hearing, the Settlement Administrator shall provide affidavits for the Court, with a copy to Class Counsel and Defendants' Counsel, attesting that Notice was disseminated in a manner consistent with the terms of this Settlement Agreement, or as otherwise required by the Court.

7.9 No later than 10 days before the Court conducts the Final Approval Hearing, Class Counsel shall file an unopposed motion for entry of a Final Approval Order and Judgment that:

- (a) Finds the Settlement to be fair, reasonable, and adequate;
- (b) Finds that the Notice given constitutes the best notice practicable;
- (c) Approves the Release specified in Section 6 of this Settlement Agreement as binding and effective as to all Class Members who have not properly excluded themselves from the Settlement Class, as well as all other Releases set forth therein;
- (d) Directs that Judgment be entered on the terms stated herein, including that this Action shall be dismissed, with prejudice, with respect to all Class Representatives and all Class Members who have not properly excluded themselves from the Class; and
- (e) Provides that the Court will retain jurisdiction over the Parties and Class Members to enforce the terms of the Final Approval Order and Judgment.

D. Communications with Class Members

7.10 For any inquiry from a Class Member regarding the Action, the Settlement, and/or the Settlement Agreement, Defendants shall advise that Class Member to contact Class Counsel.

VIII. REQUESTS FOR EXCLUSION

8.1 The provisions of this section shall apply to any request by a Class Member for exclusion from the Settlement Class.

8.2 Any Class Member may opt out of the Settlement by submitting a request for exclusion in writing to the Settlement Administrator as set forth below and in the Notice.

8.3 Any request for exclusion must be postmarked no later than the Bar Date specified in the Court's Preliminary Approval Order and shall include (i) the case name and number, *Borough of Middletown, et al. v. McNeese Wallace & Nurick, LLC, et al.*, Civil Action No: 2018-CV-03685 (C.C.P. Dauphin Co.); (ii) the Class Member's full name, current address, and current telephone number; and (iii) specifically and clearly state the Class Member's desire to be excluded from the Settlement and from the Settlement Class.

8.4 Failure to comply with the requirements in Paragraph 8.3 and to timely submit the request for exclusion shall be ineffective and result in the Class Member being bound by the terms of the Settlement Agreement.

8.5 Any Class Member who submits a timely request for exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

8.6 The Settlement Administrator shall report to the Parties the names and current addresses of all Class Members who have submitted a request for exclusion to the Parties within 5 days after the Bar Date. To the extent a timely request for

exclusion is received thereafter, the Settlement Administrator shall report to the Parties the names and current addresses of the Class Member(s) within 2 days of receipt.

8.7 Class Counsel represent and warrant that they have no other agreements with other counsel respecting Class Members, including any agreements with respect to referring, soliciting, or encouraging any Class Members to request to be excluded (or “opt out”) from this Settlement Agreement. Class Counsel also agrees not to refer, solicit, or encourage any Class Members to request to be excluded (or “opt out”) from this Settlement Agreement.

IX. OBJECTIONS

9.1 Any Class Member who wishes to enter an objection to be considered must submit a written notice of objection to the Settlement Administrator, Class Counsel, Defendants’ Counsel, and the Court as set forth below and in the Notice.

9.2 To state a valid objection to the Settlement, an objecting Class Member must provide the following information in writing to the Settlement Administrator, postmarked no later than the Bar Date: (i) the case name and number, *Borough of Middletown, et al. v. McNees Wallace & Nurick, LLC, et al.*, Civil Action No: 2018-CV-03685 (C.C.P. Dauphin Co.); (ii) the Class Member’s full name, current address, and current telephone number; (iii) a statement of the objection(s), including all

factual and legal grounds for the position; (iv) copies of any documents the objector wishes to submit in support; (v) the name and address of the attorney(s), if any, who is representing the objecting Class Member in making the objection or who may be entitled to compensation in connection with the objection; (vi) a statement of whether the Class Member objecting intends to appear at the Final Approval Hearing, either with or without counsel; (viii) the identity of all counsel (if any) who will appear on behalf of the Class Member objecting at the Final Approval Hearing and all persons (if any) who will be called to testify in support of the objection; (ix) the signature of the Class Member objecting, in addition to the signature of any attorney representing the Class Member objecting in connection with the objection, (x) identification of any potential conflict of interest with the Settlement Class, such as service, employment or affiliation with the Borough, the Borough's Mayor, or the Borough's Council; and (xi) date the objection. In addition, any Class Member objecting to the Settlement shall provide a list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in Pennsylvania or the United States in the previous five years. If the Class Member or his or her counsel has not made any such prior objection, the Class Member shall affirmatively so state in the written materials provided with the objection.

9.3 If the objecting Class Member intends to appear, in person or by counsel, at the Final Approval Hearing, the objecting Class Member must so state in the objection. Any Class Member who does not state his or her intention to appear in accordance with the applicable deadlines and other specifications, or who has not filed an objection in accordance with the applicable deadlines and other specifications, shall be deemed to have waived any objections to the Settlement and can be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

9.4 The Parties will request that the Court enter an order providing that the filing of an objection allows Class Counsel or Defendants' Counsel to notice such objecting person for, and take his, her, or its, deposition consistent with the Pennsylvania Rules of Civil Procedure at an agreed-upon location, prior to the Final Approval Hearing, and to seek any documentary evidence or other tangible things that are relevant to the objection. Failure by an objector to make himself/herself/itself available for a deposition or comply with expedited discovery requests may result in the Court striking the objection and otherwise denying that person the opportunity to be heard. The Court may tax the costs of any such discovery, including the reasonable attorney's fees of the Parties, to the objector or the objector's counsel should the Court determine that the objection is frivolous or

made for improper purpose. To the extent an objector seeks an appeal, the Parties shall demand the posting of a supersedeas bond for the full value of the Settlement Amount.

9.5 These procedures and requirements for objecting are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with the due process rights of all Class Members.

9.6 Any Class Member who fails to file and timely serve a written objection containing all of the information listed in paragraphs 9.2 and 9.3 above, including notice of his/her intent to appear at the Final Approval Hearing, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal.

9.7 Class Counsel represent and warrant that they have no other agreements with other counsel respecting objectors, including any agreements with respect to referring, soliciting, or encouraging any Class Members or other individual or entity to object to this Settlement Agreement.

X. MISCELLANEOUS

A. Choice of Law.

10.1 This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

B. Not Evidence.

10.2 The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever to any other party.

10.3 Neither this Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of it, (a) is, or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any legal claim made by Class Representatives, Class Members or opt-out, or of any wrongdoing or liability

of Defendants; or (b) is, or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of Releasees in any proceeding in any court, administrative agency, or other tribunal by anyone, including, but not limited to any opt-out or other party involved in a proceeding involving Defendants.

10.4 The provisions in Paragraphs 10.2 and 10.3 shall survive the voiding of the Settlement Agreement.

C. Headings.

10.5 The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

D. Entire Agreement.

10.6 This Settlement Agreement, including the Confidential Supplemental Agreement Regarding Termination, represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of

any provisions of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person or Party against whom enforcement of the Settlement Agreement is sought.

E. Counterparts.

10.7 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it, and all of which shall be deemed a single agreement.

F. Arm's Length Negotiations.

10.8 The Parties have negotiated all terms and conditions of this Settlement Agreement at arm's length. The provisions for Attorneys' Fees and Expenses and Service Awards set forth herein were negotiated separately from and after agreement on the provisions for relief to Class Representatives and the Settlement Classes.

10.9 All terms, conditions, and exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

10.10 The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that

ambiguities shall be construed against the drafter does not apply. The Parties were represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Agreement.

G. Public Statements.

10.11 The Parties and their Counsel agree to keep the substance of this Settlement Agreement confidential, provided that this Section shall not prevent Defendants from disclosing such information, prior to the date on which the Settlement Agreement is filed, to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers, or attorneys, nor shall it prevent the Parties and their Counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of the Settlement Agreement; provided further that Defendants may disclose publicly the terms of the Settlement Agreement that it deems necessary to meet its regulatory obligations or fiduciary duties; and provided further that the Parties may disclose the terms to any expert(s) retained in connection with the approval of this Settlement. Other than an agreed upon joint statement between Class Counsel and Defendants, neither the Parties nor their Counsel shall issue (or cause any other person or entity

to issue) any press release concerning the existence or substance of this Settlement Agreement.

H. Good Faith.

10.12 The Parties acknowledge that prompt approval, consummation, and implementation of this Settlement is essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement and ensure that it survives any challenge by non-parties, shall promptly perform their respective obligations hereunder, and shall attempt to resolve any dispute that may arise under this Settlement in a good faith and expeditious manner.

I. Continuing Jurisdiction.

10.13 The Parties agree the Court may retain continuing and exclusive jurisdiction over them, and all Class Members for the purpose of the administration and enforcement of this Settlement, including any claims asserted in violation of the Settlement Agreement.

J. Extensions of Time.

10.14 The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement without further notice (subject to Court approval as to court dates).

K. Service of Notice.

10.15 Whenever, under the terms of this Settlement Agreement, written notice is required to McNees, SGA, or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other parties in writing:

As to Settlement Class:

Simon Paris
Saltz Mongeluzzi & Bendesky, P.C.
120 Gibraltar Road, Suite 218
Horsham, PA 19044

As to McNees:

Paul C. Troy
Melissa Nagata
Kane, Pugh, Knoell, Troy & Kramer, LLP
4 Sentry Parkway East, Suite 100
Blue Bell, PA 19422

Thomas M. O'Rourke
Cozen O'Connor
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, PA 19103

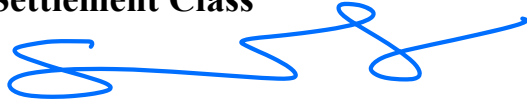
As to SGA:

John P. Morgenstern
Christopher C. Negrete
O'Hagan Meyer
1717 Arch St., Suite 3910
Philadelphia, PA 19103

IN WITNESS HEREOF, each of the Parties hereto has caused this agreement to be executed, as of the day(s) set forth below.

Dated: July 31, 2023

For Class Representatives and the Settlement Class



Simon Paris
Patrick Howard
SALTZ, MONGELUZZI & BENDESKY, P.C.
120 Gibraltar Road, Ste. 218
Horsham, PA 19044

Dated: July __, 2023

For Defendant McNeese Wallace & Nurick, LLC

Title: _____

Dated: July __, 2023

For Susquehanna Group Advisors, Inc.

Title: _____

Attachments:

- A. Lease
- B. Long Form Notice
- C. Short Form Notice
- D. Proposed Preliminary Approval Order

IN WITNESS HEREOF, each of the Parties hereto has caused this agreement to be executed, as of the day(s) set forth below.

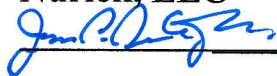
Dated: July , 2023

For Class Representatives and the Settlement Class

Simon Paris
Patrick Howard
SALTZ, MONGELUZZI & BENDESKY, P.C.
120 Gibraltar Road, Ste. 218
Horsham, PA 19044

Dated: July 31, 2023

For Defendant McNeas Wallace & Nurick, LLC



Title: Member and General Counsel

Dated: July __, 2023

For Susquehanna Group Advisors, Inc.

Title: _____

Attachments:

- A. Lease
- B. Long Form Notice
- C. Short Form Notice
- D. Proposed Preliminary Approval Order

IN WITNESS HEREOF, each of the Parties hereto has caused this agreement to be executed, as of the day(s) set forth below.

Dated: July , 2023

For Class Representatives and the Settlement Class

Simon Paris
Patrick Howard
SALTZ, MONGELUZZI & BENDESKY, P.C.
120 Gibraltar Road, Ste. 218
Horsham, PA 19044

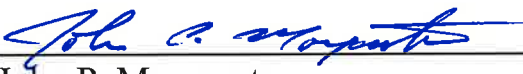
Dated: July __, 2023

For Defendant McNees Wallace & Nurick, LLC

Title: _____

Dated: July __, 2023

For Susquehanna Group Advisors, Inc.



John P. Morgenstern
O'HAGAN MEYER, PLLC
1717 Arch Street, Suite 3910
Philadelphia, PA 19103
Counsel for Susquehanna Group Advisors

Attachments:

- A. Lease
- B. Long Form Notice
- C. Short Form Notice
- D. Proposed Preliminary Approval Order

EXHIBIT A

MIDDLETOWN BOROUGH AUTHORITY

Middletown Water Joint Venture LLC
c/o Kohlberg Kravis Roberts & Co., LP
9 West 57th Street, Suite 4200
New York, NY 10019

Deutsche Bank Trust Company Americas
(in its capacity as collateral agent for the benefit of certain secured parties)
Trust and Agency Services
60 Wall Street, 16th Floor
Mail Stop: NYC60-1630
New York, New York 10005
Attention: Project Finance, Middletown Water Joint Venture LLC

December 30, 2014

The undersigned, respectively the Secretary and Chairman of the Middletown Borough Authority (the *Authority*), refer to the Municipal Water and Wastewater Utility System Concession and Lease Agreement between the Authority and Middletown Water Joint Venture LLC (the *Concessionaire*), dated as of September 30, 2014, as amended (the *Concession Agreement*), subject to joinder by the Borough of Middletown, Dauphin County, Pennsylvania (the *Borough*).

This certificate is being delivered pursuant to Section 10.2 of the Concession Agreement. Terms defined in the Concession Agreement have, unless otherwise defined in this certificate, the same meaning when used in this certificate.

Each of us certify, as of the date hereof and to his or her knowledge and belief (after reasonable investigation), as to those of the following matters specifically indicated immediately above his or her respective signature below:

(a) each of the representations and warranties of the Authority to the Concessionaire set forth in Section 9.1 of the Concession Agreement is true and correct in all material respects on and as of the Time of Closing, except that representations and warranties that by their terms speak only as of the date of the Concession Agreement or some other date are true and correct only as of such date;

(b) a true and correct copy of the Concession Agreement, together with a true and correct copy of each of the agreements contemplated thereby and effective as of the Closing Date, is attached hereto as Appendix A;

(c) the Concession Agreement, together with each of the agreements contemplated thereby and effective as of the Closing Date, in each case as attached hereto as Appendix A, contain all of the agreements among the Authority, the Borough, and the Concessionaire with respect to the Transaction, and none of them has been amended or otherwise modified as of the Closing Date, except as noted on Appendix A;

(d) the Authorizing Resolution is attached hereto as Appendix B and is in full force and effect as of the Closing Date;

(e) all expenses due and payable by the Concessionaire to the Authority have been paid to the Authority (including the Consideration) on or prior to the Closing Date pursuant to the Concession Agreement;

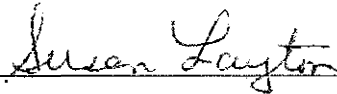
(f) each of the conditions set forth in Sections 2.4(b)(i) through (iv) of the Concession Agreement has been satisfied in full by the Concessionaire (except for any such condition that has been waived in writing by the Authority) at or before the Time of the Closing;

(g) each of the conditions set forth in Section 2.4(c) of the Concession Agreement has been satisfied in full (except for any such condition that has been waived by both the Authority and the Concessionaire) at or before the Time of the Closing; and

~~(h) no Authority Default or Concessionaire Default has occurred and remains uncured as of the date hereof, and no event has occurred as of the date hereof which with notice, lapse of time or both, would constitute an Authority Default or a Concessionaire Default.~~

MIDDLETOWN BOROUGH AUTHORITY

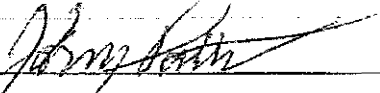
As to the certifications set forth in Section (b) and Section (d) above

By: 

Name: Susan Layton
Title: Secretary

MIDDLETOWN BOROUGH AUTHORITY

As to the certifications set forth in Section (a), Section (c), and Sections (e) through (h) (inclusive) above

By: 

Name: John L. Patten
Title: Chairman

Appendix A

**Concession Agreement
(and each of the agreements contemplated thereby and effective as of the Closing Date)**

Binding Proposal, Execution Copy

**MUNICIPAL WATER AND WASTEWATER UTILITY SYSTEM
CONCESSION AND LEASE AGREEMENT**

dated as of

September 30, 2014

by and between

Middletown Borough Authority

and

Middletown Water Joint Venture LLC

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Exhibit E	Collective Bargaining Agreement
Exhibit F	Borough Assumption Agreement

This **MUNICIPAL WATER AND WASTEWATER UTILITY SYSTEM CONCESSION AND LEASE AGREEMENT** (this “Agreement”) is made and entered into as of this 30th day of September, 2014 by and between the **Middletown Borough Authority**, a body corporate and politic (the “Authority”), duly organized under the Pennsylvania Municipality Authorities Act, Act of June 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.* (the “Municipal Authorities Act”) and incorporated by appropriate legal action of the Borough, and Middletown Water Joint Venture LLC, a Delaware Limited Liability Company (the “Concessionaire”). This Agreement is subject to a joinder, for certain purposes, by the **Borough of Middletown, Dauphin County Pennsylvania** (the “Borough”), a duly organized and validly existing political subdivision of the Commonwealth of Pennsylvania under the Borough Code, Act of Apr. 18, 2014, P.L. 432, 8 Pa.C.S. §101 *et seq.* (the “Borough Code”) as more fully described in Article 20.

Recitals

WHEREAS, the Authority owns all of the assets comprising the wastewater utility system of the Borough, constituting the assets herein defined as the “Wastewater Utility System”; and

WHEREAS, the Authority owns all of the assets comprising the water utility system of the Borough, constituting the assets herein defined as the “Water Plant and Distribution System”; and

WHEREAS, the Wastewater Utility System and the Water Plant and Distribution System are currently leased by the Authority to the Borough, by lease dated October 15, 2004, and as supplemented on December 15, 2009 (the “Borough Lease”), whose term extends to December 31, 2036 (the “Borough Lease Term”).

WHEREAS, under the terms of the Borough Lease, the Borough has the right during the Borough Lease Term to operate the Wastewater Utility System and the Water Plant and Distribution System and to charge service charges and collect “water and sewer revenues” (as such term is defined in the Borough Lease) in connection with the operation of the Wastewater Utility System and the Water Plant and Distribution System (hereinafter, together with other aspects of System Operations, the “Business”).

WHEREAS, the Concessionaire desires to lease the Wastewater Utility System and the Water Plant and Distribution System from the Authority and to obtain a grant from the Authority of the right to provide Utility Services (as defined herein) in connection therewith, all as hereinafter provided; and

WHEREAS, the Authority and the Borough agree that the Borough Lease be terminated prior to the expiration of the Borough Lease Term and that the Authority lease the Wastewater Utility System and the Water Plant and Distribution System (herein collectively defined as the “System”) to the Concessionaire and grant the Concessionaire the right to provide Utility Services in connection therewith, all as hereinafter provided; and

WHEREAS, as declared by Section 204 of the General County Assessment Law, 72 Pa. C.S. §5020-204 and Section 8812 of the Consolidated County Assessment Law, 72 Pa. C.S. §8812, the System serves, and pursuant to the Agreement will continue to serve, important public purposes promoting the public health, safety and welfare; and

WHEREAS, the Authority is authorized by the Municipal Authorities Act to enter into this Agreement providing for the lease of the System, and to grant to the Concessionaire the right to operate the System in order to provide Utility Services, subject to the terms hereof; and

WHEREAS, pursuant to the Municipal Authorities Act and that certain resolution adopted by the Authority on September 29, 2014 and attached hereto as **Exhibit A** (the “Authorizing Resolution”), the Authority is authorized to terminate the Borough Lease and enter into this Agreement and the Transaction (as herein defined); and

WHEREAS, by Ordinance No. 1308 adopted by the Borough on September 29, 2014 in the form attached hereto as **Exhibit B** (the “Authorizing Ordinance”), the Borough is authorized to terminate the Borough Lease and enter into a joinder to this Agreement; and

WHEREAS, by Ordinance No. 1303 adopted by the Borough on August 18, 2014 in the form attached hereto as **Exhibit C** (the “Initial Rate Ordinance”), the Borough established water and sewer rates for the term of this Agreement by specifying the Initial Schedule of Rates and the Service Charges (each as herein defined) to be imposed as specified under Article 7 of this Agreement, as such Service Charges shall be modified from time to time pursuant to Article 7 and this Agreement; and; and

WHEREAS, as of the Closing Date (as defined herein) the Borough Lease shall terminate and the Concessionaire, or the Operator (as defined herein) on behalf of the Concessionaire, shall be fully authorized to operate the System in accordance with any applicable provisions of Law, and the terms and provisions of this Agreement; and

WHEREAS, it is anticipated that promptly after the closing and in conformity with the Municipal Authorities Act, the Authority will be terminated and its rights and responsibilities under the Concession Agreement will be assigned to the Borough for the remainder of the term of the Concession; and

WHEREAS, the Authority and the Borough jointly have determined that the terms and conditions of this Agreement assure that the System will continue to be operated, and the Utility Services will be provided, in a manner that benefits the public and fulfills the public purposes of the System, and that such public benefits and public purposes will be preserved by, among others, requirements that the System be maintained, and the Utility Services be performed, in accordance with the Operating Standards;

NOW THEREFORE, for and in consideration of the premises, the mutual covenants, representations, warranties and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Authority and the Concessionaire covenant and agree as follows:

ARTICLE 1

Definitions and Interpretation

Section 1.1. Definitions. Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

“AAA” means the American Arbitration Association.

“AAA Rules” means the Commercial Arbitration Rules of the AAA.

“AA-Compensation” has the meaning ascribed thereto in Section 14.1(b).

“AA-Dispute Notice” has the meaning ascribed thereto in Section 14.1(c).

“AA-Notice” has the meaning ascribed thereto in Section 14.1(c).

“AA-Preliminary Notice” has the meaning ascribed thereto in Section 14.1(c).

“Additional Coverages” has the meaning ascribed thereto in Section 13.2(k).

“Adjusted for Inflation” means adjusted by the percentage increase, if any, or decrease, if any, in the Index during the applicable adjustment period.

“Adverse Action” has the meaning ascribed thereto in Section 14.1.

“Affected Property” means any public or private property, including a park, highway, street, road, roadway, railroad, rail or other transit way, mechanical room, tunnel, storage room or elevator and any ancillary facilities related to any of the foregoing, under the jurisdiction and control of the Authority, the Borough and any other Governmental Authority or any other Person (including any private road) and that is located above, within the boundaries of, intersects with, crosses over or under or is adjacent to (but does not comprise any portion of) the System or any part thereof.

“Affiliate”, when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or controls, is controlled by or is under common control with (which shall include, with respect to a managed fund or trust, the right to direct or cause the direction of the management and policies of such managed fund or trust as manager, advisor, supervisor, sponsor or trustee pursuant to relevant contractual arrangements) such specified Person, and a Person shall be deemed to be controlled by another Person if controlled in any

manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (and for purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing, supervising, sponsoring or advising such fund or trust and a limited partner in a managed fund or trust shall be deemed to be an Affiliate of such fund or trust and of the Person managing, supervising, sponsoring or advising such fund or trust).

“Agreement” has the meaning ascribed thereto in the recitals to this Agreement (and includes all Schedules and Exhibits referred to herein), as amended, modified and supplemented from time to time in accordance with the terms hereof.

“Annual Borough Payment” means (i) for the Reporting Year commencing on January 1, 2016, an amount of money equal to \$1,500,000*; (ii) for each Reporting Year after the 2016 Reporting Year (excluding the final Reporting Year), an amount of money equal to \$1,500,000*, Adjusted for Inflation from January 1, 2016 to December 31 of the preceding Reporting Year and (iii) for the final Reporting Year, an amount of money equal to \$1,500,000*, Adjusted for Inflation from the Closing Date to December 31 of the Reporting Year preceding the final Reporting Year, multiplied by a fraction the numerator of which is the number of days in the final Reporting Year and the denominator of which is 365.

“Annual Percentage Change” means, with respect to the 2019 calendar year and each calendar year thereafter, the percentage determined by adding the Index Change for that calendar year (which may be positive or negative) and the Margin Change for that calendar year provided that whenever the sum of the Index Change and the Margin Change is zero or a negative percentage, there shall be no Annual Percentage Change for that calendar year.

“Annual Rate Adjustment” means the annualized adjustment in Service Charges for a calendar year as determined pursuant to Section 7.1(e).

“Annual Shortfall Recovery Amount” means, with respect to any Shortfall Recovery Amount, one-third of the Shortfall Recovery Amount.

“Approval”, “Approved”, “Approves”, “Approved by the Authority” and similar expressions mean approved or consented to by the Authority in accordance with the provisions of Section 1.15.

“Approval Criteria” has the meaning set forth in Section 6.2.

“Arbitration Act” means the Pennsylvania Judicial Code, 42 Pa. C.S. §§ 7301-7320.

* or the lesser amount specified by the Concessionaire in its bid, but in no event less than \$965,000 for years 2016-2024; \$860,000 for years 2025-2027 and \$725,000 for years 2028 and after (or \$725,000 if the Consideration set forth in Section 2.1, before any adjustment under Section 2.2(b) equals or exceeds \$45,000,000) .

“Assignment and Assumption Agreement” has the meaning ascribed thereto in Section 18.9.

“Assumed Liabilities” has the meaning ascribed thereto in Section 3.2(c).

“Audit” and similar expressions mean, with respect to any matter or thing relating to the System, the System Operations or this Agreement, the performance by or on behalf of the Authority of such reviews, investigations, inspections and audits relating to such matter or thing as the Authority may reasonably determine to be necessary in the circumstances, conducted in each case in accordance with the terms of the Agreement, applicable United States industry accepted practices, if any, or as required by Law.

“Authority” has the meaning ascribed thereto in the recitals to this Agreement.

“Authority Board” means the board of the Middletown Borough Authority.

“Authority Default” has the meaning ascribed thereto in Section 16.2(a).

“Authority’s Option” has the meaning ascribed thereto in Section 18.8(a).

“Authority’s Pension Plan” means Middletown Borough Non-Uniform Pension Plan, as amended and restated from time to time.

“Authorization” means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, Permit, notarization or other requirement of any Person that applies to the System (including with respect to Major Capital Improvements) or is reasonably required from time to time for the System Operations.

“Authorizing Ordinance” has the meaning ascribed thereto in the recitals to this Agreement.

“Authorizing Resolution” has the meaning ascribed thereto in the recitals to this Agreement.

“Bank Rate” means the 3-Month London Interbank Offered Rate (LIBOR) (or any successor rate thereto) as reported in The Wall Street Journal (or its successors).

“Bid Date” means September 19, 2014.

“Borough” has the meaning ascribed thereto in the recitals to this Agreement.

“Borough Assumption Agreement” has the meaning ascribed thereto in Section 17.2.

“Borough Code” has the meaning ascribed thereto in the recitals to this Agreement.

“Borough Council” means the Borough Council of the Borough.

“Borough Lease” has the meaning ascribed thereto in the recitals to this Agreement.

“Borough Lease Term” has the meaning ascribed thereto in the recitals to this Agreement.

“Borough Payment Reserve Fund” means a fund established and maintained by the Concessionaire and held in trust for the benefit of the Authority and the Borough and free from any lien or claim of the Concessionaire, or any creditor of the Concessionaire including any Leasehold Mortgagee, at a bank, trust company or national banking association having an office in the Commonwealth of Pennsylvania as may be selected by the Concessionaire and Approved by the Authority.

“Borough Payment Reserve Requirement” means (i) prior to December 31, 2016, zero; and on and after January 1, 2017, an amount equal to the Annual Borough Payment for the then current Reporting Year.

“Breakage Costs” means any breakage costs, make-whole premium payments, termination payments or other prepayment amounts (including debt premiums) that are required to be paid by the Concessionaire with respect to Leasehold Mortgage Debt as a result of the early repayment of such Leasehold Mortgage prior to its scheduled maturity date because this Agreement has been terminated at the election of the Concessionaire pursuant to Section 14.2, Section 16.2(b) or Section 16.5.

“Bulk Sales Surplus” means, for any Water Sales Test Period, the amount (if any) expressed in gallons per day by which the actual average daily volume of metered water sales to all Municipal Bulk Customers over the entire Water Sales Test Period was more than 62,970 gallons per day.

“Business” means as defined in the Recitals.

“Business Day” means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by either the Commonwealth of Pennsylvania or the United States government.

“Capex Fund” means a fund to be established and maintained by the Concessionaire in accordance with Section 4.13 and held in trust for the benefit of the Authority, the Borough and the Concessionaire, free from any lien or claim of any creditor of the Authority, the Borough or the Concessionaire, including any Leasehold Mortgagee, at a bank, trust company or national banking association having an office in the Commonwealth of Pennsylvania as may be selected by the Concessionaire and Approved by the Authority.

“Capex Fund Deposit Requirement” means for the Reporting Years 2035 to 2064, both inclusive, \$375,000, in each case, Adjusted for Inflation from the Closing Date to December 31 of the calendar year immediately prior to the Reporting Year.

“Capex Plan” has the meaning ascribed thereto in Section 4.1(b).

“Capital Cost Recovery Charge” means, for a particular Reporting Year, the annual amount that the Concessionaire may charge during the Cost Recovery Period with respect to the cost of a Major Capital Improvement consisting of: (i) the amounts required to pay the principal of and interest on debt issued or incurred to finance such Major Capital Improvement at the Concessionaire’s then current interest cost assessed by the lender on such borrowed funds and (ii) a return on equity contributed to pay the capital costs of such Major Capital Improvement equal to the rate of return on equity at the time the equity is contributed for such Major Capital Improvement at the average of the return on equity as most recently calculated by the PUC Technical Utility Services Staff (and referred to as the Return on Equity in the most recent Quarterly Earnings Report – Water Utilities DSIC ROE) for **[name multiple – at least 3 - major Pennsylvania public utilities]**, where such companies were seeking to implement a new DSIC charge.

“Cash Deposit” has the meaning ascribed thereto in Section 2.3(a).

“Casualty Cost” has the meaning ascribed thereto in Section 13.3(a).

“CE-Dispute Notice” has the meaning ascribed thereto in Section 15.3(c).

“CE-Notice” has the meaning ascribed thereto in Section 15.3(a).

“CE-Preliminary Notice” has the meaning ascribed thereto in Section 15.3(a).

“Cell Tower Lease” means that certain License Agreement dated as of March 22, 1994, by and between the Authority (joined by the Borough) and New Cingular Wireless PCS, LLC, successor in interest to Harrisburg Cellular Telephone Company, as amended and supplemented by that First Amendment to License Agreement dated as of October 19, 2004 and by that Second Amendment to License Agreement dated as of April 1, 2014 but effective as of June 11, 2014.

“Change in Control” means, with respect to any Person, whether accomplished through a single transaction or a series of related or unrelated transactions and whether accomplished directly or indirectly, either (i) a change in ownership so that 50% or more of the direct or indirect voting or economic interests in such Person is transferred to a Person or group of Persons acting in concert, (ii) the power directly or indirectly to direct or cause the direction of management and policy of such Person, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise, is transferred to a Person or group of Persons acting in concert or (iii) the merger, consolidation, amalgamation, business combination or sale of substantially all of the assets of such Person to the extent that, as a result of such merger, consolidation, amalgamation, business combination or sale, the circumstances described in either clause (i) or (ii) above are satisfied; provided, however, that notwithstanding anything to the contrary set forth in this definition: (A) Transfers of direct or indirect ownership interests in the Concessionaire or the Operator (as applicable) between or among Persons that are Affiliates (including funds or similar entities managed by such

Persons) shall not constitute a “Change in Control” for the purposes of this Agreement, (B) Transfers of shares of the Concessionaire or its direct or indirect parent pursuant to an initial public offering on the New York Stock Exchange, NASDAQ, London Stock Exchange or comparable securities exchange shall not constitute a “Change in Control,” and (C) Transfers of direct or indirect ownership interest in the Concessionaire by any Equity Participant or its beneficial owner(s) to any Person shall not constitute a “Change in Control” so long as the Equity Participants or their beneficial owner(s) having, in the aggregate, more than 50% direct or indirect ownership interest in the Concessionaire as of the date of this Agreement retain, in the aggregate, more than 50% of the rights to elect directors, officers and managers of the Concessionaire.

“Change of Law” means either (A) the enactment, adoption, promulgation, modification or repeal after the Bid Date of any federal, state or local Law, or the change in interpretation (as evidenced by a final official action of a Governmental Authority having jurisdiction or a decision of a court with jurisdiction over the subject matter and with respect to which no appeal is pending or may be taken) after the Bid Date of any federal, state or local Law, Authorization or approval by any Governmental Authority, or (B) the imposition, after the Bid Date, of any material condition in the issuance, modification or renewal of any Authorization or approval necessary for the operation and maintenance of the System. Notwithstanding all of the foregoing, in no event will the imposition of a Tax of General Application or a change in a Tax of General Application be considered a Change of Law.

“Claim” means any demand, action, cause of action, suit, proceeding, arbitration, claim, judgment or settlement or compromise relating thereto which may give rise to a right to indemnification under Section 12.1 or Section 12.2.

“Closing” has the meaning ascribed thereto in Section 2.2(a).

“Closing Date” has the meaning ascribed thereto in Section 2.2(a).

“Closing LOC” has the meaning ascribed thereto in Section 2.3(a).

“Code” means the federal Internal Revenue Code of 1986, as amended.

“Collective Bargaining Agreement” means the existing collective bargaining agreement between the Borough and the Teamsters Union Local 776 effective January 1, 2009, as attached hereto as **Exhibit E**.

“Compensation Event” means the Concessionaire’s compliance with or the implementation of any Directive or any modified or changed Operating Standard subject to Section 6.3(b), the occurrence of an Adverse Action or the occurrence of any other event that under the terms of this Agreement requires the payment of Concession Compensation.

“Concession Compensation” means compensation payable by the Authority to the Concessionaire in order to restore the Concessionaire to the same economic position the Concessionaire would have enjoyed if the applicable Compensation

Event had not occurred, which compensation shall be equal to all Losses (including increased operating, financing, capital and maintenance costs of the System but excluding any costs and expenses that the Concessionaire expends or would expect to expend or incur in order to comply with this Agreement or in the ordinary course of the performance of the System Operations or the carrying on of Business in the ordinary course) that are reasonably attributable to such Compensation Event, net of any increase in Revenues attributable to such Compensation Event; provided, however, that, unless otherwise specified in this Agreement, any claim for Concession Compensation shall be made within 90 days of the date that the Concessionaire first became aware of such Compensation Event. Any Concession Compensation payable with respect to Losses that will occur in the future shall be payable at the time such Compensation Event occurs based on a reasonable determination of the net present value of the impact of such Compensation Event over the remainder of the Term. If the Concessionaire is required to provide its own capital with respect to compliance with or implementation of a Authority Directive or a modified or changed Operating Standard (other than a modified Operating Standard described in Section 6.3(a)) or any other Compensation Event, then the Concession Compensation, shall, in addition to the components described above, take into account the actual cost to the Concessionaire of such capital and include a then applicable market-based rate of return thereon (which market-based rate of return shall be reasonably commensurate with then-prevailing rates of return for similar assets and similar or analogous financings in the water and sewer utility industry with respect to investor owned utilities that are subject to rate regulations by Governmental Authority). For purposes of the preceding sentence, the market-based rate of return shall be initially proposed in writing by the Concessionaire to the Authority. The Authority may, in accordance with the provisions of Article 19, dispute that such market-based rate of return proposed by the Concessionaire is reasonably commensurate with then-prevailing rates of return for similar assets and similar or analogous financings in the water and sewer utility industry with respect to investor owned utilities that are subject to rate regulation by Governmental Authority.

“Concessionaire” has the meaning ascribed thereto in the recitals to this Agreement.

“Concessionaire Default” has the meaning ascribed thereto in Section 16.1(a).

“Concessionaire Interest” means the interest of the Concessionaire in the System created by this Agreement and the rights and obligations of the Concessionaire under this Agreement (including the interest described in Section 2.1(b)).

“Concessionaire Request” means a written request in respect of the System prepared by or on behalf of the Concessionaire and addressed to the Authority seeking to make a fundamental change in the dimensions, character, quality or location of any part of the System; provided, however, that a Concessionaire Request need not be submitted in connection with operations, maintenance, repair or overhaul of the System in the ordinary course or any other aspects of System Operations permitted or reserved to the Concessionaire under this Agreement,

including any modification or change to the Operating Standards pursuant to Section 6.2.

“Concessionaire Retirement Plan” has the meaning ascribed thereto in Section 2.5(k)(iii).

“Consideration” has the meaning ascribed thereto in Section 2.1.

“Construction Contract” means any construction contract entered into by the Concessionaire related to the System (or subcontracts thereunder).

“Contractor” means, with respect to a Person, any contractor with whom such Person contracts to perform work or supply materials or labor in relation to the System, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor. For the avoidance of doubt, the Operator shall be a Contractor of the Concessionaire.

“Cost Recovery Period” means the period of time from the later of (i) January 1, 2017 or (ii) the placed in service date of a Major Capital Improvement to the earlier of (i) the 360th month following the placed in service date of the Major Capital Improvement or (ii) the last month of the useful life of the Major Capital Improvement when such useful life is measured from the placed in service date of the Major Capital Improvement.

“Day” or “day” means a calendar day, beginning at 12:01 a.m., in the eastern time zone of the United States coinciding with the calendar day.

“Defending Party” has the meaning ascribed thereto in Section 12.4(c).

“Delay Event” means (i) an event of Force Majeure, (ii) a delay caused by the performance of works (including the activities authorized by Section 3.7) carried out by a Governmental Authority or any utility or railway operator or Person not acting under the authority or direction of, or pursuant to a contract, sublease or any other agreement or arrangement with the Concessionaire or the Operator, (iii) a delay caused by a failure by the Authority or the Borough to perform or observe any of its respective covenants or obligations under this Agreement, (iv) a delay caused by Unknown Site Conditions, or (v) a delay caused by the presence in, on, under or around the System of Hazardous Substances, which in each case results in or would result in a delay or interruption in the performance by the Concessionaire of any obligation under this Agreement or the exercise by the Concessionaire of its rights under this Agreement; except to the extent that the consequences of such delay or the cause thereof is specifically dealt with in this Agreement or arises by reason of (A) the negligence or intentional misconduct of the Concessionaire or its Representatives, (B) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement or (C) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire (provided that this exception does not apply to those circumstances contemplated by Section 5.1). For the avoidance of

doubt, a Delay Event shall not include any of the exceptions listed in clauses (i) through (iv) of the definition of Force Majeure.

“Delay Event Dispute Notice” has the meaning ascribed thereto in Section 15.1(e).

“Delay Event Notice” has the meaning ascribed thereto in Section 15.1(e).

“Delay Event Remedy” has the meaning ascribed thereto in Section 15.1(d).

“Demand Shortfall Recovery Year” means each of the three Reporting Years next following the end of the final Reporting Year of a Water Sales Test Period that resulted in a Water Sales Shortfall.

“Depository” means a savings bank, a savings and loan association or a commercial bank or trust company which would qualify as an Institutional Lender, designated by the Concessionaire, that enters into an agreement with the Concessionaire to serve as depository pursuant to this Agreement, provided that such Depository shall have an office, branch, agency or representative located in the Commonwealth of Pennsylvania; provided, however, that so long as a Leasehold Mortgage is in effect, the Depository under Section 13.3 shall be the institution acting as the collateral agent or depository under the financing secured by such Leasehold Mortgage.

“Designated Senior Person” means such individual who is designated as such from time to time by each Party for the purposes of Article 19 by written notice to the other Parties.

“Determination” has the meaning ascribed thereto in Section 19.4(b).

“Direct Claim” means any Claim by an Indemnified Party against an Indemnifier that does not result from a Third Party Claim.

“Directive” means a written order or directive prepared by or on behalf of the Authority directing the Concessionaire, to the extent permitted hereby, to (i) add or perform work in respect of the System in addition to that provided for in this Agreement, or (ii) change the dimensions, character, quantity, quality, description, location or position of any part of the System or the System Operations or make other changes to the System or the System Operations; provided, however, that no such order or directive may in any event order or direct the Concessionaire to do any act that could reasonably be expected to violate any applicable Law, Permit or Authorization, cause the Concessionaire to fail to be in compliance with this Agreement or materially interfere with the Concessionaire’s performance of its obligations under this Agreement.

“Document” has the meaning ascribed thereto in Section 1.15(c).

“Eligible Investments” means any one or more of the following obligations or securities: (i) direct obligations of, and obligations fully guaranteed by, the United States of America or any agency or instrumentality of the United States of America,

the obligations of which are backed by the full faith and credit of the United States of America; (ii) demand or time deposits, federal funds or bankers' acceptances issued by any Institutional Lender (provided that the commercial paper or the short-term deposit rating or the long-term unsecured debt obligations or deposits of such Institutional Lender at the time of such investment or contractual commitment providing for such investment have been rated by a Rating Agency "A" (or the equivalent if confirmed by such Rating Agency) or higher or any other demand or time deposit or certificate of deposit fully insured by the Federal Deposit Insurance Corporation); (iii) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than one year after the date of issuance thereof) which has been rated by a Rating Agency "A" (or the equivalent if confirmed by such Rating Agency) or higher at the time of such investment; (iv) any money market funds, the investments of which consist of cash and obligations fully guaranteed by the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America and which have been rated by a Rating Agency "A" (or the equivalent if confirmed by such Rating Agency) or higher; and (v) other investments then customarily accepted by the Authority in similar circumstances, or which the Authority shall agree in its sole discretion is, for purposes of this Agreement, to be considered an Eligible Investment; provided, however, that no instrument or security shall be an Eligible Investment if such instrument or security evidences a right to receive only interest payments with respect to the obligations underlying such instrument or if such security provides for payment of both principal and interest with a yield to maturity in excess of 120% of the yield to maturity at par.

"Encumbrance" means any mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, servitude, option, reservation, lease (including, without limitation, the Borough Lease subject to Section 2.4(a)(viii)), claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Law, judicial process, contract, agreement or otherwise created.

"End Date" means the date on which this Agreement expires or is terminated.

"Engineering Firm" means an independent firm of professional engineers with a favorable national reputation for skill and experience in the design, construction, reconstruction, maintenance and repair of water treatment and supply facilities and sewerage collection, treatment and disposal facilities appointed by the Concessionaire and Approved by the Authority.

"Environment" means soil, surface waters, ground waters, land, stream sediments, flora, fauna, surface or subsurface strata and ambient air.

"Environmental Laws" means any Laws applicable to the System or the Utility Services regulating or imposing liability or standards of conduct concerning or relating to (i) the protection of human health or the Environment, (ii) the regulation, use or exposure to Hazardous Substances or (iii) the operation, maintenance, construction, repair or rehabilitation of the System.

“Equity Participant” means any Person who holds any shares of capital stock, units, partnership or membership interests, other equity interests or equity securities of the Concessionaire.

“Escrow Agent” means a bank, trust company or national banking association selected by the Authority to hold the Cash Deposit and the executed (by the Concessionaire) Borough Assumption Agreement.

“Excluded Liabilities” has the meaning ascribed thereto in Section 3.2(c)(ii).

“First-Year Capex Plan” has the meaning ascribed thereto in Section 4.1(b).

“Five-Year Capex Plan” has the meaning ascribed thereto in Section 4.1(b).

“Force Majeure” means any event beyond the reasonable control of the Concessionaire that delays, interferes with, interrupts or limits the performance of the Concessionaire’s obligations hereunder or the Concessionaire’s use and occupancy of the System, including an intervening act of God or public enemy, war, invasion, armed conflict, act of foreign enemy, blockade, revolution, act of terror, sabotage, civil commotions, interference by civil or military authorities, condemnation or confiscation of property or equipment by any Governmental Authority, nuclear or other explosion, radioactive or chemical contamination, fire, tornado, flooding, earthquake, hurricane, tropical storm or other natural disaster, water shortage, subsurface condition, riot or other public disorder, epidemic, quarantine restriction, strike, labor dispute or other labor protest, stop-work order or injunction issued by a Governmental Authority, governmental embargo, except to the extent that the consequence of such event is otherwise specifically dealt with in this Agreement or arises by reason of (i) the negligence or intentional misconduct of the Concessionaire or its Representatives, (ii) any act or omission by the Concessionaire or its Representatives in breach of the provisions of this Agreement, (iii) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of the Concessionaire (provided that this exception does not apply to those circumstances contemplated by Section 5.1) or (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by the Concessionaire or its Representatives to supply materials or services for or in connection with the System Operations or any strike, labor dispute or labor protest pertaining to the Concessionaire that is not of general application that is caused by or attributable to any act (including any pricing, employment practice or policy or other practice or method of operation) or omission of the Concessionaire or its Representatives.

“Good Engineering and Construction Practices” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction, commissioning and testing practices for the design, construction and improvement of capital assets in the municipal wastewater treatment and collection or drinking water distribution industry as practiced in the Eastern United States for facilities of a similar size and nature and in a similar

location as the System. Good Engineering and Construction Practices is not necessarily defined as the optimal methods, techniques, standards or practices to the exclusion of others, but rather to refer to a range of methods, techniques, standards and practices that are reasonable under the circumstances.

“Government Agreement” has the meaning ascribed thereto in Section 3.12.

“Governmental Authority” means any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, including (without limitation) the PUC, the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection and the Susquehanna River Basin Commission.

“Guarantee Agreement” means the Guarantee Agreement to be executed by the Guarantor in the form attached hereto as **Exhibit D**.

“Guarantor” has the meaning set forth in the Guarantee Agreement attached hereto as **Exhibit D**.

“Hazardous Substance” means any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is a contaminant, pollutant, dangerous substance, toxic substance, hazardous waste, residual waste, solid waste, hazardous material or hazardous substance which is or becomes regulated by applicable Environmental Laws or which is classified as hazardous or toxic under applicable Environmental Laws (including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and urea formaldehyde foam insulation).

“Health and Safety Default” means any material failure by the Concessionaire or the Operator to operate and maintain the System in accordance with the Environmental Laws or any order by any Governmental Authority which failure, in the judgment of the Authority, acting reasonably, has caused a material imminent threat to the public health and safety or a material violation of any Environmental Law and that such failure can best be remedied by the immediate transfer of control and operation of System to the Authority and its Representatives.

“Indemnified Party” means any Person entitled to indemnification under this Agreement.

“Indemnifier” means any Party obligated to provide indemnification under this Agreement.

“Indemnity Payment” has the meaning ascribed thereto in Section 12.7.

“Index” means the “Consumer Price Index –for all Urban Consumers (CPI-U), Northeast Region” – (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics (the “CPI-U Index”) Notwithstanding the foregoing and solely for purposes of Section 7.1, the Index shall be weighted 55% of

the CPI-U Index and 45% of the “MCI Index,” where the MCI Index is the Municipal Cost Index published by *American City and County*. If the CPI-U Index, the MCI Index or both is changed so that the base year of such index changes, such index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics or *American City and County*, as applicable; provided further that if any such index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if such index had not been discontinued or revised.

“Index Change” means, for the 2019 calendar year and each calendar year thereafter, the percentage change in the Index for the annual period ending on June 30 of the prior calendar year.

“Information” means any and all information relating to the System Operations, including (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding revenues, operating income, expenses, capital expenditures and budgeted operating results relating to the System Operations, (ii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests, test results, system utilization information (including volume and classification of sewage data) analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the System, the Concessionaire or any of its Representatives in connection with the System or the System Operations and (iii) proper, complete and accurate books, records, accounts and documents of the Concessionaire relating to the System Operations, including any Information that is stored electronically or on computer-related media; provided, however, that nothing in this Agreement shall require the disclosure by any Party of Information that is protected by attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party or acquired by a Party subject to a confidentiality agreement.

