
**ALLENTOWN WATER AND SEWER UTILITY SYSTEM
CONCESSION AND LEASE AGREEMENT**

dated as of

_____, 2012

by and between

CITY OF ALLENTOWN

and

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This **ALLENTOWN WATER AND SEWER UTILITY SYSTEM CONCESSION AND LEASE AGREEMENT** (this "Agreement") is made and entered into as of this _____ day of _____, 2012 by and between 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 _____, (the "Concessionaire").

RECITALS

WHEREAS, the City owns and operates the Allentown Sewer Utility System constituting the assets herein defined as the "Sewer Utility System;" and

WHEREAS, the City owns and operates the Allentown Water Utility System constituting the assets herein defined as the "Water Plant and Distribution System" and the "Retained Water Supply System"; and

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

WHEREAS, the City desires to lease the Sewer 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, 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 City is authorized by the Third Class City Code, 53 Pa. C.S. §35101 *et seq.*, to enter into this Agreement providing for the lease of the System, and the grant to the Concessionaire the right to operate the System in order to provide Utility Services, subject to the terms hereof; and

WHEREAS, the City will retain and continue to own, maintain and operate the Retained Water Supply System and the City has agreed to provide untreated water to the Concessionaire from the Retained Water Supply System; and

WHEREAS, pursuant to the City of Allentown Home Rule Charter and that certain ordinance adopted by the City Council of the City on _____, 2012 and attached hereto as Exhibit A (the "System Ordinance"), the City is authorized to enter into this Agreement and the Transaction (as herein defined); and

WHEREAS, prior to the Closing Date (as defined herein) the Concessionaire, or the Operator (as defined herein) on behalf of the Concessionaire, shall be fully authorized to operate the System in accordance with applicable provisions of the Public Utility

Code, being Part I of Title 66 of the Pennsylvania Consolidated Statutes, and the terms and provisions of this Agreement; and

WHEREAS, the City has 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; the City 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(1).

“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 City any other Governmental Authority or any other Person (including any private road) that is located above, within

the boundaries of, intersects with, crosses over or under or is adjacent to 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 (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 preamble to this Agreement (including all schedules referred to herein), as amended from time to time in accordance with the terms hereof.

“Annual Percentage Change” means, with respect to the 2016 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.

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

“Annual Royalty Payment” means (i) for the first Reporting Year, an amount of money equal to \$4,500,000 multiplied by a fraction the numerator of which is the number of days in the Reporting Year and the denominator of which is 365; (ii) for each Reporting Year after the first Reporting Year (excluding the last Reporting Year), an amount of money equal to \$4,500,000, Adjusted for Inflation from the Closing Date to the first day of such Reporting Year and (iii) for the last Reporting Year, an amount of money equal to \$4,500,000, Adjusted for Inflation from the Closing Date to the first day of such Reporting Year, multiplied by a fraction the numerator of which is the number of days in the Reporting Year and the denominator of which is 365.

“Approval”, “Approved”, “Approves”, “Approved by the City” and similar expressions mean approved or consented to by the City 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.

“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 City of such reviews, investigations, inspections and audits relating to such matter or thing as the City may reasonably determine to be necessary in the circumstances, conducted in each case in accordance with applicable United States industry accepted practices, if any, or as required by Law.

“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 or is reasonably required from time to time for the System Operations.

“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 _____, 2012.

“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.

“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.

“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 the amounts required to pay the principal of and interest on debt issued or incurred to finance the Major Capital Improvement and a customary return on equity on funds contributed to pay the capital costs of such Major Capital Improvement.

“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).

“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.

“City” has the meaning ascribed thereto in the preamble to this Agreement.

“City Council” means the City Council of the City.

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

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

“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 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).

“Collective Bargaining Agreement” means the existing collective bargaining agreement between the City and SEIU dated _____, 2006, as extended to December 31, 2016, by the Memorandum of Agreement dated December 30, 2010, all as attached hereto as Exhibit D.

“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 City 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 Incremental 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 City 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 City. The City 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 preamble 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 Pension Plan” has the meaning ascribed thereto in Section 2.5(k)(iii).

“Concessionaire Request” means a written request in respect of the System prepared by or on behalf of the Concessionaire and addressed to the City 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.

“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 placed in service date of a Major Capital Improvement to the earlier of (i) the 240th 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 solely caused by a failure by the City to perform or observe any of its covenants or obligations under this Agreement or (iv) 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; 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).

“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.

“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 City 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 or cause the Concessionaire to fail to be in compliance with this Agreement.

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

“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 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 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, 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 City.

“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.

“EPA Administrative Orders” means (i) the Findings of Violation, Order of Compliance and Request for Information dated September 28, 2007 and ordered by the United States Environmental Protection Agency under Docket Number CWA-03-2007-0332DN; (ii) the Findings of Violation, Order of Compliance and Request for Information dated September 28, 2009 and ordered by the United States Environmental Protection Agency under Docket Number CW-03-2009-0313DN and (iii) any other administrative or judicial order entered subsequent to the Bid Date relating to the subject

matter of the two administrative orders set forth in clauses (i) and (ii) of this definition, in all cases in so far as such administrative or judicial orders relate to the Utility 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 City to hold the Cash Deposit.

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

“Force Majeure” means any event beyond the reasonable control of the Concessionaire that delays, 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, fire, tornado, flooding, earthquake or other natural disaster, 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.

“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 and the United States Environmental Protection Agency.

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

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

“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 City, acting reasonably, has caused a present danger 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 City 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 – U.S. City Averages for all Urban Consumers, All Items Index” – (not seasonally adjusted) as published by the U.S. Department of Labor, Bureau of Labor Statistics; *provided, however*, that if the Index is changed so that the base year of the Index changes, the Index shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics; *provided further* that if the 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 the Index had not been discontinued or revised.

“Index Change” means, for the 2016 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 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 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.

“Key Employee” mean each System Employee listed on Schedule 11.

“Law” means any order, writ, injunction, decree, judgment, law (including any Environmental Law), ordinance, decision, principle of common law, opinion, ruling, enforceable policy, statute, code, rule or regulation of any Governmental Authority, including the Pennsylvania Department of Environmental Protection 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, City 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 City 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 City with a Written Appraisal (at the Concessionaire’s 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. 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 City, 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).

“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 City, in form and content reasonably acceptable to the City, payable in United States dollars upon presentation of a sight draft and a certificate confirming that the City 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 City and approved by the City 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 City. 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 Required Capital Improvement and (b) any other capital improvement to the Utility System (1) having an estimated cost in excess of \$2,000,000, 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 betterment of the Utility System and is not a renewal or replacement of existing capital assets.

“Margin Change” means (i) for each calendar year commencing with the 2016 calendar year to and including the 2032 calendar year, two and one-half percent (2.50%) and (ii) for the 2033 calendar year and each calendar year thereafter, one and one-half percent (1.50%).

“Material Adverse Effect” means a material adverse effect on the business, financial condition or results of operations of the System taken as a whole; *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.

“Mayor” means the Mayor of the City or another City official acting under the direction and pursuant to the authority of the Mayor.

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

“Municipal Customers” means the political subdivisions of the Commonwealth (other than the City) that are parties to Municipal Service Agreements.

“Municipal Service Agreements” means each Sewer Service Agreement and each Water Service Agreement.

“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 City 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 City, acting reasonably, a failure of the Concessionaire or the Operator to comply with Laws or the Operating Standards in connection with the System.

“Operational Penalty” means the monetary penalty to be paid by the Concessionaire to the City for an Operational Breach as specified in the Operating Standards, including any additional monetary penalty 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.

