

ALLENTOWN WATER AND SEWER UTILITY SYSTEM REQUEST FOR BIDS

FEBRUARY 27, 2013

1. GENERAL INFORMATION FOR THE PROPOSER:

This Request for Bids (“RFB”) is being provided to your team by the City of Allentown (“Allentown” or the “City”) to solicit a final, binding proposal (the “Proposal”) to enter into the Allentown Water and Sewer System Concession and Lease Agreement (the “CLA” or the “Agreement”) for the City’s Water and Sewer systems owned by Allentown. Allentown has engaged Public Financial Management, Inc. (“PFM” or the “Advisor”) as an advisor in conjunction with the proposed concession transaction (the “Concession”).

The water and sewer assets included in the proposed Concession are described in more detail below as well as in the CLA. The final version of the Agreement will be posted in the data room and labeled “Binding Proposal, Execution Copy” for clarity.

All recipients of this RFB submitted responses to the Request for Qualifications for Water and Sewer Concession dated July 19, 2012 (the “RFQ”) and were determined to be eligible for consideration in moving forward with the proposed transaction process (“Pre-Qualified Proposers”). The Pre-Qualified Proposers were subsequently provided with the opportunity to conduct additional due diligence on the Water and Sewer system assets included in the Agreement (the “System”), including (i) access to an online data room, (ii) tours of System facilities with Allentown management and transaction advisors, and (iii) meetings with Allentown representatives and advisors. System assets are further detailed in Section 2 of this RFB. In addition, Allentown solicited feedback on drafts of the Agreement.

2. SYSTEM DESCRIPTION:

Sewer Utility System means the sewerage collection, treatment and disposal system of the City, including the treatment plant, collection facilities and disposal facilities as described or depicted on Schedule 1A of the CLA, 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 Allentown as the fee simple owner of the real property constituting the sites of the Sewer Utility System and (B) all improvements, structures and fixtures related to the Sewer Utility System that are not included in the Sewer Utility System, as the Sewer Utility System is described or depicted on Schedule 1A of the CLA.

Water Plant and Distribution System means the water treatment, water storage and water distribution system of Allentown including the treatment plant, water storage and distribution facilities as described or depicted on Schedule 1B of the CLA, 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) the Retained Water Supply System, and (B) all rights (including oil, gas and mineral rights, water rights, air rights and development rights) which are hereby retained by Allentown as the fee simple owner of the real property constituting the sites of the Water Plant and Distribution System and (C) 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 of the CLA.

3. INFORMATION REQUIRED FROM PROPOSERS AND SELECTION CRITERIA:

All Pre-Qualified Proposers eligible to respond to this RFB were deemed eligible to move forward based on their demonstrated technical and financial qualifications detailed in their response to the RFQ. All Pre-Qualified Proposers who submit a response to this RFB (“Proposers”) must comply with the requirements set forth in this document for submitting a final Proposal. Provided that the Proposal requirements are met and the Proposer is found to remain qualified, responsible and responsive, the award of the Agreement will be based on the amount of Consideration and the Annual City Payment included as part of Proposal Form 6. In accordance with 62 Pa.C.S. §513(d), the contents of Proposals will not be disclosed at the time of opening of the Proposals.

Each Proposal shall be in writing and formatted in accordance with the following outline:

Section 1.0 Executive Summary

- Proposal Form 1: Transmittal Letter
- Proposal Form 2: Non-Collusion Affidavit

Section 2.0 Project Team and Technical Capability Information

- Proposal Form 3: Statement of Ownership - Proposer
- Proposal Form 4: Operator Information
- Proposal Form 5: Contract and Lobbyist Disclosure

Section 3.0 Business Proposal

- Proposal Form 6: Business Proposal

4. SUBMISSION INSTRUCTIONS AND REQUIREMENTS:

One original and 2 hard copies of the Proposal shall be submitted, with the original copy of the Proposal clearly marked as the original and must contain the original signature forms and other original documents. *All packages shall be sealed and clearly marked with the legend: “RESPONSE TO ALLENTOWN WATER AND SEWER RFB.”* In accordance with Section 8 of this RFB, the contents of the Proposal will not be made public until after the award of a contract. The Proposal shall be submitted in a sealed envelope or package addressed to:

Public Financial Management, Inc.
c/o Scott Shearer
One Keystone Plaza, Suite 300
North Front & Market Streets
Harrisburg, PA 17101-2044

THE SEALED PROPOSAL MUST BE RECEIVED NO LATER THAN 2:00 P.M. EASTERN TIME ON MARCH 21, 2013. IN ADDITION, PROPOSERS MUST SUBMIT THE DOCUMENTS IN SECTION 4.0, AS APPLICABLE NO LATER THAN 4:00 P.M. EASTERN TIME ON MARCH 20, 2013.

Section 4.0 Letter of Credit and/or Escrow Agreement for Proposal Cash Deposit

- Proposal Form 7: Letter of Credit duly executed by the parties thereto; and or
- Proposal Form 8: Escrow Agreement secured by Cash Deposit duly executed by the parties thereto. *The Proposal Cash Deposit must be received prior to 4:00 p.m Eastern time on March 20, 2013.* Wire instructions will be provided prior to that date.