“Initial Schedule of Rates” means the initial schedule of Service Charges for Utility Services set forth in Schedule 3.

“Institutional Lender” means (a) the United States of America, any state thereof or any agency or instrumentality of either of them, any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects, (b) any (i) savings bank, savings and loan association, commercial bank, trust company (whether acting individually or in a fiduciary capacity) or insurance company organized and existing under the laws of the United States of America or any state thereof, (ii) foreign insurance company or commercial bank qualified to do business as an insurer or commercial bank as applicable under the laws of the United States (if such qualification is necessary in connection with the acquisition of Leasehold Mortgage Debt), (iii) pension fund, foundation or university or college or other endowment fund, or (iv) investment bank,

pension advisory firm, mutual fund, investment company or money management firm, (c) any “qualified institutional buyer” under Rule 144(A) under the Securities Act or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms or (d) any other financial institution or entity designated by the Concessionaire and Approved by the Authority (provided that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the Authority); provided, however, that each such entity (other than entities described in clauses (a) or (c) of this definition) or combination of such entities if the Institutional Lender shall be a combination of such entities shall have individual or combined assets, as the case may be, of not less than \$100,000,000, which shall include, in the case of an investment or advisory firm, assets controlled by it or under management.

“Law” means any order, writ, injunction, decree, judgment, law (including any Environmental Law), ordinance (including the Ordinance), decision, principle of common law, ruling, legally enforceable opinion or policy, statute, code, rule or regulation of any Governmental Authority, including the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, the Susquehanna River Basin Commission and the PUC.

“Lease Year” means (i) if the Closing Date occurs on the first day of a calendar month, the 12-month period beginning on the Closing Date or (ii) if the Closing Date does not occur on the first day of a calendar month, the period from the Closing Date through the end of the calendar month in which the Closing Date occurred and the next succeeding 12-month period and, in either case of clause (i) or (ii), each succeeding 12-month period and in any case ending on the End Date.

“Leasehold Mortgage” means any lease, indenture, mortgage, deed of trust, pledge or other security agreement or arrangement, including a securitization transaction with respect to Revenues, encumbering any or all of the Concessionaire Interest or the shares or equity interests in the capital of the Concessionaire and any of its subsidiaries and any cash reserves or deposits held in the name of the Concessionaire, in each case that satisfies all of the conditions in Section 18.1.

“Leasehold Mortgage Debt” means any bona fide debt (including principal, accrued interest and customary lender or financial insurer, agent and trustee fees, costs, premiums, expenses and reimbursement obligations with respect thereto, and including all payment obligations under interest rate hedging agreements with respect thereto and reimbursement obligations with respect thereto to any financial insurer) and/or an assignment in connection with a securitization transaction secured by a Leasehold Mortgage relating to the System and granted to a Person pursuant to an agreement entered into prior to the occurrence of any Adverse Action, Authority Default or any event giving rise to the payment of amounts for or in respect of termination under this Agreement. For the purposes of determining System Concession Value, Leasehold Mortgage Debt shall not include (i) debt from an Affiliate of the Concessionaire or the Operator, unless such debt is on terms consistent with terms that would reasonably be expected from a non-Affiliate lender acting in good faith; (ii) any increase in debt to the extent such increase is the result of an agreement or other arrangement entered into after the Concessionaire was

aware (or should have been aware, using reasonable due diligence) of the prospective occurrence of an event giving rise to the payment of the System Concession Value; or (iii) any debt with respect to which the Leasehold Mortgagee did not provide the Authority with notice of its Leasehold Mortgage in accordance in all material respects with the Leasehold Mortgagee Notice Requirements. Notwithstanding anything to the contrary set forth in this definition, except with respect to debt incurred or committed on or prior to the first anniversary of the Closing Date, all of which incurred or committed debt shall be deemed to be Leasehold Mortgage Debt, Leasehold Mortgage Debt shall not include any new debt incurred or committed following the first anniversary of the Closing Date unless (A) the Concessionaire has provided the Authority with a Written Appraisal (at the Concessionaire's sole expense) of the fair market value of the Concessionaire Interest at the time of the incurrence or commitment of such new debt, and (B) such Written Appraisal confirms the aggregate amount of Leasehold Mortgage Debt after giving effect to the incurrence or commitment of any such new debt is not in excess of 80% of the fair market value of the Concessionaire Interest set forth in such Written Appraisal at the time of incurrence or commitment of such new debt provided that any capitalization of interest or accretion of principal or other committed increases on any debt set forth in such Written Appraisal shall constitute Leasehold Mortgage Debt to the extent such debt constitutes Leasehold Mortgage Debt on the date such Written Appraisal is given; and provided further that the Parties agree that notwithstanding the requirements of the foregoing sub-clauses (A) and (B), the amount of Consideration paid at Closing shall be deemed to constitute the fair market value of the Concessionaire Interest for a period of one year after the Closing Date and, as such, no Written Appraisal shall be required within such one year period and no Written Appraisal shall be required for any refinancing that does not increase the amount of outstanding Leasehold Mortgage Debt, provided that the issue price of the refinancing debt does not exceed 110% of the amount of the refunded Leasehold Mortgage Debt. The appraisal requirement in the preceding sentence shall not apply to any protective advances made by any Leasehold Mortgagee or advances made by any Leasehold Mortgagee to cure Concessionaire defaults under the Leasehold Mortgage (regardless of whether entered into on or after the Closing Date) or other financing documents of such Leasehold Mortgagee.

"Leasehold Mortgagee" means the holder or beneficiary of a Leasehold Mortgage, including the Lessor in a lease or Leveraged Lease.

"Leasehold Mortgagee Notice Requirements" means the delivery by a holder or beneficiary of a Leasehold Mortgage to the Authority, not later than 10 Business Days after the execution and delivery of such Leasehold Mortgage by the Concessionaire, of a true and complete copy of the executed original of such Leasehold Mortgage, together with a notice containing the name and post office address of the holder of such Leasehold Mortgage.

"Leasehold Mortgagee's Notice" has the meaning ascribed thereto in Section 18.8(a).

"Leasehold Tax" means any Tax imposed pursuant to a Leasehold Tax Imposition.

“Leasehold Tax Imposition” means an action taken by the Borough, Dauphin County or the Commonwealth of Pennsylvania or any political subdivision thereof or any school district during the Term (including the enactment of any Law), or any other action, that will have the effect of causing property taxes attributable to any part of the System or the Concessionaire Interest to be levied, rated, charged, imposed or assessed against the Concessionaire (other than any taxes levied, rated, charged, imposed or assessed (i) in connection with any Transfer during the Term of all or any portion of the Concessionaire Interest, including without limitation any imposition of Tax described in Section 2.6 or (ii) on any leasehold interest of the Concessionaire in land, fixtures or improvements to the extent such land, fixtures or improvements are not utilized to provide Utility Services).

“Lessor” means a Leasehold Mortgagee that has purchased all or a portion of the Concessionaire Interest and leased that interest in the Concessionaire Interest to the Concessionaire.

“Letter of Credit” means an irrevocable, unconditional, commercial letter of credit, in favor of the Authority, in form and content reasonably acceptable to the Authority, payable in United States dollars upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such letter of credit in the amount of such sight draft, without presentation of any other Document, which letter of credit (i) is issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has a current credit rating of A or better by Standard & Poor’s Ratings Services and an equivalent credit rating by another Rating Agency (or an equivalent credit rating from at least two nationally recognized rating agencies if the named Rating Agency ceases to publish ratings) (or such other commercial bank or trust company reasonably acceptable to the Authority and approved by the Authority prior to the submission of the letter of credit), and (ii) provides for the continuance of such letter of credit for a period of at least one year or as otherwise provided in this Agreement. The office for presentment of sight drafts specified in the Letter of Credit shall be located at a specified street address within the Commonwealth of Pennsylvania or other location acceptable to the Authority. For the avoidance of doubt, the obligations of the account party during the Term to reimburse the issuer for draws under the Letter of Credit may be secured by a Leasehold Mortgage.

“Leveraged Lease” means a lease, sublease, concession, management agreement, operating agreement or other similar arrangement in which the Lessor has borrowed a portion of the purchase price of the interest in the Concessionaire Interest acquired by the Lessor and granted to the lenders of those funds a security interest in that interest.

“Loss” means, with respect to any Person, any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such Person, but excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual.

“Major Capital Improvement” means (a) any capital improvement required to increase the treatment capacity of the Wastewater Utility System as contemplated by Section 3.21, (b) any amount required to fund a Casualty Cost in excess of net insurance proceeds under Section 13.3(a) and (c) any other capital improvement to the Utility System (1) having an estimated cost in excess of \$500,000, Adjusted for Inflation from the Closing Date to the date such estimate is made and (2) which, in the written opinion of an Engineering Firm, constitutes an expansion to or renewal, replacement or betterment of the Utility System and has a useful life of at least five years. Capital improvements to the Utility System may be aggregated and treated as a single capital improvement under clause (c) of this definition: (i) without prior Approval, when such capital improvements are undertaken to replace water mains or sewer lines and construction of each such capital improvement commences in the same calendar year or (b) with prior Approval when such capital improvements are in close geographic proximity and are reasonably related to each other from an engineering, efficiency or functional perspective, even though not all project phases can be commenced and/or completed within the same calendar year. All costs associated with the design (and re-design, if consistent with the provisions of Section 4.4(c)), engineering, procurement, construction, commissioning and final completion of all work described in the Major Capital Improvement Conceptual Design shall be included in determining whether a capital improvement project satisfies the requirement of having an estimated cost of at least \$500,000, Adjusted for Inflation from the Closing Date to the date such estimate is made.

“Major Capital Improvement Conceptual Design” has the meaning ascribed thereto in Section 4.5(a)(i).

“Major Capital Improvement Substantially Complete Design” has the meaning ascribed thereto in Section 4.5(b).

“Major Force Majeure Event” means any individual Force Majeure event that causes a net Loss to the Concessionaire, after taking into account insurance proceeds and other recoveries, of not less than \$250,000, Adjusted for Inflation from the Closing Date to the date of the Force Majeure event.

“Major Force Majeure Unfunded Loss” means for each calendar year, the lesser of (i) \$250,000, Adjusted for Inflation from the Closing Date to June 30 of the prior calendar year and (ii) the aggregate amount of all net Losses incurred by the Concessionaire as a result of Major Force Majeure Events that were incurred prior to the current calendar year less the amount of such net Losses funded or financed in prior calendar years by the imposition of Service Charges pursuant to Section 7.1(f) or Section 7.1(j).

“Margin Change” means (i) for each calendar year commencing with the 2019 calendar year to and including the 2033 calendar year, two and one-half percent (2.50%) and (ii) for the 2034 calendar year and each calendar year thereafter, two percent (2.00%).

“Material Adverse Effect” means a material adverse effect on the Business, financial condition or results of operations of the Water Plant and Distribution System

or the Wastewater Utility System; provided, however, that no effect arising out of or in connection with or resulting from any of the following shall be deemed, either alone or in combination, to constitute or contribute to a Material Adverse Effect: (i) general economic conditions or changes therein; (ii) financial, banking, currency or capital markets fluctuations or conditions (either in the United States or any international market and including changes in interest rates); (iii) conditions affecting the real estate, financial services, construction, water utility or sewer utility industries generally; (iv) any existing event or occurrence of which the Concessionaire has actual knowledge as of the Bid Date; (v) any action, omission, change, effect, circumstance or condition contemplated by this Agreement or attributable to the execution, performance or announcement of this Agreement or the transactions contemplated hereby; and (vi) negligence, intentional misconduct or bad faith of the Concessionaire or its Representatives.

“Memorandum of Lease” has the meaning ascribed thereto in Section 2.6.

“Municipal Authorities Act” has the meaning ascribed thereto in the recitals to this Agreement.

“Municipal Bulk Customers” means Municipal Customers that purchase water pursuant to a Municipal Service Agreement.

“Municipal Customer” means each political subdivision of the Commonwealth (other than the Borough) that is a party to a Municipal Service Agreement.

“Municipal Service Agreements” means each Wastewater Service Agreement and each Water Service Agreement, as the same may be amended from time to time in accordance with Section 3.20.

“New Agreement” has the meaning ascribed thereto in Section 18.5(a).

“Non-Terminable System Contracts” are System Contracts other than Terminable System Contracts.

“Notice Period” has the meaning ascribed thereto in Section 12.4(b).

“Offsets” has the meaning ascribed thereto in Section 12.11(a).

“Operating Agreement” means any material agreement, contract or commitment to which the Concessionaire is a party or otherwise relating to the System Operations as in force from time to time (including any warranties or guaranties), but excluding any Leasehold Mortgage and financing documents related thereto.

“Operating Agreements and Plans” has the meaning ascribed thereto in Section 3.14.

“Operating Standards” means the standards, specifications, policies, procedures and processes that apply to the operation, maintenance, rehabilitation and capital improvements to, the System set forth on Schedule 4, including any

plans submitted by the Concessionaire to the Authority as required therein. To the extent that any term or provision set forth in Schedule 4 or incorporated by reference in Schedule 4 conflicts with any term or provision specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision.

“Operational Breach” means, as determined by the Authority, acting reasonably, a failure of the Concessionaire or the Operator to comply with Laws or the Operating Standards in connection with the System. A failure of the Concessionaire or the Operator to comply with Laws or the Operating Standards in connection with the System that is occasioned by the unreasonable conditioning or withholding of, or unreasonable delay in granting, a consent or Approval by the Authority shall not constitute an Operational Breach subject to the assessment of Operational Liquidated Damages unless the failure persists more than sixty (60) days following the completion of the project for which Approval was originally withheld or delayed.

“Operational Liquidated Damages” means the amount of money to be paid by the Concessionaire to the Authority for an Operational Breach as specified in the Operating Standards, including any additional amount of money assessed for multiple Operational Breaches, Adjusted for Inflation from the Closing Date to the latest period covered by the most recent Index published as of the date of the Operational Breach.

“Operator” has the meaning ascribed thereto in Section 3.3(a).

“Other Revenues” means any amounts derived from the physical properties constituting the System that are not derived from the operation of the System or the provision of Utility Services by means of the System, including but not limited to, naming rights, advertising revenues, rental income and other revenues from the utilization of the System by Persons for communications equipment and other attachments to properties of the System, including without limitation the Cell Tower Lease.

“Party” means a party to this Agreement and “Parties” means both of them.

“Pennsylvania Political Subdivisions Tort Claims Act” means 42 Pa. C.S.A. §§8541-8564.

“Permit” means any permit, approval, consent, ratification, waiver, exemption, franchise, license, novation, certificate of occupancy or other authorization, of any Governmental Authority or pursuant to any applicable Law.

“Permitted Annual Rate Adjustment” means, for the 2019 calendar year and each calendar year thereafter, the Schedule of Service Charges in effect for the prior calendar year (without regard to any Service Charges imposed pursuant to Section 7.1(f) or Section 7.1(g) or Section 7.1(h) or Section 7.1(i) or Section 7.1(j) or Section 7.1(k) or Section 7.1(l)) increased by the Annual Percentage Change (if any) for the calendar year.

“Permitted Authority Encumbrance” means, with respect to the System: (i) the Concessionaire Interest; (ii) any Encumbrance that is being contested, or being caused to be contested, by the Authority in accordance with Section 3.5(b) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen’s, mechanics’, workmen’s, repairmen’s, employees’, carriers’, warehousemen’s or other like Encumbrances arising in the ordinary course of Business of the System or the Authority’s performance of any of its rights or obligations hereunder, and either (A) not delinquent or (B) which are being contested, or are being caused to be contested, in accordance with Section 3.5(b) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any easement, covenant, condition, right-of-way, servitude, encroachment, reservation or any zoning, building, environmental, health or safety Law relating to the development, use or operation of the System (or other similar reservation, right and restriction), any matter that would be apparent upon an accurate survey or inspection of the System, or other defects and irregularities in the title to the System that do not materially interfere with the System Operations or the rights and benefits of the Concessionaire under this Agreement or materially impair the value of the Concessionaire Interest; (v) the Reserved Powers, (vi) any right reserved to or vested in any Governmental Authority (other than the Authority or the Borough) by any statutory provision or under common law (it being understood and agreed that nothing in this clause (vi) shall limit or otherwise affect the Authority’s obligations or the Concessionaire’s rights hereunder); (vii) any other Encumbrance permitted hereunder including without limitation the Cell Tower Lease; (viii) any Encumbrances created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it; (ix) any rights reserved to or vested in the Authority or the Borough by any statutory provision or under common law (it being understood and agreed that nothing in this definition shall limit or otherwise affect the Authority’s obligations or the Concessionaire’s rights hereunder); (x) any grants or leases of oil, gas, coal or mining interests, air rights or water rights that could not interfere with the System Operations or the rights and benefits of the Concessionaire under this Agreement or impair the value of the Concessionaire Interest; (xi) the Non-Terminable Contracts described in Part II of Schedule 6 and (xii) any amendment, extension, renewal or replacement of any of the foregoing to the extent effected in accordance with the terms of the Agreement.

“Permitted Concessionaire Encumbrance” means, with respect to the Concessionaire Interest: (i) any Encumbrance that is being contested in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (ii) any (A) lien or security interest for obligations not yet due and payable to a Contractor or other Person, (B) any statutory lien, deposit or other non-service lien or (C) lien, deposit or pledge to secure mandatory statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature, any of which are incurred in the ordinary course of Business of the System Operations and either (A) not delinquent or (B) which are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iii) inchoate materialmen’s, mechanics’, workmen’s, repairmen’s, employees’,

carriers', warehousemen's, or other like Encumbrances arising in the ordinary course of Business of the System or the Concessionaire's performance of any of its rights or obligations hereunder, and either (A) not delinquent or (B) which are being contested by the Concessionaire in accordance with Section 3.5(a) (but only for so long as such contestation effectively postpones enforcement of any such Encumbrance); (iv) any right reserved to or vested in any Governmental Authority by any statutory provision or under common law; (v) any other Encumbrance permitted hereunder (including any Leasehold Mortgage (and financing statements relating thereto)); (vi) liens incurred in the ordinary course of Business in connection with workers' compensation, unemployment insurance, social security and other governmental rules and that do not in the aggregate materially impair the use, value or operation of the System; (vii) any Encumbrances created, incurred, assumed or suffered to exist by the Authority or any Person claiming through the Authority; and (viii) any amendment, extension, renewal or replacement of any of the foregoing to the extent effected in accordance with the terms of the Agreement. Notwithstanding anything to the contrary contained herein, no Permitted Concessionaire Encumbrance shall be permitted to attach to the fee simple interest in the System.

"Person" means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

"Prudent Industry Practices" means those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as showing skill and good judgment in the wastewater treatment and collection or drinking water distribution industry as practiced in the Eastern United States for facilities of a similar nature and in a similar location as the System. Prudent Industry Practices is not necessarily defined as the optimal methods, techniques, standards or practices to the exclusion of others, but rather to refer to a range of methods, techniques, standards and practices that are reasonable under the circumstances.

"Public Utility Code" means Part I of Title 66 of the Pennsylvania Consolidated Statutes.

"PUC" means the Pennsylvania Public Utility Commission and any successor thereto by operation of Law.

"Rate Ordinance" means the Initial Rate Ordinance as set forth in the recitals hereto, specifically that Ordinance No. 1303 adopted by Borough Council on August 18, 2014 as amended and supplemented by the Supplemental Rate Ordinance to be adopted by the Borough Council.

"Rating Agency" means any of Standard & Poor's Corporation, Moody's Investors Service, Inc. or Fitch Ratings, Inc. or any similar entity or any of their respective successors.

“Remaining Amortized Rent” means (i) with respect to a Reversion Date on or prior to December 31, 2039, the amount of money required to retire all Leasehold Mortgage Debt and (ii) with respect to a Reversion Date on or after January 1, 2040, an amount of money equal to the applicable amount as of the Reversion Date as shown in Schedule 14, Adjusted for Inflation from the Closing Date to the Reversion Date.

“Replacement Letter of Credit” has the meaning ascribed thereto in Section 16.3(c).

“Reportable Quantity” means a release of a Hazardous Substance in an amount greater than a reportable quantity as defined under an applicable Environmental Law or which otherwise required notification to a Governmental Authority, or which is reasonably likely to result in the imposition of liability for remediation, personal injury, property damage, or natural resource damage.

“Reporting Year” means each calendar year during the Term, except that unless the Closing Date is the first day of January, the first Reporting Year shall be a partial year commencing on the Closing Date and ending on December 31st of such calendar year and the last Reporting Year shall be a partial Reporting Year commencing January 1st of such Reporting Year and ending on the End Date.

“Representative” means, with respect to any Person, any director, officer, employee, official, lender mortgagee, financier, provider of any financial instrument (or any agent or trustee acting on their behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, Contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Required Coverages” has the meaning ascribed thereto in Section 13.1.

“Reserved Powers” means the exercise by the Borough of police and regulatory powers with respect to the System, and the regulation of the use of the public way. For the avoidance of doubt, the imposition of a Tax is not a Reserved Power of the Borough.

“Restoration” has the meaning ascribed thereto in Section 13.3(a).

“Restoration Funds” has the meaning ascribed thereto in Section 13.3(a).

“Retail Sewer Customers” means all users, exclusive of Municipal Customers, that discharge into the Wastewater Utility System pursuant to Wastewater Service Agreements.

“Retail Water Customers” means all users of the Water Plant and Distribution System exclusive of Municipal Customers that purchase water pursuant to a Municipal Service Agreement.

“Reversion Date” means the Business Day immediately following the End Date.

“Revenues” means all revenues derived from the operation of the System and the provision of Utility Services by means of the System including Service Charges collected from users of the System including Municipal Customer payments pursuant to Municipal Service Agreements, but excluding revenues from the Cell Tower Lease and all Other Revenues.

“Right-to-Know Law” means the Pennsylvania Right-to-Know Law, Act of February 14, 2008, P.L. 6, No. 3, as amended, 65 P.S. §67.101 *et seq.*

“Schedule of Service Charges” means the Initial Schedule of Rates and any subsequent schedule of Service Charges for the Utility Services and for the use of the System, established from time to time in accordance with Article 7.

“Securities Act” means the United States Securities Act of 1933, as amended.

“Service Charges” means the charges pursuant to Article 7 for the use of the Utility Services provided by operation of the System, including connection fees.

“Shortfall Recovery Amount” means, with respect to a particular Water Sales Test Period, the amount of money that would have been collected from Retail Water Customers and Retail Sewer Customers from the imposition of Service Charges during the Water Sales Test Period if an amount of water equal to the Water Sales Shortfall had been sold to Retail Water Customers, calculated based upon the assumptions that the Water Sales Shortfall expressed in gallons per day would have been purchased by Retail Water Customers during each day of the Water Sales Test Period at the rate per gallon in effect for that day under the applicable Schedule of Service Charges and with a collection rate equal to the average collection rate of Retail Water Customers during the Water Sales Test Period.

“SRBC Charge” means any charge or fee imposed on the Concessionaire Interest or otherwise imposed on the Concessionaire or the Operator with respect to System Operations by the Susquehanna River Basin Commission, exclusive of any Authorization application or renewal fee.

“Supplemental Rate Ordinance” means an ordinance to be adopted by the Borough Council no later than the Time of Closing, stating that the rates, service charges and fees for the supply of water and wastewater services (as applicable) are established, effective as of the Time of Closing as those rates, service charges and fees as provided in the Concession Agreement for the Term thereof.

“System” means as set forth in the recitals hereto and includes the Water Plant and Distribution System and the Wastewater Utility System.

“System Assets” means the personal property of the Authority used in connection with operations at the System set forth on Schedule 5. Within 30 days of executing this Agreement, the Concessionaire can amend Schedule 5 to remove

assets it would prefer that the Authority retain. Notwithstanding any provision herein to the contrary, the Concessionaire shall have no obligation to repair, replace or return the System Assets to the Borough on the End Date.

“System Bonds” means the following outstanding debt obligations of the Borough and the Authority related to the System: (i) \$6,630,000 principal amount of the Borough's General Obligation Bonds, Series A of 2003 (Tax-Exempt); (ii) \$425,000 principal amount of the Borough's General Obligation Bonds, Series B of 2003 (Federally Taxable); (iii) \$7,800,000 principal amount of the Authority's Guaranteed Water and Sewer Revenue Bonds – Series of 2004; and (iv) \$6,955,000 principal amount of the Borough's General Obligation Bonds, Series of 2009.

“System Concession Value” means, at any given date, the fair market value of the Concessionaire Interest at the time of the occurrence of the relevant Adverse Action or Authority Default (but excluding the effect of such Adverse Action or Authority Default) or termination under Section 16.5, in each case as determined pursuant to a Written Appraisal. Except as specifically provided elsewhere herein, the Concessionaire shall pay the reasonable costs and expenses of any Written Appraisal of System Concession Value.

“System Contracts” means the agreements to which the Authority or the Borough is a party relating to the operations of the System that are set forth on Schedule 6. System Contracts include Non-Terminable System Contracts and Terminable System Contracts.

“System Employee” means any Borough employee engaged primarily in the provision of Utility Services, including Union Employees and non-Union Employees.

“System Operations” means (i) the use, operation, management, maintenance, repair, rehabilitation and improvement of the System and (ii) all other actions relating to the System that are performed by or on behalf of the Concessionaire pursuant to this Agreement.

“Tax” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

“Tax of General Application” means a Tax levied or imposed generally against all businesses. For the avoidance of doubt, a Tax imposed only on Persons engaged in the water supply and distribution business or the business of operating sewerage collection, treatment and disposal systems is not a Tax of General Application.

“Term” means the term of the lease and concession referred to in Section 2.1.

“Terminable System Contracts” are System Contracts that (i) are terminable upon not more than thirty (30) days’ notice or (ii) are otherwise identified as Part I of Schedule 6.

“Termination Compensation” has the meaning ascribed thereto in Section 14.1(b).

“Third Party Claim” means any Claim asserted against an Indemnified Party by any Person who is not a Party or an Affiliate of such a Party.

“Time of Closing” means 10:00 a.m. (Harrisburg time) on the Closing Date or such other time on that date as the Authority and the Concessionaire agree in writing that the Closing shall take place.

“Title Commitment” has the meaning ascribed thereto in Section 2.4(a)(v).

“Transaction” has the meaning ascribed thereto in Section 2.1.

“Transfer” means to sell, convey, assign, lease, sublease, mortgage, encumber, transfer or otherwise dispose of.

“Transferee” has the meaning ascribed thereto in Section 17.1(a).

“Uncompleted Work” means, as of the Closing Date, the following Authority contract work with respect to capital improvements to the System:

The construction of certain improvements to *the Water Plant and Distribution System* located in *Borough*, consisting of: (i) the replacement of the existing 4-inch diameter cast iron water main from Main street to Wharton Avenue; (ii) the undertaking of electrical and building modifications for Well Nos. 1, 2, 6 and 7 to help protect wells and equipment from future flooding disasters such as Tropical Storm Lee; and (iii) the extension of a 12-inch water main from Emaus Street to Main Street to provide a redundant supply of water to certain student campus housing complexes in the Borough.

The construction of certain improvements to the Water Plant and Distribution System and the Wastewater Utility System to correct failed water distribution facilities and wastewater collection facilities along State Route (SR) 230. Currently, wastewater pipeline sections with significant cracks, voids and structural deterioration have caused local water sources, including Swatara Creek, to be impacted by sanitary sewer overflows at Hoffer Park and at manholes directly upstream of the Mill Street/Railroad Street Interceptor. And, sections of the water distribution pipeline suffer from multiple leaks and aged, ineffective pipeline valves, impairing the quality of service from the High Street water storage tank to the western portion of the Water Plant and Distribution System. PennDOT plans to repave this section of SR 230 in Summer 2015. It is anticipated that the water and sewer line will be replaced in conjunction with PennDOT's paving efforts.

“Union” means the International Brotherhood of Teamsters, Local 776.

“Union Employees” members of the Union who are System Employees subject to the terms of the Collective Bargaining Agreement. Non-Union Employees are all System Employees other than Union Employees.

“Unknown Site Condition” means the discovery of historical or archaeological or cultural finds, rare, endangered or threatened species, underground obstructions, underground utilities, geotechnical or soils issues or defects, faults, anomalies, or unknown features or conditions with respect to the System, which were not actually known by the Concessionaire as of the Time of Closing.

“Utility Purposes” means the use of the System to provide Utility Services to users of the System (including Municipal Customers) pursuant to applicable Law and the terms of this Agreement.

“Utility Services” means the services to be provided by the Concessionaire as grantee of the concession under this Agreement.

“Wastewater Service Agreements” means each of the agreements listed in Schedule 2A.

“Wastewater Utility System” means as set forth in the recitals hereto and includes the sewerage collection, treatment and disposal system of the Authority, including the treatment plant, collection facilities and disposal facilities as described or depicted on Schedule 1A, all improvements, and fixtures of any and every kind whatsoever forming a part of and used in connection with such treatment plant, collection facilities and disposal facilities from time to time, and all rights of way, easements and covenants associated with the foregoing, but excluding (A) all rights (including oil, gas and mineral rights, water rights, air rights and development rights) which are hereby retained by the Authority as the fee simple owner of the real property constituting the sites of the Wastewater Utility System and (B) all improvements, structures and fixtures related to the Wastewater Utility System that are not included in the Wastewater Utility System, as the Wastewater Utility System is described or depicted on Schedule 1A hereto. Within 30 days of executing this Agreement, the Concessionaire may amend Schedule 1A to remove separate tax parcels it would prefer that the Authority retain, and the Authority will cooperate with and assist Concessionaire in removing such tax parcels. If the Concessionaire determines that it wishes to exclude certain above-ground improvements that are not on tax parcels that are separate from tax parcels that it wishes to retain, the terms of Section 21.8 shall apply.

“Water Plant and Distribution System” means as set forth in the recitals hereto and includes the water treatment, water storage and water distribution system of the Authority including the treatment plant, water storage and distribution facilities as described or depicted on Schedule 1B, and all improvements and fixtures of any and every kind whatsoever forming a part of and used in connection with such treatment plant, water storage and water distribution facilities from time to time, and all rights of way, easements and covenants associated with the foregoing, but excluding (A) all rights (including oil, gas and mineral rights, water rights, air rights and development rights) which are hereby retained by the Authority as the fee

simple owner of the real property constituting the sites of the Water Plant and Distribution System and (B) all improvements, structures and fixtures related to the Water Plant and Distribution System that are not included in the Water Plant and Distribution System, as the Water Plant and Distribution System is described and depicted on Schedule 1B hereto. Within 30 days of executing this Agreement, the Concessionaire may amend Schedule 1B to remove separate tax parcels it would prefer that the Authority retain. If the Concessionaire determines that it wishes to exclude certain above-ground improvements that are not on tax parcels that are separate from tax parcels that it wishes to retain, the terms of Section 21.8 shall apply.

“Water Sales Shortfall” means, for any Water Sales Test Period, the amount (if any) expressed in gallons per day by which the sum of (A) the actual average daily volume of metered water sales to all Retail Water Customers over the entire Water Sales Test Period and (B) the Bulk Sales Surplus (if any) over the entire Water Sales Test Period was less than 639,340 gallons per day.

“Water Sales Test Period” means each successive period of three consecutive Reporting Years commencing with the initial three-year period consisting of the 2015 Reporting Year, the 2016 Reporting Year and the 2017 Reporting Year.

“Water Service Agreements” means each of the Agreements listed in Schedule 2B.

“Written Appraisal” means the arithmetic average of three written appraisals, each prepared by a disinterested third party appraiser that is nationally recognized in appraising assets and operations similar to the System. Each appraiser shall be sworn to determine the fair market value of the Concessionaire Interest by establishing the amount that the Concessionaire Interest would be sold in a voluntary transaction between a willing buyer and willing seller under no obligation to buy or sell.

Section 1.2. Number and Gender. In this Agreement words in the singular include the plural and vice versa and words in one gender include all genders.

Section 1.3. Headings. The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

Section 1.4. References to this Agreement. The words “herein,” “hereby,” “hereof,” “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause or schedule of or to this Agreement.

Section 1.5. References to Any Person. A reference in this Agreement to any Person at any time refers to such Person's permitted successors and assignees.

Section 1.6. Meaning of Including. In this Agreement, the words "include," "includes" or "including" mean "include without limitation," "includes without limitation" and "including without limitation," respectively, and the words following "include," "includes" or "including" shall not be considered to set forth an exhaustive list and shall not be construed as limiting in any manner.

Section 1.7. Meaning of Discretion. In this Agreement, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person.

Section 1.8. Meaning of Notice. In this Agreement, the word "notice" means "written notice," unless specified otherwise.

Section 1.9. Consents and Approvals. Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by a Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

Section 1.10. Trade Meanings. Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

Section 1.11. Laws. Unless specified otherwise, references to a Law are considered to be a reference to (i) such Law as it may be amended from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of the Borough to enact, administer, apply and enforce any Law. Except for Adverse Actions or if compensation or other relief is otherwise available or provided for pursuant to applicable Law or this Agreement, the Concessionaire shall not be entitled to claim or receive any compensation or other relief whatsoever as a result of the enactment, administration, application or enforcement of any Law by the Borough.

Section 1.12. Currency. Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

Section 1.13. Generally Accepted Accounting Principles. All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with generally accepted accounting principles in the United States of America, consistently applied.

Section 1.14. Calculation of Time. For purposes of this Agreement, a period of days shall be deemed to begin on the first day after the event that began the period and to end at 5:00 p.m. (Harrisburg time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Harrisburg time) on the next Business Day.

Section 1.15. Approvals, Consents and Performance by Authority.

(a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the Authority of or to any action, Person, Document, or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (1) contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as reasonably determined by the Authority, (2) clearly set forth the matter in respect of which such approval or consent is being sought, (3) form the sole subject matter of the correspondence containing such request for approval or consent, and (4) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably withheld, conditioned or delayed or is subject to the discretion of the Authority); (iii) the Authority shall, within such time period set forth herein (or if no time period is provided, within 45 days, subject to the Authority's right to extend such period for an additional 15 days) after the giving of a notice by the Concessionaire requesting an approval or consent, advise the Concessionaire by written notice either that it consents or approves or that it withholds its consent or approval, in which latter case it shall (unless such provision provides that such approval or consent may be unreasonably withheld, conditioned or delayed or is subject to the discretion of the Authority) set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the Authority acting reasonably, of the information or documentation provided; (iv) if the responding notice mentioned in clause (iii) of this Section 1.15(a) indicates that the Authority does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of the Authority set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 1.15 shall again apply until such time as the approval or consent of the Authority is finally obtained; (v) if the disapproval or withholding of consent mentioned in clause (iv) of this Section 1.15(a) is subsequently determined pursuant to Article 19 to have been improperly withheld or conditioned by the Authority, such approval or consent shall be deemed to have been given on the date of such final determination; and (vi) any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 19.

(b) *Authorization.* Except as to the approval of a proposed Transferee pursuant to Section 17.1, wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the Authority, such act may be taken or performed or approval or consent may be given by an appropriately

designated and authorized employee of the Borough without further action by the Borough Council and the Concessionaire may rely thereon in all respects.

(c) *Required Borough Council Approval of Transferee.* Any approval of the Authority of a proposed Transferee pursuant to Section 17.1 may only be made by a resolution or ordinance adopted by the Borough Council and, if applicable, the Authority Board. The Concessionaire may rely in all respects on a certified copy of any such ordinance or resolution.

(d) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further Approval in accordance with the provisions of this Section 1.15.

Section 1.16. Reserved Powers. The Reserved Powers of the Borough are expressly reserved to the Borough for the Term of this Agreement and exercise by the Borough of its Reserved Powers is not limited by this Agreement. Any obligations or restrictions imposed by this Agreement on the Borough or Authority shall not relate to or otherwise affect any activity of the Borough in its governmental capacity, including, but not limited to, enacting Laws, inspecting structures, reviewing and issuing permits, and all other legislative, administrative, or enforcement functions of the Borough pursuant to Law.

Section 1.17. Incorporation of Schedules and Exhibits. The following attached Schedules and Exhibits are made a part of this Agreement:

Schedule 1A	Wastewater Utility System
Schedule 1B	Water Plant and Distribution System
Schedule 2A	Wastewater Service Agreements
Schedule 2B	Water Service Agreements
Schedule 3	Initial Schedule of Rates
Schedule 4	Operating Standards
Schedule 5	System Assets
Schedule 6	System Contracts
Schedule 7	Example Initial Five-year Capex Plan
Schedule 8	Form of Legal Opinion of the Authority
Schedule 9	Form of Legal Opinion of the Concessionaire
Schedule 10	Form of Memorandum of Lease
Schedule 11	Public Buildings
Schedule 12	List of Permits and Authorizations
Schedule 13	Insurance Policies
Schedule 14	Remaining Amortized Rent
Schedule 15	Employees
Exhibit A	Authorizing Resolution
Exhibit B	Authorizing Ordinance

Exhibit C	Initial Rate Ordinance
Exhibit D	Guarantee Agreement
Exhibit E	Collective Bargaining Agreement
Exhibit F	Borough Assumption Agreement

In the event of any conflict between the terms of this Agreement and the terms of the Schedules, the terms of this Agreement shall control.

ARTICLE 2

The Transaction; Closing; Conditions Precedent; Covenants

Section 2.1. Grant of Lease and Concession; Sale of System Assets.

Upon the terms and subject to the conditions of this Agreement, effective at the Time of Closing, (a) the Concessionaire shall pay the Authority the exact amount of [] dollars (\$) in cash (such initial payment being hereinafter referred to as the “Consideration”) and (b) the Authority shall (i) demise and lease the System to the Concessionaire free and clear of Encumbrances other than Permitted Authority Encumbrances, for and during the term (the “Term”) commencing on the Closing Date and expiring on the fiftieth (50th) anniversary of the Closing Date (or such later date as required pursuant to the terms of this Agreement to effect a Delay Event Remedy), unless terminated earlier in accordance with the terms of this Agreement, (ii) grant the Concessionaire a right for and during the Term to operate the System and to provide Utility Services, and in connection therewith (A) to use, possess, operate, manage, maintain, rehabilitate, expand and improve the System and (B) to charge Service Charges and collect Revenues in connection with the operation of the System for Utility Purposes and otherwise in accordance with and pursuant to this Agreement, and (iii) assign, transfer and otherwise convey to the Concessionaire by bill of sale each of the System Assets, free and clear of any Encumbrances (other than Permitted Authority Encumbrances) and the Concessionaire shall accept each such demise, lease, grant, assignment, transfer and conveyance (collectively, the “Transaction”). The rights granted to the Concessionaire to use, possess, operate, manage, maintain and rehabilitate the System and to charge Service Charges and collect Revenues are subject to (A) the Reserved Powers of the Borough, (B) the Municipal Services Agreements and (C) the “free service” provisions of Section 3.21(b).

Section 2.2. Closing.

(a) Subject to the satisfaction of all conditions precedent contained in Sections 2.4(a), (b) or (c) or the waiver by the Parties of any unsatisfied condition, the closing of the Transaction (the “Closing”) shall take place on the first Business Day immediately after the 90-day period following the date hereof or such other date agreed to in writing by the Authority and the Concessionaire (the “Closing Date”). The Closing shall be held at the offices of McNees Wallace & Nurick LLC, 100 Pine Street, in the City of Harrisburg, Pennsylvania or such other place agreed to in writing by the Authority and the Concessionaire. At the Time of Closing, the Concessionaire shall deliver or cause to be delivered to the Authority same-day funds by wire transfer in the amount of the Consideration (as adjusted pursuant to

Section 2.2(b)), and upon receipt of such payment the Transaction shall be effective. Upon receipt of the funds described in the preceding sentence, the Authority shall immediately cancel and return the Closing LOC, if any, in accordance with the Concessionaire's instructions.

(b) The Authority shall be entitled to all Revenues and shall be responsible for all debts, liabilities, and obligations (including all charges, costs, and expenses) relating to the System Operations that occur, arise out of or relate to, or are based on facts or actions occurring, prior to the Closing Date. The Concessionaire shall be entitled to all Revenues and shall be responsible for all debts, liabilities and obligations (including all charges, costs and expenses) relating to the Assumed Liabilities that occur, arise out of or relate to, or are based on facts or actions occurring, from and after the Closing Date. All such Revenues, debts, liabilities and obligations (including all charges, costs and expenses) with respect to System Operations shall be prorated between the Authority and the Concessionaire as of 11:59 p.m. on the day immediately preceding the Closing Date based upon the actual number of days in the month and a 365-day year and the required payment resulting from such proration shall be added to or subtracted from the Consideration accordingly. If final prorations cannot be made at the Closing for any item being prorated under this Section 2.2(b), then the Authority and the Concessionaire shall allocate such items on a fair and equitable basis as soon as revenue statements, invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Closing Date. The Authority and the Concessionaire shall have reasonable access to, and the right to inspect and audit, the other's books to confirm the final prorations to the extent permitted by Law.

Section 2.3. Deposit.

(a) The Authority acknowledges receipt from the Concessionaire of cash (the "Cash Deposit") or one or more Letters of Credit with a term of at least 150 days from the date hereof (the "Closing LOC"), in an aggregate amount equal to Two Million Five Hundred Thousand United States Dollars (\$2,500,000), to be held by the Authority for the sole purpose described in Section 2.3(b). The Authority shall deposit any Cash Deposit with the Escrow Agent, which shall invest such amount in Eligible Investments pending the Closing. The Authority, Concessionaire, and Escrow Agent shall enter into a customary escrow agreement and ancillary agreements to effectuate these provisions.

(b) If the Authority terminates this Agreement pursuant to Section 2.4(d)(iv) as a result of the failure of the Concessionaire to satisfy any condition set forth in Section 2.4(b) of this Agreement, then the Authority shall be entitled to, as applicable (i) retain the Cash Deposit and all interest accrued thereon or, (ii) without notice to the Concessionaire, immediately draw the full amount of the Closing LOC upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under the Closing LOC in the amount of such sight draft, and the Authority shall be entitled to retain all of the proceeds of the Closing LOC, in each case as the sole remedy or right of the Authority against the Concessionaire hereunder (*provided* that this limitation shall not apply in the event of fraud); *provided, however*, that if this Agreement is terminated for any other reason,

or if a Material Adverse Effect occurs between the Bid Date and the Closing Date and persists to the Closing Date substantially unremediated, the Authority shall return any Cash Deposit and the interest earned thereon in accordance with the Concessionaire's reasonable instructions, or deliver, in accordance with the Concessionaire's reasonable instructions, the Closing LOC and agree to cancel the Closing LOC, in each case, immediately following any such termination (*provided* that this limitation shall not apply in the event of fraud). Except in cases involving fraud by the Concessionaire, the right of the Authority to retain the Cash Deposit or to draw the Closing LOC is intended to be, and shall constitute, liquidated damages, and any payment thereof to the Authority shall terminate the Authority's rights and remedies in all respects.

(c) At Closing, upon the satisfaction of, or waiver by both Parties of, the conditions set forth in Sections 2.4(a), 2.4(b) and 2.4(c), the Authority shall be entitled to apply the Cash Deposit (including any accrued interest) as a credit against the Consideration.

Section 2.4. Conditions Precedent; Termination.

(a) *Conditions for the Benefit of the Concessionaire.* The Concessionaire shall be obligated to complete the Closing only if each of the following conditions has been satisfied in full at or before the Time of Closing, unless waived by the Concessionaire: (i) the representations and warranties of the Authority set forth in Section 9.1 and the Borough set forth in Article 20 shall be true and correct in all material respects on and as of the date hereof and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except that representations and warranties that by their terms speak only as of the date of this Agreement or some other date need be true and correct only as of such date; (ii) neither the Authority nor the Borough shall be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the Authority or the Borough, as appropriate, at or prior to the Time of Closing; (iii) the Authority and the Borough shall have arranged for the deposit of funds (including a portion of the Consideration paid by the Concessionaire) sufficient to provide for the payment of all obligations of the Authority or the Borough payable from and secured by the Revenues or the System and outstanding at the Time of Closing (including all outstanding System Bonds) in such a manner that such obligations shall be legally defeased or advance-refunded on the Closing Date and no longer treated as outstanding under the documents under which such obligations were issued and are secured and the Authority and the Borough shall have provided the Concessionaire evidence reasonably satisfactory to it that any and all security interests and collateral securing any such obligations will be released in full as of the Time of Closing (it being understood that the receipt or acceptance by the Concessionaire of any such evidence shall in no way constitute a waiver of the obligation of the Authority and the Borough to indemnify the Concessionaire if any such obligations would finally become payable); (iv) at the option and the expense of the Concessionaire, which option must be exercised no later than ten days after the date of this Agreement, the Authority shall have obtained and delivered to the Concessionaire effective at the Time of Closing, a commitment for an ALTA (2006) Owner's policy or policies, in form and substance reasonably acceptable to the

Concessionaire, proposing to insure the leasehold interest of the Concessionaire (which will include an endorsement with the terms of the leasehold coverage), which commitment will reflect that the Authority (as lessor) owns the good and marketable title to the System, subject only to Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv), clause (vii) and clause (viii) as it pertains to clauses (iv) and (vii), of the definition of the term “Permitted Concessionaire Encumbrances”) (the “Title Commitment”); (v) the Authority shall have delivered to the Concessionaire a legal opinion of counsel to the Authority, in substantially the form attached hereto as Schedule 8; (vi) the Rate Ordinance (both the Initial Rate Ordinance and the Supplemental Rate Ordinance) shall have been enacted by the Borough and shall be in full force and effect as of the Closing Date; (vii) the Authorizing Ordinance shall have been enacted by the Borough and the Authorizing Resolution shall have been enacted by the Authority and both shall be in full force and effect as of the Closing Date; (viii) the Authority and the Borough shall have delivered to the Concessionaire an amendment, duly authorized, approved and executed both parties, terminating the Borough Lease; (ix) the Authority shall have executed and delivered the estoppel certificate contemplated by Section 10.2; (x) the Authority shall have executed and delivered the conveyances referred to in Section 2.1; (xi) no event has transpired between the date of signing of this Agreement and the Closing Date that is not remedied as of the Closing Date and would have constituted an Adverse Action had such event occurred during the Term; (xii) there shall not have occurred a material casualty loss, destruction or damage to the System that remains substantially unremediated as of the Closing Date; and (xiii) there shall not have occurred an Authority Default as described in Section 16.2. As used in this Section 2.4(a) and in Section 2.5(i), a material casualty loss, destruction or damage to the System means the casualty loss, destruction or damage of not less than \$1,500,000 or (ii) a loss, damage or destruction that materially and adversely affects the ability of the Concessionaire to operate the System or renders it out of compliance with applicable Laws, Authorizations or Permits.

(b) *Conditions for the Benefit of the Authority.* The Authority shall be obligated to complete the Closing only if each of the following conditions precedent has been satisfied in full at or before the Time of Closing, unless waived by the Authority: (i) all representations and warranties of the Concessionaire in Section 9.2 shall be true and correct on and as of the date hereof and at and as of the Time of Closing with the same force and effect as if made at and as of such time and date except that representations and warranties that by their terms speak only as of the date of this Agreement or some other date need be true and correct only as of such date; (ii) the Concessionaire shall not be in material breach of any material covenant on its part contained in this Agreement which is to be performed or complied with by the Concessionaire at or prior to the Time of Closing; (iii) the Concessionaire shall have delivered to the Authority a legal opinion of counsel to the Concessionaire, in substantially the form attached hereto as Schedule 9; and (iv) the Concessionaire shall have executed and delivered the Borough Assumption Agreement, in escrow, to the Escrow Agent.