“Operations” has the meaning ascribed thereto in Section 2.5(k).

“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.

“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 2016 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)) increased by the Annual Percentage Change (if any) for the calendar year.

“Permitted City 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 City 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 City’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 City) 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 City’s obligations or the Concessionaire’s rights hereunder); (vii) any other Encumbrance permitted hereunder; (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 City by any statutory provision or under common law (it being understood and agreed that nothing in this definition shall limit or otherwise affect the City’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.

“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 City or any Person claiming through either of them; and (viii) any amendment, extension, renewal or replacement of any of the foregoing. 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.

“PMRS” means the Pennsylvania Municipal Retirement System.

“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.

“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 an amount of money equal to the total value 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 Capital Improvements” has the meaning ascribed thereto in Schedule 7 and includes all costs and expenses related to the remediation of the violations set forth in the EPA Administrative Orders.

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

“Reserved Powers” means the exercise by the City of police and regulatory powers with respect to the System, and the regulation of the use of the public way.

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

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

“Retained Water Supply System” means the water reservoirs, wells, pumping and transmission facilities owned by the City and used for water supply purposes as described and depicted in Schedule 1C, and all improvements and fixtures of any and every kind whatsoever forming a part of or used in connection with such water supply facilities from time to time.

“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 uses of the System including Municipal Customer payments pursuant to Municipal Service Agreements.

“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 by the Concessionaire from time to time in accordance with Article 7.

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

“SEIU” means the Service Employees International Union, Local 473/395A.

“Service Charges” means the charges imposed by the Concessionaire for the use of the Utility Services provided by operation of the System, including connection fees.

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

“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, 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 City 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 hereto.

“Sludge Agreement” means the Agreement dated March 29, 2012 by and between the City and Delta Thermo Energy A, LLC attached hereto as Exhibit C.

“Surplus Water” means water provided by means of the Retained Water Supply System that is not required in connection with the provision of Utility Services or the performance by the Concessionaire of its obligations under this Agreement.

“System” means the Water Plant and Distribution System and the Sewer Utility System.

“System Assets” means the personal property of the City used in connection with operations at the System set forth on Schedule 5.

“System Bonds” means the following outstanding debt obligations of the City: (i) \$2,960,000 principal amount of Guaranteed Sewer Revenue Bonds, Series of 2003; (ii) \$675,000 principal amount of Guaranteed Water Revenue Bonds, Series of 2003; (iii) \$1,640,000 principal amount of Tax-Exempt Guaranteed Water Revenue Bonds, Series of 2004; (iv) \$185,000 principal amount of Tax-Exempt Guaranteed Sewer Revenue Bonds, Series of 2004; (v) \$1,315,000 principal amount of Guaranteed Water Revenue Bonds, Series of 2008; (vi) \$3,095,000 principal amount of Guaranteed Sewer Revenue Bonds, Series of 2008 and (vii) Loan Number 87004 in the maximum principal amount of \$8,612,681 from the Pennsylvania Infrastructure Investment Authority under the Funding Agreement dated March 13, 2012 between the City and said Authority.

“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 City Default (but excluding the effect of such Adverse Action or City Default) or termination under Section 16.5, in each case as determined pursuant to a Written

Appraisal. The City shall pay the reasonable costs and expenses of any Written Appraisal of System Concession Value.

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

“System Employee” means any City employee engaged primarily in the provision of Utility Services.

“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.

“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. (Allentown time) on the Closing Date or such other time on that date as the City 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).

“Union Employees” members of the SEIU who are System Employees subject to the terms of the Collective Bargaining Agreement.

“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.

“Water Plant and Distribution System” means the water treatment and water distribution system of the City including the treatment plant 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 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 the City 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 hereto.

“Water Shortage” means any shortage in the quantity of available water provided by means of the Retained Water Supply System and caused by drought, pollution (which cannot or is not permitted to be treated by the Water Plant and Distribution System), Water Supply Force Majeure, loss of Permit or change of Permit, or any other cause or condition beyond the control of the City.

“Water Source” means Schantz Spring, Crystal Spring and the existing water intake points of the Lehigh River and the Little Lehigh Creek.

“Water Supply Force Majeure” means any event beyond the reasonable control of the City that delays, interrupts or limits the performance of the City’s obligations to supply untreated water by means of the Retained Water Supply 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, fire, tornado, flooding, earthquake or other natural disaster, 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 City or its Representatives, (ii) any act or omission by the City 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 City or (iv) any strike, labor dispute or other labor protest involving any Person retained, employed or hired by

the City or its Representatives to supply materials or services for or in connection with the Retained Water Supply System or any strike, labor dispute or labor protest pertaining to the City 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 City or its Representatives.

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

“Written Appraisal” means a written appraisal prepared in conformity with the Uniform Standards of Professional Appraisal Practice as set forth by the Appraisal Standards Board by an independent third party appraiser that is nationally recognized in appraising assets similar to the System and that is acceptable to the City and the Concessionaire; provided that if the Parties can not agree upon such a single appraiser within 30 days after a Party requests the appointment thereof, then the City and the Concessionaire shall each appoint an independent third party appraiser and both such appraisers shall be instructed jointly to select a third independent third party appraiser to make the Written Appraisal.

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.

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 therefore, 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 City 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 City.

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. (Allentown 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. (Allentown time) on the next Business Day.

Section 1.15. Approvals, Consents and Performance by City.

(a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the City 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 City, (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 City); (iii) the City shall, within such time period set forth herein (or if no time period is provided, within 45 days, subject to the City'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 City) set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the City 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 City does not approve or consent, the Concessionaire may take whatever steps may be necessary to satisfy the objections of the City 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 City 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 City, 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 City, such act may be taken or performed or approval or consent may be given by the Mayor without further action by the City Council and the Concessionaire may rely thereon in all respects.

(c) *Required City Council Approval of Transferee.* Any approval of the City of a proposed Transferee pursuant to Section 17.1 may only be made by a resolution or ordinance adopted by the City Council. 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 City are expressly reserved to the City for the Term of this Agreement and exercise by the City of

its Reserved Powers is not limited by this Agreement. Any obligations or restrictions imposed by this Agreement on the City shall not relate to or otherwise affect any activity of the City 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 City 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 Sewer Utility System
- Schedule 1B Water Plant and Distribution System
- Schedule 1C Retained Water Supply System
- Schedule 2A Sewer 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 Required Capital Improvements
- Schedule 8 Form of Legal Opinion of the City
- Schedule 9 Form of Legal Opinion of the Concessionaire
- Schedule 10 Form of Memorandum of Lease
- Schedule 11 Key Employees
- Schedule 12 List of Permits and Authorizations
- Schedule 13 Insurance Policies
- Schedule 14 Remaining Amortized Rent
- Schedule 15 Delivery Points
- Exhibit A System Ordinance
- Exhibit B Guarantee Agreement
- Exhibit C Sludge Agreement
- Exhibit D Collective Bargaining 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 City the exact amount of _____ dollars (\$_____) in cash (the "Consideration") and (b) the City shall (i) demise and lease the System to the Concessionaire free and clear of Encumbrances other than Permitted City 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 City 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 City, (B) the Municipal Services Agreements and (C) the Sludge Agreement.

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 City and the Concessionaire (the "Closing Date"). The Closing shall be held at the offices of _____, _____, in the City of _____, Pennsylvania or such other place agreed to in writing by the City and the Concessionaire. At the Time of Closing, the Concessionaire shall deliver or cause to be delivered to the City same-day funds by wire transfer in the amount of the Consideration (as adjusted pursuant to Section 2.2(b) and Section 2.2(c)) in full payment of the Transaction, and upon receipt of such payment the Transaction shall be effective. Upon receipt of the funds described in the preceding sentence, the City shall immediately cancel and return the Closing LOC, if any, in accordance with the Concessionaire's instructions.