To the extent there are any questions regarding delivery of the Proposal, Escrow Agreement or Letter of Credit, please contact Scott Shearer at [shearers@pfm.com/717-232-2723](mailto:shearers@pfm.com) or Jason Brockman at [brockmanj@pfm.com/717-232-2723](mailto:brockmanj@pfm.com).

By submitting a Proposal, Proposers acknowledge and agree to the following conditions:

- All Proposals submitted in response to this RFB shall become the property of Allentown. As such, after the award of a contract, or after the opening and rejection of all Proposals, Proposals submitted will become public records subject to public review under applicable law, subject to certain exceptions as described in Section 8 of this RFB.
- The selection of a Proposal by Allentown shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of the Proposer under the CLA as may be executed between the Proposer and Allentown.
- Proposers and their representatives shall comply with the communications protocol set forth in Section 5 of this RFB with respect to all communications concerning this RFB.
- Only one Proposal from each Proposer shall be considered.
- Proposals shall comply with all content requirements of Section 3 of this RFB. Failure to comply with such requirements may result in a Proposer being deemed non-responsive.
- The pre-qualification of Proposers to receive this RFB and provide a Proposal does not waive or abridge the right of Allentown to find that any Proposer is not qualified or that the Proposal is non-responsive to the requirements of this RFB.

5. QUESTIONS AND REQUESTS FOR CLARIFICATION:

All questions and requests for clarification concerning this RFB shall be directed in writing to Scott Shearer, whose contact information is provided below, by **NO LATER THAN 2:00 PM EASTERN TIME ON MARCH 15, 2013**. No questions, written or oral, shall be accepted after this time.

Scott Shearer
Public Financial Management, Inc.
One Keystone Plaza, Suite 300
North Front & Market Streets
Harrisburg, PA 17101-2044
shearers@pfm.com

All questions and clarification requests should be submitted in writing, and Pre-Qualified Proposers are encouraged to submit such questions and clarification requests in advance of the above deadline. Answers to such questions provided by Allentown will be in writing and will be made available to all Proposers.

6. POTENTIAL INCREASE TO BEST-AND-FINAL OFFER (“BAFO”):

Your Proposal Form should represent your best offer. However, if the Consideration set forth in Proposal Form 6 of one or more of the offers received by such deadline (other than the offer setting forth the highest amount of Consideration) is within 10% of the amount of the Consideration in such highest offer, Allentown will allow the Proposer whose offer sets forth the highest amount of Consideration and any Proposer(s) whose offer is within 10% of such highest amount of Consideration (the “Applicable Proposers”) to increase the amount of proposed Consideration by submitting an increased proposal form to be provided by Allentown at that time.

If necessary, Allentown will provide further instructions to all Applicable Proposers for submitting such increased proposal forms; however, the timing for submission of such increased proposal forms will be at the complete discretion of Allentown and may be less than a week from March 21, 2013. All other terms of the offer will remain the same. You should not assume that you will be given the opportunity to increase the amount of your Consideration under any other circumstances.

7. APPROVAL AND SIGNING:

Allentown intends to select the Proposer that offers the highest amount of the combination of the Consideration and Annual City Payment set forth in Proposal Form 6 under the terms set forth during the procurement process for this transaction, provided that the Proposer complies with all requirements set forth in this RFB for submitting a final Proposal and is found to remain qualified, responsible and responsive. Execution of the Agreement by Allentown will be subject to final approval and authorization by the Allentown City Council (the “Council”). The highest amount of the combination of the Consideration and Annual City Payment will be evaluated on a present value basis, assuming an annual discount rate of 6.00%. A recommendation will be submitted to the Council, shortly after the conclusion of the proposal process. After selection of a Proposal and approval by the Council, the selected Proposer shall be required to execute the CLA.

8. CONFIDENTIALITY AND DISCLOSURE TO THIRD PARTIES:

The existence and contents of this letter are subject to the confidentiality agreement that you previously executed. We ask you to remind all members of your team of your obligations under such confidentiality agreement and the indemnity obligation for any violation thereof.

Proposers should be aware that records of the City are subject to the provisions of the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 et seq. (“RTK Law”), and that with certain exceptions, such records are subject to public disclosure. Allentown understands that in responding to this RFB, Proposers will be submitting information, including financial data, that the parties desire to be kept confidential. It is Allentown’s position that this RFB is part of a competitive proposal Transaction process, and that prior to the award of a contract or prior to the opening and rejection of all proposals, all such submissions are confidential and exempt from disclosure under the Section 708(b)(26) of the RTK Law, 65 P.S. §67.708(b)(26).

Proposers are advised, however, that following award of a contract or the opening and rejection of all Proposals, such submissions may be subject to public disclosure unless they are otherwise exempt from disclosure under another provision of the RTK Law. Records and information submitted by Prospective Proposers that constitute “trade secrets” or “confidential proprietary information” as defined in the RTK Law are exempt from disclosure under Section 708(b)(11), 65 P.S. §67.708(b)(11). “Confidential proprietary information” includes commercial and financial information which is privileged or confidential to the submitting party and the disclosure of which would cause substantial harm to the competitive position of the person who submitted the information. Proposers are advised that if they believe any information being submitted in response to this Request for Feedback Proposals constitutes or references trade secret or confidential propriety information, they should clearly so label any such information with a prominent label of either: “TRADE SECRET” or “CONFIDENTIAL PROPRIETARY INFORMATION.” Any such claims may be subject to review pursuant to the procedures set forth in the RTK Law. If Allentown, the Pennsylvania Office of Open Records or a court determines that such information does not qualify as a trade secret or confidential proprietary information, such information may be subject to public disclosure.