(c) *Mutual Conditions.* The Parties shall be obligated to complete the Closing only if each of the following conditions precedent has been satisfied in full at

or before the Time of Closing, unless waived by both Parties: (i) there shall be no litigation pending questioning the due adoption of the Authorizing Resolution, the Authorizing Ordinance or the Rate Ordinance or the power or authority of the Authority to enter into this Agreement and/or consummate the Transaction or the Borough to enter into its joinder of this Agreement; (ii) there shall be no preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction (other than the Borough) or other legal restraint or prohibition enjoining or preventing the consummation of the Transaction (other than any such restraint or prohibition issued by the Borough); (iii) there shall be no action taken, or any Law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction that makes the consummation of the Transaction illegal and (iv) the Authorizations and Permits set forth in Schedule 12 shall have been obtained, modified or transferred, as described in Schedule 12.

(d) *Termination*. This Agreement may be terminated at any time prior to the Closing:

(i) by mutual consent of the Parties in a written instrument;

(ii) by either Party, upon notice to the other Party, if (a) any Governmental Authority of competent jurisdiction (other than the Borough) shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transaction, and such order, decree, ruling or other action has become final and nonappealable, or (b) any action is taken, or any law enacted, entered, enforced or deemed applicable to the Transaction by any Governmental Authority of competent jurisdiction (other than the Borough) that made consummation of the Transaction illegal; *provided, however*, that the right to terminate this Agreement under this Section 2.4(d)(ii) shall not be available to the Party whose failure to comply with any provision of this Agreement has been the cause of, or resulted in, such action;

(iii) by the Concessionaire, upon notice to the Authority, if any condition set forth in Section 2.4(a) or (c) is not satisfied at the Time of Closing; *provided, however*, that the Concessionaire shall not have the right to terminate this Agreement under this Section 2.4(d)(iii) if the Concessionaire's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied;

(iv) by the Authority, upon notice to the Concessionaire, if any condition set forth in Section 2.4(b) or (c) is not satisfied at the Time of Closing; *provided, however*, that the Authority shall not have the right to terminate this Agreement under this Section 2.4(d)(iv) if the Authority's or the Borough's failure to comply with any provision of this Agreement has been the cause of, or resulted in, the failure of such condition or conditions to be satisfied; or

(v) by either Party, if Closing has not occurred by December 31, 2015.

(e) *Effect of Termination.* In the event of termination of this Agreement as provided in Section 2.4(d), this Agreement shall forthwith become void and there shall be no liability or obligation on the part of either Party, the Borough, or their respective Representatives, except as set forth in Section 2.3(b), this Section 2.4(e), Article 12, Article 19 and Article 20. In the event that the Concessionaire terminates this Agreement pursuant to Section 2.4(d)(iii), as a result of the failure of the Authority or the Borough to satisfy any condition set forth in Section 2.4(a) of this Agreement, the Authority will compensate the Concessionaire for up to \$250,000 of reasonable and documented out-of-pocket costs incurred by the Concessionaire in connection with the transaction contemplated by this Agreement. In the event of termination pursuant to Section 2.4(d)(i), (ii) or (iii) or Section 2.5(i), the Cash Deposit and all investment earnings accrued thereon shall be promptly paid to the Concessionaire or the Closing LOC shall be promptly returned undrawn to the Concessionaire marked canceled, as applicable.

Section 2.5. Covenants.

(a) *Cooperation.* From the date hereof up to the Time of Closing, the Parties shall cooperate with each other in order to permit the Closing to be consummated on the Closing Date, including making necessary filings. Without limiting the generality of the foregoing, the Authority shall cooperate with Concessionaire in connection with any efforts by the Concessionaire to obtain, at the expense of the Concessionaire, any endorsements or additional coverages with respect to the Title Commitment.

(b) *Reasonable Efforts.* From the date hereof up to the Time of Closing, each Party shall use all reasonable efforts (i) to take, or cause to be taken, all actions necessary to comply promptly with all requirements under this Agreement and all legal requirements which may be imposed on such Party to consummate the Transaction as promptly as practicable, and (ii) to obtain (and to cooperate with the other Party to obtain) any consent of any Governmental Authority or any other public or private third party which is required to be obtained or made by such Party in connection with the consummation of the Transaction. Each Party shall promptly cooperate with and promptly furnish information to the other Party in connection with any such efforts by, or requirement imposed upon, any of them in connection with the foregoing.

(c) *Injunctions.* If any Governmental Authority of competent jurisdiction issues a preliminary or permanent injunction or temporary restraining order or other order before the Time of Closing which would prohibit or materially restrict or hinder the Closing, each Party shall use all reasonable efforts to have such injunction, decree or order dissolved or otherwise eliminated or to eliminate the condition that formed the basis for such injunction or order, in each case as promptly as possible and, in any event, prior to the Time of Closing.

(d) *Operation of the System.* From the Bid Date up to the Time of Closing, the Authority shall have caused the System to be operated by the Borough in the ordinary course in a manner consistent with past practice, which shall include using commercially reasonable efforts to preserve the goodwill of the System and to

maintain good business relationships with customers, suppliers and others having business dealings with the System, to maintain the System Assets in normal operating condition and repair in accordance with past practice (ordinary wear and tear excepted), to perform (or cause to be performed) in all material respects all of the Borough's obligations under the Municipal Service Agreements and the Borough's or the Authority's (as applicable) obligations under the System Contracts and to cause the System to be operated in all material respects in accordance with all applicable Laws (except to the extent any non-compliance is being contested in good faith by appropriate proceedings), all to the end that the System as a going concern shall be unimpaired and transferred to the Concessionaire at the Closing in a condition not materially worse than the condition as of the Bid Date. It is understood and agreed that the Authority shall, up to and including the Time of Closing, be entitled to all of the cash or cash equivalents in or generated by the System (subject to the terms of Section 2.2(b) in the case of any cash or cash equivalents that are paid prior to the Time of Closing but are allocable to periods after the Time of Closing). Without limiting the foregoing, neither the Authority nor the Borough shall terminate, amend, modify or agree to a waiver of the terms of any Authorization related to the System after the Bid Date and before the Time of Closing without the Concessionaire's consent, which shall not be unreasonably withheld, conditioned or delayed.

(e) *Permits.*

(i) The Permits currently held by the Authority for the ownership and operation of the System are set forth in Schedule 12, and at Closing, all the Permits shall be in full force and effect. Schedule 12 also designates which Permits are to be retained by the Authority, transferred to the Concessionaire, or have the Concessionaire added as co-permittee with the Authority. All Permits that are to be transferred to the Concessionaire, or that are required to be transferred to the Concessionaire for the proper operation of the System, are legally transferable to the Concessionaire and to the knowledge of the Authority are renewable under the same conditions currently applicable thereto. The Authority shall file the appropriate notices to add the Concessionaire on all Permits,

(ii) Regardless of which Party holds the Permits, from and after the Closing, the Concessionaire shall be responsible for complying with the terms and conditions of all Permits held for the ownership or operation of the System (other than the Storm Water permit, which shall remain the responsibility of the Authority); *provided* that the System, when operated in accordance with Prudent Industry Practices, is capable of complying with the terms and conditions of such Permits. For those Permits for which the Authority or the Borough is the permittee or co-permittee, at the request of the Concessionaire, the Authority or the Borough, as applicable shall reasonably cooperate with the Concessionaire as necessary to comply with any administrative requirements of such Permits, such as signing applications or reports that are required to be signed by permittee (when the Authority or the Borough is the sole permittee) or both permittees (when the Authority or the Borough is the co-permittee). In the event the Concessionaire requests the Authority or the Borough to execute any such application or report, the

Concessionaire represents and warrants that all information contained in such application or report is true and correct.

(iii) The Concessionaire shall not modify or amend any Permit without the Authority's prior approval, which approval shall not to be unreasonably withheld, delayed or conditioned (*provided, however*, such approval is not required for the Concessionaire to reapply for an expiring Permit requesting the same terms and conditions contained in the expiring Permit, or with minor modifications thereto).

(f) *Disclosure of Changes.*

(i) From the date hereof up to the Time of Closing, each Party shall immediately disclose in writing to the other Party any matter which becomes known to it which is inconsistent in any material respect with any of the representations or warranties contained in Article 9. No such disclosure, however, shall cure any misrepresentation or breach of warranty for the purposes of Section 2.4 or Article 12; and

(ii) From the date hereof up to the Time of Closing, the Authority may supplement or amend the Schedules hereto, including one or more supplements or amendments to correct any matter which would constitute a breach of any representation, warranty, covenant or obligation contained herein, including any amendment or supplement to Schedule 1A or Schedule 1B to make any necessary changes in relation to, pursuant to or in accordance with the delivery of the Title Commitment pursuant to Section 2.4(a)(iv)). No such supplement or amendment shall be deemed to cure any breach for purposes of Section 2.4(a) or, subject to the following sentence, for any other purpose. Notwithstanding the previous sentence, if the Closing occurs, then, subsequent to the Closing, any such supplement or amendment with respect to any representation or warranty contained in Sections 9.1(d), 9.1(g)(ii), 9.1(g)(iv), 9.1(i), 9.1(j) or 9.1(k) relating to a matter arising after the date hereof will be effective to cure and correct for all purposes any inaccuracy in, or breach of, any such representation or warranty which would exist if the Authority had not made such supplement or amendment, and all references to any Schedule hereto which is supplemented or amended as provided in this Section 2.5(f)(ii) shall (subject to the foregoing limitation) for all purposes after the Closing be deemed to be a reference to such Schedule as so supplemented or amended.

(g) *Access to Information.* From the date hereof up to the Time of Closing, but subject to confidentiality obligations binding on the Authority with respect to any Person (*provided* that the Authority has disclosed to the Concessionaire the existence of the applicable agreement or other document that is subject to such confidentiality limitation in order to enable the Concessionaire to evaluate the materiality and significance of the lack of disclosure based on such limitations), the Authority shall (i) give the Concessionaire and its Representatives reasonable access during normal business hours and on reasonable notice to the System, subject to the Authority's and the Borough's policies and regulations regarding safety and security and any other reasonable conditions imposed by the Authority, (ii) permit the Concessionaire and its Representatives and the Leasehold

Mortgagee to make such inspections as they may reasonably request (including any environmental assessments of the System and any plats of survey thereof) (*provided* that Concessionaire shall not conduct any boring, drilling or other invasive testing of the System without the express Approval of the Authority, and such invasive testing may only be conducted after entering into a separate testing agreement with the Authority), and (iii) to furnish the Concessionaire and its Representatives and the Leasehold Mortgagee with such financial and operating data and other information that is available with respect to the System as they may from time to time reasonably request. The Concessionaire shall hold and will cause its Representatives to hold in strict confidence all documents and information concerning the System to the extent and in accordance with the terms and conditions of the confidentiality agreement between the Authority and Concessionaire, dated [_____], 2014. After the Closing Date, the Concessionaire shall, in connection with claims or actions brought by or against third parties based upon events or circumstances concerning the System, (A) provide reasonable assistance in the collection of information or documents and (B) make the Concessionaire's employees available when reasonably requested by the Authority.

(h) *Transition.* From the date hereof up to the Time of Closing, the Parties shall cooperate with each other to ensure the orderly transition of control, custody, operation, management, maintenance and rehabilitation of, and the right to charge Service Charges and collect Revenues in connection with, the System at the Time of Closing. In order to assure such orderly transition and to provide Information and Documents related to the operations of the System to the Concessionaire, the Authority and the Borough shall use commercially reasonable efforts to exercise their rights under existing agreements with service providers. Prior to the Closing Date, the Authority and the Concessionaire shall develop an information action plan to advise the public concerning the transition of Utility Services from the Authority to the Concessionaire, which plan will include contact information for customer services such as customer information telephone numbers and a customer information web site. The first billing statements for Utility Services provided to customers of the System after the Closing Date shall include an insert containing the new contact telephone number and website address for Utility Services. Within 60 days after the Closing Date, all Borough logos on System rolling stock and equipment shall be replaced with logos of the Concessionaire or the Operator. Upon the request of the Concessionaire, the Authority will use reasonable efforts to provide to the Concessionaire, for up to six months following the Closing, the ability to consult with any then-current Borough employee whose primary responsibilities related to the System. All such services shall be provided for an amount equal to the actual cost to the Borough (including employment costs and related overhead expenses allocable to such employees, as reasonably determined by the Borough), which amount shall be billed to the Concessionaire as soon as reasonably practicable following the end of each month and shall be payable by the Concessionaire within 30 days of receipt of any such statement, and upon such other reasonable terms and conditions as the Authority and the Concessionaire may agree.

(i) *Casualty Loss Prior to Closing.* If prior to the Time of Closing, a material casualty loss, destruction or damage to any part of the System has occurred and this Agreement has not been terminated under Section 2.4(d), then the Authority

at its option shall (i) promptly and diligently repair and rebuild the affected parts of the System to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage; *provided* that if the affected parts of the System cannot prior to the Closing Date be repaired or rebuilt to restore them to at least the same condition in which they were before the occurrence of such casualty loss, destruction or damage, the Authority shall make such repairs or restoration as can reasonably be completed prior to the Closing Date and prior to the Closing Date shall provide to the Concessionaire a plan for the completion of such repairs or restoration following the Time of Closing at the Authority's expense subject to the Concessionaire's reasonable approval and shall then complete such repairs or restoration in accordance with such plan, or (ii) authorize the Concessionaire to repair and rebuild the affected parts of the System, in which event the Authority shall assign to the Concessionaire all insurance and other proceeds payable by third-party insurers or other third parties to the Authority in respect of such casualty loss, destruction or damage and enforce (with the cooperation of the Concessionaire) all of its rights, remedies and privileges under any applicable insurance policies with third-party insurers; *provided* that to the extent that such proceeds are not sufficient to repair and rebuild the affected parts of the System and restore such affected parts to at least the same condition in which they were before the occurrence of the casualty loss, destruction or damage then (A) either Party may terminate this Agreement prior to the Closing Date or (B) in the event neither Party terminates this Agreement pursuant to clause (A), the Authority shall reimburse the Concessionaire for the difference upon such terms as are agreed to by the Authority and the Concessionaire. The Authority shall pay the Concessionaire all Concession Compensation with respect to any repair or restoration required by this Section 2.5(i).

(j) *System Contracts.*

(i) The Terminable System Contracts are listed on Schedule 6, Part I. At least 45 days prior to the Closing Date, the Concessionaire shall designate any Terminable System Contracts that it wishes to assume as Terminable System Contracts to be assigned to the Concessionaire by the Authority or the Borough, as applicable, on the Closing Date. Following the Concessionaire's designation, the Authority shall designate any remaining Terminable System Contracts that are not to be assigned to the Concessionaire as Terminable System Contracts to be retained by the Authority or the Borough, as applicable, following the Closing Date. All other Terminable System Contracts shall be terminated by the Authority or the Borough, as applicable, effective at the Time of Closing. Any liability under or related to any Terminable System Contracts retained by the Authority or the Borough following the Closing Date or terminated by the Authority or the Borough on the Closing Date (including any liability resulting from the termination thereof), and any liability under or related to any Terminable System Contracts that is assigned to the Concessionaire on the Closing Date attributable to periods prior to the effectiveness of the assignment thereof to the Concessionaire, shall be solely for the account of the Authority.

(ii) The Non-Terminable System Contracts listed in Schedule 6, Part II will be assigned or transferred to and assumed by the Concessionaire on the Closing Date and will be deemed Assumed Liabilities of the Concessionaire.

(k) *Employees.* Attached hereto as Schedule 15 is a schedule of the Authority's Union and non-Union Employees, including, but not limited to, job titles, dates of hire, full- and part-time status, and hourly rate.

(i) *Union Employees.* Effective as of and conditioned upon Closing, the Concessionaire shall (A) recognize the Union as the exclusive bargaining representative for all Union Employees; (B) adopt the Collective Bargaining Agreement, if any, for those Union Employees and (C) make offers of employment to each Union Employee who is active and in good standing at the Time of Closing. Such offers of employment shall consist of the same terms and conditions of employment as set forth in the Collective Bargaining Agreement.

(ii) *Other Employees.* Prior to the Time of Closing, the Concessionaire shall offer employment to each of the non-Union Employees whose employment primarily relates to the operation of the System and who are active and in good standing. Such offers of employment shall contain the same salary and other terms and conditions of employment, including provision for health and other welfare benefits applicable for such employees on the Bid Date, adjusted for an annual salary increases granted to such employees after the Bid Date, but not including any special bonus payments or increase in employment benefits.

(iii) *Retirement Benefits.* The Concessionaire, or the Operator on behalf of the Concessionaire, shall establish and maintain for any former System Employee who is hired by the Concessionaire in accordance with Section 2.5(k)(i), (ii) or (iv) a retirement plan, which may be any existing retirement plan of the Concessionaire or the Operator (the "Concessionaire Retirement Plan") that provides retirement benefits that are substantially equivalent in amount and paid in substantially equivalent terms to the retirement benefits provided to other employees under the Concessionaire Retirement Plan. The Concessionaire shall recognize, for each former System Employee who is hired by the Concessionaire in accordance with Section 2.5(k)(i) or (ii), service recognized under the Authority's Pension Plan as of the Closing Date, for purposes of eligibility to participate, vesting, eligibility for retirement, early retirement or early retirement subsidies, in the Concessionaire Retirement Plan. The Authority will not be transferring any assets from the Authority's Pension Plan, or retirement health and welfare benefit assets related to the Authority's or Borough's health and welfare plans, if any, to the Concessionaire. The Concessionaire will not be responsible for any unfunded liabilities related to the Authority's Pension Plan.

The Concessionaire Retirement Plan shall be intended to qualify as a tax-qualified retirement plan under Section 401(a) of the Internal Revenue Code of 1986. After the Closing Date, the Concessionaire shall submit applications to the Internal Revenue Service for favorable determination letters indicating that the Concessionaire Retirement Plan meets the requirements of Section 401(a) of the Code, and the Concessionaire shall make any amendments or modifications to the

Concessionaire Retirement Plan that are (1) reasonably requested by the Internal Revenue Service in connection with the issuance of such favorable determination letters or (2) otherwise required to maintain the tax-qualified status of the Concessionaire Retirement Plan. Any modifications made to the Concessionaire Retirement Plan that are required in order for such plans to comply with ERISA and, to the extent applicable Sections 401(a) and 401(k) of the Internal Revenue Code of 1986, shall be deemed to be permissible modifications under the substantially equivalent standard set forth above.

The Concessionaire Retirement Plan shall be intended to be covered by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The Concessionaire shall make any amendments or modifications to the Concessionaire Retirement Plan, including investments held by the Concessionaire Retirement Plan to satisfy its duties and obligations under ERISA.

(iv) *Health and Welfare Benefits for Union Employees.* The Concessionaire, or the Operator on behalf of the Concessionaire, shall provide for any former System Employee who is hired by the Concessionaire in accordance with Section 2.5(k)(i), the active and post-retirement health and welfare benefits to such individuals that have been negotiated as part of the Collective Bargaining Agreement in effect immediately prior to Closing for the remaining period of the current term of such Collective Bargaining Agreement, or such other longer period of time as required by Law.

(v) *Other System Employee Liabilities.* Except as specified in Section 3.2(c)(ii), for each former System Employee who is hired by the Concessionaire in accordance with Section 2.5(k)(i) or (ii), Concessionaire shall assume liabilities for claims of such employees made after the Closing Date, for (i) medical, dental, vision, life, disability or any other insurance or benefits; unemployment compensation or workers compensation claims; claims for accrued vacation pay, accrued sick pay, accrued holiday or personal pay, or any other accrued paid time off; any and all grievances or other claims made pursuant to the collective bargaining agreement; and any and all unfair labor practice charges, brought by or asserted on behalf of such former System Employees, or the spouses, dependents or beneficiaries thereof, and all liabilities arising from or relating to the employment, termination of employment or employment practices with respect to such former System Employees, whether such claims arose based on incidents or facts occurring prior to, on or subsequent to the Closing Date; or (ii) claims of employment discrimination, hostile work environment, sexual harassment, discriminatory harassment, negligent hiring or retention, retaliatory discharge, or wrongful discharge; claims pursuant to the Family and Medical Leave Act or the Americans with Disabilities Act, claims pursuant to the Fair Labor Standards Act, the Pennsylvania Human Relations Act, the Pennsylvania Wage Payment and Collection Law, the Pennsylvania Minimum Wage Act, the Pennsylvania Whistleblower Act, any claims for severance; any employment related claim under any federal, state or local law or any claim under any common law theory brought by or asserted on behalf of such former System Employees, or the spouses, dependents or beneficiaries thereof, and all liabilities arising from or relating to the employment, termination of employment or employment practices with respect to such former System

Employees, whether such claims arose based on incidents or facts occurring prior to, on or subsequent to the Closing Date (provided that, Concessionaire's liability for such claims under this subparagraph (k)(v)(ii) based on incidents or facts occurring prior to the Closing Date shall not exceed \$50,000.00 in the aggregate).

(vi) *Late Hires.* The Concessionaire shall indemnify and hold harmless the Authority, the Borough and each of their respective Representatives from and against any Losses actually suffered or incurred by any such person, based upon, arising out of, occasioned by or attributable to Concessionaire's hiring of any former System Employee at any time subsequent to the Time of Closing but prior to the first anniversary of the Closing Date. By way of illustration and not limitation, Losses to be indemnified shall include Health and Welfare Benefits Costs described in Section 2.5(k)(iv) and Other System Employee Liabilities described in Section 2.5(k)(v) that would otherwise have been the financial responsibility of the Concessionaire had the System Employee(s) been hired at the Closing Time.

(l) *Damage or Destruction.* The Authority shall not perform or fail to perform any act, which as a result would cause material damage to, or the destruction of the System and such damage or destruction would have a Material Adverse Effect. For the avoidance of doubt whether or not sufficient insurance is in place shall be disregarded for the purposes of this Section 2.5(l).

(m) *Policies of Insurance.* From the date hereof up to the Time of Closing, the Authority or the Borough shall continue in force all applicable policies of insurance maintained in respect of the System. At the Time of Closing, the Concessionaire shall be responsible for obtaining insurance for the System in accordance with the terms hereof.

(n) *Operational Matters.* The Authority shall consult with the Concessionaire with respect to any System operation matters of a material nature prior to the Time of Closing.

(o) *Meter Readings.* In connection with Section 2.2(b), at or immediately prior to the Time of Closing, the Authority will take a reading of all water meters. The Authority shall bill for all usage reflected by such readings and shall be entitled to all Revenue generated thereby, and the Concessionaire shall be entitled to all Revenue generated thereafter.

Section 2.6. Memorandum of Lease. At the Time of Closing, the Parties shall execute and deliver a memorandum of lease (the "Memorandum of Lease") in the form attached hereto as Schedule 10, which shall be recorded in the Office of the Recorder of Deeds for Dauphin County, Pennsylvania. At the time of such recording, the Concessionaire shall pay any realty transfer Tax due with respect to the lease granted under this Agreement, which Tax, if any, shall be the sole and exclusive obligation of the Concessionaire. The Memorandum of Lease shall reflect the Parties' allocation of the Consideration of the portion thereof relating to the lease granted under this Agreement, in accordance with Section 2.8(b). To the extent that changes are made to this Agreement with respect to the Term, leased property or other material matters set forth in the recorded Memorandum of Lease, the Parties

shall execute, deliver and record an amendment to the recorded Memorandum of Lease reflecting such changes. The Parties agree not to record this Agreement itself.

Section 2.7. Closing Deliveries. At the Time of Closing, each Party shall execute and deliver all assets, agreements of sale, assignments, endorsements, instruments and documents as are reasonably necessary in the opinion of the other Party to effect the Transaction (and in form and substance that are reasonably satisfactory to such other Party).

Section 2.8. Intended Treatment for Federal and State Income Tax Purposes.

(a) *Tax Treatment.* This Agreement is intended for United States federal and state income Tax purposes to be a sale of the System and the System Assets to the Concessionaire, a lease of the real property on which the System is located, the grant to the Concessionaire of a right and franchise within the meaning of sections 197(d)(1)(D) and (F) of the Code and sections 1.197-2(b)(8) and (10) of the Income Tax Regulations thereunder, for and during the Term to provide Utility Services and an assignment to the Concessionaire of all other section 197 intangibles (within the meaning of such in the Code) held by the Authority with respect to the System and the System Assets and conveyed by this Agreement. The Authority and the Concessionaire agree that the Consideration will be allocated among the assets that the Concessionaire is obtaining the use of pursuant to this Agreement using the residual allocation provisions of section 1060 of the Code, as provided therein.

(b) *Allocation.* The Concessionaire shall prepare an allocation of the Consideration (and all other capitalized costs) among the acquired assets in accordance with section 1060 of the Code and the applicable Income Tax Regulations. The Concessionaire shall deliver such allocation to the Authority within 60 Days after the Closing; provided that the Memorandum of Lease attached as Schedule 10 and delivered by the Parties on the date of this Agreement, shall contain the allocation of the Consideration of the portion thereof relating to the lease granted under this Agreement. The Concessionaire acknowledges that (i) the leasing of the System as provided under this Agreement may result in the transfer of the tax ownership of the System from the Authority to the Concessionaire, (ii) the Authority and the Borough, as applicable, will be required to maintain the exclusion of the interest on the System Bonds from the gross income of the owners of the System Bonds for federal income tax purposes and (iii) in order to do so the Authority or the Borough, as applicable, may undertake “remedial actions” under applicable Income Tax Regulations or enter into settlement agreements with the Internal Revenue Service. In no event shall the Concessionaire bear any liability for failure of such “remedial actions” or any other event that would have an adverse impact on the tax-exempt status of the System Bonds. The Parties agree that any allocation under said section 1060 must not restrict the Authority’s or the Borough’s ability to preserve the tax-exempt status of the interest on the System Bonds as determined by the Authority or the Borough, as applicable. The Parties agree that any allocation prepared by the Concessionaire that is prepared in accordance with said section 1060 and the applicable Income Tax Regulations and does not restrict

the ability of the Authority or the Borough, as applicable, to preserve the tax-exempt status of interest on the System Bonds shall be binding upon the Parties.

ARTICLE 3

Terms of the Lease and Concession

Section 3.1. Quiet Enjoyment; Present Condition.

(a) *Quiet Enjoyment.* The Authority agrees that the Concessionaire shall, at all times during the Term, be entitled to and shall have the quiet possession and enjoyment of the System and the rights and privileges granted to the Concessionaire hereunder, subject to (i) the Authority's remedies upon a Concessionaire Default, and (ii) the provisions contained in this Agreement. The Parties acknowledge that the Concessionaire's rights to use the System to provide Utility Services and to impose and collect Service Charges are subject to the right of the Authority, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the System is used and operated as required by this Agreement. Any entry by the Authority or any of its Representatives onto the System required or permitted under this Agreement shall not constitute a reentry, trespass or a breach of the covenant for quiet enjoyment contained in this Agreement. The Authority shall, at all times during the Term, defend its fee or leasehold interest title, as the case may be, to the System, the Concessionaire's leasehold interest in and to the System and the rights granted to the Concessionaire hereunder, or any portion thereof, against any Person claiming any interest adverse to the Authority or the Concessionaire in the System, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Concessionaire, its Affiliates or their respective Representatives.

(b) *Present Condition.* Subject to Sections 2.5(i) and 3.2(c)(ii) and except as specifically set forth herein, the Concessionaire understands, agrees and acknowledges that the Concessionaire (i) by the execution of this Agreement, agrees to accept the System "AS IS" at the Time of Closing and (ii) has inspected the System and is aware of its condition and acknowledges that neither the Authority nor the Borough has made, and neither is making, any representation or warranty, express or implied, regarding the condition of the System (or any part thereof) or its suitability for the Concessionaire's proposed use.

Section 3.2. System Operations.

(a) *Use.* Except as otherwise specifically provided herein, including without limitation the public purpose requirements set forth in Section 3.18 the Concessionaire shall, at all times during the Term, (i) be responsible for all aspects of the System Operations, and (ii) maintain and operate the System and cause the System Operations to be performed in accordance with the provisions of this Agreement, applicable Law and Prudent Industry Practices (*provided, however,* that the Concessionaire or the Operator may contest the application of any Law by appropriate proceedings). The Concessionaire shall, at all times during the Term,

cause the System to be continuously open and operational for Utility Purposes and the provision of Utility Services, 24 hours a day, every day, except that the Concessionaire may close the System or a portion or portions thereof (A) as specifically permitted under this Agreement, (B) as required by applicable Law, (C) as necessary to comply with any other requirement of this Agreement (including closures related to the performance of capital improvements or maintenance or repair activities as required by the Operating Standards), or (D) as necessary for temporary closures required to address emergencies, public safety or temporary events.

(b) *Costs and Expenses.* Except as otherwise specifically provided herein, the Concessionaire shall, at all times during the Term, pay or cause to be paid all costs and expenses relating to the System Operations as and when the same are due and payable.

(c) *Assumed Liabilities and Excluded Liabilities.*

(i) The Concessionaire agrees to assume and discharge or perform when due, all debts, liabilities and obligations whatsoever relating to the System, the System Operations or the former System Employees that occur, arise out of or relate to, or are based on facts or actions occurring, during the Term, but only to the extent such debts, liabilities or obligations do not arise from or relate to any breach by the Authority of any covenant, representation or warranty set forth in this Agreement (collectively, the "Assumed Liabilities"); *provided that* the Assumed Liabilities shall not include the Excluded Liabilities as defined in paragraph (ii).

(ii) The Excluded Liabilities shall consist of any debts, liabilities and obligations: (A) with respect to the Authority's obligations under this Agreement, which the Authority shall perform and discharge when due; (B) arising out of System Operations (including with respect to any Municipal Service Agreements and System Contracts) prior to the Time of Closing, which the Authority shall perform and discharge when due; (C) relating to any System Bonds or any other debt or obligations related to the System and incurred by the Authority or the Borough or the defeasance or advance refunding thereof, which the Authority or the Borough, as applicable, shall perform and discharge; (D) with respect to any Hazardous Substance existing at the Time of Closing that during the Term has a Material Adverse Effect on System Operations or the System Concession Value; (E) violations arising under any Environmental Law and solely related to (1) the ownership, operation or condition of the System at any time prior to the Time of Closing or (2) any Hazardous Substance contaminant that was released at, on, under or from the System at any time prior to the Time of Closing; (F) with respect to former System Employees, all liabilities and obligations for unemployment compensation arising out of and resulting from the period of any such former System Employee's employment with the Borough, and all liabilities and obligations for occupational injury or disease which arise out of or are in any manner connected with exposure to an occupational hazard which existed during the period of any such former System Employee's employment with the Borough; (G) with respect to Uncompleted Work, which the Authority shall complete in a timely manner; (H) with respect to the Authority's Pension Plan; or (I) with respect to any attachments to the

System properties that are not required for System Operations, as described in Section 3.15(e). The Borough shall obtain and maintain, or cause to be obtained and maintained, insurance on commercially reasonable terms against personal injury and property damage that might result from (J) the operation, maintenance or repair of any facility producing Other Revenues, (K) the exercise of its rights under Section 3.7(a) or (L) the performance of the Uncompleted Work.

Section 3.3. Operator.

(a) *Engagement.* The System Operations shall, at all times during the Term, be under the direction and supervision of an active operator with the expertise, qualifications, experience, competence, skills and know-how to perform the System Operations in accordance with this Agreement (an “Operator”) who may be the Concessionaire itself or its Affiliate or an unrelated Person. The Concessionaire may appoint one Operator to operate the Wastewater Utility System and another Operator to operate the Water Plant and Distribution System. Except as provided in Section 2.5(h), the Operator on the first day of the Term shall be the Concessionaire unless the Concessionaire has designated another Person to be the Operator in the response to the request for System concessionaire qualifications delivered by or on behalf of the Concessionaire to the Authority in connection with the execution of this Agreement. The Concessionaire shall not engage or appoint a replacement Operator unless the Authority has Approved such Operator (based upon a determination in accordance with Section 3.3(b)) or such Operator and replacement Operator are Affiliates of the Concessionaire in which case no such Approval shall be required; *provided, however*, that a Change in Control of an Operator shall be deemed to be the appointment of a replacement Operator subject to the Authority’s Approval. The Operator shall at all times be subject to the direction, supervision and control (by ownership, contract or otherwise) of the Concessionaire, and any delegation to an Operator shall not relieve the Concessionaire of any obligations, duties or liability hereunder. The Concessionaire shall immediately notify the Authority of any determination by the Concessionaire to terminate the Operator and of the resignation of an Operator. Any agreement between the Concessionaire and any Operator shall by its terms terminate without penalty at the election of the Authority or the Operator upon three Business Days’ notice to such Operator or the Authority, as applicable, upon the termination of this Agreement. The Operator shall have no interest in or rights under this Agreement or the System unless the Operator is the Concessionaire itself.

(b) *Approval.* The Approval of a proposed replacement Operator may be withheld if the Authority reasonably determines that the engagement of such proposed Operator is prohibited by applicable Law or such proposed Operator is not capable of performing the System Operations in accordance with this Agreement, which determination shall be based upon and take into account the following factors: (i) the ability of the Operator to operate the System in a manner that complies with the Operating Standards and will result in the operation of the System in accordance with the public purposes of the Authority as set forth in Section 3.18; (ii) the financial strength and integrity of the proposed Operator and its direct or indirect beneficial owners; (iii) the capitalization of the proposed Operator; (iv) the experience of the proposed Operator in operating water treatment plants and water distribution

systems and sewerage collection, treatment and disposal systems; (v) the background and reputation of the proposed Operator, its direct or indirect beneficial owners and each of their respective officers, directors and employees (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance); and (vi) the ability of the Operator to meet the requirements then generally applied by the Pennsylvania Department of Environmental Protection to applicants for a license to operate a water treatment plant and water distribution system and a sewerage collection, treatment and disposal system. Any disputes between the Authority and the Concessionaire with respect to the appointment or replacement of the Operator shall be settled in accordance with the provisions of Article 19. Notwithstanding the foregoing, in the event that, upon termination or resignation of the Operator, a replacement Operator acceptable to the Authority has not been appointed, the Concessionaire shall have the right to appoint, for a period not to exceed six months, an interim Operator to operate the System until a replacement Operator can be selected pursuant to this Agreement. This interim Operator may be selected without Approval by the Authority so long as the Concessionaire reasonably determines that the interim Operator meets the following criteria: (A) the interim Operator has experience in operating water treatment plant and water distribution systems and sewerage collection, treatment and disposal systems substantially similar to the System, and (B) the interim Operator (or any guarantor of its obligations) has a tangible net worth reasonably sufficient to carry out its obligations and responsibilities as Operator. The Concessionaire shall not extend the term of any interim Operator beyond six consecutive months or appoint a successor interim Operator after such six-month period. In the case that the Operator or interim Operator will only be responsible for the operation of the Wastewater Utility System, the skill and experience requirements of this Section 3.3(b) shall be limited to the operation of sewerage collection, treatment and disposal systems and in the case that the Operator or interim Operator will only be responsible for the operation of the Water Plant and Distribution System, the skill and expertise requirements of this Section 3.3(b) shall be limited to the operation of water treatment plants and water distribution systems.

(c) *Removal*. If the Operator fails to operate the System in compliance with the Operating Standards in accordance with Section 6.1 and Section 3.18, and after 30 days written notice from the Authority to the Operator and Concessionaire, fails to correct in a timely manner all deficiencies in such operation of the System set forth in said written notice, then the Authority may direct that the Concessionaire remove the Operator pursuant to a resolution adopted by the Borough Council. The Authority shall provide the Concessionaire and the Operator with no less than 10 days prior written notice of the time, date, place and subject matter of the meeting of the Borough Council at which the removal resolution will be considered and both the Concessionaire and the Operator shall be afforded a reasonable opportunity to present testimony and evidence at such meeting and to present to the Borough Council written objections to any proposed removal determination. Any resolution adopted by the Borough Council shall contain written determinations as to the reasons for removal of the Operator. Within 60 Days following the effective date of such resolution, the Concessionaire shall remove the then current Operator and

replace such Operator with either (i) a new Operator that is approved by the Authority pursuant to Section 3.3(b) or (ii) the Concessionaire.

Section 3.4. Authorizations; Qualifications.

(a) *Compliance.* The Concessionaire shall obtain, comply with, promptly renew and maintain in good standing all Authorizations; *provided, however,* that if the Concessionaire is, at any time during the Term, required to obtain any Authorization from a Governmental Authority that the Authority was not required to obtain in connection with the operation of the System prior to the Time of Closing, the Authority shall use its reasonable efforts to assist the Concessionaire in obtaining such Authorizations. Nothing in this Agreement, including Section 2.1, shall be deemed to waive or modify any Authorization required to be obtained by the Concessionaire or any other Person in connection with the System, the System Operations or any activities generating Revenues.

(b) *Qualifications.* The Concessionaire shall, at all times during the Term, maintain in full force and effect its existence and all qualifications necessary to carry on its Business pertaining to the System Operations, including all rights, franchises, licenses, privileges and qualifications required in connection with the System Operations.

Section 3.5. No Encumbrances.

(a) *By the Concessionaire.* The Concessionaire shall not do any act or thing that will create any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the System and shall promptly remove any Encumbrance (other than a Permitted Concessionaire Encumbrance) against the System, unless the Encumbrance came into existence as a result of an act of or omission by the Authority or a Person claiming through it which in turn was not caused by an act or omission of the Concessionaire. The Concessionaire shall not be deemed to be in default hereunder if the Concessionaire continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; *provided* that the Concessionaire has given (i) advance notification to the Authority that it is the intent of the Concessionaire to contest the validity or collection thereof or cause such contest and (ii) unless a bond or other security is provided in connection with such proceedings, a satisfactory indemnity to the Authority or deposit with the Authority a Letter of Credit, title insurance endorsement (or similar instrument), indemnity bond, surety bond, cash or Eligible Investment reasonably satisfactory to the Authority in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the Authority may reasonably estimate to be payable by the Concessionaire at the conclusion of such contest or as is required to provide insurance over any potential Encumbrance; *provided, however,* that in the event such Letter of Credit, cash or Eligible Investment shall be so deposited, the same shall be held until such claim or other imposition shall have been released and discharged and shall thereupon be promptly returned to the Concessionaire, less any amounts reasonably expended by the Authority to procure such release or

discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the Authority by virtue of the contest of such Encumbrance.

(b) *By the Authority.* Neither the Borough nor the Authority shall do any act or thing that will create any Encumbrance (other than a Permitted Authority Encumbrance) against the System and shall promptly remove any Encumbrance (other than a Permitted Authority Encumbrance) against the System that came into existence as a result of an act of or omission by the Authority or a Person claiming through the Authority. The Authority shall not be deemed to be in default hereunder if the Authority continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance; *provided* that the Authority has given advance notification to the Concessionaire that it is the intent of the Authority to contest the validity or collection thereof or cause such contest.

(c) *Removal.* The Concessionaire, if requested by the Authority and at the cost and expense of the Authority, shall use its reasonable efforts to assist the Authority in attempting to remove any Encumbrance that has come into existence as a result of an act or omission by the Authority. The Authority, if requested by the Concessionaire and at the Concessionaire's costs and expense, shall use its reasonable efforts to assist the Concessionaire in attempting to remove any Encumbrance that has come into existence as a result of an act of or omission by the Concessionaire; *provided* that nothing herein shall obligate the Authority to waive, modify or otherwise limit or affect the enforcement by the Authority or the Borough of any applicable Law with respect to the System or any activities generating Revenues.

Section 3.6. Single Purpose Covenants.

(a) *Single Purpose.* Except as provided in Section 3.6(b), the Concessionaire shall, at all times during the Term, (i) be formed and organized solely for the purpose of owning the Concessionaire Interest and using, possessing, leasing, operating, collecting Revenues with respect to and otherwise dealing with the System (and carrying out other activities permitted pursuant to this Agreement (and any activities reasonably incidental and related thereto)), (ii) not engage in any business unrelated to clause (i) above, (iii) not have any assets other than those related to its activities in accordance with clauses (i) and (ii) above, (iv) except as appropriate for Tax reporting purposes, maintain its own separate books and records and its own accounts, (v) observe all corporate, limited partnership or limited liability company, as applicable, formalities and do all things necessary to preserve its existence, (vi) not guarantee or otherwise obligate itself with respect to the debts of any other Person, (vii) except as expressly permitted hereby or by any Leasehold Mortgage, or in connection in the ordinary course of Business of the System, not pledge its assets for the benefit of any other Person and (viii) maintain adequate capital in light of its contemplated Business operations.

(b) *Exception.* In lieu of forming and organizing a single purpose entity the Authority and the Concessionaire may agree upon an alternative form of

corporate organization for the Concessionaire; *provided, however*, that the Concessionaire must be principally engaged in the business of owning and operating water treatment plants, water distribution systems and sewerage collection, treatment and disposal systems and must be a wholly owned subsidiary of a corporation acceptable to the Authority and such corporation must act as Guarantor and must execute a Guarantee Agreement in the form attached as **Exhibit D**.

Section 3.7. Rights of the Authority to Access and Perform Work on the System.

(a) *Reservation of Rights*. The Authority reserves (for itself and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the Authority) and shall, at all times during the Term, have the right to enter the System and each and every part thereof at all reasonable times and upon reasonable prior notice to perform each of the following at the Authority's own cost and expense (other than if pursuant to clause (ii) or (iii)):

(i) to inspect the System or determine whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law pursuant to Section 8.3;

(ii) if a Concessionaire Default then exists, subject to the cure rights of the Leasehold Mortgagee set forth in Section 18.3, to make any necessary repairs to the System and perform any work therein pursuant to Section 16.1(b)(iii);

(iii) in the event of an emergency or danger that threatens to cause injury to individuals (or damage to property) or to impair the continuous operation of the System and if the Concessionaire is not then taking all reasonably necessary steps to rectify or deal with said emergency or danger, to take actions as may be reasonably necessary to rectify such emergency or danger (in which case, no notice shall be necessary);

(iv) as may be necessary to design, construct, operate, service, manage, maintain, repair, rehabilitate or replace any Affected Property owned or controlled by the Authority that is located within the boundaries of the System, including, without limitation, utilities and storage and maintenance facilities located within portions of the Affected Property that is located within the boundaries of the System;

(v) to (A) install, design, manage, maintain, repair and rehabilitate any existing or future safety measures (whether provided by the Authority or third parties at the Authority's instruction) in, on, under, across, over or through the System (including surveillance equipment and other safety equipment), (B) grant easements and rights on, over, under or within the System for the benefit of suppliers or owners of any such measures and (C) use the System in connection with any such installation, design, management, maintenance, repair or rehabilitation (*provided* that notwithstanding the foregoing clauses (A), (B) and (C), the Concessionaire shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate safety measures for its own account (and

not for lease, resale or service to third parties) to the extent that the said safety measures are necessary for the System Operations);

(vi) to design, construct, operate, service, manage, maintain, repair, rehabilitate or replace any Affected Property, other than as provided in clause (v);

(vii) to (A) install, design, manage, maintain, repair and rehabilitate any existing or future utilities or similar services (whether provided by the Authority or third parties at the Authority's instruction) in, on, under, across, over or through the System (including water and sewer lines, power transmission lines, fiber optic cable, other communications and other equipment), (B) grant easements and rights on, over, under or within the System for the benefit of suppliers or owners of any such utilities or services and (C) use the System in connection with any such installation, design, management, maintenance, repair or rehabilitation (*provided* that notwithstanding the foregoing clauses (A), (B) and (C), the Concessionaire shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account (and not for lease, resale or service to third parties) to the extent that the said utilities or services are necessary for the System Operations); and

(viii) to, solely in accordance with the terms hereof, do any other act or thing that the Authority may be obligated to do or have a right to do under this Agreement;

provided, however, that the Authority shall in connection with such reservation of rights comply with all reasonable industry standards, and shall comply with all safety and security provisions of which it is made aware by the Concessionaire or the Operator, and the Authority shall cause its Contractors to comply with such safety and security provisions; *provided further*, that the Authority shall not be obligated to make any payments to the Concessionaire for such access (other than Concession Compensation to the extent required hereunder) and the Authority shall use reasonable efforts to minimize interference with the System Operations in connection with any entry on the System pursuant to this Section 3.7(a). The Authority shall pay to the Concessionaire the Concession Compensation, after demand by the Concessionaire, resulting from any entry to or action on the System pursuant to clauses (iv), (v), (vi), (vii) and (viii); *provided, however*, that no Concession Compensation shall be paid to the Concessionaire with respect to any entry to or action on the System undertaken by or at the direction of the Authority to remedy any hazard created by the Concessionaire or the Operator.

(b) *Access Rights.* The Authority and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the Authority, during the progress of any work referred to in this Section 3.7 shall, subject to the Concessionaire's right to demand payment of the Concession Compensation referred to in Section 3.7(a), have all necessary easement and access rights and may keep and store at the System all necessary materials, tools, supplies, equipment and vehicles, in a reasonably neat and orderly fashion in compliance with all Laws and so as not to interfere unreasonably with the

Concessionaire's conduct of Business at the System and the performance of its obligations under this Agreement. To the extent that the Authority undertakes work or repairs in the System under this Section 3.7 or any other provision of this Agreement, such work or repairs shall be commenced and diligently completed in a good and workmanlike manner, in accordance with any applicable Operating Standards and in such a manner as not to interfere unreasonably with the Concessionaire's conduct of Business in or use of such space and the performance of its obligations under this Agreement.

(c) *Effect of Reservation.* Any reservation of a right by the Authority and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the Authority to enter the System and to make or perform any repairs, alterations, Restoration or other work in, to, above, or about the System which is the Concessionaire's obligation pursuant to this Agreement, shall not be deemed to (i) impose any obligation on the Authority to do so, (ii) render the Authority liable to the Concessionaire or any other Person for the failure to do so or (iii) relieve the Concessionaire from any obligation to indemnify the Authority as otherwise (and solely to the extent) provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the Authority to do any work required to be performed by the Concessionaire hereunder and performance of any such work by the Authority and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the Authority shall not constitute a waiver of the Concessionaire's default in failing to perform the same.

Section 3.8. Coordination.

(a) *Utility Coordination.* The Concessionaire shall be responsible for coordinating or ensuring the coordination of all System Operations with utilities and Persons having service lines, pipelines, transmission lines and other equipment, cables, systems and other apparatus in, on, under, over or adjacent to the System. The Concessionaire shall cause provision to be made for the removal or temporary or permanent relocation and restoration of utilities and other services and any lines, equipment, cables, systems and other apparatus that intersect, interfere with, interface with or otherwise affect the System Operations and shall arrange for temporary rights of entry and access to utilities and other services to be made available that are necessary in connection with the System Operations or as may exist under this Agreement or applicable Law; *provided* that the Authority shall cooperate with the Concessionaire with respect to the Concessionaire's obligations under this Section 3.8(a). The Borough shall make the Concessionaire aware annually of its expected paving or repaving program throughout the Borough, and shall coordinate to the extent reasonably practical such paving and repaving program and the Concessionaire's main replacement program.

(b) *Affected Property Coordination.* The Concessionaire shall be responsible for coordinating or ensuring the coordination of all System Operations with Affected Property. The Concessionaire shall arrange for temporary right-of-entry and access to the property of all relevant Governmental Authorities or other Persons as may be necessary in connection with the System Operations or as may exist under this Agreement or applicable Law. The Authority shall cooperate with the

Concessionaire with respect to the Concessionaire's obligations under this Section 3.8(h).