(b) All revenues, charges, costs and expenses with respect to Assumed Liabilities shall be prorated between the City 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 City 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 City 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.

(c) Using the 30 year, mid-market London Interbank Offered Rate (LIBOR) swap rate in the "Money & Investing, Borrowing Benchmarks" section of *The Wall Street Journal*, from the close of business on the Business Day immediately prior to the Bid Date (as published on the Bid Date) through the close of business two Business Days prior to the Closing Date (as published on the Business Day immediately prior to the

Closing Date), the amount of the Consideration will be decreased by six hundredths of one percent (6/100 of 1%) for every one basis point increase in the 30 year, mid-market LIBOR swap rate; during the same period, the amount of the Consideration will be increased by six hundredths of one percent (6/100 of 1%) for every one basis point decrease in the 30 year, mid-market LIBOR swap rate; *provided* that (i) any increase in the amount of the Consideration may not exceed four percent (4%) without the prior written consent of the Concessionaire and (ii) any decrease in the amount of the Consideration may not exceed four percent (4%) without the prior written consent of the City.

Section 2.3. Deposit.

(a) The City 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 \$15,000,000 to be held by the City for the sole purpose described in Section 2.3(b). The City shall deposit any Cash Deposit with the Escrow Agent, which shall invest such amount in Eligible Investments pending the Closing. The City, Concessionaire, and Escrow Agent shall enter into a customary escrow agreement and ancillary agreements to effectuate these provisions.

(b) If the City 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 City 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 City has the right to draw under the Closing LOC in the amount of such sight draft, and the City shall be entitled to retain all of the proceeds of the Closing LOC, in each case as the sole remedy or right of the City 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, the City 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 City 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 City shall terminate the City’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 City 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 City set forth in Section 9.1 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 City 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 City at or prior to the Time of Closing; (iii) the City 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 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 on the Closing Date and no longer treated as outstanding under the documents under which such obligations were issued and are secured and the City 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 City to indemnify the Concessionaire if any such obligations would finally become payable); (iv) the City shall have obtained and delivered to the Concessionaire effective at the Time of Closing, at the expense of the Concessionaire, 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 City (as lessor) owns the good and marketable title to the System, subject only to Permitted City 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 City shall have delivered to the Concessionaire a legal opinion of counsel to the City, in substantially the form attached hereto as Schedule 8; (vi) the City shall have executed and delivered the estoppel certificate contemplated by Section 10.2; (vii) the City shall have executed and delivered the conveyances referred to in Section 2.1; (viii) 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; and (ix) there shall not have occurred a material casualty loss, destruction or damage to the System. 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 \$5,000,000.

(b) *Conditions for the Benefit of the City.* The City 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 City: (i) all representations and warranties of the Concessionaire in Section 9.2 shall be true and correct on and as of the date hereof 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, or the Operator on behalf of the Concessionaire, shall have obtained, to the extent required by Law, a Certificate of Public Convenience from the PUC together with all other approvals of the PUC that are conditions precedent to the operation of the System by the Concessionaire, or by the Operator on behalf of the Concessionaire, in accordance with the Operating Standards and the requirements of this Agreement; and (iv) the Concessionaire shall have delivered to the City a legal opinion of counsel to the Concessionaire, in substantially the form attached hereto as Schedule 9.

(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 preliminary or permanent injunction or temporary restraining order or other order issued by a Governmental Authority of competent jurisdiction or other legal restraint or prohibition enjoining or preventing the consummation of the Transaction; (ii) 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 (iii) 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 any Party, upon notice to the other Party, if (a) any Governmental Authority (other than the City) of competent jurisdiction 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 (other than the City) of competent jurisdiction 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 City, 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; or

(iv) by the City, 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 City shall not have the right to terminate this Agreement under this Section 2.4(d)(iv) if the City'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.

(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 any Party 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 City to satisfy any condition set forth in Section 2.4(a) of this Agreement, the City will compensate the Concessionaire for up to \$500,000 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 paid to the Concessionaire or the Closing LOC shall be 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 City 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 City shall have caused the System to be operated by the City in the ordinary course in a manner consistent with past practice, which shall include using all 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 City's obligations under the Municipal Service Agreements and 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 City 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, the City shall not 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 City for the ownership and operation of the System are set forth in Schedule 12. Schedule 12 also designates which Permits are to be retained by the City, transferred to the Concessionaire, or have the Concessionaire added as co-permittee with the City.

(ii) Regardless of which Party holds the Permits, the Concessionaire shall be responsible for complying with the terms and conditions of all Permits held for the ownership or operation of the System. For those Permits for which the City is the permittee or co-permittee, at the request of the Concessionaire, the City 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 City is the sole permittee) or both permittees (when the City is the co-permittee). In the event the Concessionaire requests the City 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 City's prior approval (*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).

(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 City 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 1 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)(v)). 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(i), 9.1(j) or 9.1(k) or Sections 9.2(d), (e), (f), (g), (h) or (i) 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 City 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 City with respect to any Person, the City shall (i) give the Concessionaire and its Representatives reasonable access during normal business hours and on reasonable notice to the System, subject to the City's policies and regulations regarding safety and security and any other reasonable conditions imposed by the City, (ii) permit the Concessionaire and its Representatives 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 City, and such invasive testing may only be conducted after entering into a separate testing agreement with the City), and (iii) to furnish the Concessionaire and its Representatives 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 City and Concessionaire, dated _____, 2012. 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 City.

(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 City shall use commercially reasonable efforts to exercise their rights under existing agreements with service providers. Prior to the Closing Date, the City and the Concessionaire shall develop an information action plan to advise the public concerning the transition of Utility Services from the City 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 City 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 City will use reasonable efforts to provide to the Concessionaire, for up to six months following the Closing, the services of any employee whose primary responsibilities relate to the System (or the services of other City employees who are assigned for such purpose). All such services shall be provided for an amount equal to the actual cost to the City (including employment costs and related overhead expenses allocable to such employees, as reasonably determined by the City), 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 City 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 City 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 City 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 City'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 City shall assign to the Concessionaire all insurance and other proceeds payable by third-party insurers or other third parties to the City 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) any 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 City shall reimburse the Concessionaire for the difference upon such terms as are agreed to by the City and the Concessionaire. The City 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 as Terminable System Contracts to be assigned to the Concessionaire by the City on the Closing Date. Following the Concessionaire's designation, the City 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 City following the Closing Date. All other Terminable System Contracts shall be terminated by the City, effective at the Time of Closing. Any liability under or related to any Terminable System Contracts retained by the City following the Closing Date or terminated by the City 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 City.

(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.*

(i) *Union Employees.* Effective as of and conditioned upon Closing, the Concessionaire shall (A) recognize the SEIU as the exclusive bargaining representative for all Union Employees; (B) adopt the Collective Bargaining Agreement for those Union Employees and (C) make offers of employment to each Union Employee in good standing at the Time of Closing. Such offers of employment shall contain the same wages, paid leave time and benefits, or the equivalent of such benefits, as set forth in the Collective Bargaining Agreement with the exception of pension benefits which are addressed in Section 2.5(k)(iv).