PROPOSAL FORMS

**Proposal Form 1
Transmittal Letter**

{to be prepared on Proposer's Letterhead}

[Date], 2013

Public Financial Management, Inc.
c/o Scott Shearer
One Keystone Plaza
North Front & Market Streets
Harrisburg, PA

Re: City of Allentown Water and Sewer Utility System Request for Bids

Dear City of Allentown:

_____ (the "Proposer") hereby submits the attached Proposal in response to the City of Allentown Water and Sewer Utility System Request for Bids (the "RFB") issued by the City of Allentown ("**Allentown**") on February 27, 2013, as amended.

The undersigned Proposer hereby unconditionally and irrevocably offers to enter into the Allentown Water and Sewer Utility System Concession and Lease Agreement (the "**CLA**") for identified water and sewer facilities owned and operated by Allentown. Capitalized terms not otherwise defined in this Proposal have the meanings set forth in Section 1.1 of the CLA.

The Proposer, by its undersigned duly-authorized representative, hereby covenants, certifies, represents, and warrants, as follows in connection with this Proposal:

1. ***RFB and Addendum Acknowledgement.*** The Proposer acknowledges receipt of the RFB and the following addenda to the RFB:

<u>Addendum No.</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____

2. ***Due Authorization.*** The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the Proposer.

3. ***Completeness; Warranty as to Proposal Information.*** The Proposer has submitted all Proposal Forms and such Proposal Forms are a part of this Proposal. All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that Allentown will rely on such information and statements in determining which Proposals are responsive and responsible, and in ultimately selecting the Proposal deemed most advantageous to Allentown and executing the Agreement.
4. ***Identity of Concessionaire.*** The Concessionaire will be the Proposer, provided that the Proposer may, prior to the execution of the Agreement pursuant to paragraph 8 below, create a subsidiary to be the Concessionaire (the “Subsidiary”), in which event the Subsidiary shall carry out all of the obligations of the Concessionaire under the Agreement from and after such execution.
5. ***Final Agreements.*** The Proposer agrees to enter into the Agreement in each case in the form identified as “Binding Proposal, Execution Copy” as posted in the Virtual Data Room for this Concession (except for filling in indicated blanks and completion of Schedules as provided therein).
6. ***Consideration.*** The amount of the Consideration that Proposer will pay pursuant to Section 2.1 of the Agreement will be the total set forth in Proposal Form 6.
7. ***Annual City Payment.*** The annual amount of money that Proposer will pay pursuant to Section 3.23 of the Agreement will be the total set forth in Proposal Form 6. The amount of the Annual City Payment shall be no less than \$500,000 and no more than \$2,500,000.
8. ***Selected Interest Rate.*** Pursuant to Section 2.2, the Proposer shall decide if the Consideration will be adjusted at closing due to fluctuations in the Selected Interest Rate in Proposal Form 6.
9. ***Credit Spread Fluctuation Interest Rates.*** Pursuant to Section 2.2, the Proposer shall decide if the Consideration will be adjusted at closing due to Credit Spread Fluctuation Interest Rates in Proposal Form 6.
10. ***Proposal Effective Period.*** This Proposal and offer shall remain in effect and irrevocable until 5:00 p.m. Eastern Daylight Savings Time on May 1, 2013, unless extended to 5:00 p.m. Eastern Daylight Savings Time on May 15, 2013 by Allentown or unless further extended by mutual consent of both Allentown and the Proposer (the “Termination Time”). If Allentown does not give written notice to the Proposer that Allentown is prepared to enter into the Agreement on or prior to the Termination Time, this offer and the terms of this Proposal shall terminate at the Termination Time and the Proposal Cash Deposit (as hereinafter defined) and all interest earned thereon or the Closing LOC shall be returned to the Proposer in accordance with the escrow agreement.
11. ***Agreement Execution.*** If at any time prior to the Termination Time, Allentown gives written notice to the Proposer, at the address specified below, that they are prepared to enter into the Agreement with the Proposer, the Proposer will, within two Business Days of its receipt of such notice, execute and deliver the Agreement to Allentown.