(c) *No Interference*. The Parties understand and agree that nothing in the foregoing clauses (a) and (b) is in any way intended to interfere with the normal operations of the System by the Concessionaire, and the Authority shall cooperate with the Concessionaire in minimizing any effect that the obligations of the Concessionaire under such clauses (a) and (b) may have on the System Operations and the Revenues.

Section 3.9. Withholding Payments. The Concessionaire acknowledges and agrees that if the Authority is required under an applicable Law to withhold a portion of any payment that the Authority is obligated to make to the Concessionaire under this Agreement, the Authority will be deemed to have satisfied such payment obligation to the Concessionaire to the extent of such withholding by the Authority. If any such withheld amounts are permitted to be paid to the Concessionaire, the Authority shall pay such amounts to the Concessionaire whenever permitted by Law. The Authority shall notify both the Concessionaire and any Leasehold Mortgagee in writing at least five Business Days prior to the withholding of any amount pursuant to this Section 3.9. Nothing in this Section 3.9 shall excuse Concessionaire's obligation under Article 14, but it will allow for credited withholding from AA-Compensation or Termination Compensation.

Section 3.10. Payment of Taxes. The Concessionaire shall pay when due all Taxes payable during the Term in respect of the use, operations at, occupancy of, or conduct of Business in or from the System, including any Taxes that the Concessionaire is obligated to collect from customers of the System and remit to the taxing authorities, as required by the applicable Law. The Authority reserves the right, without being obligated to do so, to pay the amount of any such Taxes not timely paid or contested by the Concessionaire, and the amount so paid by the Authority shall be deemed additional consideration hereunder, due and payable by the Concessionaire within 10 Business Days after written demand by the Authority. The Concessionaire shall have the right to contest in good faith the validity or amount of any Taxes which it is responsible to pay under this Section 3.10; *provided* that (i) the Concessionaire has given prior notice to the Authority of each such contest, (ii) no contest by the Concessionaire may involve a reasonable possibility of forfeiture or sale of the System, and (iii) upon the final determination of any contest by the Concessionaire, if the Concessionaire has not already done so, the Concessionaire shall pay any amount found to be due, together with any costs, penalties and interest. Subject to the foregoing, it is the understanding and intention of the Parties that the real property comprising the System and used to provide Utility Services is and shall remain public property used for public purposes, and that such real property utilized to provide Utility Services is and should remain exempt from the imposition of real property Taxes imposed by the Commonwealth of Pennsylvania or any subdivision of the Commonwealth of Pennsylvania (including any school district). The Authority shall have the right to direct the Concessionaire, at the cost and expense of the Authority, to contest in good faith the validity or amount of any Leasehold Tax. The Concessionaire shall cooperate with the

Authority in connection with the filing of any Document for the purpose of maintaining any exemption from the Leasehold Tax which may be available by Law.

Section 3.11. Utilities. During the Term, the Concessionaire shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, light, heat, power, telephone, water and other utilities and services used in the System Operations or supplied to the System during the Term. Upon request of the Authority, the Concessionaire shall forward to the Authority, within 15 days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the Authority, of the payment required to be made by the Concessionaire in accordance with this Section 3.11.

Section 3.12. Negotiations with Governmental Authorities. Prior to entering into any agreement with any Governmental Authority in connection with the System Operations (a "Government Agreement") that extends or could extend beyond the Term (unless such extension is subject to a right by the Authority to terminate such agreement within three Business Days' notice or less) or pursuant to which the Authority or the Borough may incur any liability whatsoever thereunder, the Concessionaire shall submit such Government Agreement for Approval by the Authority (which Approval may be withheld, delayed or otherwise conditioned in the discretion of the Authority) prior to the execution and delivery thereof (except with respect to Government Agreements the absence of which may cause the Concessionaire or System Operations to fail to be in compliance with applicable Law or this Agreement, in which case the Concessionaire may enter into such Government Agreement upon notice to the Authority; *provided* that the Concessionaire indemnifies the Authority for any Losses relating thereto). If the Authority proposes to enter into a Government Agreement during the Term, the Authority shall inform the Concessionaire prior to entering into such Government Agreement and provide the Concessionaire with a reasonable amount of time and opportunity to review and request modifications of such Government Agreement.

Section 3.13. Notices of Defaults and Claims.

(a) *Notice by the Concessionaire.* The Concessionaire shall promptly give notice to the Authority (i) if the Concessionaire becomes aware that a Concessionaire Default has occurred under this Agreement (*provided, however*, that the failure to give such notice shall not constitute an independent Concessionaire Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the Concessionaire pertaining to the System, the Authority, the Borough or the System Operations (whether or not such claim, proceeding or litigation is covered by insurance) of which the Concessionaire is aware (other than as a result of a notice to the Concessionaire from a the Authority). The Concessionaire shall provide the Authority with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

(b) *Notice by the Authority.* The Authority shall promptly give notice to the Concessionaire (i) if the Authority becomes aware that a Authority Default has occurred under this Agreement (*provided, however*, that the failure to give such

notice shall not constitute an independent Authority Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the Authority or the Borough pertaining to the System, the System Operations or the Concessionaire (whether or not such claim, proceeding or litigation is covered by insurance) of which the Authority is aware (other than as a result of a notice to the Authority from the Concessionaire). The Authority shall provide the Concessionaire with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

Section 3.14. Assignment of Operating Agreements and Plans. At the request of the Authority, the Concessionaire shall collaterally assign, to the extent reasonably practicable, to the Authority, in form and substance satisfactory to the Authority, all of the right, title and interest of the Concessionaire in, to and under all or any of the Operating Agreements and all present and future specifications, plans, drawings, information and documentation in relation to the System Operations except to the extent any of the foregoing involve proprietary information (collectively, the “Operating Agreements and Plans”) as collateral security to the Authority for the observance and performance by the Concessionaire of its covenants and obligations under this Agreement. The Concessionaire covenants that it shall use all reasonable efforts to cause all of the right, title and interest of the Concessionaire in, to and under all Operating Agreements and Plans entered into or created after the Time of Closing to be collaterally assignable to the Authority for the purposes of this Section 3.14. The Authority acknowledges that the Operating Agreements and Plans may also be assigned as security to a Leasehold Mortgagee and that each of the Authority and such Leasehold Mortgagee shall be entitled to use the Operating Agreements and Plans in enforcing their respective security as hereinafter provided. Without limiting the generality of the foregoing, but subject to the Authority’s assumption of liabilities under the Operating Agreements and Plans and to Article 18, the Authority shall be entitled to use the Operating Agreements and Plans in each of the following events: (i) if the Authority terminates this Agreement without a concession agreement being granted to a Leasehold Mortgagee or nominee thereof pursuant to the provisions of Article 18; and (ii) if the Authority elects to use the Operating Agreements and Plans to remedy a Concessionaire Default under this Agreement. Notwithstanding the foregoing, in the event that any such Leasehold Mortgagee has entered into possession or is diligently enforcing and continues to diligently enforce its security, whether by way of appointment of a receiver or receiver and manager, foreclosure or power of sale in accordance with Article 18, or otherwise, and is using the Operating Agreements and Plans in respect of the System Operations, the Authority shall not be entitled to use the Operating Agreements and Plans in enforcing its security, it being acknowledged that any assignment of the Operating Agreements and Plans to a Leasehold Mortgagee shall have priority at all times over any assignment of the Operating Agreements and Plans to the Authority. The Concessionaire shall promptly deliver to the Authority, at the sole cost and expense of the Concessionaire, forthwith after completion or execution and delivery, a copy of each item of the Operating Agreements and Plans.

Section 3.15. Other Revenues.

(a) The name designated for the System is the “Borough of Middletown Water and Wastewater System”.

(b) The Borough retains the exclusive naming rights with respect to the System and the exclusive right to register and own the naming rights as the “Borough of Middletown Water and Wastewater System,” including the right to sell or lease any naming rights for the System, or any portion of the System, to any third party; *provided* that, during the Term, without the prior consent of the Concessionaire (which shall not be unreasonably withheld), the Borough shall not grant any third party the right to change the name of the System. Any action taken by the Borough pursuant to this Section 3.15(b) is not a Compensation Event or an Adverse Action. The Borough shall not use or permit to be used any name or mark in connection with the System that may reasonably be odious or offensive to the Concessionaire or otherwise be reasonably likely to result in negative association by the general public.

(c) The Borough grants to the Concessionaire a non-exclusive, non-transferable, royalty-free license during the Term to use the name “Borough of Middletown Water and Wastewater System,” together with all existing and future developed logos and marks (not including the Borough seal) used in connection with the System Operations, solely in connection with the performance of the Concessionaire’s rights and obligations under this Agreement. The Concessionaire may sub-grant the same right to the Operator and vendors with operations within the boundaries of the System.

(d) The Authority shall retain the right to solicit for advertisements at the System properties and to retain as Other Revenues any moneys derived from the sale of advertisements. The Authority shall not permit any such advertisement that may reasonably be odious or offensive to the Concessionaire or otherwise be reasonably likely to result in negative association by the general public.

(e) The Authority shall retain the right to solicit and enter into agreements related to, and retain as Other Revenues any moneys derived from, attachments to the System properties that are not required for System Operations, including all such agreements existing on the Closing Date (*e.g.* the Cell Tower Lease). After the Bid Date, the Authority shall not permit any new attachment to the System properties that may interfere with the operation of the System, and all costs related to the installation and maintenance of attachments shall be at the sole cost and expense of the Authority.

Section 3.16. Police, Fire, Emergency and Public Safety Access Rights.

At all times during the Term and without notice or compensation to the Concessionaire (i) any police, fire and emergency services and any other security or emergency personnel retained by or on behalf of the Borough shall have access, as required by such services or personnel, to the System; (ii) the Borough shall have access to the System as necessary for the protection of public health and safety; *provided, however*, that inspections by the Authority for purposes of determining

whether or not the Concessionaire is in compliance with its obligations under this Agreement or applicable Law shall be undertaken pursuant to Section 3.7(a)(i); and (iii) any Governmental Authority with jurisdiction over the System shall have access to the System as necessary for emergency management and homeland security purposes, including the prevention of or response to a public safety emergency.

Section 3.17. Administration of the Public Way. The Concessionaire acknowledges and accepts that the Borough holds and administers the public way for the non-discriminatory benefit of all Persons and interests, including the Concessionaire and the Concessionaire Interest. The rights granted to the Concessionaire under this Agreement do not create a priority in favor of the Concessionaire over any other user of the public way and are subject to the Operating Standards and all provisions of Law, including, but not limited to, applicable Borough Permit requirements.

Section 3.18. Public Purpose Requirements. The Parties agree that during the Term the Borough retains the Reserved Power to enforce this Agreement and the Operating Standards such that the System will be dedicated and used at all times for public purposes intended to promote the public health, safety and welfare. The Concessionaire, and any Operator, at all times during the Term, shall maintain and operate the System and shall provide Utility Services pursuant to this Agreement in accordance with the Operating Standards and the public purposes of the Borough as enumerated in any of the Borough Code and the General County Assessment Law.

Section 3.19. Public Utility Commission. The Parties acknowledge that the System, the System Operations, the Utility Services to be provided by the Concessionaire and the Operator under this Agreement and the imposition of Service Charges may become subject to the jurisdiction of the PUC and the applicable provisions of the Public Utility Code of Pennsylvania, Title 66 of the Pennsylvania Consolidated Statutes. If the PUC exercises jurisdiction over any matter that is the subject of this Agreement, then the Borough and the Concessionaire will negotiate in good faith to revise this Agreement to address any changes to the Agreement required to (i) address the matters subject to PUC jurisdiction and (ii) provide both Parties materially equivalent benefits hereunder as if such exercise of jurisdiction had not occurred. If the Parties cannot reach agreement on such revisions, or if such revisions are determined by the Borough Council, acting in its sole discretion, to be inadequate to provide the Parties materially equivalent benefits hereunder as if such exercise of jurisdiction had not occurred, then subject to the payment of Termination Compensation under Section 16.5, the Borough Council acting in its sole discretion may exercise an option to terminate this Agreement by written notice delivered to the Concessionaire within 90 days after the last meeting between the Parties to discuss such revisions.

Section 3.20. Municipal Service Agreements.

(a) *Enforcement.* As of the Bid Date the Borough is a party to a Municipal Service Agreement with each of the Municipal Customers. The Concessionaire, or the Operator on behalf of the Concessionaire, shall take all reasonable measures to

coordinate the Utility Services provided by the System to meet the needs of the Borough and the Municipal Customers. The Borough agrees that it will enforce its rights under each Municipal Service Agreement including, without limitation, its right to impose and collect Service Charges for Utility Services provided to the Municipal Customers by means of the System. During the Term of this Agreement, (A) the Borough shall not waive, by its action or inaction, any material right or claim granted or held by the Borough under the Municipal Service Agreements and it accepts the affirmative duty to enforce its rights under the Municipal Service Agreements, (B) the Borough shall not amend, modify, renew, extend or otherwise change the terms and conditions of any Municipal Service Agreement in any manner that affects the Concessionaire Interest without the prior written consent of the Concessionaire, which consent shall not be unreasonably conditioned, withheld or delayed and (C) the Concessionaire and the Operator shall be entitled to participate in all meetings between the Borough and a Municipal Customer relating to the Municipal Service Agreement of that Municipal Customer, including, without limitation, meetings relating to the provision of Utility Services and the payment therefor. In connection with the System Operations and the provision of Utility Services to the Municipal Customers pursuant to the Municipal Service Agreements, the Concessionaire, or the Operator on behalf of the Concessionaire, shall act as the agent of the Borough and specifically agrees to perform all of the contractual obligations of the Borough under each of the Municipal Service Agreements strictly in accordance with the terms of the Municipal Service Agreements.

(b) *Payment of Service Charges.* Any payment of Service Charges collected by the Borough under the terms of any Municipal Service Agreement, but due and owing the Concessionaire under the terms of this Agreement, shall be paid promptly to, or upon the order of, the Concessionaire and any amount not so paid to the Concessionaire within ten Business Days after its receipt by the Borough shall entitle the Concessionaire to the payment of interest at the Bank Rate from the date of receipt of such payment by the Borough to the date the unpaid amount is paid to, or upon the order of, the Concessionaire. The Borough and the Concessionaire will cooperate to limit the risk that payments from Municipal Customers may become subject to liens or attachments by creditors of the Borough.

(c) *Withdrawal or Addition of Municipal Customer.* The Parties acknowledge that during the Term of this Agreement one or more Municipal Customers may elect to terminate their existing Municipal Service Agreement or may elect not to renew or replace an expiring Municipal Service Agreement, or may otherwise withdraw as a Municipal Customer; and that new Municipal Customers and existing Municipal Customers may enter into new agreements with the Borough or the Concessionaire with respect to the provision of Utility Services by means of the System.

(d) *Payment or Cost Recovery.* For any Reporting Year, when the aggregate effect of the withdrawal or addition of Municipal Customers and of changes in the terms of the Municipal Service Agreements results in a reduction of System Revenues of more than five percent (5%) from the System Revenues that would have been collected in that Reporting Year if there had been no such withdrawals, additions or changes over the Term of the Agreement, the

Concessionaire shall be entitled to recover for that Reporting Year its reduced net System Revenues attributable to such withdrawals, additions and changes (after taking into account any resulting cost savings). Such recovery shall be fully funded by the end of the next Reporting Year. At the election of the Authority, such recovery may be provided by a direct reimbursement or by an increase in Service Charges pursuant to Section 7.1(i).

Section 3.21. Service to Borough and Borough Users.

(a) *System Capacity.* The Concessionaire, and any Operator on behalf of the Concessionaire, shall operate, maintain and improve the System in order to provide Utility Services to the Borough and the users of the System located in the Borough and subject to the Borough's obligations under Section 20.4. In particular, the capacity of the System, the water treatment plant, the water distribution facilities and the sewerage treatment plant and the sewerage collection facilities shall at all times be sufficient to meet the needs of the Borough, the residents of the Borough and the commercial and industrial users of the System that are located in the Borough, together with the service obligations to Municipal Customers under the Municipal Service Agreements, subject to the provision of reasonable notice of expansion needs. The Borough and the Concessionaire agree to cooperate in the submission by the Borough of sewage services plans required under the Pennsylvania Sewage Facilities Act. Each such plan shall include a projection with respect to the expected annual utilization of the treatment facilities of the Wastewater Utility System for the next 20 years. Whenever such projection shows that the expected utilization of the Wastewater Utility System in any future year within the 20 year projection period is expected to exceed the then current sewerage treatment capacity of the Wastewater Utility System, the Borough and the Concessionaire, acting jointly, shall prepare a capital improvement expansion plan and shall seek permit approvals for the expansion of the treatment capacity of the Wastewater Utility System. Subject to the Approval of the Borough, the Concessionaire shall proceed to design and construct, or cause to be designed and constructed, the capital improvements to the System that are needed to increase the treatment capacity of the Wastewater Utility System to meet the expected utilization of the Wastewater Utility System all in accordance with the sewage services plan required under the Pennsylvania Sewerage Facilities Act. If the capital improvements are designed and constructed to meet an increased utilization for an initial year commencing during or prior to 2044, then the cost and expense of the design and construction of such capital improvements shall be at the sole cost and expense of the Concessionaire. If the capital improvements are designed and constructed to meet an increased utilization for any initial year commencing after 2044, then the cost and expense shall be allocated between the Borough and the Concessionaire so that the share of such costs allocated to the Concessionaire shall be the total of such costs multiplied by a fraction, the numerator of which is the number of months from the month the capital improvement is expected to be placed in service to the month of the End Date, minus one and the denominator of which is 240. The Borough and the Concessionaire shall cooperate in imposing on Developers, to the extent reasonably practical, the construction of new or expanded water or waste water systems serving new development, so that the costs of such

construction is borne only by those persons benefited and not by the System as a whole.

(b) *Free Service.* Prior to the tenth anniversary of the Closing Date, no Service Charges shall be imposed on the Borough and water shall be provided free of any charge for the provision of water (i) for the suppression of fires and the provision at all times of adequate water pressure for the suppression of fires and other purposes of the Borough's Fire Department, (ii) for street cleaning, (iii) for Borough Hall and other buildings used primarily by the Borough for public purposes as set forth in Schedule 11, (iv) for comfort stations in Borough parks and (v) for swimming pools owned or operated by the Borough, *provided* that the aggregate amount of water to be provided free of charge for the purposes described in clauses (ii), (iii), (iv) and (v) shall not exceed 2,500,000 gallons in any calendar year. If such amounts exceed 2,500,000 gallons, the Concessionaire may impose Service Charges on the Borough in accordance with this Agreement for any excess amounts. Prior to the tenth anniversary of the Closing Date, no Services Charges shall be imposed on the Borough and the services of the Wastewater Utility System shall be provided free of charge for Borough Hall and other buildings used primarily by the Borough for public purposes. For purposes of this Section 3.21(b), the term "public purposes" does not include commercial or residential uses in buildings used primarily by the Borough for public purposes. Commencing on the tenth anniversary of the Closing Date, the Concessionaire may impose Service Charges on the Borough in accordance with this Agreement, and neither water, nor the services of the Wastewater Utility System, shall be provided free of charge

Section 3.22. Demand Shortfall and Water Sales Reports. Pursuant to Section 7.1(l) the Concessionaire is entitled to impose an additional Service Charge upon all Retail Water Customers and Retail Sewer Customers to recover each Shortfall Recovery Amount resulting from a Water Sales Shortfall applicable to a Water Sales Test Period. The initial Water Sales Test Period will begin on January 1, 2015 and end on December 31, 2017 and each subsequent Water Sales Test Period will have a duration of three Reporting Years. The final Water Sales Test Period will end on December 31, 2062. With respect to each month, commencing with the month of January 2015, the Concessionaire shall prepare and file with the Authority, in reasonable detail and with such supporting information as may be requested by the Authority, a written report setting forth, separately for the Retail Water Customers and the Municipal Bulk Customers, the actual average daily volume of metered water sales expressed in gallons for such month, for the Reporting Year of such month and for the Water Sales Test Period that includes such month. Each such written report shall be provided to the Authority within 30 days after the close of each such month. On or prior to the 10th day of February next following the end of a Water Sales Test Period, the Concessionaire shall file with the Authority a written report with respect to the Water Sales Test Period ended on the prior December 31st setting forth either (i) that no Water Sales Shortfall occurred with respect to such Water Sales Test Period or (ii) that a Water Sales Shortfall have occurred with respect to such Water Sales Test Period and, in such event, also setting forth the Annual Shortfall Recovery Amounts that will apply for the then current and next two Reporting Years as a result of such Water Sales Shortfall.

Section 3.23. Annual Borough Payments. With respect to the Reporting Year commencing on January 1, 2016 and each Reporting Year thereafter, the Concessionaire shall pay to the Borough the Annual Borough Payment for that Reporting Year. For each Reporting Year, the Annual Borough Payment shall be paid in two equal installments. The first installment shall be due and payable on the first Business Day of April of the Reporting Year and the second installment shall be due and payable on the first Business Day of October of the Reporting Year. The Annual Borough Payment shall be prorated for the last year of this Agreement, if less than a full calendar year.

Section 3.24. Office in the Borough. Both the Concessionaire and any Operator shall maintain an office in the Borough of Middletown Dauphin County, Pennsylvania for the management and operation of the System and the provision of customer service. Provision for walk-up payments of utility bills will be made at such office only for the first 12 months of the term.

ARTICLE 4

Capital Improvements

Section 4.1. Concessionaire Responsibility for Capital Improvements.

(a) *Concessionaire Responsible.* The Concessionaire shall be responsible for all capital improvements with respect to the System required to be completed during the Term in accordance with the terms of this Agreement, including as required by the Operating Standards and by Change of Law, which capital improvements include, without limitation, the Major Capital Improvements. The Concessionaire may undertake at its sole cost and expense and subject to the Approval of the Authority, the expansion of the System for the provision of Utility Services subject to the provisions of Section 3.21 regarding the expansion of sewerage treatment capacity.

(b) *Capex Plan.*

(i) At the Closing, the Concessionaire shall deliver to the Authority a preliminary asset management plan for the System for the period running from the Closing until the first anniversary thereof which plan shall include the Major Capital Improvements and any other capital improvements that are necessary for the performance of the System Operations in accordance with the Operating Standards and Prudent Industry Practices during such period (the "First-Year Capex Plan"). Following the Closing Date, the Concessionaire shall develop, in consultation with the Authority, an initial five-year asset management plan for the System which shall include the Major Capital Improvements and any other capital improvements that are necessary for the performance of the System Operations in accordance with the Operating Standards and Prudent Industry Practices (the "Five-Year Capex Plan") and, collectively with the First-Year Capex Plan, the "Capex Plan"). The Five-Year Capex Plan shall initially include the Major Capital Improvements, as needed. A *pro forma* example of an initial Five-Year Capex Plan is attached hereto as Schedule 7. Implementation and timing of the works described in the Capex Plan shall be carried

out in accordance with the Operating Standards based upon the asset management programs to be developed in accordance with the Operating Standards. The Capex Plan shall: (A) be developed on the basis of regulatory and industry standards pursuant to which assets are evaluated and catalogued based on condition, criticality, cost, risk of failure and consequence of failure; (B) prioritize maintenance and capital expenditures so as to extend the useful life of the System and the components thereof; and (C) include an outline of the work anticipated to be carried out and an estimate of the costs associated with such works. Each Capex Plan shall be considered by the Authority within 30 days of its submission and shall be subject to the Approval of the Authority, which Approval shall not be unreasonably conditioned, delayed or withheld.

(ii) The Concessionaire shall deliver a copy of the Five-Year Capex Plan developed in accordance with this Section 4.1(b) to the Authority no later than the date falling 60 days after the first anniversary of the Closing Date.

(iii) The Concessionaire shall update the Five-Year Capex Plan and submit such updated plan to the Authority for review and comment (i) no later than 60 days prior to the end of each full Reporting Year ending after the Closing Date and (ii) at any other time at which the Concessionaire reasonably believes that the Five-Year Capex Plan should be updated, and such updated plan shall become the Capex Plan for the purposes of this Agreement.

Section 4.2. Authorizations Related to Capital Improvements. The Concessionaire's obligation to perform capital improvements shall be subject to the issuance by the Borough of any and all Authorizations to be issued by the Borough and as required by the Borough with respect thereto, and the Borough agrees not to unreasonably withhold, condition or delay the issuance of any such Authorizations. Without limiting the generality of the foregoing, the Authority agrees that it will reasonably assist and cooperate with the Concessionaire in obtaining any and all Authorizations (including any required rights of access over real property that is owned or controlled by the Authority or the Borough but that does not comprise part of the System) in order for the Concessionaire to perform capital improvements, including Major Capital Improvements.

Section 4.3. General Provisions for Major Capital Improvements. Subject to the terms and conditions of this Article 4, the Concessionaire agrees to furnish the design for and construct the Major Capital Improvements. The Authority and the Concessionaire acknowledge and agree that this Agreement sets forth the process and procedure for advancing the design and construction of the Major Capital Improvements and the refinement and development of the scope, design, cost and construction of such Major Capital Improvements. The Concessionaire agrees to deliver to the Authority reasonable substantiation that the Concessionaire, either itself or a Contractor that will perform engineering services, holds a professional engineering license for the Commonwealth of Pennsylvania. The Concessionaire shall have the discretion, exercised in accordance with Prudent Industry Practices, to determine the precise order, schedule means and methods for the design and construction of the Major Capital Improvements. Schedules for the design and construction of the Major Capital Improvements will be prepared by

Concessionaire as set forth in Section 4.5. The Concessionaire agrees that it will diligently pursue the completion of the Major Capital Improvements in accordance with such schedules.

Section 4.4. Design and Engineering Standards for Major Capital Improvements.

(a) *Design Standards.* The Major Capital Improvements shall be designed to comply with the following design standards: (i) to the extent practicable and consistent with Prudent Industry Practices, a minimum design life of fifteen years for pumps and mechanical equipment, thirty years for above-ground buildings and structures, and fifty years for underground pipes and lines, (ii) reliability criteria as defined in United States Environmental Protection Agency documents as then current design for the appropriate reliability class of treatment works, as applicable, (iii) performance standards listed in the latest edition of “Design of Municipal Wastewater Treatment Plants” published jointly by the Water Environment Federation and the American Society of Civil Engineers, as applicable. The Major Capital Improvements shall be designed to be capable of complying with all applicable Laws. The design of the Major Capital Improvements shall be based upon and incorporate engineering principles, construction practices and methods, materials and equipment which comply with Good Engineering and Construction Practices, Borough codes and ordinances and applicable Laws. The above and foregoing criteria are intended solely as design criteria, and shall not be construed as constituting any warranty or guarantee of performance by Concessionaire.

(b) *Authority Review of Design.* As described in Section 4.5, or as may otherwise be agreed by the Parties, the Concessionaire shall submit to the Authority for the Authority’s review and approval the plans and specifications for the Major Capital Improvements. The Authority shall have the opportunity to review such plans and specifications. In the event of Authority’s disapproval in accordance with the terms of this Agreement, the Concessionaire shall cause the plans and specifications to be revised and shall resubmit the revised plans and specifications to the Authority for its review and approval, in its reasonable discretion; provided, however, that the review period shall be ten days. The Authority’s review shall be limited to determining whether or not the plans and specifications reasonably meet the design requirements set forth in Section 4.4(a). Notwithstanding such review by Authority, the plans and specifications for the Major Capital Improvements shall remain the responsibility of Concessionaire; and neither the Authority’s review or approval, nor the Authority’s failure to comment on the plans and specifications shall relieve Concessionaire of any of its responsibilities under this Agreement. If the Authority disapproves any plans or specifications and the Authority and Concessionaire are unable to reach agreement on the plans and specifications, such disputes regarding approval of the plans and specifications shall be resolved in accordance with Article 19.

(c) *Design Changes.* During the course of design or construction, the Concessionaire may make such changes in the plans and specifications, without Authority’s review and approval, as the Concessionaire may determine to be necessary or desirable to reflect and adjust to actual site conditions, to comply with

Authority codes and ordinances and applicable Laws, or to carry out the Concessionaire's obligations under this Agreement. If any design change is made for the reasons outlined above in this Section 4.4(c), or due to a Change of Law, event of Force Majeure, Authority Directive, the Governmental Approval process, Delay Event, or the discovery of an Unknown Site Condition: (i) Concessionaire shall, to the extent reasonably practicable, make such design changes; (ii) the Capital Cost Recovery Charge shall be increased as provided in Section 7.1(f) to reflect the additional costs to Concessionaire to perform its obligations under this Agreement related to such design and/or construction changes; and (iii) the applicable schedule for the design and construction of the Major Capital Improvement shall be extended by an amount equal to the time reasonably required to make and implement such design and/or construction changes.

Section 4.5. Major Capital Improvement Project Implementation.

Following the Closing Date, the Concessionaire shall commence to perform or cause to be performed the Major Capital Improvements. Except as may otherwise be agreed between the Parties as provided by Section 4.6 or the Capex Plan, the Concessionaire shall proceed with the design and construction of the Major Capital Improvements in accordance with the following process:

(a) *Major Capital Improvement Conceptual Design.*

(i) *Project Description.* Concessionaire shall prepare, for review and approval by the Authority, a basic description of each Major Capital Improvement ("Major Capital Improvement Conceptual Design"). The Major Capital Improvement Conceptual Design shall reflect the Concessionaire's definition of the needs associated with each Major Capital Improvement and state on a preliminary basis, where applicable, the performance requirements or basic scope of such Major Capital Improvement.

(ii) *Schedules.* The Major Capital Improvement Conceptual Design also shall include preliminary project schedules, including a schedule for obtaining all required Authorizations related to the Major Capital Improvement. The Concessionaire shall set forth a preliminary list of the Governmental Authorities that it believes are required for the design, construction, testing, operation and maintenance of the Major Capital Improvement.

(iii) *Review and Approval.* The Concessionaire and the Authority shall meet and review the Major Capital Improvement Conceptual Design. The Concessionaire shall provide the Major Capital Improvement Conceptual Design to the Authority at least thirty days prior to the scheduled date for the meeting at which the Major Capital Improvement Conceptual Design is reviewed and discussed. At least three days prior to the scheduled date for the meeting, the Authority shall provide the Concessionaire with written comments in accordance with the standard of review set forth in Section 4.4(b) regarding the Major Capital Improvement Conceptual Design. During the meeting to discuss the Major Capital Improvement Conceptual Design, the Authority and the Concessionaire shall proceed in good faith to discuss and resolve the Authority's comments. Following the meeting, the Concessionaire shall prepare and circulate for Approval by the Authority meeting

minutes that set forth the comments provided by the Authority and the proposed resolution of such comments. Within five days after the meeting minutes have been circulated, the Authority shall advise Concessionaire whether the meeting minutes are Approved. Approval of the meeting minutes by the Authority shall constitute approval of the Major Capital Improvement Conceptual Design, as the Major Capital Improvement Conceptual Design may have been amended or modified by the Parties, and as reflected in the meeting minutes. The absence of a response from the Authority within the five day period shall be deemed to constitute Approval of the meeting minutes.

(b) *Major Capital Improvement Substantially Complete Design.* Following the approval of the Major Capital Improvement Conceptual Design, the Concessionaire shall proceed on the basis of the approved Major Capital Improvement Conceptual Design to prepare detailed, substantially complete engineering drawings, plans, specifications and technical documents to show the character, detail and scope of the work and services to be performed with respect to the Major Capital Improvement (“Major Capital Improvement Substantially Complete Design”). The Major Capital Improvement Substantially Complete Design shall include the following:

(i) *Plans.* The Concessionaire shall furnish all required architectural and engineering plans, designs, and specifications, site plans, and building plans, process flow diagrams, sampling plans, equipment layout plans, electrical and instrument diagrams, SCADA plans and specifications, site surveys, utility service plans, and equipment procurement specifications.

(ii) *Schedules.* The Concessionaire shall prepare preliminary project schedules, including schedules for the procurement, construction, installation, and testing of all facilities and equipment. Such schedules shall establish the dates and periods of time for the Authority to submit all required documents, submissions and applications by the Authority so that the Authority may secure approval of all Authority Authorizations applicable to the Major Capital Improvement in accordance with Section 4.8. Such schedules also shall show anticipated completion dates for various phases of the construction of the Major Capital Improvement.

(iii) *Data and Information for Governmental Approvals.* The Concessionaire shall furnish the Authority all supporting engineering information and data for the preparation of all required documents, submissions and applications by the Authority so that the Authority may secure all Authorizations applicable to the Major Capital Improvements in accordance with Section 4.8. The Concessionaire shall set forth a list of the Authorizations that it believes are required for the design, construction, testing, operation and maintenance of the Major Capital Improvements.

(iv) *Review and Approval.* The Concessionaire and the Authority shall meet and review the Major Capital Improvement Substantially Complete Design. The Concessionaire shall provide the plans, specifications and documents regarding the Major Capital Improvement Substantially Complete Design to the Authority at least thirty days prior to scheduled date for the meeting at which such

plans are to be reviewed and discussed. At least three days prior to the scheduled date for the meeting, the Authority shall provide the Concessionaire with written comments in accordance with the standard of review set forth in Section 4.4(b) regarding the Major Capital Improvement Substantially Complete Design. During the meeting to discuss the Major Capital Improvement Substantially Complete Design, the Authority and the Concessionaire shall proceed in good faith to discuss and resolve the Authority's comments. Following the meeting, the Concessionaire shall prepare and circulate for approval by the Authority meeting minutes that set forth the comments provided by the Authority and the proposed resolution of such comments. Within five days after the meeting minutes have been circulated, the Authority shall advise the Concessionaire whether the meeting minutes are approved. Approval of the meeting minutes by the Authority shall constitute approval of the Major Capital Improvement Substantially Complete Design, as the Major Capital Improvement Substantially Complete Design may have been amended or modified by the Parties, and as reflected in the meeting minutes. The absence of a response from the Authority within the five day period shall be deemed to constitute approval of the meeting minutes.

(c) *Approval of the Capital Cost Recovery Charge.* Following the approval of the Major Capital Improvement Substantially Complete Design, the Concessionaire shall proceed on the basis of the approved Major Capital Improvement Substantially Complete Design to complete the design and engineering, select the Contractors, if applicable, and otherwise take all steps required to commence the performance of the construction services. The Parties shall proceed expeditiously and in good faith to complete the process for Approval of any Capital Cost Recovery Charge that may be assessed with respect to the project pursuant to Section 7.1(f) and in accordance with the definition of Capital Cost Recovery Charge.

(d) *Progress Schedule.* The Concessionaire shall submit to the Authority a progress schedule covering all work to be performed by the Concessionaire with respect to the construction of such Major Capital Improvement. The progress schedule shall show (i) the order of work; (ii) the dates upon which work will begin on each significant element of such work; (iii) the relationships between the significant elements of the work; and (iv) the contemplated number of days for and anticipated dates of completion for each significant element of the work. The Concessionaire shall advise the Authority of any significant modifications to the progress schedule.

(e) *Commencement of Construction.* Upon the approval of the imposition of the Capital Cost Recovery Charge and the satisfaction of the conditions precedent set forth in Section 4.11, the Concessionaire shall commence construction of the Major Capital Improvement in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, the Concessionaire may decide, in its sole and absolute discretion, to commence construction of a Major Capital Improvement prior to the approval of the imposition of the Capital Cost Recovery Charge and the satisfaction of the conditions precedent set forth in Section 4.11 (to the extent such conditions precedent are not required for the commencement of construction). The decision of the Concessionaire to commence construction of a Major Capital Improvement prior to the approval of the imposition of the Capital Cost

Recovery Charge shall not alter or amend the obligations of the Parties to agree upon and the Authority to permit the imposition of the Capital Cost Recovery Charge for the Major Capital Improvement.

Section 4.6. Alternate Project Delivery Procedures. Section 4.5 sets forth a project delivery method for the Major Capital Improvements that is based on a design-bid-build approach. The Concessionaire reserves the right, consistent with Good Engineering and Construction Practices, to utilize value-based project delivery, project procurement, or project pricing procedures or methods for the design and construction of the Major Capital Improvements other than those described in Section 4.5. Such alternate project delivery, project procurement, or project pricing procedures or methods include, but are not limited to, engineer-procure-construct, design-build, multiple prime, or construction management at risk. If the Concessionaire determines to utilize an alternate project delivery, project procurement, or project pricing procedures or methods for the design and construction of a Major Capital Improvement, it shall seek the consent of the Authority, such consent not to be unreasonably withheld or delayed. To the extent an alternate project delivery, project procurement, or project pricing procedure or method for the design and construction of a Major Capital Improvement is utilized, the Concessionaire and the Authority shall negotiate in good faith regarding appropriate revisions to the project delivery method set forth in Section 4.5 as required to accommodate the alternate project delivery, project procurement, or project pricing procedure or method.

Section 4.7. Construction Requirements.

(a) *Construction Services.* Except as is otherwise expressly set forth in this Agreement, the Concessionaire shall furnish and/or procure all services necessary to construct the Major Capital Improvements in accordance with Article 11.

(b) *Contractors.* The Authority acknowledges and agrees that the Concessionaire may engage Contractors to perform some or all of the services associated with the design and construction of the Major Capital Improvement. The Concessionaire may, at its sole discretion, subcontract to Contractors all or portions of the services to be provided regarding the design and construction of the Major Capital Improvements; *provided that* the Concessionaire shall remain liable for any work so subcontracted. If any Contractor defaults on its contract, the Concessionaire shall make all reasonable efforts to enforce its rights under such contract, but such default shall not relieve the Concessionaire of its obligation to complete the Major Capital Improvements in accordance with this Agreement.

(c) *Construction Wastes.* The Concessionaire shall be solely responsible for the storage, treatment and disposal of all construction wastes generated by the Concessionaire during the construction of a Major Capital Improvement; provided, however, that the foregoing shall not limit, alter or modify the provisions of Section 3.2(c)(ii).

(d) *Design Plans/As Built Plans.* The Concessionaire shall maintain a set of “as-built” plans and specifications for each of the Major Capital Improvements, all manuals required for operation and maintenance of the Major Capital Improvement, and copies of warranties issued by the manufacturer of the equipment and materials installed as part of the Major Capital Improvements. A copy of the “as-built” plans and specifications for each of the Major Capital Improvements shall be provided to the Authority in electronic form. The Concessionaire shall make available for review by the Authority, a paper copy of the “as-built” plans and specifications for each of the Major Capital Improvements, all manuals required for operation and maintenance of the Major Capital, and copies of warranties issued by the manufacturer of the equipment and materials installed as part of the Major Capital Improvements.

(e) *Major Capital Improvement Startup.* The Concessionaire shall provide all necessary services in connection with planning, direction and supervision, and provide all materials, supplies and equipment required for the start-up, testing, and commissioning of the Major Capital Improvements.

Section 4.8. Governmental Authorizations. The Concessionaire shall prepare all applications and supporting information necessary to prosecute and obtain all Authorizations required under applicable Laws and Article 11 for the design, construction, testing, operation and maintenance of the Major Capital Improvements. Except for those Authorizations which must be held by the Concessionaire pursuant to applicable Law, the Authority shall execute and submit all such Authorizations applications prepared by the Concessionaire, and shall prosecute and obtain, with the assistance and support of the Concessionaire, all such Authorizations to be held in the name of the Authority.

Section 4.9. Cooperation. The Parties shall cooperate in any and all actions necessary or appropriate for the completion of the design, construction, start up and performance of the services relating to a Major Capital Improvement in accordance with this Agreement.

Section 4.10. Reports. The Concessionaire shall prepare monthly reports describing the progress with respect to the design and construction of each Major Capital Improvement. In addition, the Concessionaire shall keep, and furnish to the Authority, at the Authority’s request, such information as the Authority may reasonably request. Upon the commencement of construction of a Major Capital Improvement, the Concessionaire and the Authority shall hold regularly scheduled construction progress meetings. The frequency of the regularly scheduled construction progress meetings shall not be more than once per month unless agreed upon between the Parties. The Concessionaire shall prepare and submit information regarding progress of construction to the Authority at least five days prior to the regularly scheduled construction progress meetings. The information to be prepared by the Concessionaire shall generally include the following: (i) updates regarding the costs and expenses incurred with respect to the design and construction of each Major Capital Improvement, and any updates of the cost estimate for each Major Capital Improvement; (ii) update and narrative with respect to progress schedules; (iii) overview of the work performed on each Major Capital

Improvement currently being constructed; (iv) narrative of any expected upcoming issues or changes in the design of a Major Capital Improvement; and (v) updated list of any outstanding issues and action items.

Section 4.11. Conditions Precedent to Construction. The Concessionaire in its discretion shall have determined that each of the following events must have occurred before the Concessionaire starts construction of a Major Capital Improvement: (a) the Parties have obtained all necessary Authorizations for the construction of the Major Capital Improvement; and (b) the Authority has approved the imposition of the Capital Cost Recovery Charge in accordance with Section 7.1(f) and the definition of Capital Cost Recovery Charge for the design and construction of the Major Capital Improvement.

Section 4.12. Adjustment of Capital Cost Recovery Charge. Following the completion of each Major Capital Improvement, the Concessionaire and the Authority shall confer regarding any adjustments to the Capital Cost Recovery Charge that may be necessary or appropriate based on the total costs, fees and expenses incurred by the Concessionaire to design and construct the Major Capital Improvement including those costs, fees and expenses described in Section 7.1(f). The Parties shall proceed in good faith to negotiate and agree upon any adjustments to the Capital Cost Recovery Charge that are mutually acceptable to the Authority and the Concessionaire consistent with Section 7.1(f).

Section 4.13. Capex Fund. No later than January 1, 2034 the Concessionaire shall establish the Capex Fund. The moneys in the Capex Fund shall be used to pay that portion of the cost of Major Capital Improvements that cannot be recovered during the Term as a Capital Cost Recovery Charge because the last day of the Cost Recovery Period of the Major Capital Improvement to be funded by such Capital Cost Recovery Charge is later than the End Date determined without regard to any earlier termination of this Agreement. The Concessionaire may withdraw moneys from the Capex Fund to pay costs incurred with respect to a Major Capital Improvement meeting the requirements of this Section 4.13 to the extent such costs are not includible in the Capital Cost Recovery Charge for the Major Capital Improvement. For each Reporting Year, commencing with the 2034 Reporting Year, the Concessionaire shall deposit into the Capex Fund an amount of money equal to the Capex Fund Deposit Requirement for that Reporting Year. The Capex Fund Deposit Requirement for each Reporting Year shall be funded by the Concessionaire in two equal installments. The first installment shall be due and payable on the first Business Day of April of the Reporting Year and the second installment shall be due and payable on the first Business Day of October of the Reporting Year. At the direction of the Concessionaire, moneys in the Capex Fund may be invested in Eligible Investments maturing (i) prior to the End Date, without the Approval of the Authority, or (ii) on or after the End Date, subject to the Approval of the Authority. On the Reversion Date, any moneys or securities held in the Capex Fund shall be applied to pay off any and all outstanding Encumbrances, applied to the reduction of the principal amount of the Borough note otherwise to be issued pursuant to Section 4.14 by a payment made to the Concessionaire, and to pay any unpaid Termination Compensation, AA-Compensation and Concession

Compensation. Any amount thereafter remaining in the Capex Fund shall be paid over to the Concessionaire.

Section 4.14. Borough Payment of Remaining Capital Cost Recovery.

In the event that the recovery period with respect to any project for which a Capital Cost Recovery Charge was approved extends beyond the End Date, the amount of the Concessionaire's unrecovered Capital Cost Recovery Charge as of the End Date that is not recovered by a withdrawal from the Capex Fund and paid to the Concessionaire pursuant to Section 4.13 will be evidenced by the Borough's note, duly incurred pursuant to the Local Government Unit Debt Act (or any successor to such Act requiring approval of the debt obligations of local government units), and secured by a security interest in the unrecovered Capital Cost Recovery Charges related to such project. The Borough note shall have a term equal to the remaining Cost Recovery Period and shall be paid to the Concessionaire and amortized as, and to the extent that, the uncollected Capital Cost Recovery Charges for such project are collected by the Borough after the End Date. Upon payment of the Borough note in full, the Concessionaire shall release its lien as aforescribed in this Section 4.14.

ARTICLE 5

Modifications

Section 5.1. Authority Directives. Subject to the Authority's compliance with any applicable Laws (including, to the extent applicable, the Commonwealth Procurement Code, Pa. C.S.A. Title 62, or other Laws governing procurement), the Authority may, at any time during the Term, issue a Directive to the Concessionaire. Subject to the Authority making available to the Concessionaire sufficient funds to perform the work required to implement such Directive at or before the time payment for such work is required to be made, and the Concessionaire having obtained (with the cooperation of the Authority) all relevant Authorizations from all relevant Governmental Authorities required for the relevant work, the Concessionaire shall perform the work required to implement such Directive, and the Authority shall pay to the Concessionaire the Concession Compensation with respect thereto.

Section 5.2. Concessionaire Requests. If the Concessionaire wishes at any time during the Term to make a fundamental change in the dimensions, character, quality or location of any part of the System, then the Concessionaire may submit to the Authority, for Approval, a Concessionaire Request with respect to such change and shall submit to the Authority for its Approval specific plans with respect to any such work. Repairs, renewals and replacements of sewer lines, water mains and equipment and changes that are non-structural in nature shall not be considered "fundamental changes." The Concessionaire shall be responsible for all amounts required to implement an Approved Concessionaire Request (and any Losses incurred in connection therewith). No Concessionaire Request shall be implemented unless and until such Concessionaire Request has been Approved by the Authority.

Section 5.3. Performance of Modifications. Subject to the other provisions of this Article 5, the Concessionaire shall ensure that Directives and

Approved Concessionaire Requests are performed in a good and workmanlike manner and diligently complied with and implemented in such manner that the costs (in the case of Directives only) and delays relating thereto are minimized.

ARTICLE 6

Operating Standards

Section 6.1. Compliance with Operating Standards. The Concessionaire shall, at all times during the Term, cause the System Operations to, comply with and implement the Operating Standards in all material respects (including any changes or modifications to the Operating Standards pursuant to the terms of this Agreement). The Concessionaire shall have in place procedures that are designed to achieve compliance with the Operating Standards. Except as specifically set forth herein, the Concessionaire shall perform all work required to comply with and implement the Operating Standards (including the capital improvements described therein) as part of the System Operations and at its sole cost and expense. The Operating Standards shall not be deemed to be violated by occasional immaterial acts or omissions other than actions or omissions that endanger the public health and safety, but in all cases the Authority may assess Operational Liquidated Damages for each Operational Breach in accordance with Section 6.4 and the Operating Standards.

Section 6.2. Proposed Operating Standards. If the Concessionaire, at its cost and expense, wishes to implement and use operating standards other than the Operating Standards, the Concessionaire must provide such proposed operating standards to the Authority for Approval. The Concessionaire's proposed operating standards must be accompanied by an explanation of the Concessionaire's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that the Concessionaire's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards that the proposed operating standards would modify and will assure that all affected portions of the System are operated in a manner consistent with public purpose requirements of Section 3.18 (the "Approval Criteria"). The Concessionaire shall provide any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably requested by the Authority to determine if the Concessionaire's proposed operating standards are reasonably designed to satisfy the Approval Criteria. Approval of the Concessionaire's proposed operating standards may be withheld, delayed or conditioned only if the Authority reasonably determines that the Concessionaire's proposed operating standards are not reasonably designed to satisfy the Approval Criteria. The Concessionaire's proposed operating standards shall be deemed incorporated into the Operating Standards upon Approval by the Authority in accordance with the terms hereof. If the Authority refuses to Approve any proposed operating standards and the Concessionaire disagrees with such refusal, the Concessionaire may submit the matter to dispute resolution under the provisions of Article 19.