(ii) *Other Employees.* Prior to the Bid Date, the City shall designate the Key Employees and, prior to the Time of Closing, the Concessionaire shall offer employment to each of the Key Employees. Such offers of employment to the Key Employees shall contain the same salary and other terms and conditions of employment, including provision for health and other welfare benefits applicable for such Key Employees on the Bid Date, adjusted for an annual salary increase granted to the Key Employees after the Bid Date, but not including any special bonus payments or increase in employment benefits. The Concessionaire shall also offer employment interviews to all other non-union employees whose employment primarily relates to the operation of the System. If the Concessionaire makes any offer of employment to any such

individual, such offer shall contain only the terms and conditions of employment that the Concessionaire deems to be appropriate in its discretion, except as provided in Sections 2.5(k)(iii) and (iv).

(iii) *Retirement Benefits.*

(A) 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) or (ii), a defined benefit pension plan (the “Concessionaire Pension Plan”) that provides retirement benefits that are substantially identical in amount and paid in substantially identical terms to the retirement benefits provided to such employee under PMRS as in effect immediately prior to the Closing Date. 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), all compensation and service recognized under PMRS as of the Closing Date, including service for purposes of eligibility to participate, vesting, retirement (including eligibility for early retirement subsidies), and benefit accrual, in the Concessionaire Pension Plan. The benefit payable under the Concessionaire Pension Plan to a former System Employee who is hired by the Concessionaire shall be offset by the actuarial equivalent of the former System Employee’s vested accrued benefit (*i.e.*, the normal retirement benefit) or early retirement benefit, as applicable, payable with respect to such individual under PMRS. For the purpose of this offset, the vested accrued benefit or early retirement benefit, as applicable, shall be determined based on the former System Employee’s credited service and final salary (as such terms are defined under PMRS) as of the Closing Date. The Concessionaire Pension Plan shall provide that mandatory employee after-Tax contributions shall be made to the Concessionaire Pension Plan in an annual amount that is substantially identical to the annual pre-Tax governmental pick-up contributions as of the Closing Date (net of any Taxes that would have applied if such pick-up contributions had been made on an after-Tax basis).

(B) The Concessionaire Pension 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 Pension Plan meets the requirements of Section 401(a) of the Internal Revenue Code of 1986 and the Concessionaire shall make any amendments or modifications to the Concessionaire Pension 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 Pension Plan.

(C) The Concessionaire Pension 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 Pension Plan, including investments held by the Concessionaire Pension Plan to satisfy its duties and obligations under ERISA. Any modifications made to the Concessionaire Pension Plan that are required in order for such plans to comply with

ERISA shall be deemed to be permissible modifications under the substantially identical standard set forth above.

(iv) *Health and Welfare Benefits for Union Employees.* To the extent that the Concessionaire offers employment to an individual described in Section 2.5(k)(i), and such individual accepts employment with the Concessionaire, the Concessionaire shall provide 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 such Collective Bargaining Agreement, or such other longer period of time as required by Law.

(v) *Retiree Health and Welfare Benefits for Non-Union Employees.* To the extent that the Concessionaire offers employment to an individual described in Section 2.5(k)(ii), and such individual accepts employment with the Concessionaire, the Concessionaire shall provide post-retirement health and welfare benefits to such individuals that are substantially identical to (or better than) the post-retirement health and welfare benefits such individual was entitled to receive as an employee of the City immediately prior to the Closing Date (or would have been entitled to receive at such date if he or she had then completed a sufficient period of service). The Concessionaire shall recognize all service by such individuals with the City for purposes of determining eligibility for such post-retirement health and welfare benefits. The obligation set forth in this Section 2.5(k)(v) shall terminate at the expiration of the Collective Bargaining Agreement described in Section 2.5(k)(i) that is in effect on the Closing Date and that has the longest term, or such other longer period of time as required by Law.

(l) *Damage or Destruction.* The City 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 City 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 City shall consult with the Concessionaire with respect to any System operation matters of a material nature prior to the Time of Closing.

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 Lehigh County Department of Real Estate. At the time of such recording, the Concessionaire shall pay any realty transfer tax due with respect to the lease granted under this Agreement. 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 Internal Revenue Code of 1986, 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 Internal Revenue Code of 1986) held by the City with respect to the System and the System Assets and conveyed by this Agreement. The City 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 Internal Revenue Code of 1986 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 Internal Revenue Code of 1986 and the applicable Income Tax Regulations. The Concessionaire shall deliver such allocation to the City within 60 Days after the Closing. 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 City to the Concessionaire, (ii) the City 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 City may undertake “remedial actions” under applicable Income Tax Regulations or enter into settlement agreements with the Internal Revenue Service. The Parties agree that any allocation under said section 1060 must not restrict the City’s ability to preserve the tax-exempt status of the interest on the System Bonds as determined by the City. 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 City 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 City 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 City's remedies upon a Concessionaire Default, (iii) the Reserved Powers and (iv) 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 City, 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 City 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 City 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 City 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 Section 2.5(i) 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 the City has not made and is not 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 utility practice (*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 the Required Capital Improvements or 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 or the System Operations 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 City 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) Except as noted in Section 3.2(c)(iii), the Excluded Liabilities shall consist of any debts, liabilities and obligations: (A) with respect to the City’s obligations under this Agreement, which the City 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 City 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 City or the defeasance thereof, which the City shall perform and discharge; or (D) 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.

(iii) All costs and expenses (including, without limitation, capital improvements) related to the remediation of violations set forth in the EPA Administrative Orders are Required Capital Improvements to be undertaken at the sole cost and expense of the Concessionaire, are Assumed Liabilities and are not Excluded Liabilities.

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. The Concessionaire may appoint one Operator to operate the Sewer 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 City in connection with the execution of this Agreement. The Concessionaire shall not engage or appoint a replacement Operator unless the City 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 City'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 City 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 City or the Operator upon three Business Days' notice to such Operator or the City, 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 City 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 City 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 City 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 City 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 City 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 Sewer 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 and Section 3.18, and after 30 days written notice from the City 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 City may direct that the Concessionaire remove the Operator pursuant to a resolution adopted by the City Council. The City 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 City 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 City Council written objections to any proposed removal determination. Any resolution adopted by the City Council shall contain written determinations as to the reasons for removal of the Operator. Within 30 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 City 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 City was not required to obtain in connection with the operation of the System prior to the Time of Closing, the City 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. 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 a limited partnership), subject to the terms of Section 17.1(e).

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 City 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 City 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 City or deposit with the City a Letter of Credit, title insurance endorsement (or similar instrument), indemnity bond, surety bond, cash or Eligible Investment reasonably satisfactory to the City in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the City 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 City to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the City by virtue of the contest of such Encumbrance.

(b) *By the City.* The City shall not do any act or thing that will create any Encumbrance (other than a Permitted City Encumbrance) against the System and shall promptly remove any Encumbrance (other than a Permitted City Encumbrance) against the System that came into existence as a result of an act of or omission by the City or a Person claiming through the City. The City shall not be deemed to be in default hereunder if the City 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 City has given advance notification to the Concessionaire that it is the intent of the City to contest the validity or collection thereof or cause such contest.

(c) *Removal.* The Concessionaire, if requested by the City and at the cost and expense of the City, shall use its reasonable efforts to assist the City in attempting to remove any Encumbrance that has come into existence as a result of an act or omission by the City. The City, 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 City to waive, modify or otherwise limit or affect the enforcement by the City 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 City 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 City 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 City to Access and Perform Work on the System.

(a) *Reservation of Rights.* The City reserves (for itself and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City) 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 City'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 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 City 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 City or third parties at the City'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 City or third parties at the City'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 City may be obligated to do or have a right to do under this Agreement;

provided, however, that the City 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 City 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 City 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 City to remedy any hazard created by the Concessionaire or the Operator.