12. **Cash Deposit/Proposal LOC.** In accordance with Section 2.3 of the Agreement, this offer set forth in the Proposal is secured by (i) a cash deposit in the amount of US\$_____ (the “Proposal Cash Deposit”) which shall be deposited with the Escrow Agent as provided in the Escrow Agreement for Proposal Cash Deposit, and/or (ii) Closing LOC(s) in an amount of US\$_____ issued by an appropriate institution in the form prescribed in Proposal Form 7. The Proposer’s offer must be secured by a combination of one or more (x) Letters of Credit or (y) Cash Deposit (each, a “RFB Deposit”), in the amount of Ten Million Dollars (\$10,000,000) (United States currency).
13. **Debarment.** Neither the Proposer, the Operator, nor any other member of Proposer’s project team is currently suspended or debarred from doing business with any governmental entity.
14. **Contract Disclosures.** Except as disclosed in Proposal Form 5, neither Proposer nor any member of Proposer’s team has entered into any arrangement with any person or entity involving a finder’s fee, fee splitting, firm affiliation or relationship with any broker-dealer, payments to consultants, lobbyists, or commissioned representatives or other contractual arrangements that could present a real or perceived conflict of interest.
15. **No Litigation.** There is no action, suit or proceeding, at law or in equity, before any court or similar governmental body, against the Proposer, wherein an unfavorable decision, ruling or finding would have a materially adverse affect on the ability of the Proposer to perform its obligations under the Agreement or the Concession contemplated hereby, or which, in any way, would have a materially adverse affect on the validity or enforceability of the obligations proposed to be undertaken by the Proposer, or any agreement or instrument entered into by the Proposer in connection with the Concession contemplated hereby.
16. **Certain Representations.** The Proposer represents and warrants that (1) Proposer has full power and authority to make this offer and submit this Proposal; (2) Proposer, or the Subsidiary, will have full power and authority to execute and deliver the Agreement pursuant to the terms hereof; (3) such actions do not and will not violate the terms of any of the Proposer’s or the Subsidiary’s organizational documents or any agreement binding upon it or the terms of any Applicable Law; (4) no further consent to this offer or Proposal or to the execution of the Agreement pursuant to the terms hereof is required to be obtained from any other Person or Governmental Authority; and (5) this offer and Proposal constitute, and the Agreement, if executed pursuant to the terms hereof, will constitute duly authorized, valid and legally binding obligations of the Proposer, or the Subsidiary, enforceable in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or transfers, or other laws affecting creditor’s rights generally, and subject to general principles of equity (regardless of whether in law or in equity).
17. **Material Changes.** The Proposer has disclosed as an attachment to this Proposal all material changes from the information provided in the Proposer’s RFQ Response.
18. **Principal Contact.** The principal contact person who will serve as the interface between the Governmental Party and the Proposer for all communications is:

NAME:

TITLE:

ADDRESS:

PHONE:

FAX:

EMAIL:

Submitted by:

Name of Proposer

Name of Designated Signatory

Signature

Title

**Proposal Form 2
Non-Collusion Affidavit**

STATE OF _____)

COUNTY OF _____)

I, [INSERT DESIGNATED SIGNATORY NAME], a resident of _____ MUNICIPALITY OR OTHER JURISDICTION], in the State of [INSERT STATE], of full age, being duly sworn according to law, on my oath depose and say that:

(1) I am the [INSERT TITLE] of [INSERT PROPOSER NAME], organized under the laws of the state of [INSERT STATE NAME], the Proposer making the Proposal in response to City of Allentown Water and Sewer Utility System Request for Bids issued by the City of Allentown on February 25, 2013, as amended, and that I executed said Proposal with full authority to do so;

(2) The pricing information set forth in this Proposal have been arrived at independently without collusion, fraud, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such pricing information with any other Proposer or with any competitor;

(3) Unless otherwise required by law, the pricing information which has been quoted in this Proposal has not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer, directly or indirectly, to any other Proposer or to any competitor prior to execution of the Agreement; and

(4) No attempt has been made or will be made by the Proposer to induce any other person or entity to submit or not to submit a Proposal for the purpose of restricting competition.

I, hereby affirm under the penalties of perjury that the foregoing statements are true.

Name of Proposer

Name of Designated Signatory

Signature

Title

(Notary Public)

State of _____

County of _____

On this _____ day of _____, 2013, before me appeared [DESIGNATED SIGNATORY], who is [INSERT TITLE] of [INSERT PROPOSER], a [INSERT STATE AND ENTITY TYPE], personally known to me to be the person described in and who executed this Non-Collusion Statement and acknowledged that she/he signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

Notary Public in and for the State of _____

(seal)

(Name printed)

Residing at _____

Commission Number _____

Proposal Form 4 Operator Information

If the Proposer is not the Operator, the Proposer must clearly identify the entity or entities who will serve as the Operator under the CLA. For the proposed Operator, please provide the following information.

1. **Name & Address of Proposed Operator:**

2. **Operator's Primary Representative:**

3. **Operator Experience (if not previously provided in response to the RFQ):**

4. **Operator's References (if not previously provided in response to the RFQ):**

5. **Material Change:** Any change in condition (financial or otherwise), development, occurrence or circumstance that could be materially adverse to the Operator that has arisen after the date of the RFQ and which would have been responsive to the RFQ if such change, development, occurrence or circumstance had arisen prior to the Proposer's response to the RFQ.

Proposal Form 5
Contract and Lobbyist Disclosure

Proposer hereby certifies that except as listed below, neither Proposer nor any member of Proposer's team has entered into any arrangement with any person or entity involving a finder's fee, fee splitting, firm affiliation or relationship with any broker-dealer, payments to consultants, lobbyists, or commissioned representatives or other contractual arrangements that could present a real or perceived conflict of interest. (If there are no such arrangements, please write NONE)

<i>Name of Person or Entity</i>	<i>Disclosure and Description of Arrangement</i>

Name of Proposer

Name of Designated Signatory

Signature

Title

**Proposal Form 6
Business Proposal**

The amount of the Consideration that Proposer offers to pay pursuant to Section 2.1 of the Agreement is the total of

US\$ _____ [*in numbers*],

_____ [*in words*] United States Dollars.

The Annual City Payment shall be no less than \$500,000 and no more than \$2,500,000. The amount of the Annual City Payment that Proposer offers to pay pursuant to Section 3.23 of the Agreement is

US\$ _____ [*in numbers*],

_____ [*in words*] United States Dollars.

Pursuant to Section 2.2, the Proposer shall decide if the Consideration will be adjusted at Closing due to fluctuations in the Selected Interest Rate and/or Credit Spread Fluctuation Interest Rates.