Section 6.3. Modified Operating Standards.

(a) The Authority shall have the right, at any time during the Term, to modify or change the Operating Standards upon notice to the Concessionaire to (i) comply with any new Law or Change of Law (other than a new Law or Change of Law enacted by the Authority that is not required by any new Law or Change of Law by another Governmental Authority applicable to the System Operations) or (ii) conform the Operating Standards to standards or practices generally adopted with respect to sewage collection, treatment and disposal systems and water treatment plants and water distribution systems. In the event the Authority modifies the Operating Standards in accordance with the immediately preceding sentence, the Concessionaire, at its cost and expense, shall perform all work required to implement and shall comply with all such modifications and changes and in no event shall the Concessionaire be excused from compliance with any such modification or change. The Concessionaire has the right to challenge any modified Operating Standard pursuant to Article 19 on the basis that it does not meet either of the requirements of this Section 6.3(a). In the event the Authority modifies or changes the Operating Standards pursuant to Section 6.3(a)(i), the Parties shall proceed to adjust the Schedule of Service Charges pursuant to Section 7.1(g). In the event the Authority modifies or changes the Operating Standards pursuant to Section 6.3(a)(ii), the Parties agree to negotiate in good faith to reduce the impact on the Concessionaire of any increased costs and expenses associated with such modification or change.

(b) If during the Term the Authority is of the opinion that a modification or change to the Operating Standards is necessary or desirable but such modification or change is not subject to Section 6.3(a), the Authority may upon reasonable written notice to the Concessionaire modify or change the Operating Standards; provided, however, that the Authority shall pay to the Concessionaire the Concession Compensation with respect thereto at the time such modification or change is implemented. At the Authority's request, the Concessionaire shall perform all work required to implement and shall comply with all such modifications and changes, and in no event shall the Concessionaire be excused from compliance with any such modification or change. The Authority shall have the right to undertake the work necessary to ensure implementation of and compliance with any such modification or change to the Operating Standards if the Concessionaire fails to do so within a reasonable period of time; provided, however, that to the extent that such work is undertaken by the Authority, the Concessionaire shall pay to the Authority within 10 Business Days following demand therefor, or the Authority may offset from amounts owing to the Concessionaire in connection with such modification or change, the costs of the portion of the work performed in order to comply with the Operating Standards existing immediately prior to such modification or change, and the Authority shall be responsible only for the incremental costs of the additional work required in order to implement such proposed modification or change to the Operating Standards and, without duplication with the foregoing, the Concession Compensation with respect to such modification or change.

Section 6.4. Liquidated Damages. As provided in the Operating Standards, the Authority may assess Operational Liquidated Damages for each

Operational Breach and may assess additional Operational Liquidated Damages for multiple Operational Breaches by filing a written notice with the Concessionaire setting forth the nature of the Operational Breach. The Concessionaire shall pay the Operational Liquidated Damages assessed with respect to an Operational Breach within 30 days following the filing of the written notice by the Authority. The Authority may assess Operational Liquidated Damages for an Operational Breach of the water quality standards at any time. With respect to all other Operational Breaches, the Concessionaire shall have a transition period beginning on the Closing Date and ending on the 183rd day next following the Closing Date to bring its operations into compliance with the Operating Standards without assessment of any Operational Liquidated Damages.

ARTICLE 7

Service Charges

Section 7.1. Imposition of Service Charges.

(a) *Establishment of Tariff.* The Initial Schedule of Rates previously established by the Borough shall be in full force and effect on the Closing Date. Pursuant to the Rate Ordinance, the Borough established and approved the Service Charges to be charged by Concessionaire as specified under this Article 7 and this Agreement, as such Service Charges shall be adjusted from time to time in accordance with the provisions thereof. In accordance with and subject to the provisions of the Ordinance and this Article 7, the Concessionaire shall, at all times during the Term, revise from time to time, the Schedule of Service Charges for the use of the System and for the provision of Utility Services by means of the System.

(b) *Just and Reasonable.* Every Schedule of Service Charges shall be just and reasonable.

(c) *Municipal Customers.* Any Schedule of Service Charges for a Municipal Customer under a Municipal Service Agreement shall conform to the terms and conditions contained in that Municipal Service Agreement.

(d) *Initial Schedule.* The Initial Schedule of Rates shall be in effect on the Closing Date. Prior to January 2019 the Concessionaire shall not revise the Schedule of Service Charges from the Initial Schedule of Rates in effect on the Closing Date, without the prior approval of such revisions by the Borough, which approval shall be at the sole discretion of the Borough; *provided* that no Borough approval shall be required for any revision of the Schedule of Service Charges established by the Concessionaire to fund or finance Major Capital Improvements as permitted by Section 7.1(f), Changes of Law as permitted by Section 7.1(g), Leasehold Tax Adjustments as permitted by Section 7.1(h), Major Force Majeure Events as permitted by Section 7.1(j), SRBC Charges as permitted by Section 7.1(k), or Demand Shortfall Recoveries as permitted by Section 7.1(l).

(e) *Annual Rate Adjustment.* For the 2019 calendar year and each calendar year thereafter, the Concessionaire shall establish the Schedule of Service

Charges for each class or type of Utility Service (other than Service Charges determined pursuant to a Municipal Services Agreement). The Annual Rate Adjustment for any such calendar year shall be determined in the discretion of the Concessionaire but may not result in an increase in Service Charges for each class or type of Utility Service in excess of the Permitted Annual Rate Adjustment for that calendar year. Each such Annual Rate Adjustment and the resulting new Schedule of Service Charges shall take effect as of the first day of the calendar year and shall remain in effect for the entire calendar year.

(f) *Major Capital Improvements.* In addition to the Service Charges otherwise imposed under this Section 7.1, but subject to Section 7.1(c), the Concessionaire may also impose a Capital Cost Recovery Charge to recover the costs incurred to implement Major Capital Improvements. If the Concessionaire seeks to impose a Capital Cost Recovery Charge it shall submit to the Authority a written report detailing the costs incurred to implement the Major Capital Improvement, any change in costs of operation and maintenance of the System, the sources for funding such capital cost, including, where applicable, the Capex Fund, the expected placed in service date of the Major Capital Improvement, the expected average useful life of the Major Capital Improvement and the proposed Capital Cost Recovery Charge for the Major Capital Improvement, as determined in accordance with the definition of Capital Cost Recovery Charge for the Concessionaire's debt incurred for and equity investment in the Major Capital Improvement, which the Concessionaire proposes to impose for each Reporting Year over the term of the Cost Recovery Period. The report shall be considered by the Authority within 30 days of its submission and shall be subject to the Approval of the Authority, which Approval shall not be unreasonably conditioned, delayed or withheld, provided however that the Authority shall be deemed to have withheld its Approval reasonably of any proposed Capital Cost Recovery Charge that includes for any Reporting Year during the permitted Cost Recovery Period a Capital Cost Recovery Charge that is greater than 200% of the Capital Cost Recovery Charge for any other Reporting Year (with the exception of the initial Capital Cost Recovery charge requested). Any Approved Capital Cost Recovery Charge may be imposed during the entire Cost Recovery Period.

(g) *Change of Law.* The Schedule of Service Charges shall be subject to prospective annual adjustment, upward or downward, on account of any Change of Law in order to reflect any changed cost or expense related to the System and incurred by the Concessionaire as a result thereof, all as may be reasonably agreed to by the Authority and the Concessionaire. If the Authority and the Concessionaire are unable to so agree, the adjustment of the Schedule of Service Charges shall be resolved pursuant to Article 19.

(h) *Leasehold Tax Adjustment.* For any period that a Leasehold Tax is to be paid by the Concessionaire, the Concessionaire may also impose upon all users of the System a Service Charge to pay the Leasehold Tax, which Service Charge shall be in addition to the Service Charges otherwise imposed under this Section 7.1, but subject to Section 7.1(c).

(i) *Borough Approval.* In addition to the Service Charges otherwise imposed under this Section 7.1, but subject to Section 7.1(c), the Borough, pursuant to action taken by the Borough Council, may approve an increase in Service Charges to fund any amounts due the Concessionaire pursuant to Section 3.20(d), Section 3.21(a) or Section 15.3(d).

(j) *Major Force Majeure Event.* The Concessionaire may also impose upon all users of the System a Service Charge in any calendar year to fund the Major Force Majeure Unfunded Loss for that calendar year, which Service Charge shall be in addition to the Service Charges otherwise imposed under this Section 7.1, but subject to Section 7.1(c)

(k) *SRBC Charge.* The Concessionaire may also impose upon all users of the System a Service Charge to pay any SRBC Charge, which Service Charge shall be in addition to the Service Charges otherwise imposed under Section 7.1, but subject to Section 7.1(c).

(l) *Demand Shortfall Recovery.* The Concessionaire may also impose upon all Retail Water Customers and Retail Sewer Customers a Service Charge in any Demand Shortfall Recovery Year to recover the Annual Shortfall Recovery Amount that may be recovered in that Demand Shortfall Recovery Year, which Service Charge shall be in addition to the Service Charges otherwise imposed under Section 7.1.

Section 7.2. Collection and Enforcement of Service Charges. The Concessionaire is entitled to collect and enforce all Service Charges. The Borough agrees to assist and cooperate with the Concessionaire in the collection and enforcement of Service Charges to the extent that the Borough may be authorized by Law to provide such assistance or cooperation. Any costs incurred by the Borough in connection with the collection and enforcement of Service Charges on behalf of the Concessionaire shall be at the sole cost and expense of the Concessionaire and the Concessionaire shall reimburse the Borough for such costs.

Section 7.3. PUC Regulation. In the event that the Service Charges authorized by the Ordinance and this Article 7 (i) become subject to PUC jurisdiction; (ii) are limited by any regulation, order or other action of the PUC; (iii) any such regulation, order or other action results in a reduction in the aggregate Service Charges that may be imposed under this Agreement; and (iv) such reduction cannot be offset by adjustments in the Schedule of Service Charges in a manner otherwise consistent with this Article 7; then, within 90 days of the end of each Reporting Year in which PUC regulations, orders or actions resulted in a reduction of the amount of Revenues collected for that Reporting Year (after taking into account all offsetting adjustments in Service Charges) from the amount of Revenues that otherwise would have been collected from Service Charges absent PUC jurisdiction over the Schedule of Service Charges, the Concessionaire shall file a report detailing such reduction in Revenues for such Reporting Year and, within 30 days of the filing of such report, the Authority shall pay to the Concessionaire, the amount set forth in such report, together with interest thereon at the Bank Rate from the last day of such Reporting Year to the date payment is made by the Authority. Such payment shall

constitute full satisfaction and discharge with respect to the impact of PUC jurisdiction for that Reporting Year and the Authority shall not otherwise be liable for additional payments under any other provision of this Agreement. PUC jurisdiction over this Agreement shall not constitute a Compensation Event or an Adverse Action. The Concessionaire and the Authority agree to cooperate in any rate hearing or other proceedings before the PUC or any court in order to defend any Schedule of Service Charges imposed pursuant to this Agreement. In no event may the Concessionaire or the Operator petition for or otherwise seek PUC approval of any schedule of rates and charges other than the Schedule of Service Charges imposed pursuant to this Agreement. Within 90 days of making the first such payment, the Authority or Borough may exercise an option, by action of and within the sole discretion of Borough Council to terminate this Agreement by giving written notice of such termination to the Concessionaire, subject to the obligation to pay Termination Compensation as set forth in Section 16.5.

ARTICLE 8

Reporting, Audits and Inspections

Section 8.1 Reports.

(a) *Incident Management and Notifications.* The Concessionaire shall provide notice to the Authority within 24 hours of all emergencies, and promptly provide notice to the Authority of all accidents and incidents occurring on or at the System, and of all claims in excess of \$50,000 made by or against the Concessionaire, or potential claims in excess of \$50,000 that the Concessionaire reasonably expects to make against, or to be made against it by, third parties.

(b) *Environmental Incident Management and Notifications.* The Concessionaire shall provide notice to the Authority as soon as possible, but in no event later than 24 hours following the Concessionaire's becoming aware of the discharge, dumping, spilling or other release (accidental or otherwise) of any Reportable Quantity of Hazardous Substances occurring on or at the System and the location at which the incident has occurred, the time, the agencies involved, the damage that has occurred and the remedial action taken.

(c) *EPA Violations and Reports.*

(i) The Concessionaire shall notify the Authority of any violation of Environmental Law, malfunction of the System or failure to operate the System that has the potential to present a danger to public health and safety immediately upon becoming aware of such violation, malfunction or failure. Such notification shall include a report of actions being taken by the Concessionaire to correct the violation, malfunction or failure and to mitigate the danger to public health and safety. Concessionaire shall continue to regularly update the Authority and, as appropriate, coordinate its response with the Authority, until the issue has been resolved. Within thirty (30) days after resolution of the issue or such other time agreed to by the Parties, Concessionaire shall provide the Authority an analysis of the issue and its

resolution, including recommendations for modifying the Operating Standards in accordance with Section 6.2.

(ii) The Concessionaire shall notify the Authority within thirty (30) days of any violation of Environmental Law that (1) has the potential to result in a penalty under the Environmental Laws of greater than \$50,000, (2) may require modification of the Operating Standards, or (3) may require capital improvements to the System exceeding \$250,000.

(iii) Until the End Date, the Concessionaire and the Operator shall deliver to the Authority within 45 days after the end of each Reporting Year a certification that the System, for that Reporting Year, had been operated in accordance with existing Permits and had operated for that Reporting Year, to Concessionaire's knowledge, in compliance with Environmental Laws. Any exceptions to the certification shall include a description of the non-compliance event, actions taken to cure the event, any enforcement action taken by any Government Authority, and actions taken to prevent a recurrence of the event. In addition, the certification shall identify any potential new or changes to existing Environmental Laws or change of fact or circumstances (including condition or operation of the System) that may have a material impact on the ability of the System to continue to operate in compliance with Environmental Laws.

(d) *Financial Reports.* Until the End Date, the Concessionaire shall deliver to the Authority within 150 days after the end of each Reporting Year a copy of the audited balance sheets of the Concessionaire or Guarantor at the end of each such Reporting Year, and the related audited statements of income, changes in equity and cash flows for such Reporting Year, including in each case the notes thereto, together with the report thereon of the independent certified public accountants of the Concessionaire or Guarantor, in each case in a manner and containing information consistent with the Concessionaire's or Guarantor's current practices and certified by the Concessionaire's or Guarantor's chief financial officer, as applicable, that such financial statements fairly present the financial condition and the results of operations, changes in equity and cash flows of the Concessionaire as at the respective dates of and for the periods referred to in such financial statements, all in accordance with generally accepted accounting principles in the United States, or, as applicable, International Financial Reporting Standards, in all cases, consistently applied. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements.

Section 8.2 Information.

(a) *Furnish Information.* At the request of the Authority, the Concessionaire shall, at the Concessionaire's cost and expense and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by the Authority, furnish or cause to be furnished) to the Authority all Information relating to the System Operations, this Agreement or the System as may be specified in such request and as shall be in the possession or control of the Concessionaire or its Representatives, and (ii) permit the Authority, after giving 10

Business Days' prior notice to the Concessionaire (which notice shall identify the persons to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to discuss the obligations of the Concessionaire under this Agreement with any of the directors, officers, employees or managers of the Concessionaire, the Operator or their respective Representatives (it being agreed that the Concessionaire shall have the right to be present during any such discussions with the Operator or Representatives of the Concessionaire or the Operator), for the purpose of enabling the Authority to determine whether the Concessionaire is in compliance with this Agreement, provided that, in the case of investigations of possible criminal conduct or Authority ordinance violations, no prior notice shall be required to the Concessionaire and the Concessionaire shall not have the right to be present during any discussions with the Operator or Representatives of the Concessionaire or the Operator. For the avoidance of doubt, this Section 8.2(a) does not impose a requirement to retain Information not otherwise retained in the normal course of Business or required to be retained by applicable Law.

(b) *Confidentiality.* Unless disclosure is required by applicable Law, the Authority shall keep confidential any Information obtained from the Concessionaire or its Representatives that constitutes "confidential proprietary information" or "trade secrets" (as those terms are defined under the Pennsylvania Right-to-Know Law) that are exempt from required disclosure under the Pennsylvania Right-to-Know Law, where such Information is designated and clearly marked as such by the Concessionaire in writing at the time when the Information is submitted to the Authority; provided, however, that the Authority shall have the right to determine, in its reasonable discretion, whether any exemption from disclosure under the Pennsylvania Right-to-Know Law applies to any such Information; provided further that in the event the Authority determines that the exemptions from disclosure under the Pennsylvania Right-to-Know Law do not apply to any such Information, the Authority shall provide reasonable notice to, and shall consult with, the Concessionaire prior to disclosure of such Information. In the event that the Concessionaire requests the Authority to defend an action seeking the disclosure of Information that the Authority determines to be exempt from disclosure pursuant to the Pennsylvania Right-to-Know Law and this Section 8.2(b), the Concessionaire shall reimburse the Authority for the reasonable costs and expenses (including attorneys' fees of the prevailing party) incurred by the Authority in defending any such action. The Authority and the Concessionaire may disclose the United States federal tax treatment and tax structure of the Transaction apart from any confidentiality provision of the confidentiality agreement referenced in Section 2.5(g), or any confidentiality provision herein, including this Section 8.2(b).

Section 8.2. Inspection, Audit and Review Rights of the Authority.

(a) *Audit Right.* In addition to the rights set out in Section 8.2, the Authority may, at all reasonable times, upon 10 Business Days' prior notice, except in the case of investigations of possible criminal conduct or Authority ordinance violations, in which case no prior notice shall be required, cause a Representative designated by it to, carry out an Audit of the Information required to be maintained or delivered by the Concessionaire under this Agreement in connection with the

performance of the System Operations for the purpose of verifying the information contained therein and shall be entitled to make copies thereof and to take extracts therefrom, at the Authority's expense, but, in any event, subject to Section 8.2(b). The Concessionaire, at the cost and expense of the Concessionaire, shall, at reasonable times, make available or cause to be made available to the Authority or its designated Representative such information and material as may reasonably be required by the Authority or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by the Authority in connection with the same. Except in the case of investigations of possible criminal conduct or Authority ordinance violations, the Authority shall not conduct an Audit more than once each Lease Year.

(b) *Inspection Right.* The Authority and its Representatives shall, at all reasonable times and upon reasonable prior notice, have access to the System and every part thereof and the Concessionaire, at the reasonable cost and expense of the Concessionaire, shall and shall cause its Representatives to, furnish the Authority with every reasonable assistance for inspecting the System and the System Operations for the purpose of Auditing the Information or ascertaining compliance with this Agreement and applicable Law.

(c) *Tests.* The Authority and its Representatives shall, with the prior consent of the Concessionaire (which shall not be unreasonably withheld, conditioned or delayed), except in the case of investigations of possible criminal conduct or Borough ordinance violations, in which case no consent shall be required, be entitled, at the sole cost and expense of the Authority, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the System or the System Operations as the Authority may reasonably determine to be necessary in the circumstances and the Concessionaire, at the cost and expense of the Concessionaire, shall, and shall cause its Representatives to, furnish the Authority or its Representatives with reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.

(d) *No Waiver.* Failure by the Authority or its Representatives to inspect, review, test or Audit the Concessionaire's responsibilities under this Agreement or any part thereof or the Information, shall not constitute a waiver of any of the rights of the Authority hereunder or any of the obligations or liabilities of the Concessionaire hereunder. Inspection, review, testing or Audit not followed by a notice of Concessionaire Default shall not constitute a waiver of any Concessionaire Default or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.

(e) *No Undue Interference.* In the course of performing its inspections, reviews, tests and Audits hereunder, the Authority shall minimize the effect and duration of any disruption to or impairment of the System Operations or the Concessionaire's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews, tests and Audits being performed, except as necessary in the case of investigations of possible criminal conduct or Authority ordinance violations.

Section 8.3. Audits, Assistance, Inspections and Approvals.

Wherever in this Agreement reference is made to the Authority or its Representatives providing assistance, services, Approvals or consents to or on behalf of the Concessionaire or its Representatives or to the Authority or its Representatives performing an Audit or inspecting, testing, reviewing or examining the System, the System Operations or any part thereof or the books, records, documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Concessionaire or its Representatives, such undertaking by the Authority or its Representatives shall not relieve or exempt the Concessionaire from, or represent a waiver of, any requirement, liability, Concessionaire Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on the Authority or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

ARTICLE 9

Representations and Warranties

Section 9.1. Representations and Warranties of the Authority. The Authority makes the following representations and warranties to the Concessionaire and acknowledges that the Concessionaire and its Representatives are relying upon such representations and warranties in entering into this Agreement:

(a) *Organization.* The Authority is a body corporate and politic, duly organized and existing under the Municipal Authorities Act and incorporated by appropriate legal action of the Borough.

(b) *Power and Authority.* The Authority has (i) duly adopted the Authorizing Resolution authorizing the Transaction, which remains in full force and effect, (ii) duly authorized and approved the execution and delivery of this Agreement and (iii) duly authorized and approved the performance by the Authority of its obligations contained in this Agreement. The Authority has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority, enforceable against the Authority in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) *Title.* At the Time of Closing, the Authority will have good and marketable title to the System necessary for the System Operations pursuant to this Agreement, subject only to Permitted Authority Encumbrances and Permitted

Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv), clause (viii) and clause (ix) as it pertains to clauses (iv) and (vii), of the definition of the term “Permitted Concessionaire Encumbrances”). Subject to any and all Permitted Authority Encumbrances and Permitted Concessionaire Encumbrances (other than the Permitted Concessionaire Encumbrances specified in clause (iv), clause (vii) and clause (viii) as it pertains to clauses (iv) and (vii), of the definition of the term “Permitted Concessionaire Encumbrances”) existing at the Time of Closing, there is no recorded or unrecorded agreement, contract, option, commitment, right, privilege or other right of another binding upon, or which at any time in the future may become binding upon, the Authority to sell, transfer, convey, subject to lien, charge, grant a security interest in, or in any other way dispose of or materially encumber any portion of the System. The recorded or unrecorded restrictions, exceptions, easements, rights of way, reservations, limitations, interests and other matters that affect title to the System (or any portion thereof) do not and will not materially adversely affect the Concessionaire’s ability to operate the System in accordance with the terms hereof. Following defeasance or advance refunding of the outstanding System Bonds pursuant to Section 2.4(a), no obligation of the Authority or the Borough will be secured by any right or interest in the System or the revenues or income therefrom and no Person will have any claim or right to, or interest in, any income, profits, rents, or revenue derived from or generated with respect to the System (other than the Concessionaire under this Agreement and any claims, rights or interests granted by or otherwise relating to the Concessionaire); provided, however, that the foregoing shall not apply to (i) revenues to which the Authority is or may become entitled under the provisions of this Agreement or (ii) revenues and income derived after the End Date.

(e) *No Conflicts.* The execution and delivery of this Agreement by the Authority, the consummation of the transactions contemplated hereby (including the operation of the System in accordance with the terms of this Agreement) and the performance by the Authority of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Authority under (i) any applicable Law or (ii) any agreement, instrument or document to which the Authority is a party or by which it is bound.

(f) *Consents.* No consent is required to be obtained by the Authority from, and no notice or filing is required to be given by the Authority to or made by the Authority with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the Authority of this Agreement or the consummation of the transactions contemplated hereby as of Closing, except for those consents which have been obtained or will be obtained on or before Closing or, with respect to the performance of the Authority’s obligations after Closing, those consents which the Authority has obtained or reasonably expects to obtain in the ordinary course prior to the time when such consent is required.

(g) *Compliance with Law; Litigation.*

(i) To the knowledge of the Authority, the Authority and the Borough have operated and are operating the System in compliance, in all material respects, with all applicable Laws, Authorizations and Permits and is not in breach of any applicable Law, Authorization or Permit that would have a material adverse effect on the operations of the System or on the Concessionaire Interest. There are no Authorizations or Permits from any Governmental Authority necessary for the operation of the System as currently being operated except for those Authorizations and Permits listed in Schedule 12. The System, when operated and maintained in accordance with Prudent Industry Practices and as configured, as of the Bid Date is, and as of the Closing Date will be, operated, and capable of being operated, in compliance with the Operating Standards and without an Operational Breach.

(ii) Except as disclosed to the Concessionaire prior to the Bid Date, there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any environmental claims or governmental enforcement actions that could reasonably be expected to have a Material Adverse Effect, and there are no past, pending or threatened environmental claims or governmental enforcement actions against the Authority that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(iii) There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the knowledge of the Authority, threatened against the Authority or the Borough prior to or at the Time of Closing, which will have a material adverse effect on the operations of the System. As of the date of this Agreement, there is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending nor, to the knowledge of the Authority, threatened against the Authority or the Borough which could materially affect the validity or enforceability of this Agreement.

(iv) Except for circumstances arising directly as a result of the transactions contemplated in this Agreement, to the Authority's knowledge there is no incident or fact, which has not been disclosed to the Concessionaire as at the Closing Date which could give rise to an action, suit or proceeding (at law or in equity) by any System Employee or family member of any System Employee related to: (A) unemployment compensation, long-term disability or workers' compensation claims; (B) claims for accrued vacation pay, accrued sick pay, accrued holiday or personal pay, or any other accrued paid time off; (C) grievances or other claims made pursuant to the collective bargaining agreement; (D) unfair labor practice charges; claims of employment discrimination, hostile work environment, sexual harassment, discriminatory harassment, negligent hiring or retention, retaliatory discharge, or wrongful discharge; (E) claims pursuant to the Family and Medical Leave Act or the Americans with Disabilities Act, claims pursuant to the Fair Labor Standards Act, the Pennsylvania Human Relations Act, the Pennsylvania Wage Payment and Collection Law, the Pennsylvania Minimum Wage Act, the Pennsylvania Whistleblower Act; or (F) claims for severance; any employment related claim under any federal, state or local law.

(h) *Financial Statements.* The financial statements of the System for the fiscal years ending December 31 of each of the years 2011 to 2013, both inclusive, fairly present the financial position and results of operations of the portion or portions of the System reflected in such financial statements as of the dates and for the periods stated in such financial statements in accordance with generally accepted accounting principles, as applied to governmental parties.

(i) *System Contracts and Municipal Service Agreements.* Each System Contract not terminated in accordance with Section 2.5(j) and each Municipal Service Agreement is in full force and effect and is enforceable in accordance with its terms. The Authority has provided or caused to be provided to Concessionaire true, accurate and complete copies (including all exhibits, schedules, modifications, amendments, renewals and other attachments) of each System Contract not terminated in accordance with Section 2.5(j) and each Municipal Service Agreement. Neither the Authority nor the Borough, as applicable, is in material breach of its obligations under any such System Contract or Municipal Service Agreement, and no act or event has occurred which, with notice or lapse of time, or both, would constitute a material breach thereof, and to the knowledge of the Authority no other party to any such System Contract or Municipal Service Agreement is in material breach of its obligations under any such System Contract or Municipal Service Agreement, and no act or event has occurred with respect to any such party, which with notice or lapse of time, or both, would or is reasonably be expected to constitute a material breach thereof. The System Contracts and the Municipal Service Agreements are all of the material contracts and agreements (i) to which the Authority or the Borough is a party that relate to the System Operations or (ii) that bind the Authority or the Borough with respect to the System in any material respect.

(j) *Insurance Policies.* All insurance policies set forth on Schedule 13 are in full force and effect with respect to the period between the date hereof and the Time of Closing or will be replaced with like insurance policies that will be in full force and effect through the Time of Closing.

(k) *Absence of Changes.* Since December 31, 2013, there has not been any transaction or occurrence that has resulted or is reasonably likely to result in a Material Adverse Effect.

(l) *Brokers.* Except for Susquehanna Group Advisors, whose fees will be paid by the Borough, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Authority who might be entitled to any fee or commission from the Authority or the Borough in connection with the transactions contemplated by this Agreement.

(m) *Accuracy of Information.* To the knowledge of the Authority, all consultant reports and financial information prepared by the Authority in connection with the Transaction and all historical financial statements and results of operations regarding the System that the Authority provided to the Concessionaire in the virtual data room were accurate in all material respects at the time such information was prepared.

(n) *Employees.* The Authority does not have any Union or non-Union Employees other than as shown on Schedule 15.

Section 9.2. Representations and Warranties of the Concessionaire.

The Concessionaire makes the following representations and warranties to the Authority (and acknowledges that the Authority is relying upon such representations and warranties in entering into this Agreement):

(a) *Organization.* The Concessionaire is duly organized, validly existing and in good standing under the laws of the state of its organization. The capital stock, units, partnership or membership interests and other equity interests or securities of the Concessionaire (including options, warrants and other rights to acquire any such equity interests) are owned by the Persons set forth in the written certification that the Concessionaire delivered to the Authority prior to the date hereof.

(b) *Power and Authority.* The Concessionaire has the power and authority to enter into this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(c) *Enforceability.* This Agreement has been duly authorized, executed and delivered by the Concessionaire and constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) *No Conflicts.* The execution and delivery of this Agreement by the Concessionaire, the consummation of the transactions contemplated hereby and the performance by the Concessionaire of the terms, conditions and provisions hereof has not and will not contravene or violate or result in a material breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Concessionaire under (i) any applicable Law, (ii) any material agreement, instrument or document to which the Concessionaire is a party or by which it is bound or (iii) the articles, bylaws or governing documents of the Concessionaire.

(e) *Consents.* No consent is required to be obtained by the Concessionaire from, and no notice or filing is required to be given by the Concessionaire to or made by the Concessionaire with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the Concessionaire of this Agreement or the consummation of the transactions contemplated hereby, except for such consents which have been obtained and notices which have been given as of the date hereof.

(f) *Compliance with Law; Litigation.* The Concessionaire is not in breach of any applicable Law that could have a material adverse effect on the operations of the System or the Concessionaire. Neither the Concessionaire nor any Affiliate of

the Concessionaire is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors, or on any other list of Persons with which the Authority or the Borough may not do business under applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the knowledge of the Concessionaire, threatened against the Concessionaire prior to or at the Time of Closing, which will have a material adverse effect on (i) the transactions contemplated by this Agreement or (ii) the validity or enforceability of this Agreement.

(g) *Operator.* To the extent the Operator is not the Concessionaire, the Concessionaire represents and warrants as follows: To the knowledge of the Concessionaire: (i) the Operator is duly organized, validly existing and in good standing under the laws of the state of its organization; (ii) the capital stock of the Operator (including options, warrants and other rights to acquire capital stock) is owned by the Persons set forth in the written certification that the Concessionaire delivered to the Authority prior to the date of this Agreement; (iii) the Operator has the power and authority to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in connection with its engagement by the Concessionaire; (iv) the Operator has all necessary expertise, qualifications, experience, competence, skills and know-how to perform the System Operations in accordance with this Agreement; and (v) the Operator is not in breach of any applicable Law that would have a material adverse effect on the operations of the System or any Operator.

(h) *RFP.* All information regarding the Concessionaire's qualifications set forth in the response to the request for System proposals delivered by or on behalf of the Concessionaire to the Authority in connection with the execution of this Agreement is true, accurate and correct in all material respects.

(i) *Brokers.* Except for any broker or advisor whose fees will be paid by the Concessionaire or its Affiliates, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Concessionaire or any of its Affiliates who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 9.3. Non-Waiver. No investigations made by or on behalf of either Party at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the other Party in this Agreement or pursuant to this Agreement. No waiver by a Party of any condition, in whole or in part, shall operate as a waiver of any other condition.

Section 9.4. Survival.

(a) *Authority's Representations and Warranties.* The representations and warranties of the Authority contained in Section 9.1 and of the Borough in Article 20 shall survive and continue in full force and effect for the benefit of the

Concessionaire as follows: (i) as to the representations and warranties contained in Sections 9.1(a) through 9.1(g), inclusive, and Sections 20.1(a) through 20.1(f), inclusive without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 21.1, prior to the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

(b) *Concessionaire's Representations and Warranties.* The representations and warranties of the Concessionaire contained in Section 9.2 shall survive and continue in full force and effect for the benefit of the Authority as follows: (i) as to the representations and warranties contained in Sections 9.2(a) through 9.2(i), inclusive, without time limit; and (ii) as to all other matters, for a period of 24 months following the Closing Date unless a bona fide notice of a Claim shall have been given, in writing in accordance with Section 21.1, before the expiry of that period, in which case the representation and warranty to which such notice applies shall survive in respect of that Claim until the final determination or settlement of that Claim, provided such determination or settlement is being pursued diligently and in good faith by the applicable Party.

ARTICLE 10

Finance Obligations

Section 10.1. Concessionaire's Obligations. Except with respect to the Authority's funding of costs and expenses related to Directives as contemplated by Section 5.1, the Concessionaire shall be responsible for obtaining any financing for the performance of its obligations under this Agreement, which financing shall comply with all requirements of this Agreement.

Section 10.2. Authority's Obligations. The Authority shall, to the extent consistent with applicable Law and at the sole cost and expense of the Concessionaire, cooperate with the Concessionaire with respect to documentation reasonably necessary to obtain, maintain and replace financing for the performance of the obligations of the Concessionaire hereunder. The Authority's cooperation will include promptly reviewing, approving and executing documents which substantiate the terms of this Agreement (including any consents and agreements necessary to confirm that the debt evidenced by the relevant financing constitutes Leasehold Mortgage Debt) and making information and material available to the Concessionaire's lenders to facilitate financing to the extent permitted by applicable Law and contractual obligations with third parties and to the extent reasonable in the circumstances. If requested to do so by the Concessionaire, the Authority and the Borough shall, at the sole cost and expense of the Concessionaire, use reasonable efforts to cause the Borough's independent public accountants to consent to the preparation, use and inclusion of certain financial information regarding the System in connection with the Concessionaire's public or private offering of securities, as the case may be. In addition, the Authority shall, promptly upon the request of the

Concessionaire or any Leasehold Mortgagee, execute, acknowledge and deliver to the Concessionaire, or any of the parties specified by the Concessionaire, standard consents and estoppel certificates with respect to this Agreement which may be qualified to the knowledge and belief of a designated Representative of the Authority. Nothing herein shall require the Authority to incur any additional obligations or liabilities (unless the Authority shall have received indemnification, as reasonably determined in the Authority's discretion, with respect thereto) or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement.

Section 10.3. Concessionaire's Obligation for Estoppel Certificates.

The Concessionaire shall, within 10 days of the request of the Authority, execute and deliver to the Authority, or any of the parties specified by the Authority, standard consents and estoppel certificates with respect to this Agreement. Nothing herein shall require the Concessionaire to incur any additional obligations or liabilities or to take any action, give any consent or enter into any document inconsistent with the provisions of this Agreement or applicable Law.

Section 10.4. Prohibited Tax Shelter Transactions. The Concessionaire covenants and agrees that it shall not enter into any lease, sublease, concession, management agreement, operating agreement or other similar arrangement or other transaction that would cause the Authority or the Borough to become a party to a "prohibited tax shelter transaction" within the meaning of section 4965 of the Internal Revenue Code of 1986 (it being agreed that, for purposes of this Section 10.4, the Authority shall not be treated as having become a party to any such transaction solely by virtue of its execution of this Agreement and the Borough shall not be treated as having become a party to any such transaction solely by virtue of its execution of its limited joinder to this Agreement). A violation of this Section 10.4 by the Concessionaire shall entitle the Authority or the Borough, as applicable, to (a) recover from the Concessionaire, to the extent permitted by applicable Law, the amount of any Tax liability to which the Authority or the Borough, or any Authority or Borough official is subject and (b) require the Concessionaire, at the Concessionaire's expense, to prepare timely all statements and returns, and to maintain all lists and similar information that the Authority becomes obligated to disclose, file or maintain with any taxing authority or participant or otherwise as a result of such transaction.

ARTICLE 11

Compliance With Laws

Section 11.1. Compliance with Laws. The Concessionaire must at all times at its own cost and expense observe and comply, in all material respects, and cause the System Operations to observe and comply, in all material respects, with all applicable Laws now existing or later in effect that are applicable to it or such System Operations, and Laws that the Concessionaire must comply with in its role as a lessee and/or operator of a Pennsylvania municipality or municipal authority, as applicable from time to time depending on the ownership of the underlying System assets, including those Laws expressly enumerated in this Article 11, and those that

may in any manner apply with respect to the performance of the Concessionaire's obligations under this Agreement. The Concessionaire must notify the Authority within seven days after receiving notice from a Governmental Authority that the Concessionaire may have violated any Laws as described above.

Section 11.2. Non-Discrimination.

(a) *Non-Discrimination Requirements.* The Concessionaire shall comply with all applicable federal, state and local Laws regarding non-discrimination, including: (i) the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (1981); (ii) the Civil Rights Act of 1991, P.L. 102-166; (iii) Executive Order Number 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000(e) note, as amended by Executive Order Number 11375, 32 Fed. Reg. 14,303 (1967) and by Executive Order Number 12086, 43 Fed. Reg. 46,501 (1978); (iv) the Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); (v) the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34 (1967); (vi) the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); (vii) the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (1990); and (viii) the Pennsylvania Human Relations Act, Act of October 27, 1955 (P.L. 744, No. 222) as amended, 43 P.S. §§ 951-963.

(b) *Contract Provisions.* The Concessionaire shall cause all Contractors to comply with each of the federal laws, Pennsylvania Laws and Borough Laws referenced in this Section 11.2, and shall include a provision to such effect in each contract entered into with any Contractor.

Section 11.3. Non-Discrimination/Sexual Harassment Clause. Pursuant to 62 Pa. C.S.A. § 3701, the Concessionaire agrees as follows during the Term:

(a) In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under this Agreement or any subcontract, the Concessionaire, any Contractor or any Person acting on behalf of the Concessionaire or a Contractor shall not by reason of gender, race, creed, or color or any other status protected by law discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates.

(b) Neither the Concessionaire nor any Contractor nor any Person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under this Agreement on account of gender, race, creed, or color.

(c) The Concessionaire and all Contractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

(d) The Concessionaire shall not discriminate by reason of gender, race, creed, or color or any other status protected by law against any Contractor or supplier who is qualified to perform the work to which the contract relates.

(e) The Concessionaire shall and shall ensure that each Contractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Authority for purposes of investigation to ascertain compliance with this Section 11.3; all of the foregoing subject to applicable Law, including but not limited to the Authority's commitment consistent with its obligations under the Right-to-Know Law to maintain the confidentiality of such employment related information. If the Concessionaire or any Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Authority.

(f) The Concessionaire shall include the provisions of this Section 11.3 in every subcontract so that such provisions will be binding upon each Contractor.

(g) Any termination or cancellation of this Agreement as described in 62 Pa. C.S.A. § 3701 as a result of an alleged breach or failure to comply with the provisions of this Section 11.3 or 62 Pa. C.S.A. § 3701 shall be subject and pursuant to Section 16.1 of this Agreement.

Section 11.4. Non-Collusion. The Concessionaire attests, after inquiry of its Representatives and subject to the penalties for perjury, that no Representative of the Concessionaire, directly or indirectly, to the knowledge of the Concessionaire, entered into or offered to enter into any combination, conspiracy, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Agreement other than that which is expressly set forth in this Agreement.

Section 11.5. Ethics and Conflict of Interest Requirements.

(a) The Concessionaire shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal Laws, regulations, or other requirements that govern contracting with the Commonwealth of Pennsylvania, its agencies or instrumentalities or the Borough.

(b) The Concessionaire shall not, in connection with this or any other agreement with the Authority or the Borough, directly or indirectly offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth of Pennsylvania.

(c) The Concessionaire shall not, in connection with this or any other agreement with the Authority or the Borough, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Authority or the Borough.

(d) Except with the consent of the Authority, neither the Concessionaire nor anyone in privity with the Concessionaire shall accept or agree to accept from, or give or agree to give to, any Representative of the Authority or the Borough, any gratuity from any person in connection with this Agreement that is intended by the

provider thereof to be a material inducement to enter into this Agreement or any other contract.

(e) The Concessionaire certifies that except as fully disclosed in the Concessionaire's proposal, Concessionaire has not entered into any arrangement involving a finder's fee, fee splitting, firm affiliation or relationship with any broker-dealer, payment to any consultant, lobbyist, or commissioned representative or any other contractual arrangement that could present a real or perceived conflict of interest.

(f) The Concessionaire, upon being informed that any violation of the provisions of this Section 11.5 has occurred or may occur, shall immediately notify the Authority in writing.

(g) The Concessionaire, by execution of this Agreement and any request for compensation pursuant hereto certifies and represents that it has not violated any of the provisions of this Section 11.5.

ARTICLE 12

Indemnification

Section 12.1. Indemnification by the Concessionaire. The Concessionaire shall indemnify and hold harmless the Authority, the Borough and each of their respective Representatives from and against any Losses actually suffered or incurred by the Authority, the Borough or any such Representative, based upon, arising out of, occasioned by or attributable to (i) any failure by the Concessionaire, the Operator or each of their respective Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or, subject to Section 9.4(b), any breach by the Concessionaire of its representations or warranties set forth herein, (ii) any Assumed Liabilities, (iii) any Tax or mortgage recording charge attributable to any Transfer of the Concessionaire Interest or any part thereof by the Concessionaire, including without limitation any imposition of Tax described in Section 2.6, (iv) the amounts described in Section 2.5(k)(v) or (vi) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Concessionaire or its Representatives in connection with this Agreement, any Transfer of the Concessionaire Interest or any part thereof or any other matter affecting the System; provided, however, that, except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three years following the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations.

Section 12.2. Indemnification by the Authority. The Authority shall indemnify and hold harmless the Concessionaire and each of its Representatives from and against any Losses actually suffered or incurred by the Concessionaire or any such Representative, based upon, arising out of, occasioned by or attributable to (i) any failure by the Authority or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this

Agreement or, subject to Section 9.4(a), any breach by the Authority or its representations or warranties set forth herein, (ii) any Excluded Liabilities, (iii) any claim for brokerage commissions, fees or other compensation by any Person who acted on behalf of the Authority or any of its Representatives in connection with this Agreement, or any other matter affecting the System; provided, however, that, (A) except with respect to Claims resulting from Third Party Claims, Claims are made in writing within a period of three years of the expiration of the Term or earlier termination of this Agreement or within such shorter period as may be prescribed by the applicable statute of limitations and (B) nothing in this Section 12.2 shall be construed as a waiver by the Authority or the Borough of any governmental immunity and related limitations on liability as to damages on account of any injury to a person or property pursuant to the Pennsylvania Political Subdivisions Tort Claims Act, and there shall be no requirement to indemnify the Concessionaire for any such personal injury or property damages (including Third Party Claims as to such damages) except to the extent provided under Pennsylvania Political Subdivisions Tort Claims Act.

Section 12.3. Agency for Representatives. Each Party agrees that it accepts each indemnity in favor of any of its Representatives, as agent and trustee of that Representative and agrees that each Party may enforce an indemnity in favor of its Representatives on behalf of that Representative.

Section 12.4. Third Party Claims.

(a) *Notice of Third Party Claim.* If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than 30 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

(b) *Defense of Third Party Claim.* The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than 30 days after receiving notice of that Third Party Claim (the “Notice Period”). The Indemnifier’s right to do so shall be subject to the rights of any insurer or other Party who has potential liability in respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defense. The Indemnified Party shall co-operate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

(c) *Assistance for Third Party Claims.* The Indemnifier and the Indemnified Party will use all reasonable efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the “Defending Party”), (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim, and (ii) all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise co-operate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

(d) *Settlement of Third Party Claims.* If an Indemnifier elects to assume the defense of any Third Party Claim in accordance with Section 12.4(b), the Indemnifier shall not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of such Third Party Claim. However, if the Indemnifier fails to take reasonable steps necessary to defend diligently such Third Party Claim within 30 days after receiving notice from the Indemnified Party that the Indemnified Party bona fide believes on reasonable grounds that the Indemnifier has failed to take such steps, the Indemnified Party may, at its option, elect to assume the defense of and to compromise or settle the Third Party Claim assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith. The Indemnified Party shall not settle or compromise any Third Party Claim without obtaining the prior written consent of the Indemnifier unless such settlement or compromise is made without any liability to, and does not require any action on the part of, the Indemnifier.

Section 12.5. Direct Claims. Any Direct Claim shall be asserted by giving the Indemnifier reasonably prompt notice thereof, but in any event not later than 60 days after the Indemnified Party becomes aware of such Direct Claim. The Indemnifier shall then have a period of 30 days within which to respond in writing to such Direct Claim. If the Indemnifier does not so respond within such 30-day period, the Indemnifier shall be deemed to have rejected such Claim, and in such event the Indemnified Party may submit such Direct Claim to the dispute resolution process set forth in Article 19.

Section 12.6. Failure to Give Timely Notice. A failure to give timely notice in accordance with this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure. However, this Section 12.6 shall have no effect whatever on the survival provisions set out in Section 9.4 and the rights of the Parties with respect thereto.

Section 12.7. Reductions and Subrogation. If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of an indemnity payment hereunder (an “Indemnity Payment”) is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred in connection therewith), together with interest thereon from the date of payment thereof at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier. Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party’s rights against such third party.

Section 12.8. Payment and Interest. All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss, liability or expense in respect of a Loss for which the Indemnifier is liable to make payment pursuant to this Article 12, to the date of payment by the Indemnifier to the Indemnified Party.

Section 12.9. Limitation on Certain Claims. No Claim may be made by the Concessionaire or its Representatives against (i) the Authority under Section 12.2 for the breach of any representation or warranty made or given by the Authority in Section 9.1 or by the Borough in Article 20 unless (A) the Loss suffered or incurred by the Concessionaire or its Representatives in connection with such breach is in excess of \$10,000 and (ii) the aggregate of all Losses suffered or incurred by the Concessionaire or its Representatives in connection with breaches of representations and warranties in Section 9.1 and Article 20 exceeds \$500,000 in the aggregate, in which event the amount of all such Losses in excess of such amount may be recovered by the Concessionaire or its Representatives; provided, however, that the maximum aggregate liability of the Authority to the Concessionaire or its Representatives in respect of such Losses shall not exceed 50% of the Consideration; provided further that this Section 12.9 shall not apply to Claims for the breach of the representations or warranties in Section 20.1(a), (b), (c), (d), (e), (f) or (g) or Section 9.1(a), (b), (c), (d), (e) or (f); or to Claims for fraud, intentional misrepresentation or intentional breach of the representations or warranties in Section 9.1.

Section 12.10. Workers Compensation. To the extent permissible by applicable Law, the Concessionaire waives any limits to the amount of its obligations to defend, indemnify, hold harmless or contribute to any sums due to the Authority, the Borough or their respective Representatives for any Losses, including any such Losses related to any claim by any employee of the Concessionaire that may be subject to the Pennsylvania Workers Compensation Act, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§1-1001.

Section 12.11. Offset Rights; Limitations on Certain Damages.

(a) Each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights as against such Party or any part thereof or interest therein, whether the claim or right of such Party relied upon for such purpose is matured or unmatured, contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets.

(b) In no event shall a Party be liable to the other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach).

Section 12.12. Survival. This Article 12 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by a Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by a Party.

ARTICLE 13

Insurance

Section 13.1. Insurance Coverage Required. The Concessionaire shall provide and maintain at the Concessionaire's own expense, or cause to be maintained, during the Term and during any time period following expiration if the Concessionaire is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring the System and all System Operations (the "Required Coverages").