(b) *Access Rights.* The City and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City, 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 to not unreasonably interfere with the Concessionaire's conduct of business at the System. To the extent that the City 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 unreasonably interfere with the conduct of business in or use of such space.

(c) *Effect of Reservation.* Any reservation of a right by the City and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City 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 City to do so, (ii) render the City 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 City as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the City to do any work required to be performed by the Concessionaire hereunder and performance of any such work by the City and any of its Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City 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 City shall cooperate with the Concessionaire with respect to the Concessionaire's obligations under this Section 3.8(a).

(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 City shall cooperate with the Concessionaire with respect to the Concessionaire's obligations under this Section 3.8(b).

(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 City 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 City is required under an applicable Law to withhold a portion of any payment that the City is obligated to make to the Concessionaire under this Agreement, the City will be deemed to have satisfied such payment obligation to the Concessionaire to the extent of such withholding by the City. If any such withheld amounts are permitted to be paid to the Concessionaire, the City shall pay such amounts to the Concessionaire whenever permitted by Law. The City shall notify the Concessionaire in writing at least five Business Days prior to the withholding of any amount pursuant to this Section 3.9.

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 City 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 City shall be deemed additional consideration hereunder, due and payable by the Concessionaire within 10 Business Days after written demand by the City. 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 City 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).

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 City, the Concessionaire shall forward to the City, within 15 days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the City, 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 City to terminate such agreement within three Business Days' notice or less) or pursuant to which the City may incur any liability whatsoever thereunder, the Concessionaire shall submit such Government Agreement for Approval by the City (which Approval may be withheld, delayed or otherwise conditioned in the discretion of the City) 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 City *provided* that the Concessionaire indemnifies the City for any Losses relating thereto).

Section 3.13. Notices of Defaults and Claims.

(a) *Notice by the Concessionaire.* The Concessionaire shall promptly give notice to the City (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 or the City 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 City). The Concessionaire shall provide the City with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

(b) *Notice by the City.* The City shall promptly give notice to the Concessionaire (i) if the City becomes aware that a City Default has occurred under this Agreement (*provided, however*, that the failure to give such notice shall not constitute an independent City Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the City 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 City is aware (other than as a result of a notice to the City from the Concessionaire). The City 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 City, the Concessionaire shall collaterally assign, to the extent reasonably practicable, to the City, in form and substance satisfactory to the City, 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 City 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 City for the purposes of this Section 3.14. The City acknowledges that the Operating Agreements and Plans may also be assigned as security to a Leasehold Mortgagee and that each of the City 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 City’s assumption of liabilities under the Operating Agreements and Plans and to Article 18, the City shall be entitled to use the Operating Agreements and Plans in each of the following events: (i) if the City 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 City 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 City 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 City. The Concessionaire shall promptly deliver to the City, 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 “Allentown Water and Sewer System”.

(b) The City retains the exclusive naming rights with respect to the System and the exclusive right to register and own the naming rights as the “Allentown Water and Sewer 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 City shall not grant any third party the right to change the name of the System. Any action taken by the City pursuant to this Section 3.15(b) is not a Compensation Event or an Adverse Action. The City 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 City grants to the Concessionaire a non-exclusive, non-transferable, royalty-free license during the Term to use the name “Allentown Water and Sewer System”, together with all existing and future developed logos and marks (not including the City 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 City 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 City 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 City 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. After the Bid Date, the City 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 City.

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 City shall have access, as required by such services or personnel, to the System; (ii) the City shall have access to the System as necessary for the protection of public health and safety; *provided, however,* that inspections by the City 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 City 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 City Permit requirements.

Section 3.18. Public Purpose Requirements. The Parties agree that during the Term the City 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 City as enumerated in the General County Assessment Law. In order to assure that the System continues to fulfill the public purposes of the City, the System shall be operated consistent with the following requirements:

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 be or 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. To the extent required by Law, the Concessionaire and the Operator shall obtain from the PUC and shall retain a valid Certificate of Public Convenience with respect to the System and the System Operations.

Section 3.20. Municipal Service Agreements. As of the Bid Date the City is a party to a Municipal Service Agreement with each of the Municipal Customers. The City 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 the City shall not waive, by its action or inaction, any material right or claim granted or held by the City under the Municipal Service Agreements and it accepts the affirmative duty to enforce its rights under the Municipal Service Agreements. In connection with the System Operations and the provision of Utility Services to the Municipal Customers pursuant to the Municipal Services Agreements, the Concessionaire, or the Operator on behalf of the Concessionaire, shall act as the agent of the City and specifically agrees to perform all of the contractual obligations of the City under each of the Municipal Service Agreements strictly in accordance with the terms of the Municipal Service Agreements. Any payment of Service Charges collected by the City under the terms of any Municipal Service 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 City shall entitle the Concessionaire to the payment of interest at the Bank Rate from the date of receipt of such payment by the City to the date the unpaid amount is paid to, or upon the order of, the Concessionaire. 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 City and the Municipal Customers.

Section 3.21. Water Supply and Retained Water Supply System.

(i) *Water Supplied.* From the Retained Water Supply System and during the Term of this Agreement, the City shall supply to the Concessionaire, at no cost to the Concessionaire, all the untreated water that may be supplied from the Retained Water Supply System to the quantity necessary to enable the Concessionaire to provide Utility Services by means of the Water System (A) to the City, the residents of the City, the commercial and industrial users of the System that are located and all other users in the City and, (B) in accordance with the applicable Water Service Agreement, to each Municipal Customer that is supplied with water under a Municipal Services Agreement as set forth in Schedule 2B.

(ii) *Retained Water Supply System.* The City agrees to maintain, or cause to be maintained, the Retained Water Supply System so that the Retained Water Supply System shall be operated in a manner consistent with prudent utility practice.

(iii) *Water Shortage.* In the event of a Water Shortage, the amount of water to be provided by the City to the Concessionaire by means of the Retained Water Supply System shall be reduced by no more than the degree to which the total amount of available water is reduced (i.e., the City shall not discriminate against the Concessionaire to the benefit of any other purchaser of water from the City). In the event of a Water Shortage relating to any individual Water Source within the Retained Water Supply System, the amount of water being provided by the City to the Concessionaire from that individual Water Source shall be reduced no more than the degree to which the total amount of available water from that particular source is reduced. To the extent possible, the City shall provide additional water from the other Water Sources within the Retained Water Supply System to compensate for the reduction from the affected Source. The City shall not be liable to Concessionaire for any damages, direct or indirect, arising from a Water Shortage.

(iv) *Maintenance Activities.* The Concessionaire acknowledges that the supply of water may need to be temporarily discontinued or reduced as a result of required maintenance, repair or replacement of Retained Water Supply System equipment or other assets. The City shall notify the Concessionaire as far as advance as reasonably possible (which shall, at a minimum, be seven days, except in the event of an emergency) of any planned maintenance, repair or replacement to minimize, to the extent reasonably possible, the impact of such disruption on the Concessionaire. Other than City's obligations under this Section 3.21(iv), the City shall not be liable to Concessionaire for any damages, direct or indirect, arising from supply disruptions arising out of such required maintenance, repair or replacement.