Selected Interest Rate _____ Yes _____ No

If Selected Interest Rate “Yes”, the Proposer hereby selects _____ as the Selected Interest Rate as defined in the Agreement.

Credit Spread Fluctuation Interest Rates _____ Yes _____ No

Name of Proposer

Name of Designated Signatory

Signature

Title

Proposal Form 7
Form of Proposal Letter of Credit

FORM OF PROPOSAL LETTER
OF CREDIT

_____, 2013

City of Allentown, Pennsylvania
C/O Director of Finance
435 Hamilton Street, Room 227
Allentown, PA 18101

Ladies and Gentlemen:

We hereby issue this Irrevocable Standby Letter of Credit No. _____ in your favor for the account of *[Name of Applicant]* in the amount of US \$ _____ *as the Stated Amount*.

Funds under this Standby Letter of Credit are available to you upon your presentation to us at *[bank address]* of one or more sight drafts drawn on us for a sum or sums in an amount not exceeding the Stated Amount, specifically referencing this *[Name of Bank]* Irrevocable Standby Letter of Credit No. _____, signed by the Director of Finance of the City of Allentown, Pennsylvania (the "City") (whether acting or actual) or his designee, which sight draft shall contain a statement that the City is entitled to make such draw or be accompanied by a signed statement of the City to the same effect.

Our obligations hereunder are primary obligations to the City and shall not be affected by the performance or non-performance by *[Name of Applicant]* under any agreement with the City or by any bankruptcy, insolvency or other similar proceeding initiated by or against *[Name of Applicant]*. *[Name of Applicant]* is not the beneficiary under this Standby Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. We agree with you that any draws under this Standby Letter of Credit shall be duly honored on sight if presented to us on or before [no earlier than June 15, 2013] (the "Expiry Date"), unless extended by *[Name of Applicant]* for an additional period not to exceed [60] days. This Standby Letter of Credit shall terminate on the earlier of (i) the close of business on the Expiry Date or (ii) the date that we have honored one or more draws in the full amount of this Standby Letter of Credit. This Standby Letter of Credit may not be transferred by the City to any other person.

To the extent not inconsistent with the express provisions hereof, this Standby Letter of Credit shall be governed by and construed in accordance with the International Standby Practices 1998, International Chamber of Commerce, Publication No. 590 (*ISP98*) as interpreted under the laws of the Commonwealth of Pennsylvania and shall, as to matters not governed by *ISP98*, be

governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

With respect to any suit, action or proceedings relating to this Standby Letter of Credit (Proceedings), we irrevocably: (i) submit to the exclusive jurisdiction of courts located in the Commonwealth of Pennsylvania; and (ii) waive any objection which we may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us.

[Name and Address of Bank] *
[Authorized Signature]

* Bank or parent bank holding company must be rated "A" or better by a Moody's, S&P or Fitch. Bank must designate an office in the Commonwealth of Pennsylvania for the presentation of drafts under the Letter of Credit.

Proposal Form 8
Form of Proposal Cash Deposit Escrow Agreement

**ALLENTOWN WATER AND SEWER UTILITY SYSTEM
ESCROW AGREEMENT**

This ALLENTOWN WATER AND SEWER UTILITY SYSTEM ESCROW AGREEMENT (this "Escrow Agreement"), dated this _____ day of _____, 2013 (the "Commencement Date"), is made by and among National Penn Investors Trust Company, a division of National Penn Wealth Management, N. A., a national trust company duly organized and existing under the laws of the United States, as escrow agent (the "Escrow Agent"), the City of Allentown, a municipality and a city of the third class of the Commonwealth of Pennsylvania duly organized and existing under the Constitution and laws of said Commonwealth and the City of Allentown Home Rule Charter (the "City") and _____, a _____, organized and existing under the laws of the State of _____ (the "Proposer").

WITNESSETH:

WHEREAS, the City has solicited offers from qualified Proposers to enter into the Allentown Water and Sewer Utility System Concession and Lease Agreement (the "Concession Agreement") regarding the Allentown Water and Sewer Utility System (the "Concession") in accordance with the City of Allentown Water and Sewer Utility System Request for Bids dated February 27, 2013 (the "RFB" and, together with the Concession Agreement, the "Bid Documents"); and

WHEREAS, the Proposer intends to submit an offer in response to the RFB; and

Whereas, capitalized terms defined in this Escrow Agreement and not otherwise defined herein shall have the same meanings as assigned to such terms in the RFB unless otherwise defined herein; and

WHEREAS, the RFB requires that the Proposer's offer be secured by a combination of one or more (a) Letters of Credit with a term of at least 150 days from the date thereof or (b) Cash Deposits, in the aggregate amount of Ten Million Dollars (\$10,000,000); and