(a) *Workers' Compensation and Employer's Liability.* The Concessionaire shall provide or cause to be provided Workers' Compensation and Employer's Liability Insurance, as prescribed by applicable Law, covering all employees who agree to provide a service under this Agreement with limits of not less than \$500,000 each accident or illness or disease.

(b) *Employment Practices.* The Concessionaire shall provide or cause to be provided Employment Practices Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate.

(c) *Commercial General Liability (Primary).* The Concessionaire shall provide or cause to be provided Commercial General Liability Insurance or equivalent with primary limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the annual aggregate, for bodily injury, personal injury and property

damage liability. Coverage shall include the following: all premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, terrorism (to the extent commercially available) and contractual liability (with no limitation endorsement). The Authority and the Borough are to be included as an additional insured on a primary, non-contributory basis for any liability arising under or in connection with this Agreement.

(d) *Automobile Liability (Primary)*. When any motor vehicles (owned, non-owned or hired) are used in connection with work to be performed, the Concessionaire shall provide or cause to be provided Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence, which limits may be met through a combination of primary and excess or umbrella policies, for bodily injury and property damage. The Authority and the Borough are to be additional insureds on a primary, non-contributory basis.

(e) *Umbrella/Excess Liability*. In addition to the coverages outlined in Section 13.1(a) through (d) above, the Concessionaire shall provide or cause to be provided Excess Insurance covering those items with limits of not less than \$5,000,000. The Authority and the Borough are to be additional insureds on a primary, non-contributory basis. Total limits may be provided through a combination of primary and umbrella or excess liability policies.

(f) *Builder's Risk*. When the Concessionaire undertakes any construction, maintenance or repairs to the System, including improvements and betterments pursuant to this Agreement, the Concessionaire shall provide or cause to be provided, Builder's Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the System. For all purposes of this Section 13.1(d), the term "System" does not include underground water mains and sewer lines. Coverage shall include, but not be limited to, the following: right to partial occupancy, boiler and machinery, business income, valuable papers and other consequential loss, when applicable with aggregate sublimits for catastrophic perils of earthquake, flood and named wind which are the best available on commercially reasonable terms. The Authority and the Borough shall be loss payees as is commercially customary and, any Leasehold Mortgagee as well, as may be required.

(g) *Professional Liability*. When any architects, engineers, construction managers or other professional consultants perform work of a material nature in connection with this Agreement, the Concessionaire shall cause such professional consultants to provide Professional Liability Insurance, covering acts, errors or omissions shall be maintained with limits of not less than \$2,000,000. Any contractual liability exclusion applying to the policy shall not apply to the extent the professional would otherwise be liable for loss under the policy in the absence of a contract. When policies are renewed or replaced, the policy retroactive date shall coincide with, or precede, start of work in connection with this Agreement. A claims-made policy that is not renewed or replaced shall have an extended reporting period of two years.

(h) *Property.* The Concessionaire shall obtain or cause to be obtained Commercial Property Insurance at full replacement cost, covering all loss, damage or destruction to the System, including improvements and betterments, which insurance may be provided on a blanket basis with reported building values, which shall include the value of the coverage for the System required hereunder. For all purposes of this Section 13.1(f), the term “System” does not include underground water mains and sewer lines. Coverage shall include the following: equipment breakdown, collapse, water including overflow, leakage, sewer backup or seepage, utility interruption, debris removal, business ordinance or law for increased cost of construction, extra expense, boiler and machinery, valuable papers and, to the extent commercially available, terrorism and aggregated sublimits for flood, earthquake and named wind (with coverage limits Approved by the Authority). Coverage shall also include business income, which shall be subject to a limit that is separate from and in addition to the limit of full replacement cost for property unless part of a blanket loss limit. The Authority and the Borough shall be loss payees as is commercially customary and, any Leasehold Mortgagee as well, as may be required, on such Commercial Property Insurance. Subject to the claims of any Leasehold Mortgagee, the Authority, the Borough and the Depository are to be named as loss payees. The Concessionaire shall be responsible for any loss or damage to Authority property at full replacement cost. The Concessionaire shall be responsible for all loss or damage to personal property (including materials, fixtures/contents, equipment, tools and supplies) of the Concessionaire unless caused by the Authority or its Representatives.

(i) *Third-Party Requirements.* During the Term, the Concessionaire shall be responsible for obtaining and maintaining, or causing to be maintained, at its sole expense, any insurances required by third parties in the ordinary course of the Business.

Section 13.2. Additional Requirements.

(a) *Evidence of Insurance.* The Concessionaire shall deliver or cause to be delivered to the Authority original Certificates of Insurance evidencing the Required Coverages on or before the Closing Date, and shall provide or cause to be provided, promptly following renewal but not more than five Business Days following renewal of the then current coverages (or such other period as is agreed to by the Authority), Renewal Certificates of Insurance, or such similar evidence, if such coverages have an expiration or renewal date occurring during the Term. The receipt of any certificate does not constitute agreement by the Authority that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the Authority to obtain certificates or other insurance evidence from the Concessionaire shall not be deemed to be a waiver by the Authority. The Concessionaire shall advise all insurers of provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve the Concessionaire of the obligation to provide insurance as specified herein. Except as otherwise expressly set forth herein, each Required Coverage may be reviewed by the Authority for compliance with the terms of this Agreement. Each Required Coverage shall be signed by the insurer responsible for the risks insured against or

by the insurer's authorized representative. All Required Coverages shall be placed with insurers reasonably acceptable to the Authority; *provided* that all such insurers, at a minimum, shall have a rating of "A VII" or better by A.M. Best Company (unless the Authority consents to waive this requirement). At the request of the Authority and at the Authority's sole cost, the Concessionaire shall provide the Authority with all policy endorsements.

(b) *Notice of Cancellation or Violation.* All Required Coverages shall provide for 60 days (or in the case of cancellation for non-payment of premiums, 10 days) prior notice to be given to the Concessionaire by the insurer in the event coverage is canceled or non-renewed. Concessionaire shall forward such notice to the Authority within 24 hours of receipt. The Authority shall be permitted (but not obligated) to pay any delinquent premiums before the cancellation date specified by the insurer in any notice of cancellation for non-payment of premium in order to maintain such coverage in full force and effect, and the Concessionaire shall reimburse the Authority for any delinquent premiums paid by the Authority on demand without any days of grace and without prejudice to any other rights and remedies of the Authority hereunder. The Concessionaire shall not cancel, terminate or materially change to the detriment of the Authority any Required Coverage.

(c) *Deductibles.* All Required Coverages may contain deductibles or self-insured retentions not to exceed amounts reasonably acceptable to the Authority taking into account the deductibles or self-insured retentions for the required insurance coverages for comparable facilities. Any and all deductibles or self-insured retentions on Required Coverages shall be borne by the Concessionaire or its Contractors.

(d) *Inflation Adjustment.* The amounts of coverage required by Section 13.1 shall be Adjusted for Inflation each anniversary of the Closing Date except for the policies required by Section 13.1(e) and 13.1(g) where the increase, if any, will be limited to the extent that replacement cost has increased.

(e) *Waiver of Subrogation by Insurers.* Each of the Required Coverages provided by the Concessionaire shall where legally or customarily permitted include a waiver by the insurer of its rights of subrogation against the Authority, the Borough, and their respective employees, elected officials, agents or representatives with written evidence of such waiver to be included in the certificate of insurance or otherwise provided to the Authority.

(f) *Authority's Right to Insure.* If the Concessionaire fails to obtain and maintain or cause to be obtained and maintained the insurance required by this Article 13, the Authority shall have the right (without any obligation to do so), upon two Business Days' notice to the Concessionaire in a non-emergency situation or forthwith in an emergency situation and without assuming any obligation in connection therewith, to effect such insurance and all costs and expenses of the Authority in connection therewith shall be payable by the Concessionaire to the Authority on demand without any days of grace and without prejudice to any other rights and remedies of the Authority hereunder. Such insurance taken out by the

Authority shall not relieve the Concessionaire of its obligations to insure hereunder and the Authority shall not be liable for any loss or damage suffered by the Concessionaire in connection therewith.

(g) *No Limitation as to Concessionaire Liabilities.* The Concessionaire expressly understands and agrees that any coverages and limits furnished by the Concessionaire shall in no way limit the Concessionaire's liabilities and responsibilities specified within this Agreement or by Law.

(h) *No Contribution.* The Concessionaire expressly understands and agrees that any insurance or self-insurance programs maintained by the Authority or the Borough shall not contribute with insurance provided by the Concessionaire under this Agreement.

(i) *Insurance Requirements of Contractors.* The Concessionaire shall require in each contract with any Contractor or subtenant (where such Contractor or subtenant is not covered by the Required Coverages) that such Contractor or subtenant obtain coverages reasonably comparable to the Required Coverages that are reasonably appropriate in their limits and other terms and conditions to the nature of the contract with the Contractor or subtenant. Such coverages shall include the interests of the Authority, the Borough, their respective employees, elected officials, agents and representatives, the Concessionaire and any other Contractors or subtenants as an additional insured in respect of the applicable work being performed and shall be subject to the same (or comparable) coverage and administrative requirements as are imposed on the Concessionaire pursuant to this Agreement. When requested to do so by the Authority, the Concessionaire shall provide or cause to be provided to the Authority Certificates of Insurance with respect to such insurance coverages or such other evidence of insurance, acceptable in form and content to the Authority, acting reasonably.

(j) *Joint Venture and Limited Liability Company Policies.* If the Concessionaire or any Contractor required to obtain an insurance policy hereunder is a joint venture or limited liability company, all insurance policies required to be obtained by the Concessionaire or such Contractor shall specifically name the joint venture or limited liability company as a named insured, or additional insured, as commercially available. If the Concessionaire contracts operations to a third party, the Concessionaire will be an additional insured on any liability policy, except professional liability.

(k) *Other Insurance Obtained by Concessionaire.* If the Concessionaire or its Contractors or subtenants desire coverages in addition to the Required Coverages, the Concessionaire and each Contractor or subtenant shall be responsible for the acquisition and cost of such additional coverages. If the Concessionaire or its Contractors or subtenants obtain any property, liability or other insurance coverages in addition to the Required Coverages ("Additional Coverages"), then the Concessionaire or its Contractors shall (i) notify the Authority as to such Additional Coverages, (ii) provide the Authority with any documentation relating to the Additional Coverages, including Certificates of Insurance, that the Authority reasonably requests and (iii) at the Authority's election cause the Authority,

the Borough and their respective employees, elected or appointed officials, agents and representatives to be named insured, or additional insured, as commercially available under such Additional Coverages, if that is normally allowed in accordance with good industry practice.

(l) *Cooperation.* The Parties shall do all acts, matters and things as may be reasonably necessary or required to expedite the adjustment of any loss or damage covered by insurance hereunder so as to expedite the release and dedication of proceeds of such insurance in the manner and for the purposes herein contemplated.

(m) *Authority's Right to Modify.* The Authority shall have the right, acting reasonably, to modify, delete, alter or change insurance coverage requirements set forth in Section 13.1 and this Section 13.2 to reflect known and established material changes in insurance coverages for water and sewer utility systems or operations comparable to the System Operations or known and established material changes in insurance exposures associated with the System; *provided* that the Concessionaire shall not have any obligation to procure or maintain at its cost any additional insurance unless an independent insurance consultant shall have delivered to the Concessionaire its opinion to the effect that the additional coverages are required pursuant to the above-stated criteria and such additional coverages are commercially available at reasonable rates in terms of cost of premium and amount of deductibles. Notwithstanding anything to the contrary herein, if any insurance (including the limits or deductibles thereof) required to be maintained under this Agreement shall not be available at commercially reasonable rates, the Concessionaire shall have the right to request that the Authority consent to waive such requirement and the Authority shall not unreasonably withhold, condition or delay such consent. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates; *provided* that during the period of such waiver, the Concessionaire maintains the maximum amount of such insurance otherwise available at commercially reasonable rates.

Section 13.3. Damage and Destruction.

(a) *Obligations of Concessionaire.* If all or any part of any of the System shall be destroyed or damaged during the Term in whole or in part by fire or other casualty of any kind or nature (including any casualty for which insurance was not obtained or obtainable), ordinary or extraordinary, foreseen or unforeseen, the Concessionaire shall: (i) give the Authority notice thereof promptly after the Concessionaire receives actual notice of such casualty; (ii) at its sole cost and expense, whether or not insurance proceeds, if any, shall be equal to the estimated cost of repairs, alterations, restorations, replacement and rebuilding (the "Casualty Cost"), proceed diligently to repair, restore or rebuild the same to the condition existing prior to the happening of such fire or other casualty (any such activity being a "Restoration"); and (iii) deposit all insurance proceeds received by the Concessionaire in connection with any Restoration with a Depository; provided, however, that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depository, then the Concessionaire shall also deposit with the Depository such cash as is sufficient to cover the difference between the

Casualty Cost and the net insurance proceeds (collectively, with any interest earned thereon, the “Restoration Funds”); provided further that the procedures of this clause (iii) of this Section 13.3(a) shall not apply during an initial period of time needed to restore Utility Services and shall only apply to casualty events in which the cost of Restoration exceeds \$2,000,000, Adjusted for Inflation from the Closing Date to the date the casualty event occurred. Any Restoration undertaken pursuant to this Section 13.3 shall be undertaken in accordance with and subject to the terms of this Agreement. Prior to the commencement of Restoration work, the Concessionaire shall submit to the Authority for Approval by the Authority the plans for the Restoration work and such work shall not be undertaken unless the plans for such work have been Approved by the Authority, which Approval shall not be unreasonably withheld, delayed or conditioned. Nothing contained in this Section 13.3 shall be deemed to restrict, amend, or modify any rights of the Concessionaire or obligations of the Authority under this Agreement (including, without limitation, Article 15).

(b) *Rights of the Authority.* If (i) the Concessionaire shall fail or neglect to commence the diligent Restoration of the System or the portion thereof so damaged or destroyed, (ii) having so commenced such Restoration, the Concessionaire shall fail to diligently complete the same in accordance with the terms of this Agreement or (iii) prior to the completion of any such Restoration by the Concessionaire, this Agreement shall expire or be terminated in accordance with the terms of this Agreement, the Authority may, but shall not be required to, complete such Restoration at the Concessionaire’s expense and shall be entitled to be paid out of the Restoration Funds, but such payment shall not limit the Concessionaire’s obligation to pay the Authority’s reasonable Restoration expenses, less amounts received by the Authority from such Restoration Funds. In any case where this Agreement shall expire or be terminated prior to the completion of the Restoration, the Concessionaire shall (x) account to the Authority for all amounts spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depository to pay over to the Authority, within 30 days after demand therefor, the remainder, if any, of the Restoration Funds received by the Concessionaire prior to such termination or cancellation and (z) pay over or cause the Depository to pay over to the Authority within 30 days after receipt thereof, any Restoration Funds received by the Concessionaire or the Depository subsequent to such termination or cancellation. The Concessionaire’s obligations under this Section 13.3(b) shall survive the expiration or termination of this Agreement.

(c) *Payment of Restoration Funds to Concessionaire.* Subject to the satisfaction by the Concessionaire of all of the terms and conditions of this Section 13.3, the Depository shall pay to the Concessionaire from time to time, any Restoration Funds, but not more than the amount actually collected by the Depository upon the loss, together with any interest earned thereon, after reimbursing itself therefrom, as well as the Authority, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and the Authority in the collection of such monies, to be utilized by the Concessionaire solely for the Restoration, such payments to be made as follows:

(i) prior to commencing any Restoration, the Concessionaire shall furnish the Authority with an estimate of the cost of such Restoration, prepared by an architect or engineer;

(ii) the Restoration Funds shall be paid to the Concessionaire in installments as the Restoration progresses, subject to Section 13.3(c)(iii), based upon requisitions to be submitted by the Concessionaire to the Depository and the Authority in compliance with Section 13.3(d), showing the cost of labor and materials purchased for incorporation in the Restoration, or incorporated therein since the previous requisition, and due and payable or paid by the Concessionaire; *provided, however*, that if any lien (other than a Permitted Concessionaire Encumbrance) is filed against the System or any part thereof in connection with the Restoration, the Concessionaire shall not be entitled to receive any further installment until such lien is satisfied or discharged (by bonding or otherwise); *provided further* that notwithstanding the foregoing, but subject to the provisions of Section 13.3(c)(iii), the existence of any such lien shall not preclude the Concessionaire from receiving any installment of Restoration Funds so long as such lien will be discharged with funds from such installment and at the time the Concessionaire receives such installment the Concessionaire delivers to the Authority and the Depository a release of such lien executed by the lienor and in recordable form;

(iii) the amount of any installment to be paid to the Concessionaire shall be the amount of Restoration Funds incurred by the Concessionaire in connection therewith, less 10% of such amount as a retainage (which 10% retainage shall (i) be reserved without duplication of any retainage reserved by the Concessionaire under its contracts for the Restoration work and (ii) shall be released to the Concessionaire upon completion of the Restoration work), except that such retainage shall not include any amounts for architects' or engineers' fees or permitting or other governmental fees in connection with the Restoration or with respect to each Contractor upon the final completion of each such Contractor's respective work; *provided* that the unapplied portion of the funds held by the Depository are sufficient to complete the Restoration; *provided, however*, that all disbursements to the Concessionaire shall be made based upon an architect's or engineer's certificate for payment in accordance with industry standards, and disbursements may be made for advance deposits for material and Contractors to the extent that such disbursements are customary in the industry; and *provided* that the unapplied portion of the funds held by the Depository are sufficient to complete the Restoration; and

(iv) except as provided in Section 13.3(b), upon completion of and payment for the Restoration by the Concessionaire, subject to the rights of any Leasehold Mortgagee, the Depository shall pay the balance of the Restoration Funds, if any, to the Concessionaire; *provided, however*, that if the insurance proceeds are insufficient to pay for the Restoration (or if there shall be no insurance proceeds), the Concessionaire shall nevertheless be required to make the Restoration and provide the deficiency in funds necessary to complete the Restoration as provided in Section 13.3(a)(iii).

(d) *Conditions of Payment.* The following shall be conditions precedent to each payment made to the Concessionaire as provided in Section 13.3(c):

(i) at the time of making such payment, no Concessionaire Default exists, except if such Concessionaire Default is the result of the damage or destruction for which such payment is being made;

(ii) the Restoration shall be carried out under the supervision of the architect or engineer, and there shall be submitted to the Depository and the Authority the certificate of the architect or engineer (or other evidence reasonably satisfactory to the Authority) stating that (A) the materials and other items which are the subject of the requisition have been delivered to the System (except with respect to requisitions for advance deposits permitted under Section 13.3(c)(iii)), free and clear of all Encumbrances, and no unsatisfied or unbonded mechanic's or other liens have been claimed, except for any mechanic's lien for claims that will be discharged, by bonding or otherwise, with funds to be received pursuant to such requisition (*provided* that a release of such lien is delivered to the Depository in accordance with Section 13.3(c)(ii)), or insured over by title insurance acceptable to the Authority, (B) the sum then requested to be withdrawn either has been paid by the Concessionaire or is due and payable to Contractors, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons in respect thereof, and stating in reasonable detail the progress of the work up to the date of such certificate, (C) no part of such expenditures has been made the basis, in any previous requisition (whether paid or pending), for the withdrawal of Restoration Funds or has been made out of the Restoration Funds received by the Concessionaire, (D) the sum then requested does not exceed the value of the services and materials described in the certificate, (E) the work relating to such requisition has been performed in accordance with this Agreement, (F) the balance of the Restoration Funds held by the Depository will be sufficient upon completion of the Restoration to pay for the same in full, and stating in reasonable detail an estimate of the cost of such completion and (G) in the case of the final payment to the Concessionaire, the Restoration has been completed in accordance with this Agreement.

(e) *Payment and Performance Bonds.* The Concessionaire ***shall*** obtain, or cause to be obtained, and shall maintain, or cause to be maintained, payment or performance bonds with respect to ***any*** work performed on the System, including without limitation work related to a Restoration. Such bonds shall name the Authority, the Borough, the Concessionaire and the Leasehold Mortgagee, as their interests may appear, as additional obligees, and the Concessionaire shall deliver copies of any such bonds to the Authority promptly upon obtaining them. In lieu of obtaining individual bonds for projects that do not involve Major Capital Improvements, the Concessionaire may obtain and maintain an annual payment or performance bond in an amount no less than \$500,000 for each Reporting Year during the Term.

(f) *Benefit of Authority.* The requirements of this Section 13.3 are for the benefit only of the Authority and its authorized assigns, and no Contractor or other Person shall have or acquire any claim against the Authority or the Borough as a result of any failure of the Authority actually to undertake or complete any Restoration as provided in this Section 13.3 or to obtain the evidence, certifications and other documentation provided for herein.

(g) *Investment of Restoration Funds.* Restoration Funds deposited with a Depository shall be invested and reinvested in Eligible Investments at the direction of the Concessionaire, and all interest earned on such investments shall be added to the Restoration Funds.

(h) *Rights of Leasehold Mortgagee.* The Parties acknowledge and agree that any Restoration Funds not applied to a Restoration as provided in this Section 13.3 shall be subject to the lien or liens of any Leasehold Mortgage.

ARTICLE 14

Adverse Actions

Section 14.1. Adverse Action.

(a) An “Adverse Action” shall occur if the Authority or the Borough takes any action or actions at any time during the Term (including enacting, amending or repealing any Law) and the effect of such action or actions, individually or in the aggregate, is reasonably expected (i) to be principally borne by the Concessionaire and (ii) to have a material adverse effect on the fair market value of the Concessionaire Interest greater than \$250,000, Adjusted for Inflation, from the Closing Date to the date of such Adverse Action (whether as a result of decreased Revenues, increased expenses or both), except where such action is in response to any act or omission on the part of the Concessionaire that is illegal (other than an act or omission rendered illegal by virtue of the Adverse Action) or such action is otherwise permitted under this Agreement; provided, however, that none of the following shall be an Adverse Action (A) the exercise by the Borough of its Reserved Powers where the Borough has reasonable cause to exercise such Reserved Powers for the protection of the public health or safety, (B) the exercise of law enforcement, subpoena or investigating powers by the Borough or any Governmental Authority and (C) the imposition of a Tax of General Application or an increase in any Tax of General Application.

(b) Subject to the provisions of Section 14.3 and the other provisions of this Article 14, if an Adverse Action occurs, the Concessionaire shall have the right (exercisable in its sole discretion) to (i) be paid by the Authority the Concession Compensation with respect thereto (the “AA-Compensation”) or, (ii) if the value of the Concession Compensation exceeds twenty five percent (25%) of the System Concession Value, terminate this Agreement and be paid by the Authority the “Termination Compensation” being the greater of (A) the System Concession Value and (B) the lesser of (i) the amount required to retire all Leasehold Mortgage Debt and pay Breakage Costs related to the retirement of all Leasehold Mortgage Debt

and (ii) the sum of Remaining Amortized Rent and the Breakage Costs related to the retirement of all Leasehold Mortgage Debt minus the amount of any monetary compensation (including without limitation insurance proceeds and condemnation proceeds) received by the Concessionaire, or to which the Concessionaire is entitled by contract, by operation of Law or by a final unappealable order of a court of competent jurisdiction, in respect of such Adverse Action. The Concessionaire shall pay the reasonable costs and expenses of any Written Appraisal of System Concession Value for purposes of determining the occurrence of an Adverse Action and the Authority shall pay the reasonable costs and expenses of any Written Appraisal of System Concession Value for purposes of determining AA-Compensation or Termination Compensation, if available, in the context of an Adverse Action.

(c) If an Adverse Action occurs, the Concessionaire shall give notice (the "AA-Preliminary Notice") to the Authority within 30 days following the date on which the Concessionaire first became aware of the Adverse Action stating an Adverse Action has occurred. Within 180 days following the date of delivery of the AA-Preliminary Notice, the Concessionaire shall give the Authority another notice (the "AA-Notice") setting forth (i) details of the effect of said occurrence that is principally borne by the Concessionaire, (ii) details of the material adverse effect of the said occurrence on the fair market value of the Concessionaire Interest, (iii) a statement as to which right in Section 14.1(b) the Concessionaire elects to exercise, and (iv) if the Concessionaire elects to exercise the right to Concession Compensation under Section 14.1(b), the amount claimed as AA-Compensation and details of the calculation thereof. The Authority shall, after receipt of the AA-Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Authority may reasonably consider necessary. If the Authority wishes to dispute the occurrence of an Adverse Action or the amount of AA-Compensation, if any, claimed in the AA-Notice, the Authority shall give notice of dispute (the "AA-Dispute Notice") to the Concessionaire within 30 days following the date of receipt of the AA-Notice stating in reasonable detail the grounds for such dispute. If neither the AA-Notice nor the AA-Dispute Notice has been withdrawn within 30 days following the date of receipt of the AA-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

(d) If the Concessionaire has elected to exercise its right to AA-Compensation, the Authority shall pay the amount of Concession Compensation claimed to the Concessionaire within 90 days following the date of receipt of the AA-Notice, or if a AA-Dispute Notice has been given, then not later than 90 days following the date of determination of the AA-Compensation (together with interest at the Bank Rate from the date of receipt of the AA-Dispute Notice to the date on which payment is made); *provided* that, subject to the right of the Concessionaire to receive interest at the Bank Rate on the payment owed by the Authority from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the Authority may defer any such payment for an additional 90 days if the Authority determines, in its reasonable discretion, that such additional period is necessary in order to obtain financing or otherwise to obtain the necessary funds to make such a payment.

Section 14.2. Termination.

(a) If the Concessionaire has elected to exercise its right to terminate this Agreement in connection with an Adverse Action, pursuant to Section 14.1, this Agreement, subject to Section 14.2(c) and Section 14.3, shall terminate 90 days following the date of receipt of the AA-Notice, by the Authority, and the Authority shall pay an amount equal to the aggregate of (i) the Termination Compensation, plus (ii) without duplication, the reasonable, documented out-of-pocket and costs and expenses incurred by the Concessionaire as a result of such termination, less (iii) any insurance or condemnation proceeds received by the Concessionaire in respect of all or any portion of the System as a result of such Adverse Action (collectively, the "Termination Damages") to the Concessionaire on the Reversion Date or, if the Termination Damages are determined on a date subsequent to the Reversion Date, then not later than 90 days following the date of determination of the Termination Damages (together with interest at the Bank Rate from the Reversion Date to the date on which payment is made); *provided* that, subject to the right of the Concessionaire to receive interest at the Bank Rate on the payment owed by the Authority from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the Authority may defer any such payment for an additional 120 days if the Authority reasonably determines that such additional period is necessary in order to obtain financing to make such a payment; *provided, however*, that any amounts received by the Concessionaire or any Leasehold Mortgagee from any insurance policies payable as a result of damage or destruction to the System that has not been remedied prior to the Reversion Date, shall, to the extent not used to remedy such effects, be deducted from the amount payable by the Authority to the Concessionaire, so long as the Authority has not received any such amounts pursuant to Section 13.3(b).

(b) Any dispute arising out of the determination of the Termination Damages shall be submitted to the dispute resolution procedure in Article 19.

(c) This Agreement shall not terminate pursuant to Section 14.2(a) unless the Concessionaire has first obtained and delivered to the Authority the written consent of the Leasehold Mortgagee to such termination.

(d) Payment of the entire sum of Termination Damages or the AA-Compensation, as the case may be, by the Authority to the Concessionaire, shall constitute full and final satisfaction of all amounts that may be claimed by the Concessionaire for and in respect of the occurrence of the Adverse Action, and, upon such payment, the Authority shall be released and forever discharged by the Concessionaire from any and all liability in respect of such Adverse Action.

(e) In consideration for the payment of the entire sum of Termination Damages or AA-Compensation, as the case may be, by the Authority to the Concessionaire, the Concessionaire shall irrevocably assign to the Authority all of the rights, claims and causes of action of the Concessionaire for the payment of insurance proceeds, condemnation proceeds and other claims with respect to such Adverse Action.

Section 14.3. Right of Authority to Remedy an Adverse Action. If the Authority wishes to remedy the occurrence of an Adverse Action, the Authority shall give notice thereof to the Concessionaire within 30 days following the date of receipt of the AA-Notice. If the Authority gives such notice it must remedy the Adverse Action within 180 days following the date of receipt of the AA-Notice, or, if a AA-Dispute Notice, has been given, within 180 days following the final award pursuant to Article 19 to the effect that an Adverse Action occurred. If the Authority elects to remedy the occurrence of an Adverse Action within the applicable period of time, the right of the Concessionaire shall be limited to a claim for AA-Compensation with respect to such Adverse Action.

ARTICLE 15

Delay Events and Concession Compensation

Section 15.1. Delay Events.

(a) If the Concessionaire is affected by a Delay Event, it shall give notice to the Authority within 10 Business Days following the date on which it first became aware of such Delay Event (*provided* that in the case of such Delay Event being a continuing cause of delay, only one notice shall be necessary), which notice shall include (i) a statement of which Delay Event the claim is based upon, (ii) details of the circumstances from which the delay arises and (iii) an estimate of the delay in the performance of obligations under this Agreement attributable to such Delay Event and information in support thereof, if known at that time. The Authority shall, after receipt of any such notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Authority may reasonably consider necessary.

(b) The Concessionaire shall notify the Authority within 10 Business Days following the date on which it first became aware that a Delay Event has ceased.

(c) Subject to the Concessionaire giving the notice required in Section 15.1(a), a Delay Event shall excuse the Concessionaire from whatever performance is prevented by the Delay Event referred to in such notice for such appropriate number of days as the Parties determine, each acting reasonably. If the Parties cannot agree upon the period of extension, then each Party shall be entitled to refer the matter to the dispute resolution procedure in Article 19. This Section 15.1(c) shall not excuse the Concessionaire from the performance and observance under this Agreement of all obligations and covenants not affected by the Delay Event. Notwithstanding the occurrence of a Delay Event, the Concessionaire shall continue its performance and observance under this Agreement of all of its obligations and covenants to the extent that it is reasonably able to do so and shall use its reasonable efforts to minimize the effect and duration of the Delay Event. Nothing herein shall permit or excuse noncompliance with a change to applicable Laws.

(d) If a Delay Event occurs that has the effect of causing physical damage or destruction to the System that results in the System being substantially

unavailable for Utility Purposes and such effect continues for a period in excess of 120 days and has a material adverse effect on the fair market value of the Concessionaire Interest (“material adverse effect” being defined solely for this purpose as greater than one percent (1%) of the Consideration, Adjusted for Inflation, from the Closing Date to the date of the Delay Event), and insurance policies payable (or that should have been payable but for the breach of an obligation to take out and maintain such insurance policy by the Concessionaire) or condemnation or other similar proceeds are insufficient to restore the Concessionaire to the same economic position as it would have been in the absence of such event, then, notwithstanding Section 2.1, the Concessionaire shall have the right to extend the Term for a period that would be sufficient so to compensate the Concessionaire and to restore it to the same economic position as it would have been in had such Delay Event not occurred (a “Delay Event Remedy”), which time period shall not exceed the length of time during which the System was substantially unavailable for Utility Purposes.

(e) If the Concessionaire elects to exercise the right to the Delay Event Remedy, the Concessionaire shall give notice (“Delay Event Notice”) to the Authority within 30 days following the date on which the Concessionaire first became aware of its right to the Delay Event Remedy occurring setting forth (i) the details of the Delay Event and its effect on either causing physical damage or destruction to the System that results in the System being substantially unavailable for Utility Purposes or suspending the ability to impose and collect Service Charges, (ii) the amount claimed as compensation to restore the Concessionaire to the same economic position as it would have been in had such Delay Event not occurred (including the details of the calculation thereof) and (iii) the details of the relationship between such compensation and the Delay Event Remedy that it proposes. The Authority shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the Authority may reasonably consider necessary. If the Authority wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the Authority shall give notice of dispute (the “Delay Event Dispute Notice”) to the Concessionaire within 30 days following the date of receipt of the Delay Event Notice stating the grounds for such dispute, and if neither the Delay Event Notice nor the Delay Event Dispute Notice has been withdrawn within 30 days following the date of receipt of the Delay Event Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure in Article 19.

Section 15.2. Relationship to Compensation Event. Section 15.1 shall not prevent the Concessionaire from receiving Concession Compensation for any Delay Event that constitutes a Compensation Event pursuant to the terms of this Agreement.

Section 15.3. Payment of Concession Compensation.

(a) Except as provided elsewhere in this Agreement, if a Compensation Event occurs, the Concessionaire shall give notice (the “CE-Preliminary Notice”) to the Authority within 60 days following the date on which the Concessionaire first became aware of the Compensation Event stating that a Compensation Event has

occurred. Within 30 days following the date of delivery of the CE-Preliminary Notice, the Concessionaire shall give the Authority another notice (the “CE-Notice”) setting forth (i) details of the Compensation Event, including an explanation of the reasons that the event constitutes a Compensation Event under the terms of this Agreement and (ii) the amount claimed as Concession Compensation and details of the calculation thereof in accordance with the calculation methodology set forth in the definition of “Concession Compensation”; *provided*, that the failure by the Concessionaire to timely deliver the CE-Preliminary Notice or the CE-Notice shall not limit its remedies hereunder or otherwise reduce the amount of the Concession Compensation.

(b) Except as provided elsewhere in this Agreement, all Concession Compensation due to the Concessionaire shall be due and payable by the Authority within 60 days of the CE-Notice.

(c) If the Authority wishes to dispute the occurrence of a Compensation Event or the amount of Concession Compensation claimed in the CE-Notice issued by the Concessionaire in accordance with Section 15.3(a), then the Authority shall give notice of dispute (the “CE-Dispute Notice”) to the Concessionaire within 30 days following the date of receipt of the CE-Notice stating the grounds for such dispute. If the CE-Dispute Notice has not been withdrawn within 30 days following the date of receipt of the CE-Dispute Notice by the Concessionaire, the matter shall be submitted to the dispute resolution procedure set forth in Article 19.

(d) If the Authority wishes to mitigate the occurrence of a Compensation Event, the Authority shall give notice thereof to the Concessionaire within 30 days following the receipt of the CE-Notice. If the Authority gives such notice it must effect an increase in Service Charges within 45 days following the receipt of the CE-Notice or, if a CE-Dispute Notice has been given, within 60 days following the final award pursuant to Article 19 to the effect that a Compensation Event occurred. In the event that the increased Service Charges do not fully mitigate the Concessionaire’s claim for Concession Compensation, the Concessionaire shall submit a revised claim for Concession Compensation to the Authority.

ARTICLE 16

Defaults, Termination and Security

Section 16.1. Default by the Concessionaire.

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute a “Concessionaire Default” under this Agreement:

(i) if the Concessionaire fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Authority to the Concessionaire or for such longer period as may be reasonably necessary to cure

such failure; *provided*, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Authority, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Authority, acting reasonably and (C) such failure is in fact cured within such period of time;

(ii) if this Agreement or all or any portion of the Concessionaire Interest is Transferred in contravention of Article 17 and such failure continues unremedied for a period of 10 Business Days following notice thereof from the Authority to the Concessionaire;

(iii) if the Concessionaire fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19, and such failure continues unremedied for a period of 30 days following notice thereof from the Authority to the Concessionaire, or for such longer period as may be reasonably necessary to cure such failure; *provided*, in the latter case, that the Concessionaire has demonstrated to the satisfaction of the Authority, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Authority, acting reasonably and (C) such failure is in fact cured within such period of time;

(iv) if the Concessionaire (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if such petition is filed against it and an order for relief is entered, or if the Concessionaire files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the United States Bankruptcy Code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the System or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 16.1(a)(iv);

(v) if within 90 days after the commencement of any proceeding against the Concessionaire seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the United States Bankruptcy Code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of the Concessionaire, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Concessionaire or of all or any substantial part of its properties or of the System or any interest therein, such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated;

(vi) if a levy under execution or attachment has been made against all or any part of the System or any interest therein as a result of any Encumbrance (other than a Permitted Concessionaire Encumbrance) created, incurred, assumed or suffered to exist by the Concessionaire or any Person claiming through it, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within 60 days after the Concessionaire becomes aware of such levy, unless such levy resulted from actions or omissions of the Authority, the Borough or their respective Representatives;

(vii) the failure by the Concessionaire or the Operator to pay when due all Taxes (or in the case of contested Taxes to escrow the disputed amount pending final resolution of any appeal), fees or other monetary obligations payable to the Authority with respect to the System or Utility Services, which failure shall continue (i) in the case of the Concessionaire for thirty (30) days, or (ii) in the case of the Operator for sixty (60) days, after written notice thereof from the Authority to the Concessionaire;

(viii) the failure by the Concessionaire to pay any Operational Liquidated Damages Amount as provided in Section 6.4;

(ix) if the Concessionaire repudiates in writing any of its material obligations under this Agreement; or

(x) if a Health and Safety Default shall have occurred and be continuing.

(b) *Remedies of the Authority Upon Concessionaire Default.* Upon the occurrence of a Concessionaire Default, the Authority may, by notice to the Concessionaire with a copy to the Leasehold Mortgagee in accordance with the terms hereof, declare the Concessionaire to be in default and may, subject to the rights of the Leasehold Mortgagee under Articles 18 and 19 and to the provisions of Articles 18 and 19, do any or all of the following as the Authority, in its discretion, shall determine:

(i) the Authority may terminate this Agreement by giving 60 days' prior notice to the Concessionaire upon the occurrence of (A) a Concessionaire Default that consists of a failure to comply with, perform or observe any Operating Standard if such Concessionaire Default creates a material danger to the safety of System Operations or a material impairment to the System or to the continuing use of the System for Utility Purposes and the public purpose requirements of Section 3.18 or (B) any other Concessionaire Default; *provided, however*, that the Concessionaire shall be entitled to cure a Concessionaire Default pursuant to Section 16.1(a)(i) by (i) agreeing within such 60-day period to pay any Losses sustained as a result of such Concessionaire Default or (ii) providing the Authority with a written work plan within such 60-day period outlining the actions by which the Concessionaire will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the Concessionaire failed to perform or observe, which work plan is Approved by the Authority, but any failure

of the Concessionaire to comply in any material respect with such Approved work plan following 45 days' notice of such failure from the Authority to the Concessionaire shall be deemed to be a Concessionaire Default described in Section 16.1(a)(i), and the entitlement of the Concessionaire to cure such Concessionaire Default by the delivery of an Approved work plan shall not apply thereto;

(ii) if the Concessionaire Default is by reason of the failure to pay any monies to another Person, the Authority may (without obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the Authority shall be payable by the Concessionaire to the Authority within five Business Days after demand therefor;

(iii) subject to the cure rights of the Leasehold Mortgagee set forth in Section 18.3, the Authority may cure the Concessionaire Default (but this shall not obligate the Authority to cure or attempt to cure a Concessionaire Default or, after having commenced to cure or attempted to cure a Concessionaire Default, to continue to do so), and all costs and expenses reasonably incurred by the Authority in curing or attempting to cure the Concessionaire Default, shall be payable by the Concessionaire to the Authority within five Business Days after written demand therefor; *provided, however*, that (A) the Authority shall not incur any liability to the Concessionaire for any act or omission of the Authority or any other Person in the course of remedying or attempting to remedy any Concessionaire Default and (B) the Authority's cure of any Concessionaire Default shall not affect the Authority's rights against the Concessionaire by reason of the Concessionaire Default;

(iv) the Authority may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;

(v) the Authority may seek to recover its Losses arising from such Concessionaire Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(vi) with respect to those Concessionaire Defaults that entitle the Authority to terminate this Agreement pursuant to Section 16.1(b)(i), the Authority may terminate the Concessionaire's right of possession of the System, and in such event, the Authority or the Authority's agents and servants may immediately or at any time thereafter re-enter the System and remove all Persons and all or any property therefrom, by any available action under law or proceeding at law or in equity, and with or without terminating this Agreement, and repossess and enjoy the System; *provided, however*, that no reentry by the Authority shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to the Concessionaire; *provided further* that any re-entry or termination of this Agreement made in accordance with this Agreement as against the Concessionaire shall be valid and effective against the Concessionaire even though made subject to the rights of a Leasehold Mortgagee to cure any default of the Concessionaire and

continue as in the place of the Concessionaire under this Agreement or a new concession and lease agreement as provided herein;

(vii) the Authority may, subject to applicable Law, distraint against any of the Concessionaire's goods situated on the System and the Concessionaire waives any statutory protections and exemptions in connection therewith;

(viii) subject to the cure rights of the Leasehold Mortgagee set forth in Section 18.3, the Authority may close any and all portions of the System; and

(ix) immediately upon a Health and Safety Default the Authority may take immediate possession of the System or any part thereof for so long as may be necessary to cure the Health and Safety Default and may take any subsequent actions to cure the Health and Safety Default and protect the public health, safety and welfare.

(x) the Authority may exercise any of its other rights and remedies provided for hereunder or at law or equity.

Section 16.2. Defaults by the Authority.

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute an "Authority Default" under this Agreement:

(i) if the Authority or the Borough fails to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement (other than an Adverse Action) and such failure continues unremedied for a period of 90 days following notice thereof (giving particulars of the failure in reasonable detail) from the Concessionaire to the Authority or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the Authority has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding with all due diligence to cure or cause to be cured such failure, and (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time; or

(ii) if the Authority fails to comply with the requirements or directives of a final award in a matter submitted to dispute resolution in accordance with Article 19 and such default continues unremedied for a period of 30 days following notice thereof from the Concessionaire to the Authority, or for such longer period as may be reasonably necessary to cure such failure; *provided*, in the latter case, that the Authority has demonstrated to the satisfaction of the Concessionaire, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the Concessionaire, acting reasonably and (C) such failure is in fact cured within such period of time; or

(iii) if a levy under execution or attachment has been made against all or any part of the System or the Concessionaire Interest as a result of any Encumbrance (other than a Permitted Authority Encumbrance) created, incurred, assumed or suffered to exist by the Authority or the Borough or any Person claiming through same, and such execution or attachment has not been vacated, removed or stayed by court order, bonding or otherwise within a period of 60 days, unless such levy resulted from actions or omissions of the Concessionaire or its Representatives or if all or a material part of the System shall be subject to a condemnation or similar taking by the Borough or any agency of the Borough; or

(iv) if the Authority or the Borough (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 9 of the United States Bankruptcy Code, or if the Authority or the Borough files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the United States Bankruptcy Code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of it or of all or any substantial part of its properties (in each case, to the extent appropriate to a governmental agency or political subdivision, as applicable), or (D) takes any action in furtherance of any action described in this Section 16.2(a)(iv); or if within 90 days after the commencement of any proceeding against the Authority or the Borough seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the United States Bankruptcy Code or any other present or future applicable Law, such proceeding has not been dismissed, or if, within 90 days after the appointment, without the consent or acquiescence of the Authority or the Borough, as applicable, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of it or of all or any substantial part of its properties (in each case, to the extent appropriate to a governmental agency or political subdivision, as applicable), such appointment has not been vacated or stayed on appeal or otherwise, or if, within 90 days after the expiration of any such stay, such appointment has not been vacated; or

(v) if the Authority or the Borough repudiates in writing any of its material obligations under the Agreement; or

(vi) if (A) a court of competent jurisdiction enters a final and unappealable judgment order in any action, suit or proceeding brought against the Authority or the Borough, which action, suit or proceeding was not brought by or supported in any way by the Concessionaire, any Operator, any Representative, any Leasehold Mortgagee or any other Person acting on behalf of any of the foregoing or any other Person having an pecuniary interest in this Agreement, and (B) as a result of such final and unappealable judgment order (i) it becomes unlawful for the Authority or the Borough to comply with or observe any material obligation, covenant, agreement, term or condition in this Agreement or (ii) any material obligation, covenant, agreement, term or condition of the Authority or the Borough under this Agreement becomes unenforceable; and (C) the Parties, acting in good faith and within a reasonable time, are unable to reform this Agreement to conform

to the requirements of such judgment order; *provided* that the entry of such judgment order shall not constitute an Authority Default if, within 270 days following the entry of such judgment order, (i) a Law is enacted that validates or confirms the lawful authority of the Authority or the Borough, as applicable, or grants to the Authority or the Borough the lawful authority, to perform its contractual obligations under this Agreement notwithstanding such judgment order or otherwise remedies the Authority Default and (ii) the Authority reimburses the Concessionaire for any unreimbursed Losses attributable to such judgment order and accrued during the period from the date of entry of such judgment order to the date of enactment of such Law.

(b) *Remedies of Concessionaire Upon Authority Default.* Upon the occurrence of a Authority Default, the Concessionaire may by notice to the Authority declare the Authority to be in default and may, subject to the provisions of Article 19, do any or all of the following as the Concessionaire, in its discretion, shall determine:

(i) the Concessionaire may terminate this Agreement by giving 60 days' prior notice to the Authority; *provided, however*, that the Authority shall be entitled to cure a Authority Default pursuant to Section 16.2(a)(i) by (A) agreeing within such 60-day period to pay any Losses sustained as a result of such Authority Default or (B) providing the Concessionaire with a written work plan within such 60-day period outlining the actions by which the Authority will ensure future compliance with either (x) the obligation, covenant, agreement, term or condition in this Agreement or (y) the requirements or directives of the issued final award in accordance with Article 19 that the Authority failed to perform or observe, which work plan is approved by the Concessionaire (which approval shall not be unreasonably withheld, delayed or conditioned), but any failure of the Authority to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Concessionaire to the Authority shall be deemed to be a Authority Default described in Section 16.2(a)(i) and the entitlement of the Authority to cure such Authority Default by the delivery of an approved work plan shall not apply thereto; and upon such termination the Authority shall be obligated to pay to the Concessionaire the Termination Compensation plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination, with the Authority paying the reasonable costs and expenses of any Written Appraisal of System Concession Value for purposes of determining Termination Compensation, if available, in the context of an Authority Default;

(ii) the Concessionaire may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Authority Default;

(iii) the Concessionaire may seek to recover its Losses caused by the Authority Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt; and

(iv) the Concessionaire may exercise any other rights and remedies provided for hereunder or available at law or equity.

Section 16.3. Letters of Credit.

(a) The Concessionaire shall deliver to the Authority no later than the first day of the Lease Year that is five years prior to the final Lease Year of the Term, a Letter of Credit in an amount equal to the lesser of (i) \$2,000,000.00, Adjusted for Inflation from the Closing Date to the date of the determination of the amount by the Engineering Firm, and (ii) the amount that the Engineering Firm reasonably determines is appropriate to cover all costs of capital improvements for the remainder of the Term as set forth in the then current Capex Plan. In determining such amount the Engineering Firm shall take into account the moneys and securities then held in the Capex Fund for the payment of the costs of Major Capital Improvements and the Capex Fund Deposit Requirements for the then current Reporting Year and subsequent Reporting Years.