(v) *Water Quality.* The Concessionaire acknowledges that it is receiving untreated source water from the City. The City is providing the water in its "AS IS, WHERE IS" condition and makes no representations or warranties regarding the quality of the water, including, without limitation, its use for a particular purpose, its treatability by the Water Plant and Distribution System, its chemical and physical characteristics, temperature, and the presence of pollutants or Hazardous Substances. The Concessionaire acknowledges and understands the vulnerability of the Retained Water Supply System, including the Water Sources to contamination by Hazardous Substances. In particular, Schantz Spring and Crystal Spring may be susceptible to contamination by spills of Hazardous Substances, given their location and proximity to roads and highways and because of the possibility of ground water pollution from other sources. The Concessionaire recognizes and accepts the possibility that a spill or other pollution event could make water from one or more of the sources of the Retained Water Supply System unfit for human or commercial consumption and/or not treatable by the Water Plant and Distribution System. The Concessionaire acknowledges and understands there is a risk of water from Schantz Spring and/or Crystal Spring being classified by any Governmental Authority as "under the influence" of surface water, or any other similar classification, because of the negative impacts significant rain events have on spring water quality and the identification of algae and diatoms in the spring

water. The Concessionaire acknowledges that if water from Schantz Spring and/or Crystal Spring is classified as “under the influence” of surface water, that spring could be shut down or water from the so designated spring may require additional treatment. In the event that water from any source is determined unfit for human or commercial consumption or receives the “under the influence” designation and, in either case, cannot be treated by the Water Plant and Distribution System or is otherwise unusable by Concessionaire. The City agrees to take reasonable measures to prevent and respond to such contamination or an “under the influence” designation to avoid and/or minimize the adverse consequences due to such designation

(vi) *Delivery Points.* The untreated water to be supplied by the City by means of the Retained Water Supply System shall be delivered to the Concessionaire at the delivery points set forth in Schedule 15.

(vii) *Surplus Water.* The City retains all of the water rights with respect to Surplus Water and the Concessionaire shall not be entitled to enter into any agreement for the sale of Surplus Water. The City is entitled to enter into agreements for the bulk sale of Surplus Water. Whenever Surplus Water is sold by the City pursuant to any such agreement and treated by means of the water treatment plant and facilities of the Water Plant and Distribution System or transmitted by means of the water distribution facilities of the Water Plant and Distribution System, the Concessionaire shall be entitled to charge reasonable fees for such treatment and transmission of Surplus Water.

Section 3.22. Service to City and City 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 City and the users of the System located in the City. 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 City, the residents of the City and the commercial and industrial users of the System that are located in the City. The City and the Concessionaire agree to cooperate in the submission by the City 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 Sewer Utility System for the next 20 years. Whenever such projection shows that the expected utilization of the Sewer Utility System in any future year within the 20 year projection period is expected to exceed the then current sewerage treatment capacity of the Sewer Utility System, the City 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 Sewer Utility System. Subject to the Approval of the City, 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 Sewer Utility System to meet the expected utilization of the Sewer 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 2043, 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 2043, then the cost and expense shall be allocated between the City 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.

(b) *Free Service.* No Service Charges shall be imposed on the City 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 City's Fire Department, (ii) for street cleaning, (iii) for City Hall and other buildings used primarily by the City for public purposes, (iv) for comfort stations in City parks and (v) for swimming pools owned or operated by the City. No Services Charges shall be imposed on the City and the services of the Sewer Utility System shall be provided free of charge for City Hall and other buildings used primarily by the City for public purposes.

Section 3.23. Annual Royalty Payments. With respect to each Reporting Year, the Concessionaire shall pay to the City the Annual Royalty Payment for that Reporting Year. For the first Reporting Year, the Annual Royalty Payment shall be paid in a single installment which shall be due and payable on the earlier of the 180th day following the Closing Date or the first Business Day in the month of December of the first Reporting Year. For each Reporting Year after the first Reporting Year, the Annual Royalty Payment shall be paid in two equal installments. The first installment shall be due and payable on the first Business Day of April and the second installment shall be due and payable on the first Business Day of October.

Section 3.24. Office in the City. Both the Concessionaire and any Operator shall maintain an office in the City of Allentown for the management and operation of the System and the provision of customer service.

ARTICLE 4

Capital Improvements

Section 4.1. Concessionaire Responsibility for Capital Improvements. 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 changes in Law, which capital improvements include the Required Capital Improvements. The Concessionaire may undertake at its sole cost and expense and subject to the Approval of the City, the expansion of the System for the provision of Utility Services.

Section 4.2. Authorizations Related to Capital Improvements. The Concessionaire's obligation to perform capital improvements shall be subject to the issuance by the City of any and all Authorizations to be issued by the City and as

required by the City with respect thereto and the City agrees not to unreasonably withhold, condition or delay the issuance of any such Authorizations, and to use their respective reasonable efforts to assist the Concessionaire in obtaining such Authorizations. Without limiting the generality of the foregoing, the City 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 City but that does not comprise part of the System) in order for the Concessionaire to perform capital improvements.

Section 4.3. Project Labor Agreement With respect to any Major Capital Improvement having an estimated cost of \$5,000,000 or more, the Concessionaire shall enter into a Project Labor Agreement in substantially the form of the Project Labor Agreement attached hereto as Exhibit ____.

ARTICLE 5

Modifications

Section 5.1. City Directives. Subject to the City'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 City may, at any time during the Term, issue a Directive to the Concessionaire. Subject to the City 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 City) 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 City shall pay to the Concessionaire the Concession Compensation with respect thereto, less any projected additional Revenues that would be derived from such work.

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 City, for Approval, a Concessionaire Request with respect to such change and shall submit to the City for its Approval specific plans with respect to any such work. 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 City.

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.

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 City 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 City 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 City 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 City in accordance with the terms hereof. If the City 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 City 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 in Law (other than a new Law or change of Law enacted by the City) that is not required by any new Law or change in 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 City 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).

(b) If during the Term the City 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 City may upon reasonable written notice to the Concessionaire modify or change the Operating Standards; *provided, however*, that the City shall pay to the Concessionaire the Concession Compensation with respect thereto at the time such modification or change is implemented. At the City'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 City 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 City, the Concessionaire shall pay to the City within 10 Business Days following demand therefor, or the City 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 City 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 City may assess an Operational Penalty for each Operational Breach and may assess additional Operational Penalties 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 Penalty assessed with respect to an Operational Breach within 30 days following the filing of the written notice by the City.

ARTICLE 7

Service Charges

Section 7.1. Imposition of Service Charges.

(a) *Establishment of Tariff.* In accordance with and subject to the provisions of this Article 7, the Concessionaire shall, at all times during the Term, establish, and revise from time to time, a 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 2016 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 City, which approval shall be at the sole discretion of the City, provided that no City 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).

(e) *Annual Rate Adjustment.* For the 2016 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 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) and Section 7.2, the Concessionaire may also impose a Capital Cost Recovery Charge to recover the capital costs of Major Capital Improvements. If the Concessionaire seeks to impose a Capital Cost Recovery Charge it shall submit to the City a written report detailing the capital cost of the Major Capital Improvement, the sources for funding such capital cost, 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 which the Concessionaire proposed to impose over the term of the Cost Recovery Period. The report shall be considered by the City within 30 days of its submission and shall be subject to the Approval of the City, which Approval shall not be unreasonably conditioned, delayed or withheld. Any Approved Capital Cost Recovery Charge may be imposed during the Cost Recovery Period.

(g) *Regulatory Costs.* The Parties acknowledge that changes in regulations imposed by the Federal government or the government of the Commonwealth of Pennsylvania may result in increased costs of operation and maintenance of the Utility System. In addition to the Service Charges otherwise imposed under this Section 7.1, but subject to Section 7.1(c) and Section 7.2, the Concessionaire may also impose upon all users of the Utility System an additional charge to pay for additional costs of operation and maintenance of the Utility System directly related to the burden of regulations imposed by the United States or the Commonwealth of Pennsylvania, but only to the extent that such regulations were not proposed or in effect on the Bid Date.