WHEREAS, the Proposer has elected to utilize a Cash Deposit (the "Cash Deposit") to secure (in whole or in part) its offer; and

WHEREAS, the Proposer's offer will be unconditional and irrevocable until 5:00 p.m. (Eastern time) on May 1, 2013, unless extended by the City to 5:00 p.m. (Eastern time) on May 15, 2013 or to a later time by mutual consent of both the City and the Proposer; and

WHEREAS, the Escrow Agent is desirous of acting as escrow agent with respect to the Cash Deposit provided by the Proposer pursuant to the RFB; and

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein the parties hereto intending to be legally bound do hereby agree as follows:

Section 1. For a period commencing on the Commencement Date and terminating 10 days after the final disbursement of all of the Cash Deposit deposited hereunder and any earnings thereon (the "Funds") in accordance with the terms hereof, the Escrow Agent agrees to act as escrow agent for the Funds when received by the Escrow Agent and to promptly deposit the Cash Deposit into a segregated escrow account (the "Escrow Account") to be established

hereunder and to be held in trust for the Proposer and the City pursuant to the terms of this Agreement.

Section 2. On or before 4:00 p.m. (Eastern time) on March 20, 2013 the Cash Deposit will be provided to the Escrow Agent by the Proposer and deposited into the Escrow Account. Upon receipt of the Cash Deposit, the Escrow Agent shall immediately issue a receipt to the Proposer, confirming that the Escrow Agent has received the Cash Deposit, and confirming the dollar amount on deposit in the Escrow Account at such time. **All risk of loss, if any, in regard to such investments or reduction of the Cash Deposit resulting from such investments shall be borne by the Proposer, other than losses arising from the Escrow Agent's negligence or willful misconduct.** The Escrow Agent shall calculate the market value on a daily basis as of close of business on the preceding day. If there is a deficit (a "Deficit") which reduces the market value of the Cash Deposit below the requirement imposed by the RFB (the "Benchmark"), the Escrow Agent shall promptly give notice to the City and Proposer of the amount of such deficit ("Deficit Notice"). The Proposer agrees to replenish the Cash Deposit to reach the applicable Benchmark through an additional deposit ("Deficit Deposit") by 5:00 p.m. (Eastern time) on the third business day following receipt by the Proposer of the Deficit Notice; provided that no Deficit Deposit need be made if the Escrow Agent, following the daily calculation of the market value of the Cash Deposit on the morning of the third business day, determines that the Deficit has been eliminated as of the time of calculation. The Escrow Agent shall provide notice to the City and the Proposer within one business day following the deadline for the Deficit Deposit established in the Deficit Notice if the Proposer has not fully replenished the Cash Deposit by such deadline.

Section 3. The Escrow Agent shall invest and reinvest the Cash Deposit in Eligible Investments (as defined in Schedule 3 hereto) at the written direction of an Authorized Proposer Representative (as described below) without distinction between principal and income. The Escrow Agent may conclusively rely upon such written instructions as to both the suitability and legality of the directed investments. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. In the absence of investment instructions from the Authorized Proposer Representative, the Escrow Agent shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Eligible Investments. Any interest or other earnings on the Funds shall become part of the Cash Deposit and shall be disbursed in accordance with the provisions of this Escrow Agreement. The Escrow Agent will provide monthly statements to the City and the Proposer that will show accrued interest along with any deposits and withdrawals from the Escrow Account. The Authorized Proposer Representatives are _____. It is further understood by the parties that the City is not responsible in any way for the results of the investments by the Escrow Agent of the Cash Deposit or the investment earnings thereon nor is the City responsible for the actions of the Escrow Agent unless such actions have been directed by an authorized representative of the City (a "City Authorized Representative") pursuant to the terms of this Agreement. The City Authorized Representatives are the Director of Finance of the City and the Controller of the City.

Section 4. The Funds shall at all times be held in a separate account and (i) may be delivered by the Proposer at all times prior to 2:00 p.m. (Eastern time), on the Commencement

Date pursuant to instructions of the Proposer and (ii) shall be disbursed after the Commencement Date pursuant to the terms and conditions of Section 5 below.

Section 5. The Escrow Agent shall, as soon as practicable, but no sooner than 9:00 a.m. (Eastern time) on March 26, 2013, liquidate all investments and pay to the Proposer (or as directed by the Proposer) all Funds in the Escrow Account under the following conditions: (i) upon receipt of a statement signed by a City Authorized Representative addressed to the Proposer and the Escrow Agent to the effect that the Proposer has not been selected as the Concessionaire for the Concession; (ii) upon receipt of a statement signed by a City Authorized Representative at any time, and addressed to the Proposer and the Escrow Agent, to the effect that the Proposer did not tender a bid by 2:00 p.m. (Eastern time), March 21, 2013 (which statement the City shall be required to deliver promptly after such date and time); (iii) upon the failure of the City to provide by 2:00 p.m. (Eastern time), May 16, 2013 or such later time as may be set by mutual consent of both the City and the Proposer (the “Escrow Deadline”) a statement signed by a City Authorized Representative addressed to the Escrow Agent that any party has been selected as the Concessionaire for the Concession.