(b) Such Letter of Credit shall be replaced on every anniversary of such Lease Year until the date that is two years after the expiration of the Term or such earlier time as there are no unresolved disputes with respect to the Concessionaire complying with, performing or observing any obligation, covenant, agreement, term or condition in this Agreement, with a Replacement Letter of Credit in the amount of the undrawn balance of such Letter of Credit plus the amount of interest that would have been earned on such balance if invested for the next 12-month period at the Bank Rate. Subject to Approval, the required amount of any Letter of Credit with respect to a Lease Year (but only with respect to such Lease Year) may be reduced from time to time (at intervals that may be shorter than one year) by the amount that the Engineering Firm reasonably determines is appropriate such that the amount of the Letter of Credit remains sufficient to cover all costs of capital improvements for the remainder of the Term in light of the condition of the System (including the Engineering Firm's assessment of the present and future condition of the System, and all costs and expenses of capital improvements to be performed in connection therewith, during the remaining years of the Term) and the Concessionaire's compliance with this Agreement in connection therewith. In the event during the last five years of this Agreement that there is a capital improvement which is part of the then current Capex Plan which the Concessionaire does not fund the cost of and for which there are not sufficient funds in the Capex Fund to meet the costs of such capital improvement, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the Authority may recover will be reduced by the amount so drawn, and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated), with three Business Days' prior notice to the Concessionaire, to draw against such Letter of Credit or any replacement thereof, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount necessary to pay the cost of such capital improvement. At any time that there is a Letter of Credit or Replacement Letter of Credit which is outstanding after the End Date, upon the occurrence, or in the event of an earlier occurrence at such time that the Authority shall be aware, of a Concessionaire Default (or if there is a dispute as to the occurrence of a Concessionaire Default, upon the final decision of the arbitral panel pursuant to Article 19 that a Concessionaire Default has occurred), the Authority

shall have the right (in addition to all other rights and remedies provided in this Agreement, but with the understanding that any other monetary damages that the Authority may recover will be reduced by the amount so drawn, and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated), with three Business Days' prior notice to the Concessionaire, to draw against such Letter of Credit or any replacement thereof, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the Authority with respect to such Concessionaire Default.

(c) The Concessionaire shall replace each Letter of Credit with a replacement Letter of Credit (the "Replacement Letter of Credit") at least 30 days prior to the expiry date of a Letter of Credit that is expiring. If the Concessionaire does not deliver to the Authority a Replacement Letter of Credit within such time period, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform and whether or not this Agreement is thereby terminated) to immediately draw the full amount of the Letter of Credit upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft. After the Concessionaire delivers to the Authority a Replacement Letter of Credit complying with the provisions of this Agreement, the Authority shall deliver in accordance with the Concessionaire's reasonable instructions the Letter of Credit being replaced (except to the extent that at such time no sight draft under such Letter of Credit is outstanding and unpaid). Any Replacement Letter of Credit shall be upon the same terms and conditions as the Letter of Credit replaced and satisfy the requirements for a Letter of Credit, but in any event (i) the amount of each Replacement Letter of Credit, except as provided in Sections 16.3(a) and (b), shall equal or exceed the amount of the Letter of Credit being replaced at the time of replacement and (ii) the date of the Replacement Letter of Credit shall be its date of issuance. The expiry date of the Replacement Letter of Credit, as referred to in the opening paragraph of such Replacement Letter of Credit, shall be not earlier than one year later than the expiry date of the Letter of Credit being replaced.

(d) If this Agreement is terminated by the Authority prior to the expiration of the Term as a result of a Concessionaire Default, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform), with three Business Days' prior notice to the Concessionaire, to draw against any Letter of Credit, upon presentation of a sight draft and a certificate confirming that the Authority has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the Authority pursuant to the terms of this Agreement.

(e) The Authority will accept the Letters of Credit to be delivered pursuant to this Section 16.3 (and pursuant to Section 2.3) as security for the Concessionaire's obligations under this Agreement, in place of a cash deposit in the same amount, with the understanding that the Letters of Credit are to be the

functional equivalent of a cash deposit. The Concessionaire's sole remedy in connection with the improper presentment or payment of sight drafts drawn under the Letter of Credit shall be the right to obtain from the Authority a refund of the amount of any sight draft the proceeds of which were drawn inappropriately or misapplied and the reasonable costs incurred by the Concessionaire as a result of such inappropriate draw or misapplication; *provided, however*, that at the time of such refund, the Concessionaire increases the amount of the Letter of Credit to the amount (if any) then required under the applicable provisions of this Agreement. The Concessionaire acknowledges that the presentment of sight drafts drawn under the Letter of Credit could not under any circumstances cause the Concessionaire injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor. The Concessionaire shall not request or instruct the issuer of the Letter of Credit to refrain from paying any sight draft drawn under a Letter of Credit.

(f) If the Authority desires to assign its rights and obligations in accordance with Section 17.2 of this Agreement, or if the Authority's rights and obligations hereunder are assigned to the Borough by operation of Law upon termination of the Authority, as contemplated, the Concessionaire shall cooperate so that concurrently with the effectiveness of such assignment, either Replacement Letters of Credit as described in Section 16.3(c) for, or appropriate amendments to, the Letters of Credit then held by the Authority, in either case identifying as beneficiary the appropriate party after the assignment becomes effective, shall be delivered to the assignee, at the sole cost of the Concessionaire.

(g) The Concessionaire shall obtain and furnish all Letters of Credit and Replacement Letters of Credit at its sole cost and expense and shall pay all charges imposed in connection with the Authority's presentation of sight drafts and drawing against the Letters of Credit or Replacement Letters of Credit.

(h) In lieu of any Letter of Credit to be provided by the Concessionaire pursuant to the terms of this Section 16.3, the Concessionaire shall, at the Concessionaire's sole discretion, have the option to deposit with a Depository for the benefit of the Authority, as collateral security, cash or Eligible Investments in an amount equal to the amount of such Letter of Credit at the time of such deposit. Such Depository shall invest and reinvest such amounts in Eligible Investments at the direction of the Authority; *provided* that earnings thereon shall be paid to the Concessionaire not less frequently than quarterly. If, at any time during the Term, the Authority would have the right to draw any amount on a Letter of Credit for which the Concessionaire has substituted cash or Eligible Investments pursuant to this Section 16.3(h), the Depository shall pay such amount to the Authority from such cash deposit or Eligible Investments in accordance with the terms of this Section 16.3 and all rights and remedies of the Authority and the Concessionaire with respect to such cash deposits or Eligible Investments, if any, shall be the same as those provided in this Section 16.3 with respect to any Letter of Credit; *provided, however*, that the certification that would have been provided by the Authority with the sight draft had cash or Eligible Investments not been so substituted shall be made to the Depository and delivered to the Depository together with the Authority's written demand for payment.

(i) If Letters of Credit shall not in the future be available at commercially reasonable terms and rates or shall not be a commercially reasonable form of security in similar transactions, the Concessionaire shall furnish the Authority with comparable security instruments or Eligible Investments that then are commonly used in similar transactions and which are Approved; and if no such comparable security instruments shall be available, the Concessionaire shall deposit with the Authority cash as security.

Section 16.4. Consequences of Termination or Reversion. Upon the termination of this Agreement, and, in the event of termination pursuant to Section 14.2(a), Section 16.1(b)(i) or Section 16.2(b)(i), notwithstanding any claims the Parties may have against the other Party and subject to Article 18, the following provisions shall apply:

(a) the Concessionaire shall, without action whatsoever being necessary on the part of the Authority, well and truly surrender and deliver to the Authority the System (including all improvements to the System), the System Assets and all tangible and intangible personal property of the Concessionaire (including inventories) that is located on the System and used in connection with the System Operations (except in the case of a termination in the circumstance contemplated by Section 13.3(b)) in good order, condition and repair (reasonable wear and tear excepted), determined reasonably in accordance with the then applicable Operating Standards, free and clear of all Encumbrances other than (w) Permitted Concessionaire Encumbrances set forth in clause (iv), clause (viii) and clause (ix) as it pertains to clauses (iv) and (viii) of the definition of that term, (x) Permitted Authority Encumbrances, (y) those created by or suffered to exist or consented to by the Authority or any Person claiming through it, and (z) with respect to any property added to the System after the Time of Closing, title defects affecting such property in existence on the date such property is added to the System;

(b) the Concessionaire hereby waives any notice now or hereafter required by Law with respect to vacating the System on the Reversion Date;

(c) to the extent not prohibited by law, the Concessionaire expressly waives all rights now or hereafter conferred by the Pennsylvania Landlord and Tenant Act of 1951, Act of April 6, 1951 (P.L. 69, No. 20) as amended, 68 P.S. § 250.101 *et seq.*, including, without limitation, any provision of such Act requiring notice to Concessionaire to vacate the System at the end of the Term, and Concessionaire covenants and agrees to give up quiet and peaceable possession, without further notice from the Authority;

(d) the Authority shall, as of the Reversion Date, assume full responsibility for the System Operations, and as of such date, the Concessionaire shall have no liability or responsibility for System Operations occurring after such date;

(e) the Concessionaire shall be liable for all costs, expenses and other amounts for which it is liable or responsible hereunder incurred up to but not including the Reversion Date, and the Authority shall be liable for all costs, expenses

and amounts incurred in connection with the System Operations on and after the Reversion Date;

(f) the Authority shall have the option by providing notice to the Concessionaire of requiring that the Concessionaire assign, without warranty or recourse to the Concessionaire, to the fullest extent permitted by Authorizations and applicable Law, all of its right, title and interest in, to and under (in each of the following cases, to the extent assignable) all or any of the Operating Agreements then in effect and all Authorizations to the Authority or its nominee for the remainder of their respective terms; *provided, however*, that if the Authority exercises such option, the right, title and interest of the Concessionaire in, to and under such Operating Agreements and Authorizations shall be assigned to the Authority or its nominee as of the Reversion Date and the Concessionaire shall surrender the System to the Authority and shall cause all Persons claiming under or through the Concessionaire to do likewise, and the Authority shall assume in writing, pursuant to an assumption agreement satisfactory to the Concessionaire, the Concessionaire's obligations under the Operating Agreements that arise in respect of, or relate to, any period of time falling on and after the Reversion Date; *provided further* that if the Authority does not exercise such option, the Concessionaire shall, unless the Authority has granted to a Leasehold Mortgagee or its nominee a new concession agreement containing the same provisions as are contained in this Agreement, take such steps as are necessary to terminate the Operating Agreements to the extent permitted thereunder and in accordance with the terms thereof;

(g) all plans, drawings, specifications and models prepared in connection with construction at the System and in the Concessionaire's possession and all "as-built" drawings shall become the sole and absolute property of the Authority, and the Concessionaire shall promptly deliver to the Authority all such plans, drawings, specifications and models and all such as-built drawings (but may keep copies of those plans, drawings, specifications and models that were developed by the Concessionaire or its Representatives);

(h) the Concessionaire, at its sole cost and expense, shall promptly deliver to the Authority copies of all records and other documents relating to the Service Charges and Revenues that are in the possession of the Concessionaire or its Representatives and all then existing records and information relating to the System as the Authority may request;

(i) the Concessionaire shall execute and deliver to the Authority a quitclaim deed in recordable form or other release or other instrument reasonably required by the Authority or its title insurer to evidence such expiration or termination;

(j) the Concessionaire shall assist the Authority in such manner as the Authority may require to ensure the orderly transition of control, operation, management, maintenance and rehabilitation of the System, and shall, if appropriate and if requested by the Authority, take all steps as may be necessary to enforce the provisions of the Operating Agreements pertaining to the surrender of the System;

(k) the Authority and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to the Authority, fees and other similar charges collected on and after the Reversion Date that are incurred prior to the Reversion Date, and utilities, and any adjustments and payment therefor shall be made by the appropriate Party on the Reversion Date, but shall be subject to readjustment if necessary because of error in matters such as information, calculation, payments and omissions that are identified within the period of 180 days following the Reversion Date; *provided, however*, that the Authority and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the Authority or the Concessionaire a final adjustment amount in respect of a matter, and for such matters the adjustment and readjustment date shall each be correspondingly extended;

(l) if this Agreement is terminated as a result of an Adverse Action, the payment by the Authority to the Concessionaire of the amounts required under Article 14 or Article 19 shall constitute full and final settlement of any and all Claims the Concessionaire may have against the Authority for and in respect of the termination of this Agreement and upon such payment, the Concessionaire shall execute and deliver all such releases and discharges as the Authority may reasonably require to give effect to the foregoing; and

(m) this Section 16.4 shall survive the expiration or any earlier termination of this Agreement.

Section 16.5. Termination As Result of Assertion of PUC Jurisdiction and Termination Other Than Pursuant to Agreement. If this Agreement is terminated by the Authority other than pursuant to Section 16.1 but at its election pursuant to either Section 3.19 or Section 7.3, the Authority shall pay to the Concessionaire the Termination Compensation as of the date of such termination. In all other cases where this Agreement is terminated by the Authority other than pursuant to Section 16.1 or is otherwise canceled, rescinded or voided during the Term for any reason over the objection and without action by the Concessionaire, any Leasehold Mortgagee and their respective Affiliates, the Authority shall pay to the Concessionaire (i) the Termination Compensation as of the date of such termination, cancellation, rescinding or voiding, plus, without duplication, (ii) the reasonable, documented out-of-pocket costs and expenses incurred by the Concessionaire as a direct result of such termination, cancellation, rescinding or voiding. The Authority hereby acknowledges and agrees that it may only terminate this Agreement in accordance with the express terms hereof and shall not, in any event, have the right to terminate this Agreement for convenience. The Authority shall pay the reasonable costs and expenses of any Written Appraisal of System Concession Value for the purposes of determining Termination Compensation in the context of this Section 16.5.

Section 16.6. Guarantee Agreement, Borough Payment Reserve Fund or Letter of Credit.

(a) *Guarantee, Reserve or Letter of Credit Required.* In order to better secure compliance by the Concessionaire with all of its obligations respecting the

punctual payment of each installment of the Annual Borough Payment, the operation and maintenance of the System and the performance of the Utility Services pursuant to this Agreement, and to protect the Authority and the Borough against the consequences of failure to fulfill its obligations, the Concessionaire must provide the Authority with the Guarantee Agreement, establish and maintain a Borough Payment Reserve Fund or post a Letter of Credit in the amount of the Borough Payment Reserve Fund. The Authority reserves the right to stop System Operations by the Concessionaire unless the Guarantee Agreement is in place and effective or the Borough Payment Reserve Fund is funded to, or a Letter of Credit is established in, an amount no less than the then current Borough Payment Reserve Requirement.

(b) *Guarantee Agreement.* The rights reserved to the Authority under the Guarantee Agreement are in addition to any rights that the Authority may have under this Agreement, at law or in equity. The Authority is entitled to demand payment under the Guarantee Agreement upon the occurrence of a Concessionaire Default that the Concessionaire has failed to cure within the applicable cure period herein provided. The Authority may only demand payment equal to the Authority's actual damages resulting from such uncured Concessionaire Default. If this Agreement is terminated by the Authority prior to the expiration of the Term as a result of a Concessionaire Default, the Authority shall have the right (in addition to all other rights and remedies provided in this Agreement and without the Authority's exercise of such right being deemed a waiver or a cure of the Concessionaire's failure to perform), with three Days' prior notice to the Concessionaire, to demand payment under the Guarantee Agreement.

(c) *Borough Payment Reserve Fund.* At any time that the Concessionaire has elected to satisfy the provisions of Section 16.6(a) by means of a Borough Payment Reserve Fund, the Concessionaire, at its cost and expense including the payment of all fees and expenses of the fiduciary holding the Borough Payment Reserve Fund, shall establish and maintain the Borough Payment Reserve Fund in an amount equal to not less than the then current Borough Payment Reserve Requirement. The moneys held in the Borough Payment Reserve Fund may be invested at the direction of the Concessionaire in Eligible Investments. All Eligible Investments held in the Borough Payment Reserve Fund shall be valued at their market value and such market value must be established by market to market valuation as of April 15 and October 15 of each year and immediately upon any withdrawal from the Borough Payment Reserve Fund to pay all or any portion of any installment of any Annual Borough Payment. At any time, and from time to time, the Borough may withdraw funds from the Borough Payment Reserve Fund to pay all or any portion of any Annual Borough Payment installment that is past due and not paid. If on any date, the amount held in the Borough Payment Reserve Fund is less than the Borough Payment Reserve Requirement, the Concessionaire shall deposit into the Borough Payment Reserve Fund an amount sufficient so that the amount held therein will equal or exceed the then current Borough Payment Reserve Requirement. If on any date, (i) all prior installments of the Annual Borough Payment have been paid in full, (ii) no Concessionaire Default then exists and (iii) the amount held in the Borough Payment Reserve Fund exceeds the Borough Payment Reserve Requirement, then the Concessionaire may withdraw from the Borough Payment Reserve Fund all or a portion of such excess. If at any time, (i) all

prior installments of the Annual Borough Payment have been paid in full, (ii) no Concessionaire Default then exists and (iii) the Concessionaire and the Authority have entered in a Guarantee Agreement meeting the requirements of Section 16.6(b), or the Concessionaire has posted a Letter of Credit in the amount of the Borough Payment Reserve Fund, then the Borough Payment Reserve Fund may be abolished and the money and Eligible Investments held therein shall be paid over to the Concessionaire.

(d) *Letter of Credit.* At any time that the Concessionaire has elected to satisfy the provisions of Section 16.6(a) by means of a Letter of Credit, the Concessionaire, at its sole cost and expense including the payment of all fees and expenses of the issuer of the Letter of Credit, shall deliver to the Authority a Letter of Credit in an amount equal to not less than the then current Borough Payment Reserve Requirement. The Authority shall be entitled to make a full or partial draw upon the Letter of Credit upon the occurrence of a Concessionaire Default which the Concessionaire has failed to cure within the applicable cure period herein provided. The Authority may only draw upon the Letter of Credit in an amount equal to the the unpaid amounts then due and payable together with any other of the Authority's actual losses resulting from such uncured Concessionaire Default.

(e) *Substitution of Security.* At any time, and from time to time, so long as at such time there is not a Concessionaire Default that the Concessionaire has failed to cure within the applicable cure period, the Concessionaire shall have the right to substitute one form of security with one of the other forms of security provided for under this Section 16.6 upon not less than ten (10) days prior written notice to the Authority. Following such notice and upon receipt of the substitute form of security, the Authority's recourse under this Section 16.6 shall be solely to such substitute form of security, and the Authority shall return the substituted form of security to the Concessionaire.

ARTICLE 17

Restrictions on Transfers

Section 17.1. Transfers by the Concessionaire.

(a) Prior to the 548th day following the Closing Date the Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire Interest other than to a Leasehold Mortgagee permitted by Article 18. On and after the 548th day following the Closing Date, the Concessionaire shall not Transfer, or otherwise permit the Transfer of, any or all of the Concessionaire Interest to or in favor of any Person (a "Transferee"), unless (i) the Authority has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee (unless it is a Leasehold Mortgagee or its designee or nominee permitted under Article 18) and (ii) the proposed Transferee (unless it is a Leasehold Mortgagee or its designee or nominee permitted under Article 18) enters into an agreement with the Authority in form and substance reasonably satisfactory to the Authority, wherein the Transferee acquires the rights and assumes the obligations of the Concessionaire and agrees to perform and

observe all of the obligations and covenants of the Concessionaire under this Agreement. Any Transfer made in violation of the foregoing provisions shall be null and void *ab initio* and of no force and effect.

(b) The Authority's Approval of a proposed Transferee must be without delay or condition (other than those stated in this Section 17.1(b) and may be withheld only if the Authority, acting reasonably, determines that (i) such proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with the Authority is prohibited by Law, (iii) such proposed Transfer would result in a violation of Law, (iv) such proposed Transfer would result in a Tax liability to the Authority or the Borough (unless the Authority and/or the Borough, as applicable, shall have received indemnification, as determined in the Authority's and/or the Borough's discretion, with respect thereto) or (v) such proposed Transferee is not capable of performing the obligations and covenants, or making the representations and warranties, of the Concessionaire under this Agreement, which determination shall be based upon and take into account the following factors: (a) the ability of the Transferee to operate (or cause the Operator to operate) the System in a manner that will result in the operation of the System in accordance with the Operating Standards and the public purposes of the Authority and the Borough as set forth in Section 3.18; (b) the financial strength and integrity of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (c) the experience of the proposed Transferee or the Operator to be engaged by the proposed Transferee in operating water treatment plants and water distribution systems and sewerage collection, treatment and disposal systems; (d) the background and reputation of the proposed Transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors and employees and each of their respective Affiliates (including the absence of criminal, civil or regulatory claims or actions against any such Person and the quality of any such Person's past or present performance on other projects); and (e) the Operator engaged (or to be engaged) by the proposed Transferee. Any determination of the Authority to withhold Approval of the proposed Transferee under clause (v) of this Section 17.1(b) must be supported by the written report of a professional engineering firm with skill and expertise in the management of water distribution systems and sewerage collection, treatment and disposal systems taking into account the factors set forth in said clause (v) and confirming that in the professional judgment of said firm, the determination of the Authority that the proposed Transferee is not capable of performing the obligations and covenants, or making the representations and warranties, of the Concessionaire under this Agreement, is reasonable and has a basis in fact.

(c) No Transfer of all or any of the Concessionaire Interest (except a Transfer to a Leasehold Mortgagee or its nominee upon the Leasehold Mortgagee's exercise of remedies under its Leasehold Mortgage as provided in Article 18 and a subsequent transfer to the transferee of the Leasehold Mortgagee or its nominee that has been Approved under Section 17.1(b)) shall be made or have any force or effect if, at the time of such Transfer there has occurred a Concessionaire Default that has not been remedied or an event that with the lapse of time, the giving of notice or otherwise would constitute a Concessionaire Default.

(d) A Change in Control of the Concessionaire (other than a Change in Control occasioned by the exercise by any Leasehold Mortgagee of its remedies under any pledge of shares, limited liability, company interest or partnership interests) shall be deemed to be a Transfer of the Concessionaire Interest for purposes of the foregoing provisions.

(e) Nothing contained in the foregoing shall be deemed to prohibit or limit the Concessionaire from changing its organizational form or status (including a change from a limited liability company to a corporation or limited partnership); *provided* that such change in organizational form or status does not result in a Change of Control of the Concessionaire.

(f) Neither (i) a change of ownership that is attributable to a lease, sublease, concession, management agreement, operating agreement or other similar arrangement that is subject and subordinate in all respects to the rights of the Authority under this Agreement, nor (ii) the creation of a trust or any other transaction or arrangement that is solely a transfer of all or part of the Concessionaire's economic interest under this Agreement to another entity shall be deemed to be a Transfer of the Concessionaire Interest for purposes of Section 17.1(a).

(g) While any Leasehold Mortgage is outstanding, the Authority shall not agree to any Transfer of any or all of the Concessionaire Interest to or in favor of any Person without the previous written confirmation from each Leasehold Mortgagee that such Transfer is permitted under its Leasehold Mortgages.

Section 17.2. Assignment by the Authority. The Authority shall have the right to Transfer any or all of the Authority's interest in the System and this Agreement, provided that it shall be jointly and severally liable with the Transferee for the performance and observance of the obligations and covenants of the Authority under this Agreement and any agreement entered into by the Authority under this Agreement (including agreeing directly with any Leasehold Mortgagee to be bound by the agreement entered into in accordance with Section 18.3) and that any such Transfer by the Authority shall not materially limit or reduce any of the Concessionaire's other rights, benefits, remedies or privileges under this Agreement, and, provided further, any such Transfer shall be subject to the rights and Encumbrances of the Concessionaire and of the Leasehold Mortgagee under any Leasehold Mortgage. Without limiting the generality of the foregoing, the Parties acknowledge that, as of the Bid Date it was anticipated, and the Parties currently anticipate, that promptly after the Closing Date and in conformity with the Municipal Authorities Act and other applicable Law, the Authority will be terminated. The Borough and the Authority agree, promptly after the Closing Date, to take all commercially reasonable action to terminate the Authority in conformity with the Municipal Authorities Act and other applicable Law. Any assignment of this Agreement to the Borough that occurs by operation of Law upon termination is hereby deemed by the Parties to satisfy all of the foregoing terms and conditions of this Section 17.2, any contrary provision of the foregoing (such as the continuing joint and several liability of the Authority) notwithstanding. Attached hereto as **Exhibit F** is a form of agreement between the Borough and the Concessionaire

whereby the Borough acquires the rights and assumes the obligations of the Authority and agrees to perform and observe all of the obligations and covenants of the Authority under this Agreement from and after the effective date of termination of the Authority (the "Borough Assumption Agreement"). Pursuant to Section 2.4(b), the Concessionaire shall have executed and delivered the Borough Assumption Agreement, in escrow, to the Escrow Agent for release by the Escrow Agent to the Borough and the Concessionaire upon the termination of the Authority. Promptly upon its release by the Escrow Agent, the Borough shall execute and deliver the Borough Assumption Agreement to the Concessionaire.

Section 17.3. Employees of the Borough. The Parties acknowledge that the Authority currently has no employees, and will have no employees after the Closing Date. Prior to the anticipated termination of the Authority, actions to be taken by the Authority pursuant to the Agreement shall be taken by appropriate and authorized employees of the Borough, acting as agent for the Authority for such purposes.

ARTICLE 18

Lender's Rights and Remedies

Section 18.1. Leasehold Mortgages. The Concessionaire shall have the right, at its sole cost and expense, to grant one or more (subject to Section 18.7) Leasehold Mortgages, secured by the Concessionaire Interest or Revenues if at the time any such Leasehold Mortgage is executed and delivered to the Leasehold Mortgagee, no Concessionaire Default exists unless any such Concessionaire Default will be cured pursuant to Section 18.3 in connection with entering into such Leasehold Mortgage, and upon and subject to the following terms and conditions:

(a) a Leasehold Mortgage may not cover any property of, or secure any debt issued or guaranteed by, any Person other than the Concessionaire, but may cover shares or equity interests in the capital of the Concessionaire and any cash reserves or deposits held in the name of the Concessionaire;

(b) no Person other than an Institutional Lender shall be entitled to the benefits and protections accorded to a Leasehold Mortgagee in this Agreement; *provided, however*, that lessors and lenders to the Concessionaire (and lenders to a Leasehold Mortgagee that is a Lessor) including financial insurers may be Persons other than Institutional Lenders so long as any Leasehold Mortgage securing the loans made by such Persons is held by an Institutional Lender acting as collateral agent or trustee;

(c) no Leasehold Mortgage or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against any or all of the Concessionaire Interest shall extend to or affect the fee simple interest in the System, the Authority interest hereunder or its reversionary interests and estates in and to the System or any part thereof;

(d) neither the Authority nor the Borough shall have any liability whatsoever for payment of the principal sum secured by any Leasehold Mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and, except for violation by the Authority or the Borough of express obligations set forth herein, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against the Authority or the Borough for any or all of the same;

(e) neither the Authority nor the Borough shall have any obligation to any Leasehold Mortgagee in the enforcement of the rights and remedies of the Authority under this Agreement or by Law provided, except as expressly set forth in this Agreement and unless such Leasehold Mortgagee has provided the Authority with notice of its Leasehold Mortgage in accordance with the Leasehold Mortgagee Notice Requirements;

(f) each Leasehold Mortgage shall provide that if the Concessionaire is in default under the Leasehold Mortgage and the Leasehold Mortgagee gives notice of such default to the Concessionaire, then the Leasehold Mortgagee shall give notice of such default to the Authority;

(g) subject to the terms of this Agreement, all rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject and subordinate to all of the provisions of this Agreement and to all of the rights of the Authority hereunder;

(h) while any Leasehold Mortgage is outstanding, the Authority shall not agree to any amendment or modification of this Agreement that could reasonably be expected to have a material adverse effect on the rights or interests of the Leasehold Mortgagee or agree to a voluntary surrender or termination of this Agreement by the Concessionaire without the consent of the Leasehold Mortgagee;

(i) notwithstanding any enforcement of the security of any Leasehold Mortgage, the Concessionaire shall remain liable to the Authority for the payment of all sums owing to the Authority under this Agreement and the performance and observance of all of the Concessionaire's covenants and obligations under this Agreement; and

(j) a Leasehold Mortgagee shall not, by virtue of its Leasehold Mortgage, acquire any greater rights or interest in the System than the Concessionaire has at any applicable time under this Agreement, other than such rights or interest as may be granted or acquired in accordance with Section 18.2, 18.3, 18.4 or 18.5; and each Leasehold Mortgagee, the Authority and the Concessionaire shall enter into a consent agreement in a form acceptable to all parties; *provided* that such consent agreement shall be in a customary form and shall include the rights and protections provided to the Leasehold Mortgagees in this Agreement.

Section 18.2. Notices and Payments to Leasehold Mortgagees. Whenever a Leasehold Mortgage exists as to which the Authority has been provided notice by the holder thereof in accordance with the Leasehold Mortgagee Notice

Requirements, the Authority shall, simultaneously with providing the Concessionaire any required notice under this Agreement, provide a copy of such notice to such Leasehold Mortgagee, and no such notice to the Concessionaire shall be effective against the Leasehold Mortgagee until a copy thereof is duly provided to such Leasehold Mortgagee at its address specified in its notice given to the Authority in accordance with the Leasehold Mortgagee Notice Requirements (or any subsequent change of address notice given to the Authority pursuant to the requirements of Section 21.1). With respect to a Leasehold Mortgage regarding which the Authority has been provided notice in accordance with the Leasehold Mortgage Notice Requirements, unless the Leasehold Mortgagee has otherwise advised the Authority in writing, all payments to the Concessionaire to be made by the Authority under this Agreement shall be made to the institution acting as the collateral agent or depository under the financing secured by such Leasehold Mortgage.

Section 18.3. Leasehold Mortgagee's Right to Cure. The Leasehold Mortgagee shall have a period of 60 days with respect to any Concessionaire Default beyond any cure period expressly provided to the Concessionaire herein, in which to cure or cause to be cured any such Concessionaire Default; *provided, however*, that such 60-day period shall be extended if the Concessionaire Default may be cured but cannot reasonably be cured within such period of 60 days, and the Leasehold Mortgagee begins to cure such default within such 60-day period (or if possession is necessary in order to effect such cure, the Leasehold Mortgagee files the appropriate legal action to foreclose the liens of the Leasehold Mortgage (or takes other appropriate action to effect a transfer of title to the property subject to such liens) and take possession of the System within such period) and thereafter proceeds with all due diligence to cure such Concessionaire Default (including by proceeding with all due diligence to effect such foreclosure and during such foreclosure action (to the extent practicable) and thereafter to effect such a cure) within a reasonable period of time acceptable to the Authority, acting reasonably; *provided further* that if a Leasehold Mortgagee's right to cure a Concessionaire Default has not expired, and the Leasehold Mortgagee is acting to cure such Concessionaire Default in accordance with this Section 18.3, then the Authority shall not exercise its right to terminate this Agreement by reason of such Concessionaire Default. In furtherance of the foregoing, the Authority shall permit the Leasehold Mortgagee and its Representatives the same access to the System as is permitted to the Concessionaire hereunder. The Authority shall accept any such performance by a Leasehold Mortgagee as though the same had been done or performed by the Concessionaire. Any payment to be made or action to be taken by a Leasehold Mortgagee hereunder as a prerequisite to keeping this Agreement in effect shall be deemed properly to have been made or taken by the Leasehold Mortgagee if such payment is made or action is taken by a nominee, agent or assignee of the rights of such Leasehold Mortgagee. This Section 18.3 shall not limit the rights granted to the Authority under Section 16.1(b)(ix) to exercise remedies upon a Health and Safety Default.

Section 18.4. Rights of the Leasehold Mortgagee.

(a) Subject to the provisions of this Agreement, a Leasehold Mortgagee may (i) enforce its Leasehold Mortgage in any lawful way, (ii) acquire the

Concessionaire Interest in any lawful way or (iii) take possession of in any lawful way and manage the System. Upon foreclosure of (or without foreclosure upon exercise of any contractual or statutory power of sale under such Leasehold Mortgage or a deed in lieu) and subject to the provisions of Article 17 (applied to the Leasehold Mortgagee as if it were the Concessionaire), a Leasehold Mortgagee may Transfer the Concessionaire Interest; *provided, however*, that no Transfer by a Leasehold Mortgagee shall be effective unless the Transfer is made in accordance with Section 17.1. Any Person to whom the Leasehold Mortgagee Transfers the Concessionaire Interest (including such Leasehold Mortgagee) shall take the Concessionaire Interest subject to any of the Concessionaire's obligations under this Agreement.

(b) Except as provided in Section 18.3, unless and until a Leasehold Mortgagee (i) forecloses or has otherwise taken ownership of the Concessionaire Interest or (ii) has taken possession or control of the Concessionaire Interest, whether directly or by an agent as a mortgagee in possession or a receiver or receiver and manager has taken possession or control of the Concessionaire Interest by reference to the Leasehold Mortgage, the Leasehold Mortgagee shall not be liable for any of the Concessionaire's obligations under this Agreement or be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except by way of security. During any period in which the Leasehold Mortgagee itself or by an agent or a receiver or a receiver and manager is the owner, or is in control or possession of, the Concessionaire Interest, it shall be bound by all liabilities and obligations of the Concessionaire under this Agreement (including the obligation to engage an Operator). Once the Leasehold Mortgagee goes out of ownership, possession or control of the Concessionaire Interest or Transfers the Concessionaire Interest to another Person in accordance with the provisions of this Agreement, the Leasehold Mortgagee shall cease to be liable for any of the Concessionaire's obligations under this Agreement accruing thereafter and shall cease to be entitled to any of the Concessionaire's rights and benefits contained in this Agreement, except, if the Leasehold Mortgage remains outstanding, by way of security.

Section 18.5. Termination of this Agreement; New Agreement.

(a) Without prejudice to the rights of a Leasehold Mortgagee under Section 18.3, if this Agreement is terminated prior to the expiration of the Term due to a Concessionaire Default (in which case the Authority shall notify the Leasehold Mortgagee of such termination) or if this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' rights generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the Authority agrees to enter into a new concession and lease agreement of the System with the Leasehold Mortgagee (or its designee or nominee; *provided* that such designee or nominee either is controlled by or acting at the direction of the Leasehold Mortgagee or is Approved by the Authority as Transferee under Section 17.1) for the remainder of the original stated Term upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "New Agreement"), effective as of the date of such termination, but only on and subject to the satisfaction of all of the following requirements and conditions: (i) such

Leasehold Mortgagee commits in writing to the Authority, in a notice delivered to the Authority, within 30 days after the Authority delivers the termination notice to Leasehold Mortgagee (or, if later, upon the termination of any cure period granted to the Leasehold Mortgagee pursuant to Section 18.3) or within 30 days after the effective date of such rejection or disaffirmance, as the case may be, that the Leasehold Mortgagee (or its designee or nominee) will enter into the New Agreement, which notice is accompanied by a copy of such New Agreement, duly executed and acknowledged by the Leasehold Mortgagee (or its designee or nominee); (ii) the Leasehold Mortgagee (or its designee or nominee) pays or causes to be paid to the Authority, at the time of the execution and delivery of the New Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable by the Concessionaire in accordance with the provisions of this Agreement but for such termination; (iii) *provided* the Authority furnishes a statement or invoice for such costs the Leasehold Mortgagee pays or causes to be paid to the Authority all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the Authority in connection with such defaults and termination, the recovery of possession from the Concessionaire, and in connection with the preparation, execution and delivery of the New Agreement and related agreements and documents specified in such statement or invoice; and (iv) such Leasehold Mortgagee (or its designee or nominee), at the time of such written request, cures all Concessionaire Defaults under this Agreement (curable by the payment of money) existing immediately prior to the termination of this Agreement, or, if such Concessionaire Defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) commits to the Authority in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other Concessionaire Defaults to the extent such Concessionaire Defaults are capable of cure by a Person other than the original Concessionaire and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults (and such cure shall be a covenant in the New Agreement).

(b) Nothing contained in this Section 18.5 shall be deemed to limit or affect the Authority's interests in and to such System upon the expiration of the Term of the New Agreement. The provisions of this Section 18.5 shall survive the termination of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 18.5 were a separate and independent contract made by the Authority, the Concessionaire and the Leasehold Mortgagee and, if the Leasehold Mortgagee satisfies the conditions to a New Agreement from the effective date of such termination of this Agreement to the date of execution and delivery of the New Agreement, the Leasehold Mortgagee may use and enjoy the leasehold estate created by this Agreement without hindrance by the Authority, but only on and subject to the terms and provisions of this Agreement.

(c) If the circumstances described in Section 18.5(a) occur, and the Authority determines, based on the written legal advice of counsel, that termination of this Agreement and the entry into a New Agreement by and between the Authority and the Leasehold Mortgagee could violate applicable provisions of the Laws of the

Commonwealth of Pennsylvania governing procurement by the Authority or the Borough then, in lieu of entering in a New Agreement and in satisfaction of their obligations under this Section 18.5, the Authority agrees to enter into an Assignment and Assumption Agreement pursuant to Section 18.9.

Section 18.6. Right to Arbitration. In each case specified in this Agreement in which resort to arbitration is authorized, the Leasehold Mortgagee shall have the right and privilege if an event of default under the Leasehold Mortgage then exists and notice has been given to the Authority as contemplated by Section 18.1(f), in the Concessionaire's name, place and stead, to obtain and participate in such arbitration upon notice to the Authority in accordance with Article 20; *provided* that the Leasehold Mortgagee agrees to be bound by the decision of the arbitration panel.

Section 18.7. Recognition of Leasehold Mortgagee. If there is more than one Leasehold Mortgagee, only that Leasehold Mortgagee, to the exclusion of all other Leasehold Mortgagees, whose notice was earliest received by the Authority pursuant to the Leasehold Mortgagee Notice Requirements, shall have the rights as a Leasehold Mortgagee under this Article 18, unless such Leasehold Mortgagee has designated in writing another Leasehold Mortgagee to exercise such rights. Such Leasehold Mortgagee may act as agent for a group or syndicate of one or more Institutional Lenders and such Leasehold Mortgagee and Institutional Lenders may freely assign or sell interests and/or participations in the loans to any other Institutional Lender.

Section 18.8. Authority's Right to Purchase Leasehold Mortgage.

(a) If any default by the Concessionaire has occurred under a Leasehold Mortgage, or any act, condition or event has occurred which would permit a Leasehold Mortgagee to declare all or part of the indebtedness secured by a Leasehold Mortgage to be immediately due and payable (or, in the case of a Leasehold Mortgage that is a lease, to terminate the lease), then the Authority shall have 30 days after the date on which such Leasehold Mortgagee shall serve notice upon the Authority in writing ("Leasehold Mortgagee's Notice") that such Leasehold Mortgagee intends to commence proceedings to foreclose the Leasehold Mortgage or, in the case of a Leasehold Mortgagee that is a Lessor to terminate the lease (stating the calculation of the purchase price pursuant Section 18.8(c)), during which 30-day period the Authority shall have the right and option (the "Authority's Option") to purchase from all Leasehold Mortgagees their Leasehold Mortgages, upon the terms and subject to the conditions contained in this Section 18.8.

(b) The Authority's Option shall be exercised by notice served upon the Concessionaire and all Leasehold Mortgagees within such 30-day period. Time shall be of the essence as to the exercise of the Authority's Option. If the Authority's Option is duly and timely exercised, the Authority shall purchase and all Leasehold Mortgagees shall assign their Leasehold Mortgages to the Authority (or its designee) on the date that is 90 days after the date on which a Leasehold Mortgagee's Notice is served upon the Authority. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the Authority shall be equal to the aggregate amounts secured by such Leasehold Mortgages (including principal, interest, fees, premiums, Breakage Costs and other costs, expenses (including attorneys' fees) and any other amounts secured thereby) as of the closing date of the purchase. The purchase price shall be paid in full in cash at closing by wire transfer or other immediately available funds. The purchase price shall be paid by the Authority to each respective Leasehold Mortgagee, to be applied by the Leasehold Mortgagee to the amounts secured by the Leasehold Mortgage owed to such Leasehold Mortgagee, subject to the priorities of lien of such Leasehold Mortgages.

(d) At the closing and upon payment in full of the purchase price each Leasehold Mortgagee shall assign its Leasehold Mortgage to the Authority, together with any security interest held by it in the Concessionaire Interest, without recourse, representations, covenants or warranties of any kind; *provided* that such Leasehold Mortgages and security interests shall be deemed modified to secure the amount of the aggregate purchase price paid by the Authority to all Leasehold Mortgagees (rather than the indebtedness theretofore secured thereby) payable on demand, with interest and upon the other items referred to in this Section 18.8(d). Each such assignment shall be in form for recordation or filing, as the case may be. The Authority shall be responsible for paying any Taxes payable to any Governmental Authority upon such assignment. Such assignment shall be made subject to such state of title of the System as shall exist at the date of exercise of the Authority's Option.

(e) Any Leasehold Mortgage shall contain an agreement of the Leasehold Mortgagee to be bound by the provisions of this Section 18.8.

(f) The Authority shall have the right to receive all notices of default under any Leasehold Mortgage, but the Authority shall not have the right to cure any default under any Leasehold Mortgage, except to the extent provided in this Section 18.8.

Section 18.9. Assignment and Assumption Agreement.

(a) The provisions of this Section 18.9 shall be in effect whenever either (i) the Authority has made the determination contemplated by Section 18.5(c) or (ii) the Authority, with the written consent of the Leasehold Mortgagee, have determined to proceed under this Section 18.9 in lieu of under Section 18.5.

(b) Without prejudice to the rights of a Leasehold Mortgagee under Section 18.3, if either (i) the Authority has given a notice of termination of this Agreement due to Concessionaire Default pursuant to Section 16.1(b), or (ii) this Agreement is rejected or disaffirmed pursuant to any bankruptcy Law or proceeding or other similar Law or proceedings affecting creditors' right generally with respect to a bankruptcy proceeding relating to the Concessionaire or otherwise, the Authority agrees to cooperate with a Leasehold Mortgagee in order to effectuate such Leasehold Mortgagee's rights under the Leasehold Mortgage to step-in, assume or

assign this Agreement, in accordance with the procedures, terms and conditions of this Section 18.9.

(c) Upon notification and satisfaction of all of the conditions and requirements in Section 18.9(d), the Authority agrees that this Agreement shall not be deemed terminated, but may be assumed by a Leasehold Mortgagee or by a designee or nominee of such Leasehold Mortgagee who is either controlled by or acting at the direction of the Leasehold Mortgagee or is Approved by the Authority as a Transferee under Section 17.1, for the remainder of the original stated Term of this Agreement, and as evidence of such assignment and assumption the Authority agrees to execute an amended and restated concession and lease agreement for the System upon all of the covenants, agreements, terms, provisions and limitations of this Agreement (the "Assignment and Assumption Agreement").

(d) This Agreement may be so assigned and assumed pursuant to an Assignment and Assumption Agreement upon and subject to satisfaction of all of the following requirements and conditions:

(i) Such Leasehold Mortgagee must commit in writing to the Authority, in a notice delivered to the Authority within the later of 30 days after the Authority delivers the termination notice to Leasehold Mortgagee or upon the termination of any cure period granted to such Leasehold Mortgagee pursuant to Section 18.3, or within 30 days after the effective date of any rejection or disaffirmance of this Agreement in a bankruptcy proceeding, as the case may be, that such Leasehold Mortgagee (or its designee or nominee) will assume this Agreement and enter into the Assignment and Assumption Agreement, which notice is accompanied by a copy of such Assignment and Assumption Agreement duly executed and acknowledged by such Leasehold Mortgagee (or its designee or nominee).

(ii) Such Leasehold Mortgagee (or its designee or nominee) shall pay or cause to be paid to the Authority, at the time of the execution and delivery of the Assignment and Assumption Agreement, all amounts which, at the time of the execution and delivery thereof, would have been past-due or due and payable in accordance with the provisions of this Agreement.

(iii) Such Leasehold Mortgagee (or its designee or nominate) shall pay or cause to be paid to the Authority all reasonable, documented out-of-pocket costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the Authority in connection with such defaults and notice of termination, the recovery of possession from the Concessionaire, and in connection with the preparation, execution and delivery of the Assignment and Assumption Agreement and related agreements and documents. The Authority shall provide an invoice to such Leasehold Mortgagee of such costs, and the Leasehold Mortgagee or its designee or nominee shall pay such invoiced costs within five days of the receipt of such invoice.

(iv) Such Leasehold Mortgagee (or its designee or nominee), at the time of the notice provided under Section 18.9(b)(i), shall cure all Concessionaire

Defaults under this Agreement (including all such Concessionaire Defaults curable by the payment of money) existing immediately prior to the notice of termination issued pursuant to Section 16.1(b), or, if such Concessionaire Defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) shall commit to the Authority in the Assignment and Assumption Agreement to proceed both promptly and diligently, upon the execution of the Assignment and Assumption Agreement, to cure all such other Concessionaire Defaults to the extent such defaults are capable of cure by a Person other than the original Concessionaire and, if possession is necessary in order to cure such other Concessionaire Defaults, to proceed both promptly and diligently to obtain the possession required to cure any such other defaults (and such obligation to cure shall be a covenant in the Assignment and Assumption Agreement).

(e) If a Leasehold Mortgagee gives the Authority a notice as provided in Section 18.9(d)(i), the Authority and Leasehold Mortgagee agree to cooperate with respect to taking any appropriate actions required to regain and transfer possession of the System and the System Assets, including (i) seeking surrender of possession in any bankruptcy proceedings; (ii) seeking relief from any automatic stay in bankruptcy provisions and pursuit of state law remedies to obtain possession and to foreclose on the Leasehold Mortgage interest and assume the Concessionaire's position as provided in Section 18.4 of this Agreement; *provided* that any costs incurred by the Authority under this provision shall be reimbursed by the Leasehold Mortgagee (or its designee or nominee) as provided in Section 18.9(d)(iii).

ARTICLE 19

Dispute Resolution

Section 19.1. Scope. Any dispute arising out of, relating to, or in connection with this Agreement, including any question as to whether such dispute is subject to arbitration, shall be resolved as set forth in this Article 19.

Section 19.2. Informal Dispute Resolution Procedures. The Parties shall attempt in good faith to resolve such dispute within 15 days following receipt by the other Party of notice of such dispute. If the Parties are unable to resolve the dispute within such 15-day period, and upon notice by a Party to the other Party, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary. Statements made by representatives of the Parties during the dispute resolution procedures set forth in this Section 19.2 and in Section 19.3 and documents specifically prepared for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any arbitration or other litigation proceeding between the Parties without the mutual consent of the Parties.

Section 19.3. Mediation. Mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as all of the Designated Senior Persons, after following the procedures set forth in Section 19.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not

appear likely; or (ii) 15 days after the notice referring the dispute to the Designated Senior Persons, pursuant to Section 19.2 has been received by all of the Designated Senior Persons. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through mediation administered by the AAA under its Commercial Mediation Procedures before resorting to binding arbitration, as provided by Section 19.4. The Parties agree that any period of limitation applicable to the assertion of a claim shall be deemed tolled during the conduct of informal dispute resolution under Section 19.2 and mediation under this Section 19.3, and that any claim of any Party shall be deemed not to have accrued until the mediation is terminated.

Section 19.4. Arbitration.