Section 7.2. Rebate of Service Charges. As of the Bid Date, the City has established a program of Service Charge rebates for all bond fide residents of the City

who are 65 years of age or older or who are permanently disabled individuals. The Concessionaire shall continue this program during the Term of this Agreement.

Section 7.3. Collection and Enforcement of Service Charges. The City agrees to assist and cooperate with the Concessionaire in the collection and enforcement of Service Charges to the extent that the City may be authorized by Law to provide such assistance or cooperation. Any costs incurred by the City 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 City for such costs.

ARTICLE 8

Reporting, Audits and Inspections

Section 8.1. Reports.

(a) *Incident Management and Notifications.* The Concessionaire shall provide notice to the City within 24 hours of all emergencies, and promptly provide notice to the City 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 City 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 immediately notify the City of any violation of Environmental Law, malfunction of the System or failure to operate the System which has the potential to present a danger to public health and safety. 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 City and, as appropriate, coordinate its response with the City, 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 City 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 City 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 City within 45 days after the end of each Reporting Year a certification that the System is and had operated for the Reporting Year in full 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 City within 120 days after the end of each Reporting Year a copy of the audited balance sheets of the Concessionaire 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, in each case in a manner and containing information consistent with the Concessionaire's current practices and certified by the Concessionaire's chief financial officer 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 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 City, 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 City, furnish or cause to be furnished) to the City 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 City, 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 City to determine whether the Concessionaire is in compliance with this Agreement, *provided* that, in the case of investigations of possible criminal conduct or City 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 City 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 City; *provided, however*, that the City 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 City determines that the exemptions from disclosure under the Pennsylvania Right-to-Know Law do not apply to any such Information, the City 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 City to defend an action seeking the disclosure of Information that the City 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 City for the reasonable costs and expenses (including attorneys’ fees of the prevailing party) incurred by the City in defending any such action. Notwithstanding anything to the contrary herein, the City and the Concessionaire may disclose the United States federal tax treatment and tax structure of the Transaction.

Section 8.3. Inspection, Audit and Review Rights of the City.

(a) *Audit Right.* In addition to the rights set out in Section 8.2, the City may, at all reasonable times, upon 10 Business Days’ prior notice, except in the case of investigations of possible criminal conduct or City 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 City’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 City or its designated Representative such information and material as may reasonably be required by the City or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by the City in connection with the same.

(b) *Inspection Right.* The City 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 City 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 City 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 City ordinance violations, in which case no consent shall be required, be entitled, at the sole cost and expense of the City, 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 City 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 City 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 City 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 City 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.

Section 8.4. Audits, Assistance, Inspections and Approvals. Wherever in this Agreement reference is made to the City or its Representatives providing assistance, services, Approvals or consents to or on behalf of the Concessionaire or its Representatives or to the City 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 City 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 City 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 City. The City 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 City is a municipal corporation and city of the third class, duly organized and existing under the Constitution and laws of the Commonwealth of Pennsylvania and the City of Allentown Home Rule Charter.

(b) *Power and Authority.* The City Council has (i) duly adopted an ordinance 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 City of its obligations contained in this Agreement. The City 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 City and constitutes a valid and legally binding obligation of the City, enforceable against the City 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 City will have good and marketable title to the System necessary for the System Operations pursuant to this Agreement, subject only to Permitted City 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 City 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 City 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 of the outstanding System Bonds pursuant to Section 2.4(a), no obligation of the City 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 City 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 City, 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 City

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 City under (i) any applicable Law or (ii) any agreement, instrument or document to which the City is a party or by which it is bound.

(f) *Consents.* No consent is required to be obtained by the City from, and no notice or filing is required to be given by the City to or made by the City with, any Person (including any Governmental Authority) in connection with the execution, delivery and performance by the City 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 City's obligations after Closing, those consents which the City 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 best of the City's knowledge, the City has operated and is operating the System in compliance, in all material respects, with all applicable Laws and is not in breach of any applicable Law that would have a material adverse effect on the operations of the System or on the Concessionaire Interest. There are no Authorizations from any Governmental Authority necessary for the operation of the System as currently being operated except for those Authorizations listed in Schedule 12.

(ii) There is no action, suit or proceeding, at law or in equity, or before or by any Governmental Authority, pending nor, to the best of the City's knowledge, threatened against the City 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 best of the City's knowledge, threatened against the City which could materially affect the validity or enforceability of this Agreement.

(h) *Financial Statements.* The financial statements of the System for the fiscal years ending December 31 of each of the years 2009 to 2011, 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 units.

(i) *System Contracts, Sludge Agreement and Municipal Service Agreements.* Each System Contract not terminated in accordance with Section 2.5(j) the Sludge Agreement and each Municipal Service Agreement is in full force and effect and has been made available for review by the Concessionaire. The City is not in material breach of its obligations under any such System Contract, Sludge Agreement 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 City no other party to any such System Contract, Sludge Agreement or Municipal Service Agreement is in material breach of its obligations under any such System Contract,

Sludge Agreement 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, the Sludge Agreement and the Municipal Service Agreements are all of the material contracts and agreements (i) to which the City is a party that relate to the System Operations or (ii) that bind the City 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, 2011, 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 Public Financial Management, Inc., whose fees will be paid by the City, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the City who might be entitled to any fee or commission from the City in connection with the transactions contemplated by this Agreement.

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

Section 9.2. Representations and Warranties of the Concessionaire. The Concessionaire makes the following representations and warranties to the City (and acknowledges that the City 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 City 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 City 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 best of the Concessionaire's knowledge, 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 best 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 City 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) *RFQ and RFP.* All information regarding the Concessionaire's qualifications set forth in the response to the request for System concessionaire qualifications and the response to the request for proposals delivered by or on behalf of the Concessionaire to the City 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) *City's Representations and Warranties.* The representations and warranties of the City contained in Section 9.1 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, 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 20.1, 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 City 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 20.1, 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 City'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. City's Obligations. The City 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 City's cooperation will include 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 City shall, at the sole cost and expense of the Concessionaire, use its reasonable efforts to cause the City'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 City 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 best of the knowledge and belief of a designated Representative of the City. Nothing herein shall require the City to incur any additional obligations or liabilities (unless the City shall have received indemnification, as reasonably determined in the City'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 City, execute and deliver to the City, or any of the parties specified by the City, 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 City 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 City shall not be treated as having become a party to any such transaction solely by virtue of the execution of this Agreement). A violation of this Section 10.4 by the Concessionaire shall entitle the City to (a) recover from the Concessionaire, to the extent permitted by applicable Law, the amount of any Tax liability to which the City, or any City 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 City 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, 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 City 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 City 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 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 against any Contractor or supplier who is qualified to perform the work to which the contract relates.

(e) The Concessionaire and each Contractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the City for purposes of investigation to ascertain compliance with this Section 11.3. 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 City.

(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 best of the Concessionaire's knowledge, 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 or the City.

(b) The Concessionaire shall not, in connection with this or any other agreement with the City, 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 City, 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 City.

(d) Except with the consent of the City, 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 City, 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 City 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.

Section 11.6. Prevailing Wage.

(a) *Compliance with Prevailing Wage Act.* The Concessionaire shall comply with the provisions of the Pennsylvania Prevailing Wage Act, Act of August 15, 1961 (P.L. 987), as amended, 43 P.S. §§165-1 to 165-17, known as the Pennsylvania Prevailing Wage Act and the regulations issued pursuant thereto by the Pennsylvania Department of Labor and Industry. To the extent that the Concessionaire performs any "public work" (as such term is defined in the Pennsylvania Prevailing Wage Act) related to the System during the Term, or engages any Contractor to perform any such "public work" relating to the System during the Term, the Concessionaire shall pay and ensure that all of its Contractors pay all employees engaged in such "public work" at least the prevailing wage rates as ascertained from time to time by the Pennsylvania Department of Labor and Industry (or its successors).