The Escrow Agent shall retain the Funds in the Escrow Account upon receipt of a statement, signed by a City Authorized Representative to the Escrow Agent that the Proposer has been selected as the Concessionaire (the “Award Statement”) for the Concession until the earlier to occur of (a) statement, at any time after the Commencement Date, in a form substantially similar to that attached hereto as Schedule 2 (a “City Statement”) that is signed by a City Authorized Representative directing disbursement to the City of the Cash Deposit in accordance with the Bid Documents; (b) a statement of instructions from an Authorized City Representative, acknowledged by the Proposer, that the Concession Agreement is being closed and that all Funds should be paid immediately to the City; (c) the earlier of the passage of one hundred and twenty (120) days following the date of the Award Statement, and September 15, 2013 (the “Closing Escrow Deadline”); or (d) the Proposer has provided the City with one or more satisfactory Closing LOCs meeting the aggregate requirements of the Concession Agreement.

If the City and the Proposer mutually consent to extend the Escrow Deadline or the Closing Escrow Deadline to a date certain (collectively, an “Extended Escrow Deadline”), and the City provides timely notice to the Escrow Agent of such Extended Escrow Deadline, the term of this Escrow Account shall be extended to coincide with the Extended Escrow Deadline.

Section 6. All disbursements by the Escrow Agent pursuant to this Escrow Agreement shall be made by wire transfer in immediately available funds to such account or accounts as the party entitled to receive the Funds shall designate in writing to the Escrow Agent. The Escrow Agent undertakes to perform such duties and only such duties as are expressly set forth herein and no implied duties or obligations may be read into this Escrow Agreement other than as may be required by applicable law. The Escrow Agent has not examined and is in no way responsible for the contents of the Concession Agreement or the RFB. By accepting the position of escrow agent, the Escrow Agent, the City and the Proposer agree that the Escrow Agent’s duties and obligations are set forth solely in this Escrow Agreement.

Section 7. The Escrow Agent shall be responsible in fulfilling its duties under this Agreement to a standard of care which could fairly be attributable to an experienced corporate escrow agent. The Escrow Agent shall have only those duties as are specifically provided herein,

which shall be deemed purely ministerial in nature. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other agreement. In no event shall the Escrow Agent be liable, directly or indirectly, for any (i) damages or expenses arising out of the services provided hereunder, other than damages which result from the Escrow Agent's failure to act in accordance with the standards set forth in this agreement, or (ii) special, punitive or consequential damages, even if the Escrow Agent has been advised of the possibility of such damages except in cases of negligence or willful misconduct. This Escrow Agreement and all information received by the Escrow Agent is sensitive (in that it pertains to information which may be pertinent to public bidding), is confidential and may not be disclosed by the Escrow Agent to any third party without the express written permission of the City and the Proposer, except as set forth in this Section 7. To the extent that the Escrow Agent deems it necessary in the carrying out of its duties to consult with its outside counsel, such outside counsel shall acknowledge the confidential nature of this Agreement in writing and agree to be bound by such requirements. In the event the Escrow Agent is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding this Escrow Agreement or any documents related thereto which may be in its possession, the Escrow Agent shall immediately give notice to the City and the Proposer with the understanding that the City and the Proposer shall have the opportunity to contest such process by any means available to them before such records or documents are submitted to a court or other third party, provided, however, that the Escrow Agent shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce it otherwise extended. Such confidentiality provisions shall survive the termination of this Escrow Agreement and any breach thereof may subject the Escrow Agent or its agents to liability. The Escrow Agent has the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees (collectively "Agents") appointed by it with due care so long as such Agents are informed of the requirements of confidentiality imposed in this Agreement and agree to follow such requirements.

Section 8. Except as to matters covered in Section 7, to the fullest extent permitted by law, the Escrow Agent shall not be liable for any action taken by it without negligence and in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Escrow Agreement, and may consult with counsel of its own choice (whether specially retained or regularly employed) and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the advice of such counsel. The Proposer shall be liable for and shall reimburse and indemnify Escrow Agent and hold Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorney's fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Escrow Agreement or being Escrow Agent hereunder (including but not limited to Losses incurred by Escrow Agent in connection with its successful defense, in whole or in part, of any claim of negligence or willful misconduct on its part), provided that nothing contained herein shall require Escrow Agent to be indemnified for Losses caused by its negligence or willful misconduct. The terms of this indemnification shall survive the termination of the Escrow Agreement and the resignation or removal of the Escrow Agent.

Section 9. The Escrow Agent shall charge an escrow fee pursuant to its schedule of fees attached as Schedule 1 in effect from time to time payable at the inception of the Escrow Account. Such fee shall be payable by the Proposer.

Section 10. The Escrow Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be entitled to any portion of the Funds in the Escrow Account under any circumstances except as provided herein. The City hereby agrees that any actions taken by the City with respect to the Funds in the Escrow Account shall be consistent with the RFB.

Section 11. The Escrow Agent shall not be bound by any amendment, modification, cancellation or rescission of this Escrow Agreement unless the same shall be in writing and signed by all the parties hereto.