(a) *Arbitration Process.* If the procedures described in Sections 19.2 and 19.3 do not result in resolution of the dispute within 30 Business Days following a reference to mediation, the dispute shall be resolved by arbitration in accordance with the AAA Rules then in effect. Any Party may initiate the arbitration, as provided in the AAA Rules. Any arbitration conducted pursuant to this Section 19.4 shall be governed by the statutory arbitration provisions of the Arbitration Act. The place of arbitration shall be Harrisburg, Pennsylvania unless the Parties agree otherwise. The arbitral panel shall determine the rights and obligations of the Parties in accordance with the substantive laws of the Commonwealth of Pennsylvania and without regard to conflicts of laws principles thereof. Except as agreed by the Parties, the arbitral panel shall have no power to alter or modify any terms or provisions of this Agreement, or to render any award that, by its terms or effects, would alter or modify any term or provision of this Agreement. The Parties shall be entitled to reasonable production of relevant, non-privileged documents, carried out expeditiously. If the Parties are unable to agree upon such document production, the arbitral panel shall have the power, upon application of any Party, to make all appropriate orders for production of documents by any Party. At the request of any Party, the arbitral panel shall have the discretion to order the examination by deposition of any witness to the extent the arbitral tribunal deems such examination appropriate or necessary. The arbitral panel shall be composed of three arbitrators, one to be selected by the Authority, one to be selected by the Concessionaire and the third (who shall act as chairman of the panel) to be selected by the two previously-selected arbitrators. If, within 15 Business Days, the two previously-selected arbitrators cannot agree on the selection of the third arbitrator, then the third arbitrator shall be selected by the AAA pursuant to the AAA Rules. Once the arbitral panel has been composed, the arbitrators shall act as neutrals and not as party arbitrators, and no Party shall engage in any *ex parte* communication with any member of the arbitral panel. Each Party shall bear its own attorney fees, expenses, and costs. Any award of monetary damages shall include interest at the Bank Rate from the date of any breach or violation of this Agreement or the incurring of any obligation as determined in the arbitral award until paid in full. Any award of monetary damages shall be in writing and state the reasons upon which it is based. The award shall be final and binding on the Parties, subject only to such review and other proceedings as provided by the Arbitration Act. Judgment on the award may be entered by any court with competent jurisdiction in accordance with the Arbitration Act.

(b) *Remedy of Arbitration Not Available.* If it is determined by a final and unappealed order of a tribunal of competent jurisdiction or by written agreement of the Parties that arbitration pursuant to the Arbitration Act cannot provide a remedy for or resolution of a dispute for any reason relating to a lack of jurisdiction or a constraint arising from an immunity (“Determination”), then the Parties shall present the dispute to such court or other tribunal of competent jurisdiction or other applicable dispute resolution process which possesses jurisdiction and the power to afford relief not limited by immunity. The presentation to the other forum may be accomplished by transfer order in connection with a Determination or by a submission by a Party in which case the submission shall be deemed timely if so submitted within sixty (60) Business Days of any such Determination. Irrespective of whether the subsequent presentation is accomplished by transfer or submission by a Party, any applicable period of limitation shall be deemed tolled during the conduct of arbitration or any proceedings relating to the arbitration or to the rendering of the Determination, and the Parties further waive the defense of the application of any period of limitation with respect to the submission in the subsequent forum. For clarification, it is the intent of the Parties that no Party shall be precluded from presenting a claim on the basis of timeliness (and the Parties hereby waive any defenses relating to timeliness) arising from the need to present the dispute in a different forum as provided for and subject to the conditions of this Section 19.4.

Section 19.5. Provisional Remedies. No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement or to enforce or execute upon a judgment entered in accordance with this Agreement, including temporary preliminary and permanent injunctive relief and restraining orders, writs of mandamus, and the appointment of a receiver or receiver and manager in connection with the collection and retention of Revenues.

Section 19.6. Tolling. If a Party receiving a notice of default under this Agreement contests, disputes or challenges the propriety of such notice by making application to the dispute resolution procedure in this Article 19, any cure period that applies to such default shall be tolled for the time period between such application and the issuance of a final award or determination.

Section 19.7. Technical Arbitration.

(a) *Informal Dispute Resolution by Engineering Firm.* The Parties may agree to submit any engineering or technical dispute under this Agreement to the Engineering Firm, which submission may be made without submitting the engineering or technical dispute to engineering arbitration pursuant to Section 19.7(b) or to the dispute resolution process described in Sections 19.2 through 19.4 and once such technical dispute has been submitted to the Engineering Firm then the time limits set out in Section 19.2, Section 19.3 and Section 19.4 shall no longer apply. The Engineering Firm shall determine any unresolved disputed items within three Business Days of the submission of such dispute to the Engineering Firm, unless the Engineering Firm has good cause to extend such date for determination. The submission shall be in the form of written statements of

position by one or more of the Parties, which statements shall be provided to both Parties and the Engineering Firm, with each Party having an opportunity to respond to such written statements of the other Party and any requests for statements or information by the Engineering Firm, including in-person meetings. The Parties shall each bear their own costs with respect to the submission of such dispute to the Engineering Firm and shall bear equally the cost of the Engineering Firm with respect to such dispute. The Engineering Firm's decision shall be in writing and state the reasons upon which it is based. The decision of the Engineering Firm shall be final and binding on the Parties, unless a Party expressly reserves the right, at the time of the submission of the engineering or technical dispute to the Engineering Firm, to submit the dispute to engineering arbitration pursuant to Section 19.7(b) or to the dispute resolution process described in Sections 19.2 through 19.4. The Parties agree that any period of limitation applicable to the assertion of a dispute shall be deemed tolled during the conduct of informal dispute resolution under Section 19.7(a) and any dispute shall be deemed not to have accrued until the informal dispute resolution process is terminated. Within three Business Days after its receipt of the decision, any Party may request the Engineering Firm to interpret the decision or to correct any clerical, typographical or computation errors therein. The other Party shall have a right to comment within three Business Days of its receipt of the requesting Party's request for interpretation and/or correction. If the Engineering Firm considers the request justified, it shall comply with such request within three Business Days after its receipt of such request. The correction and/or interpretation of the decision shall take the form of an addendum and shall constitute part of the decision.

(b) *Engineering Arbitration.* The Parties may agree to submit any engineering or technical dispute under this Agreement to engineering arbitration, which submission may be made without submitting the engineering or technical dispute to the Engineering Firm pursuant to Section 19.7(a) or to the dispute resolution process described in Sections 19.2 through 19.4. Any arbitration conducted pursuant to this Section 19.7(b) shall be governed by the statutory arbitration provisions of the Arbitration Act. Such engineering arbitration shall be conducted by an independent engineering arbitrator, which shall be an engineering firm with nationally recognized engineering experience related to water treatment plants and water supply systems and sewerage collection, treatment and disposal systems and that is acceptable to the Parties (and if the Parties fail to agree upon the independent engineering arbitrator within five Business Days after the Parties agree to submit the dispute to engineering arbitration, then the Authority and the Concessionaire shall each appoint an independent engineering arbitrator and both such arbitrators shall be instructed to select a third independent engineering arbitrator to conduct the engineering arbitration). If the Party-appointed engineering arbitrators are unable to agree upon a third engineering arbitrator within five Business Days after they are instructed by the Parties to select a third arbitrator, the Engineering Firm shall select the independent engineering arbitrator to conduct the engineering arbitration as soon as possible. Such submission shall be in the form of written statements of position by one or more of the Parties, which statements shall be provided to all Parties and the independent engineering arbitrator, with each Party having an opportunity to respond to such written statements and any requests for statements or information by the independent engineering arbitrator, including in-

person meetings; *provided, however*, that all such submissions by a Party shall be made within 10 Business Days following appointment of the independent engineering arbitrator and, notwithstanding any provision herein to the contrary, any unresolved disputed items shall be determined by the independent engineering arbitrator within seven Business Days following receipt by the independent engineering arbitrator of the Parties' submissions of information unless such independent engineering arbitrator has good cause to extend such date for determination. The Parties shall each bear their own costs with respect to the arbitration of any such engineering dispute and the Concessionaire on the one hand and the Authority on the other shall bear equally the cost of retaining such independent engineering arbitrator. The independent engineering arbitrator's award shall be in writing and state the reasons upon which it is based. Within one Business Day after its receipt of the decision, any Party may request the independent engineering arbitrator to interpret the decision or to correct any clerical, typographical or computation errors therein. The other Party shall have a right to comment within one Business Day of its receipt of the requesting Party's request for interpretation and/or correction. If the independent engineering arbitrator considers the request justified, it shall comply with such request within three Business Days after its receipt of such request. The correction and/or interpretation of the decision shall take the form of an addendum and shall constitute part of the decision. The independent engineering arbitrator's award shall be final and binding on the Parties, subject only to review and other proceedings as provided by the Arbitration Act.

Section 19.8. Authority Liability and Further Remedies. In fulfillment of its obligations under this Agreement, the Authority shall take any and all actions necessary, including, without limitation, using its best efforts to lease Authority assets or to borrow funds, in order to finance any obligation to pay the System Concession Value, or Termination Compensation or any other amounts due and payable to the Concessionaire arising from this Agreement; *provided* that in connection with any borrowing or leasing, the Authority shall not adversely impact any of the rights and remedies of the Concessionaire hereunder unless this Agreement shall have been terminated in accordance with the terms hereof. The term "best efforts" means all legally permissible actions that a prudent person, acting in good faith and desirous of achieving the result, would use to achieve that result as expeditiously as possible, including the expeditious undertaking and diligent prosecution of any applications or submissions required to obtain necessary approvals from any other Governmental Authority or Person. Without limiting the generality of the foregoing, in the exercise of such "best efforts" to the extent necessary to raise required funds, the Authority covenants to take any and all actions allowed or required under the applicable law (including the Local Government Unit Debt Act, 53 Pa.C.S. §8001 *et seq.*), to approve and issue any debt required to pay and satisfy the System Concession Value or other amounts due and payable to the Concessionaire arising under this Agreement, including but not limited to presentation and diligent prosecution of a petition to the appropriate courts for the incurrence of "unfunded debt" as defined under the Local Government Unit Debt Act. Nothing in this Section 19.8(b) shall diminish or release the Authority from its obligations under this Agreement, or alter or modify any of their obligations under this Agreement, to pay the System Concession Value, the Termination

Compensation or any other amounts arising hereunder, notwithstanding their inability to lease or borrow any funds.

ARTICLE 20

Joinder and Borough Covenants

Section 20.1. Limited Joinder by Borough. By countersigning this Agreement below, the Borough hereby joins the foregoing Agreement for the limited purpose of agreeing to be bound by the provisions of Sections 2.4(a)(vi), 2.4(a)(vii), 2.4(a)(viii), 2.5(d), 2.5(e)(i) and (ii), 2.5(h), 2.5(j), 2.5(m), 3.2(c)(ii), 3.2(c)(iii), 3.5(b), 3.15(b), 3.15(c), 3.20(a), 3.20(b), 4.2, 7.2, 9.1(l), 10.2, and 17.2 and this Article 20, and in connection with said limited joinder, makes the following additional representations and warranties to Concessionaire, as a material inducement to Concessionaire to enter into this Agreement, with the understanding that Concessionaire will be relying thereon in consummating the Transactions contemplated hereby:

(a) *Organization.* The Borough is a duly organized and validly existing political subdivision of the Commonwealth of Pennsylvania under the Borough Code.

(b) *Power and Authority.* The Borough has (i) duly adopted the Authorizing Ordinance authorizing the Transaction, which remains in full force and effect, (ii) duly adopted the Rate Ordinance, which remains in full force and effect, (iii) duly authorized and approved the execution of the limited joinder to this Agreement and (iv) duly authorized and approved the performance by the Borough obligations specific and exclusive to the Borough as contained in this Agreement. The Borough has the power and authority to enter into its limited joinder to this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(c) *Enforceability.* The Borough's limited joinder to this Agreement has been duly authorized, executed and delivered by the Borough and constitutes a valid and legally binding obligation of the Borough, enforceable against the Borough in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(d) *No Conflicts.* The execution and delivery of its limited joinder to this Agreement by the Borough, and the performance by the Borough of the terms, conditions and provisions thereof, has not and will not contravene or violate or result in a breach of (with or without the giving of notice or lapse of time, or both) or acceleration of any material obligations of the Borough under (i) any applicable Law or (ii) any agreement, instrument or document to which the Borough is a party or by which it is bound.

(e) *Consents.* No consent is required to be obtained by the Borough from, and no notice or filing is required to be given by the Borough to or made by the

Borough with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the Borough of its limited joinder to this Agreement, except for those consents which have been obtained or will be obtained on or before Closing or, with respect to the performance of the Borough's obligations after Closing, those consents which the Borough has obtained or reasonably expects to obtain in the ordinary course prior to the time when such consent is required.

(f) *Compliance with Law; Litigation.*

(i) To the knowledge of the Borough, the Authority and the Borough have operated and are operating the System in compliance, in all material respects, with all applicable Laws, Authorizations and Permits, and to the knowledge of the Borough there is no breach of any applicable Law, Authorization or Permit that would have a Material Adverse Effect on the operations of the System or on the Concessionaire Interest. There are no Authorizations or Permits from any Governmental Authority necessary for the operation of the System as currently being operated except for those Authorizations and Permits listed in Schedule 12. The System, when operated and maintained in accordance with Prudent Industry Practices and as configured is, as of the Bid Date, and will be, as of the Closing Date, capable of being operated in compliance with the Operating Standards and without an Operational Breach.

(ii) To the knowledge of the Borough and except as disclosed to the Concessionaire prior to the Bid Date, there are no facts, circumstances, conditions or occurrences regarding the System that could reasonably be expected to give rise to any environmental claims or governmental enforcement actions that could reasonably be expected to have a Material Adverse Effect, and there are no past, pending or threatened environmental claims or governmental enforcement actions against the Borough or the Authority that individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

(iii) There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending or, to the knowledge of the Borough, threatened against the Authority or the Borough prior to or at the Time of Closing, that will have a Material Adverse Effect on the operations of the System. As of the date of this Agreement, there is no action, suit or proceeding, at Law or in equity, or before or by any Governmental Authority, pending or, to the knowledge of the Borough, threatened against the Authority or the Borough that could materially affect the validity or enforceability of this Agreement.

Section 20.2. Termination of the Authority. The Borough shall use, and shall cause the Authority to use, all deliberate speed to effectuate termination of the Authority in full compliance with the requirements of the Municipal Authorities Act.

Section 20.3. Maintenance of Expertise. The Borough shall at all times during the Term maintain (or contract, at Borough expense, with third parties for) sufficient expertise to perform its (and the Authority's) obligations hereunder.

Section 20.4. Enforcement of Ordinances. During the Term, the Borough shall actively and strictly enforce its ordinances that relate to protection of the water supply.

Section 20.5. Expiration of Limited Joinder. The Borough’s limited joinder, as set forth in Section 20.1, shall expire upon the Assignment Effective Date, as defined in the Assumption Agreement among the Authority, the Borough and the Concessionaire dated _____, 201_ (the “Assumption Agreement”), and thereafter the Borough’s obligations pursuant to this Agreement shall be those set forth or described in the Assumption Agreement.

ARTICLE 21

Miscellaneous

Section 21.1. Notice. All notices, other communications and approvals required or permitted by this Agreement shall be in writing, shall state specifically that they are being given pursuant to this Agreement and shall be addressed as follows:

- (a) in the case of the Authority and the Borough:

Attention: _____

with a copy to:

McNees Wallace & Nurick LLC
100 Pine Street, P.O. Box 1166
Harrisburg, Pennsylvania 17108-1166
Attention: Michael G. Jarman
Phone: 717-237-5232
Fax: 717- 260-1705
mjarman@mwn.com

- (b) in the case of the Concessionaire:

Attention: _____

with a copy to:

Attention: _____

or such other persons or addresses as a Party may from time to time designate by notice to the other Party. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next Business Day, or (ii) on the fourth Business Day after mailing if sent by United States registered or certified mail.

Section 21.2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other Party.

Section 21.3. Amendment. This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

Section 21.4. Waiver of Rights. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

Section 21.5. Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstances is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstances shall not have

the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein. If the Parties cannot agree on an appropriate amendment, any Party may refer the matter for determination pursuant to the dispute resolution procedure in Article 19. If, by means of the dispute resolution procedure, the Parties are unable, as a result of applicable Law, to resolve the matter in a manner that effectively entitles the Authority or the Borough to have the same rights after the aforesaid determination of invalidity or unenforceability as before, the Borough shall have the right to enact, and cause to come into force, any Law to provide for the same or substantially the same rights as were determined to be invalid or unenforceable.

Section 21.6. Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Commonwealth of Pennsylvania (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

Section 21.7. Submission to Jurisdiction. Subject to Article 19, any action or proceeding against any Party relating in any way to this Agreement may be brought and enforced in the federal or state courts in the Commonwealth of Pennsylvania in Dauphin County, and each of the Parties hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now or hereafter have to the laying of venue of any such action or proceeding in such courts and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Service of process on the Authority may be made, either by registered or certified mail addressed as provided for in Section 21.1 or by personal delivery on the Borough Manager. Service of process on the Concessionaire may be made either by registered or certified mail addressed as provided for in Section 21.1 or by delivery to the Concessionaire's registered agent for service of process in the Commonwealth of Pennsylvania. If the Concessionaire is presented with a request for Documents by any administrative agency or with a subpoena duces tecum regarding any Documents which may be in its possession by reason of this Agreement, the Concessionaire shall give prompt notice to the Authority. The Authority may contest such process by any means available to it before such Documents are submitted to a court or other third party; provided, however, that the Concessionaire shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the subpoena or request is quashed or the time to produce is otherwise extended.

Section 21.8. Further Acts. The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or

delivery of this Agreement. Without limiting the generality of the foregoing and to the extent feasible and practicable, the Concessionaire, the Authority and the Borough will work cooperatively and expeditiously to procure subdivision of any parcel comprising the Water Plant and Distribution System or the Wastewater System as necessary to give effect to the asset exclusion elections of Concessionaire under Schedules 1A and 1B.

Section 21.9. Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

Section 21.10. Interest. Any amount payable under this Agreement and not paid when due shall bear interest at a variable nominal rate per annum equal on each day to the Bank Rate then in effect plus 3%, from the date such payment is due until payment and both before and after judgment.

Section 21.11. Inurement and Binding Effect. This Agreement shall inure to the benefit of the Parties and their respective permitted successors and permitted assigns and be binding upon the Parties and their respective successors and permitted assigns.

Section 21.12. No Partnership or Third Party Beneficiaries. Nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between or among any of the Parties. Except as expressly provided herein to the contrary (including with respect to such rights as are expressly granted to each Leasehold Mortgagee pursuant to this Agreement), no term or provision hereof shall be construed in any way to grant, convey or create any rights or interests to any Person not a party to this Agreement.

Section 21.13. Cumulative Remedies. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 21.14. Non-Liability of Public Officials. The Concessionaire and any assignee or Contractor may not charge any official, officer, employee, advisor or consultant of the Authority or the Borough personally with any liability or expenses of defense or hold any official, officer, employee, advisor or consultant of the Authority or the Borough personally liable to them under any term or provision of this Agreement or because of the Authority's execution, attempted execution or any breach of this Agreement by the Authority or the Borough's limited joinder, attempted limited joinder or any breach of this Agreement by the Borough.

Section 21.15. Borough Code and Limitations on Appropriations. This Agreement is subject to the Borough Code and the Laws of the Commonwealth of Pennsylvania regarding the appropriation of public funds.

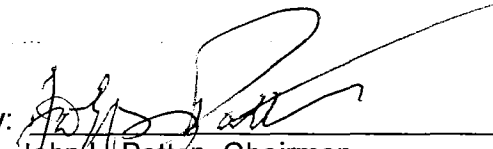
Section 21.16. Filing with PUC. In accordance with Section 507 of the Public Utility Code of Pennsylvania, the Authority shall file an executed copy of this Agreement with the PUC.

Section 21.17. Counterparts; Facsimile Execution. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to both Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

(Intentionally Left Blank)

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed on its behalf by John L. Patten pursuant to due authorization of the Authority Board, and the Concessionaire has caused this Agreement to be duly executed pursuant to due authorization, all as of the day and year first above written.

MIDDLETOWN BOROUGH AUTHORITY

By: 

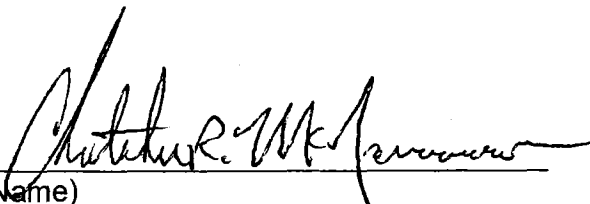
John L. Patten, Chairman

MIDDLETOWN WATER JOINT VENTURE LLC

By: _____
(Name)
(Title)

The Borough of Middletown, Pennsylvania hereby executes a limited joinder to the foregoing Agreement for the purposes more fully specified in Article 20, intending to be legally bound hereby.

BOROUGH OF MIDDLETOWN, PENNSYLVANIA

By: 


(Name)
(Title)

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed on its behalf by John L. Patten pursuant to due authorization of the Authority Board, and the Concessionaire has caused this Agreement to be duly executed pursuant to due authorization, all as of the day and year first above written.

MIDDLETOWN BOROUGH AUTHORITY

By: _____
John L. Patten, Chairman

MIDDLETOWN WATER JOINT VENTURE LLC

By:  _____
(Name) Brandon Freiman
(Title) Vice President

The Borough of Middletown, Pennsylvania hereby executes a limited joinder to the foregoing Agreement for the purposes more fully specified in Article 20, intending to be legally bound hereby.

BOROUGH OF MIDDLETOWN, PENNSYLVANIA

By: _____
(Name)
(Title)

EXHIBIT B

**TO: SETTLEMENT CLASS MEMBER NAME/ADDRESS
VIA U.S. PRIORITY MAIL, TRACKING NO.**

YOU HAVE RECEIVED THIS NOTICE BECAUSE YOU ARE A RETAIL WATER CUSTOMER OR RETAIL SEWER CUSTOMER IN THE BOROUGH OF MIDDLETOWN WHO PAID, OR WILL PAY, THE SHORTFALL RECOVERY AMOUNT FOR A WATER SALES TEST PERIOD DURING THE TERM OF THE LEASE BETWEEN THE BOROUGH OF MIDDLETOWN AND MIDDLETOWN WATER JOINT VENTURE LLC, DATED SEPTEMBER 30, 2014. YOU MAY BE ABLE TO RECEIVE MONEY FROM THIS CLASS ACTION SETTLEMENT.

**A CLASS ACTION IS PENDING THAT MAY AFFECT YOUR LEGAL RIGHTS
PLEASE READ THIS NOTICE CAREFULLY**

- A \$4.8 million settlement has been reached in a class action lawsuit brought in 2018 by several Retail Water and Retail Sewer Customers in the Borough of Middletown (“Class Representatives”) against McNees Wallace & Nurick LLC (“McNees”) and Susquehanna Group Advisors, Inc. (“SGA”) (collectively “Defendants”) in the Court of Common Pleas of Dauphin County (the “Court”). The lawsuit alleges that the Defendants breached their contracts with the Borough of Middletown (“Borough”) in negotiating the Concession and Lease Agreement between the Borough of Middletown and Middletown Water Joint Venture LLC (“Concessionaire”) on September 30, 2014 (“Lease”) causing damage to Plaintiffs and Settlement Class Members as third-party intended beneficiaries to those contracts. Defendants deny doing anything wrong and that the Settlement Class has a viable legal claim as third-party beneficiaries of any contract between Defendants and the Borough.
- You have been identified as a potential member of the Settlement Class. Settlement Class Members who paid the Shortfall Recovery Amount for the First Water Sales Test Period (2015-2017) and Second Water Sales Test Period (2018-2020) will receive a pro rata reimbursement of up to 15% of the total Shortfall Recovery Amount (not to exceed an aggregate total for the Settlement Class of \$300,000) paid for each Water Sales Test Period. Each of these amounts will be set forth in the Final Plan of Allocation to distribute payments for the First Waters Sales Test Period that is subject to Court approval during the Final Fairness Hearing.
- For each Water Sales Test Period after the First Water Sales Test Period (ending in 2017) where a Shortfall Recovery Amount exists, the total payment for the Settlement Class of up to 15% of the total Shortfall Recovery Amount (not to exceed an aggregate total of \$300,000) shall be paid to the Settlement Class Members who paid the Shortfall Recovery Amount for the covered Water Sales Test Period on a pro rata basis during each Water Sales Test Period until the Settlement Fund is exhausted or the Lease expires.

- The Settlement must be approved by the Court before any payment is issued from the Settlement Fund to any Settlement Class Member.
- Your rights regarding this Settlement, and the actions you can take, are explained in this Notice. You may also review the settlement website at www._____ for updates and further details, or call _____.
- [IN SPANISH] A \$4.8 million settlement has been reached in a class action lawsuit against McNeese Wallace & Nurick LLC and Susquehanna Group Advisors, Inc. concerning their contracts with the Borough of Middletown and its entry into the Lease. You have been identified as a member of the Settlement Class. Your rights with respect to this Settlement, and the actions you can take, are explained in this Notice. A Spanish version of this Notice are available on settlement website at www._____.

**PLEASE READ THIS NOTICE CAREFULLY AS IT
DESCRIBES THE OPTIONS AVAILABLE TO YOU AND
THE OUTCOME OF THE OPTION YOU PICK**

1. What is this lawsuit about?

Plaintiffs commenced this class action on June 4, 2018, and asserted class claims asserting a breach of contract claim against McNeese and SGA as third party beneficiaries to the contracts between the Borough and each Defendant, under the following caption: Borough of Middletown, et al. v. McNeese Wallace & Nurick LLC, et al., Civil Action No: 2018-CV-03685, CCP – Dauphin County (the “Action”). The Borough leased its water and wastewater system to the Concessionaire for a period of 50 years. Defendants McNeese and SGA provided legal and financial advising services, respectively, to the Borough throughout the process of developing, negotiating, and finalizing the Lease. The lawsuit alleges the Settlement Class is impacted by terms the Borough agreed to when entering the Lease based on professional services provided to the Borough by each Defendant, which resulted in alleged overpayments by Settlement Class Members. This lawsuit sought to recover those overpayments by the Settlement Class during the Lease.

McNeese and SGA both dispute the legal viability of Plaintiffs’ claims and deny any wrongdoing, but have agreed to enter this Settlement. This Settlement is the result of good-faith, arms-length negotiations between the Class Representatives and Defendants, through their respective attorneys. Both sides agree that, in light of the risks and expense associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and it is in the best interests of the Settlement Class.

2. Why are you receiving this Notice?

You are receiving this Notice because you have been identified as a Retail Water Customer or Retail Sewer Customer in the Borough of Middletown that paid a Shortfall

Recovery Amount based on a Water Sales Test Period. As a Settlement Class Member, you have certain rights and options prior to the Court deciding whether to approve the Settlement. This Notice informs you of those rights and options and where additional information can be found.

3. What are the terms of the Settlement?

The Defendants agreed to pay \$4.8 million to create a Settlement Fund to make payments to the Settlement Class for a percentage of the Shortfall Recovery Amounts established pursuant to each Water Sales Test Period during the Lease. The Settlement Fund will be divided amongst Settlement Class Members, as described below in Question 4 and as set forth in detail in the Settlement Agreement.

The Settlement Fund also includes payment of all related costs of providing this Notice, Administrative Expenses, payment of Attorneys' Fees and Expenses to Class Counsel, and Plaintiffs' Service Awards. Defendants will make this payment in exchange for Settlement Class Members releasing the Released Parties for the Released Claims.

4. What will you receive from the Settlement?

For each Water Sales Shortfall Test Period, you will receive a pro rata payment for 15% of the Shortfall Recovery Amount paid by the Settlement Class for each Water Sales Shortfall Test Period, up to an aggregate \$300,000 for the Settlement Class calculated for each Water Sales Shortfall Test Period. The payment for the First Water Sales Shortfall Test Period will be mailed to you within 60 days from the Effective Date of the Settlement following the Court's order approving the Settlement as final. Each Water Sales Test Period identifies a Shortfall Recovery Amount, if any, over a period of three years. After the First Water Sales Shortfall Test Period, pro rata payments to Settlement Class Members will occur for each Water Sales Shortfall Test Period where a Shortfall Recovery Amount is paid by the Settlement Class pursuant to the same procedure set forth for the First Water Sales Shortfall Test Period. This will continue until the conclusion of the Lease, or the Settlement Fund is exhausted, whichever comes first.

5. What are you giving up to receive money and benefits of the Settlement?

If you do not exclude yourself from the Settlement Class by opting-out (described in Question 6), and the Court approves the Settlement, in exchange for the payment to you as described in Question 4 you will forever release and discharge the Released Claims against the Released Parties.

YOUR OPTIONS

6. How do you exclude yourself from the Settlement?

If you do not want to be a member of the Settlement Class and receive the payment identified in Question 4 in exchange for providing a release of the Released Claims to the Released Parties, and wish to pursue an individual separate lawsuit over the issues in the lawsuit, then you must take affirmative steps to exclude yourself from this Settlement and the Settlement Class. This process is referred to as “opting-out” of the Settlement Class. **To opt-out of the Settlement Class, you must mail a request to opt-out or exclude yourself from the Settlement and Settlement Class to the Settlement Administrator at [redacted] by Month, DD, YYYY. If you do not timely opt-out, you will not be permitted to opt-out at a later date.**

7. If you opt-out, will you still get money from the Settlement?

No. If you timely opt-out as described in Question 6, you will not receive money from the Settlement and you will be able to bring a lawsuit against Defendants for your individual damages relating to the Lease. Defendants retain all available defenses to any separate lawsuit filed if you opt-out of the Settlement, including that the legal claim is invalid because members of the Settlement Class can not be third-party beneficiaries of the applicable contract between the Borough and either Defendant.

8. How do you object to the Settlement?

If you are a Settlement Class Member, you can submit written comments to the Court in support of, or in opposition to, the Settlement or any of its terms. A written comment in opposition to the Settlement is called an “objection.” To object, a Settlement Class Member must send their written objection to the Court and mail a copy of the objection on the Settlement Administrator and Counsel, identified below by **Month, DD, YYYY**:

Class Counsel	Defense Counsel	Defense Counsel	Settlement Administrator
Simon Paris Saltz Mongeluzzi & Bendesky, P.C. 120 Gibraltar Road, Suite 218 Horsham, PA 19044	Thomas M. O’Rourke Cozen O’Connor One Liberty Place 1650 Market Street, Suite 2800 Philadelphia, PA 19103	John P. Morgenstern Christopher C. Negrete O’Hagan Meyer 1717 Arch St., Suite 3910 Philadelphia, PA 19103	

To be considered by the Court, all objections must be in writing and personally signed by the Settlement Class Member, postmarked by [redacted], and include:

- (i) the case name and number, *Borough of Middletown, et al. v. McNees Wallace & Nurick, LLC, et al.*, Civil Action No: 2018-CV-03685 (C.C.P. Dauphin Co.);

- (ii) the Class Member's full name, current address, and current telephone number;
- (iii) a statement of the objection(s), including all factual and legal grounds for the position;
- (iv) copies of any documents the objector wishes to submit in support;
- (v) the name and address of the attorney(s), if any, who is representing the objecting Class Member in making the objection or who may be entitled to compensation in connection with the objection;
- (vi) a statement of whether the Class Member objecting intends to appear at the Final Approval Hearing, either with or without counsel;
- (vii) the identity of all counsel (if any) who will appear on behalf of the Class Member objecting at the Final Approval Hearing and all persons (if any) who will be called to testify in support of the objection;
- (viii) the signature of the Class Member objecting, in addition to the signature of any attorney representing the Class Member objecting in connection with the objection;
- (ix) identification of any potential conflict of interest with the Settlement Class, such as service, employment or affiliation with the Borough, the Borough's Mayor, or the Borough's Council; and
- (x) date the objection.

In addition, any Class Member objecting to the Settlement shall provide a list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in Pennsylvania or the United States in the previous five years. If the Class Member or his or her counsel has not made any such prior objection, the Class Member shall affirmatively so state in the written materials provided with the objection. Class Counsel and/or Counsel for Defendants may seek information directly from any Class Members submitting an objection pursuant to Section 9.4 of the Agreement and the Court's Preliminary Approval Order.

The written objection must indicate whether the Settlement Class Member and/or their counsel intend to appear at the Final Fairness Hearing to be scheduled by the Court, and failure to do so may preclude you from speaking during the Final Fairness Hearing. If you have opted-out, you are no longer a Settlement Class Member and you cannot submit an objection.

9. What is the difference between opting out and objecting?

If you opt-out, you are no longer part of the Settlement Class subject to the terms of the Settlement. This means you will not participate in its benefits or release any claims against the Defendants. If you object, you can comment on the terms of the Settlement and remain part of the Settlement Class so that you can receive the Settlement's benefits in exchange for providing Released Claims to the Released Parties if and when the Court approves the Settlement. If you choose to opt-out, you cannot object. If you choose to object, you cannot opt-out. If you choose to do nothing, see Question 10 below.

10. What happens if you do nothing at all?

If the Court approves the Settlement and you are a Settlement Class Member, you will receive your pro rata payment for the paid Shortfall Recovery Amounts for the Water Sales Test Periods to reimburse portions paid for the Shortfall Recovery Amounts pursuant to the terms of the Settlement. These pro rata payments under the Settlement are for up to 15% of the Shortfall Recovery Amount paid, not to exceed \$300,000 aggregate for the Settlement Class for any Water Sales Test Period. These payments under the Settlement shall continue approximately every three years until it is exhausted or the Lease has expired, whichever comes first.

THE COURT'S FINAL APPROVAL HEARING

11. Where and when will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on _____, 2023 at ____ A.M. in a Courtroom to be designated by the Court Administrator at the Dauphin County Courthouse, _____, Harrisburg, PA _____. The Honorable _____, will preside at the hearing.

The Final Approval Hearing may be moved to a different date, time or location without additional notice to the Settlement Class, but it will be posted to the settlement website, _____, so please confirm if you have notified the Court you intend to appear.

12. What will the Court decide at the Final Approval Hearing?

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider how much to award Class Counsel for attorneys' fees, which shall not exceed one-third of the Settlement Fund, plus reimbursement of litigation costs. The Court will also consider whether to award Service Awards to the Class Representatives who prosecuted the lawsuit on behalf of the Settlement Class in an amount not to exceed \$2,500 for each (total not to exceed \$7,500). The Court will also award payment to the Settlement Administrator for Notice and Administrative Expenses.

13. Do you have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions that the Court may have, and address any challenges to the Settlement. If you timely send a comment supporting or objecting to the Settlement, you may, but do not have to come to Court to discuss the issues raised in your written objection, so long as the procedure set forth in Question 8 of this Notice was

correctly followed. You may also attend the hearing in person, and may hire your own attorney to attend for you, at your own expense.

14. Do you need an attorney to represent you at the Final Approval Hearing?

No. Class Counsel has been appointed by the Court and will be present at the hearing to appear on behalf of all Settlement Class Members.

15. How can you get more information about this Settlement?

If you have any questions regarding your rights as a Settlement Class Member or the options and rights discussed in this Notice, you may contact Class Counsel without charge. You can also obtain more information by visiting the settlement website [\[REDACTED\]](#) or by calling [1-877-XXX-XXXXXXX](tel:1-877-XXX-XXXXXXX).

PLEASE DO NOT CONTACT THE COURT

EXHIBIT C

A \$4.8 million proposed settlement has been reached in a class action lawsuit commenced in 2019 by Plaintiffs against McNees Wallace & Nurick, LLC (“McNees”) and Susquehanna Group Advisors, Inc. (“SGA”) in the Court of Common Pleas of Dauphin County (the “Court”). The lawsuit alleges that the Defendants breached their contracts with the Borough of Middletown (“Borough”) in negotiating the Concession and Lease Agreement between the Borough of Middletown and Middletown Water Joint Venture LLC (“Concessionaire”) on September 30, 2014 (“Lease”) causing damage to Plaintiffs and Settlement Class Members as third-party intended beneficiaries to those contracts. Defendants deny doing anything wrong and that the Settlement Class has a viable legal claim as third-party beneficiaries of any contract between Defendants and the Borough. The Court has not decided who is right or wrong. Rather, to avoid the time, expense, and uncertainty of going forward with the case, the parties have agreed to settle. That Settlement has been preliminarily approved by the Court.

For each Water Sales Test Period where a Shortfall Recovery Amount exists, the total payment for the Settlement Class of up to 15% of the total Shortfall Recovery Amount (not to exceed an aggregate total of \$300,000) shall be paid to the Settlement Class Members who paid the Shortfall Recovery Amount for the covered Water Sales Test Period. The payments to Settlement Class Members shall be on a pro rata basis during each Water Sales Test Period until the Settlement Fund is exhausted or the Lease expires. You do not need to do anything to receive these payments from the Settlement.

To Opt-Out: If you do not wish to participate in the proposed Settlement, you must exclude yourself on or before _____, 2023. Please visit [Settlement Website/opt-out](#) for more information.

To Object: If you wish to object to the proposed Settlement, you must take specific steps on or before _____, 2023. Please visit [Settlement Website/object](#) for more information.

The Court will hold a fairness hearing on _____, 2023 to consider whether to approve the proposed Settlement as well as Class Counsel’s application for fees in an amount not to exceed one-third of the \$4.95 million Settlement Fund, plus litigation expenses for their work in the case, which will be paid from the Settlement Fund. The Court will also consider a Service Award payment of up to \$2,500.00 for each Class Representative. You can appear at the hearing, but you do not have to. If you want to, you can hire your own attorney, at your own expense, to appear or speak for you at the hearing. If the Court approves the proposed Settlement, which excludes claims for personal injury and property damage, you will not be able to sue for similar claims if you remain in the class.

*For more information, visit www.xxxxxxxx.com or call toll-free 1-xxx-xxx-xxxx
Para una notificación en Español, visitar www.xxxxxxxx.com.*

*Borough of Middletown, et
al. v. McNees Wallace &
Nurick LLC, et al.*
Settlement Administrator
P.O. Box _____
City/State/Zip

**Court of Common Pleas
of Dauphin County**

**NOTICE OF PROPOSED CLASS
SETTLEMENT**

**CLASS MEMBER NAME
CLASS MEMBER ADDRESS
CITY, STATE ZIP CODE**

**You have received this notice because you paid,
or will pay, the Shortfall Recovery Amount for a
Water Sales Test Period during the term of the Lease
between the Borough of Middletown and Middletown
Water Joint Venture LLC, dated September 30, 2014.
You may be able to receive money from this class action
settlement. This is not a lawyer solicitation.**

EXHIBIT D

**COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

Borough of Middletown, Jennifer Miller, Angela Lloyd, Michael Woodworth, James E. Myers, Jr., and Kay Wealand <i>On behalf of themselves and all others</i> <i>similarly situated</i>	:	
	:	
Plaintiffs,	:	C.A. No. 2018-CV-03685-CV
	:	
V.	:	CLASS ACTION
	:	
McNeese Wallace & Nurick LLC and Susquehanna Group Advisors, Inc.	:	
	:	
Defendants.	:	

**ORDER GRANTING PRELIMINARY SETTLEMENT APPROVAL
AND APPROVING CLASS NOTICE**

THIS MATTER having been opened to the Court upon Class Plaintiffs’ Motion and Incorporated Memorandum of Law in Support of Certification of Settlement Classes, Preliminary Approval of Class Action Settlement, and Approval of Form and Manner of Notice (the “Motion”), seeking entry of an Order preliminarily approving the Class Settlement Agreement dated July __, 2023 (“Agreement”) in the above matter; and

WHEREAS the Court finds as follows: the Agreement was entered into at arms length, by experienced counsel, using an independent third-party mediator, Jerry Roscoe, Esq. of JAMS, Inc. The Agreement is not the result of collusion. The Agreement bears a reasonable relationship to the claims alleged by the Class Representatives on behalf of the Settlement Class certified herein

and the terms of the Agreement are within the range of reasonableness;

and

WHEREAS this Court has fully considered the record of these proceedings, the representations, argument, and recommendation of counsel for the parties, and the requirements of law; and good cause appearing,

IT IS ON THIS _____ day of August, 2023;

ORDERED as follows:

1. The Court has reviewed the Motion, exhibits to the Motion, Agreement, and exhibits to the Agreement, and preliminarily approves its terms finding the terms of settlement set forth in the Agreement are reasonable, adequate, just and fair, and further finds that Notice to members of the Settlement Class is warranted followed by a full Final Fairness Hearing at which the final approval of the Agreement will be considered.

2. The Court further finds, on a preliminary basis and for settlement purposes only, that all requirements of Pa. R. Civ. P. 1702, 1708, and 1709 have been satisfied. The Court conditionally certifies the following Settlement Class: All Retail Water Customers and Retail Sewer Customers who have paid, or shall pay, the Shortfall Recovery Amount for a Water Sales Test Period during the entire term of the Lease. The Settlement Class excludes: Defendants; any current affiliate, parent, or subsidiary of Defendants; the Borough; any entity in which Defendants currently have a controlling interest; any current officer, director, or employee of Defendants; any successor or assign of Defendants; and any judge to whom this Action is assigned, his or her spouse; and individuals and/or entities who validly and timely opt-out of the settlement by submitting a request for exclusion. Individual members of the Settlement Class shall be referred to as a “Class Member.”

3. The Court approves, as to both form and content, the Notice and the plan for its distribution set forth in the Agreement, concluding it meets the requirements of Pennsylvania law and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto, and complies fully with the requirements of Pennsylvania law, the Constitution of the United States, and any other applicable law.

4. _____ shall be appointed Settlement Administrator. The Settlement Administrator shall mail the Notice to the Settlement Class by U.S. Mail on or before August __, 2023. The Court reserves the right to amend the forms and notices approved by this Order as may be required to be consistent with the Agreement and any subsequent orders that the Court may enter in connection with the Notice, Opt-Out, and Objection Procedures, Plan of Allocation, or other matters related to the Agreement.

5. The Court understands the data necessary to complete the administration of the Settlement rests exclusively in the possession, custody and control of the Concessionaire who is not a party to this Action or the Settlement Agreement, but is cooperating with Class Counsel and the Settlement Administrator to effectuate the terms of the Settlement Agreement;

6. For the purposes stated and defined in the Agreement, the Court hereby sets the following dates and deadlines:

The Notice shall be mailed as set forth in
the Agreement (no later than 14 days after entry of this
Preliminary Approval Order) August __, 2023

“Bar Date” (deadline for post-marking
a request for exclusion or objection)
(45 days after the Notice Date above) October __, 2023

Final Fairness Hearing

(no earlier than 30 days after Bar Date)

November __, 2023

7. At or before the Final Fairness Hearing, the Settlement Administrator shall file with the Court a proof of mailing of the Notice.

8. If the Concessionaire does not provide to Class Counsel the Class Member information described in Section 3.2.2..1 of the Agreement by 15 days prior to the Bar Date, the Parties may mutually seek from the Court at least one extension of the date for the Final Approval hearing, and the Parties will exercise good faith to pursue available remedies to obtain that information necessary to effectuate the Settlement.

9. The Court hereby approves and adopts the procedures, deadlines, forms and manner governing all requests to be excluded from the Class and for objections to the Class as provided for in the Agreement.

10. Without limiting the generality of the foregoing: (A) any Class Member who does not timely and validly request exclusion from the Class shall be included in such class and shall be bound by all the terms of the Agreement, if it is finally approved whether or not such person has objected to the settlement or has made a claim; (B) any Class Members who possess the legal right to do so, and timely and validly elects to opt out shall be excluded from the Agreement and any Release of Claims it provides; (C) Class Members who request to be excluded from the Class and to opt-out are required to file a written opt-out request as instructed in Notice and Agreement, which must be postmarked no later than the Bar Date.

11. Class Members who do not exclude themselves, but who object must provide the following information in writing to the Settlement Administrator, Class Counsel, Defendants' Counsel, and

the Court as set forth below, postmarked no later than the Bar Date: (i) the case name and number, *Borough of Middletown, et al. v. McNees Wallace & Nurick, LLC, et al.*, Civil Action No: 2018-CV-03685 (C.C.P. Dauphin Co.); (ii) the Class Member's full name, current address, and current telephone number; (iii) a statement of the objection(s), including all factual and legal grounds for the position; (iv) copies of any documents the objector wishes to submit in support; (v) the name and address of the attorney(s), if any, who is representing the objecting Class Member in making the objection or who may be entitled to compensation in connection with the objection; (vi) a statement of whether the Class Member objecting intends to appear at the Final Approval Hearing, either with or without counsel; (viii) the identity of all counsel (if any) who will appear on behalf of the Class Member objecting at the Final Approval Hearing and all persons (if any) who will be called to testify in support of the objection; (ix) the signature of the Class Member objecting, in addition to the signature of any attorney representing the Class Member objecting in connection with the objection, (x) identification of any potential conflict of interest with the Settlement Class, such as service, employment or affiliation with the Borough, the Borough's Mayor, or the Borough's Council; and (xi) date the objection. In addition, any Class Member objecting to the Settlement shall provide a list of any other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in Pennsylvania or the United States in the previous five years. If the Class Member or his or her counsel has not made any such prior objection, the Class Member shall affirmatively so state in the written materials provided with the objection.

The Court of Common Pleas of Dauphin County:
Dauphin County Courthouse
101 Market Street
Harrisburg, PA 17101

Class Counsel:

Simon Paris
**SALTZ, MONGELUZZI
& BENDESKY, P.C.**
120 Gibraltar Road, Ste. 218
Horsham, PA 19103

Defendant's Counsel:

Thomas M. O'Rourke
Cozen O'Connor
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, PA 19103

Defendant's Counsel:

John P. Morgenstern
Christopher C. Negrete
O'Hagan Meyer
1717 Arch St., Suite 3910
Philadelphia, PA 19103

Settlement Administrator:

12. For a Class Member who files an objection, Class Counsel or Defendants' Counsel may seek discovery from the objecting Class Member, limited to: (i) a deposition consistent with the Pennsylvania Rules of Civil Procedure at an agreed-upon location for a period not to exceed 2 hours; (ii) request documentary evidence or other tangible things that are relevant to the objection. This must be completed prior to the Final Approval Hearing, and any failure by an objector to make himself/herself/itself available for a deposition or comply with expedited discovery requests may result in the Court striking the objection and otherwise denying that person the opportunity to be heard.

12. The Final Fairness Hearing will be held to determine whether to finally approve the Agreement and dismiss the Action with prejudice on November ____, 2023 at __:00 a.m.

Any Class Member who has followed the objection procedures set forth in this Preliminary Approval Order and the Agreement may then and there appear and show cause why the Agreement should or should not be approved as fair, reasonable and adequate, or why the proposed Final Judgment and Order of Dismissal should or should not be entered thereon.

13. All costs incurred in connection with mailing the Notice to the members of the Class, as well as administering the settlement, shall be paid from the Escrow Account as directed in the Agreement. In the event the Agreement is not granted final approval by the Court, or otherwise fails to become effective, Defendants shall pay the Settlement Administrator the costs of providing Notice pursuant to the Agreement.

14. Until further order of the Court, all activity in this Action relating to the Settling Parties shall be and hereby are stayed. The stay of proceedings shall not prevent the filing of any motions, objections, responses, affidavits and other matters necessary to the consideration and approval of the Agreement.

15. The findings and rulings in this Order are made solely for the purposes of settlement and may not be cited or otherwise used to support the certification of any contested class or subclass in this action or any other actions.

16. If there are or arise logistical problems with actually implementing this Order as herein Ordered, then the Parties shall bring them to the attention of this Court for resolution by subsequent order of this Court.

17. Class Counsel is authorized, directed and ordered to sign and date in the name of the Clerk of the Court, the Notice, approved by this Order with such modification as may be authorized by this Order.

18. The Court reserves the right to adjourn the date of the Final Fairness Hearing

without further notice to the Class and retains jurisdiction to consider all further applications arising out of or in connection with the proposed settlement. The Court may approve the settlement, with such modification as may be agreed to by the parties, if appropriate, without further notice.

19. If the settlement is not approved or consummated for any reasons whatsoever, the proposed settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the status quo ante and rights of the other Parties to the action as they existed prior to the date of execution of the Agreement.

THE HONORABLE _____