Section 12. All notices and communications hereunder shall be in writing and shall be deemed to be duly given if sent by regular mail or facsimile as follows:

If to the Escrow Agent: National Penn Investors Trust Company
2201 Ridgewood Road, Suite 180
Wyomissing, PA 19610-1190
Attn: Robert J. D'Egidio
Tel: (610) 371-7302
Fax Number: (610) 372-6474
E-mail: bob.d'egidio@npitc.com

If to the City: City of Allentown
Finance Department
435 Hamilton Street, Room 227
Allentown, PA 18101
Fax Number: (610) 437-7563
Attn: Garret H. Strathearn

If to the Proposer: _____

Attn: _____
Fax Number: _____

The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by facsimile transmission (including pdf transmission of such facsimile), provided, however, that each of the parties hereto desiring to provide any directions or instructions by facsimile shall provide to the Escrow Agent an incumbency certificate listing the persons with authority to act hereunder, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Proposer or the City elects to give the Escrow Agent instructions or directions by facsimile (including pdf transmission of such facsimile), and the Escrow Agent acts upon such instructions or directions, the Escrow Agent's

understanding of such instructions and directions shall be deemed controlling; provided that such instructions or directions are consistent with the applicable provisions of this Agreement. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions or directions notwithstanding whether such instructions or directions conflict or are inconsistent with a subsequent written instruction other than any losses which result from the Escrow Agent's negligence or willful misconduct; provided that the instructions or directions being complied with are consistent with the applicable provisions of this Agreement. The Proposer and the City agree to assume all risks arising out of the use of the foregoing electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 13. This Escrow Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in force in Pennsylvania (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction). All parties hereby waive, to the extent permitted by law, the right to trial by jury. Any defined terms in this Agreement shall have the meanings set forth in the Concession Agreement unless otherwise defined in this Agreement.

Section 14. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written evidence of such assignment in form satisfactory to the Escrow Agent shall be filed with and accepted by the Escrow Agent. No such assignment shall be permitted by the City or the Proposer without the prior written consent of the other such two parties.

Section 15. The Escrow Agent reserves the right to resign at any time by giving written notice of resignation, specifying the effective date thereof. Within 30 days after receiving the aforesaid notice, the parties to this Escrow Agreement agree to appoint a successor escrow agent to which the Escrow Agent may distribute the property then held hereunder, less the Escrow Agent's fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of the 30-day period, the Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorneys' fees which are incurred in connection with such a proceeding shall be paid by the City and the Proposer.

Any banking association or corporation into which the Escrow Agent may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be transferred, shall succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 16. If any one or more of the covenants or agreements provided in this Agreement on the part of the Proposer, the City or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and

agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 17. This Escrow Agreement may be executed in several counterparts, all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 18. The Escrow Agent shall report to the Internal Revenue Service, as of each calendar year-end, and to the Proposer all income earned from the investment of any sum held in the Escrow Account against the Proposer, as and to the extent required under the provisions of the Internal Revenue Code of 1986 and the regulations promulgated thereunder (the "Code").

The Proposer is required to prepare and file any and all income or other tax returns applicable to the Escrow Account with the Internal Revenue Service and all required state and local departments of revenue in all years income is earned in any particular tax year as and to the extent required under the provisions of the Code.

Any taxes payable on income earned from the investment of any sums held in the Escrow Account shall be paid by the Proposer, whether or not the income was distributed by the Escrow Agent during any particular year as and to the extent required under the provisions of the Code.

The Escrow Agent shall have no responsibility for the preparation and/or filing of any tax or information return with respect to any transaction, whether or not related to the Agreement or the Concession Agreement, that occurs outside the Escrow Account.

IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the day and year first above written.

[PROPOSER]

CITY OF ALLENTOWN

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Federal Employer ID #: _____

_____,
as Escrow Agent

By: _____

Name: _____

Title: _____

SCHEDULE 1

**ESCROW AGENT
SCHEDULE OF FEES**

Schedule to be provided

SCHEDULE 2

FORM OF CITY STATEMENT

[Date]

[Escrow Agent Address]

Re: Allentown Water and Sewer Utility System
Water and Sewer Utility System Escrow Agreement - City Statement of Disbursement

Ladies and Gentlemen:

Pursuant to Section 5 of the Allentown Water and Sewer Utility System Escrow Agreement dated as of _____, 2013 (the "Escrow Agreement"), by and among _____, as escrow agent, the City of Allentown (the "City"), and _____, a _____, organized and existing under the laws of the State of _____, the undersigned hereby submits this City Statement directing the Escrow Agent to liquidate all investments in the Escrow Account and pay to the City all Funds in the Escrow Account. The City represents that its actions are in keeping with the Bid Documents described in the Escrow Agreement.

Disbursement of Funds should be made to Account No. _____ at _____.

Dated: _____ .

CITY OF ALLENTOWN

By: _____

Name: _____

Title: _____

SCHEDULE 3

ELIGIBLE INVESTMENTS

For purposes of this Escrow Agreement, “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 “A” (or the equivalent) or higher by a Rating Agency 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 “A” (or the equivalent) or higher by a Rating Agency 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 “A” (or the equivalent) or higher by a Rating Agency; and (v) other investments then customarily accepted by the City in similar circumstances; 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.

“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 Collateral Assignment 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 City (provided that such institution or entity, in its activity under this Agreement, shall be acceptable under then current guidelines and practices of the City); provided, however, that each such entity (other than entities described in clause (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 \$200,000,000, which shall include, in the case of an investment or advisory firm, assets controlled by it or under management.

“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.