(b) *City Powers.* Further, the Concessionaire acknowledges that the City may withhold any sums due to the Concessionaire or a Contractor as is necessary to pay to such employees of the Concessionaire or Contractor, as applicable, any deficiency between the wages required to be paid to such employees and the wages actually paid to such employees, and the City may make such payments directly to the appropriate employees.

(c) *Contract Provisions.* The Concessionaire shall include a provision in each contract or subcontract entered into with a Contractor performing “public work” reflecting the requirements of this Section 11.6.

Section 11.7. Reciprocal Limitations Act. Subject to federal and state Law, the Concessionaire shall comply with the provisions of the Reciprocal Limitations Act, 62 Pa. C.S.A. § 107, which imposes certain procurement restrictions against those states which have imposed restrictions against purchases from the Commonwealth of Pennsylvania or other states, as such statute relates to the performance by the Concessionaire of any obligation under this Agreement. Nothing in the foregoing shall be deemed to bar the Concessionaire or any Contractor from seeking any waiver as provided for in the Reciprocal Limitations Act.

Section 11.8. Steel Products Procurement Act. In the performance of any construction, reconstruction, alteration, repair, improvement or maintenance of the System, the Concessionaire shall comply with the requirements of the Steel Products Procurement Act, Act of March 3, 1978 (P.L. 6, No. 3), as amended, 73 P.S. §§1881-1887.

Section 11.9. Trade Practices Act. In accordance with Pennsylvania Trade Practices Act, the Act of July 23, 1968 (P.L. 686, No. 226), 71 P.S. §§ 773.101-773.113, the Concessionaire shall not furnish or use or permit to be furnished or used in any “public works” (as defined in the Pennsylvania Trade Practices Act) any aluminum or steel products made in a foreign country that has been identified by the Commonwealth of Pennsylvania as a foreign country that discriminates against aluminum or steel products manufactured in the Commonwealth of Pennsylvania.

Section 11.10. Pennsylvania Procurement Code. In addition to the other obligations set forth in this Agreement, the Concessionaire shall be subject to the following provisions of the Commonwealth Procurement Code: 62 Pa. C.S.A. § 531 (relating to debarment and suspension), 62 Pa. C.S.A. § 541 (relating to accounting standards); 62 Pa. C.S.A. § 551 (relating to inspections), 62 Pa. C.S.A. § 552 (relating to audits) and 62 Pa. C.S.A. § 563 (relating to record retention requirements).

ARTICLE 12

Indemnification

Section 12.1. Indemnification by the Concessionaire. The Concessionaire shall indemnify and hold harmless the City and each of its Representatives from and against any Losses actually suffered or incurred by the City 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 or (iv) 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 City. The City shall indemnify and hold harmless the Concessionaire and each of its Representatives against and 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 City 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 City of 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 City 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 of the City's 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 the City shall not be required 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 City under Section 12.2 for the breach of any representation or warranty made or given by the City in Section 9.1 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 exceeds \$2,000,000 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 City 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 9.1(a), (b), (c), (d), (e), (f) or (g); 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 City or its 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 any 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 Insurance, as prescribed by applicable Law, covering all employees who agree to provide a service under this Agreement and Employer's Liability Insurance coverage with limits of not less than \$500,000 each accident or illness or disease.

(b) *Commercial General Liability (Primary and Umbrella).* The Concessionaire shall provide or cause to be provided Commercial General Liability Insurance or equivalent with limits of not less than \$25,000,000 per occurrence and in the annual aggregate, which limits may be met through a combination of primary and excess or umbrella policies, 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, defense, terrorism (to the extent commercially available) and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising under or in connection with this Agreement.

(c) *Automobile Liability (Primary and Umbrella).* 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 \$10,000,000 per occurrence and in the annual aggregate, which limits may be met through a combination of primary and excess or umbrella policies, for bodily injury and property damage. The City is to be a named insured on a primary, non-contributory basis.

(d) *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, All Risk Builder's Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the System. 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 City shall be a named insured and, subject to the claims of any Leasehold Mortgagee, as a loss payee.

(e) *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, with the City as a named insured, covering acts, errors or omissions shall be maintained with limits of not less than \$2,000,000; *provided, however,* that design and construction architects and engineers performing work of a material nature with respect to any such construction project undertaken by the Concessionaire pursuant to this Agreement must maintain limits of not less than \$5,000,000 (to the extent commercially available). 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 which is not renewed or replaced shall have an extended reporting period of two years.

(f) *Property.* The Concessionaire shall obtain All Risk 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. 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 City). 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 City is to be a named insured on such All Risk Property Insurance. Subject to the claims of any Leasehold Mortgagee, the City and the Depository are to be named as loss payees. The Concessionaire shall be responsible for any loss or damage to City 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 City or its Representatives.

(g) *Railroad Protective Liability.* When any work is to be done adjacent to or on railroad or transit property, the Concessionaire shall provide or shall cause to be provided, with respect to the operations that the Concessionaire or Contractors perform, Railroad Protective Liability Insurance in the name of the applicable railroad or transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

Section 13.2. Additional Requirements.

(a) *Evidence of Insurance.* The Concessionaire shall deliver or cause to be delivered to the City, original Certificates of Insurance and copies of all policies 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 City), 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 City 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 City to obtain certificates or other insurance evidence from the Concessionaire shall not be deemed to be a waiver by the City. 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 City 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 City; *provided* that all such insurers, at a minimum, shall have a rating of A(VII) or better by A.M. Best Company (unless the City consents to waive this requirement). At the request of the City, the Concessionaire shall provide the City with certified copies of policies and 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 City by the insurer in the event coverage is canceled or non-renewed. The City 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 City for any delinquent premiums paid by the City on demand without any days of grace and without prejudice to any other rights and remedies of the City hereunder. The Concessionaire shall not cancel, terminate, materially change to the detriment of the City any Required Coverage.

(c) *Deductibles.* All Required Coverages may contain deductibles or self-insured retentions not to exceed amounts reasonably acceptable to the City 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 succeeding fifth 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 City, their employees, elected officials, agents or representatives with written evidence of such waiver to be included in the policy endorsement or otherwise provided to the City.

(f) *City'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 City 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 City in connection therewith shall be payable by the Concessionaire to the City on demand without any days of grace and without prejudice to any other rights and remedies of the City hereunder. Such insurance taken out by the City shall not relieve the Concessionaire of its obligations to insure hereunder and the City 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 by City.* The Concessionaire expressly understands and agrees that any insurance or self-insurance programs maintained by the City 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 insure the interests of the City, its employees, elected officials, agents and representatives, the Concessionaire and any other Contractors or subtenants 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 City, the Concessionaire shall provide or cause to be provided to the City Certificates of Insurance with respect to such insurance coverages or such other evidence of insurance, acceptable in form and content to the City.

(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. If the Concessionaire contracts operations to a third party, the Concessionaire will be an additional named insured on any liability policy.

(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 City as to such Additional Coverages, (ii) provide the City with any documentation relating to the Additional Coverages, including Certificates of Insurance, that the City reasonably requests and (iii) at the City’s election cause the City and its employees, elected or appointed officials, agents and representatives to be named as additional insureds 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) *City’s Right to Modify.* The City 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 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 City consent to waive such requirement and the City 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 City 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 Depositary; *provided, however*, that if at any time the Casualty Cost exceeds the net insurance proceeds actually deposited with the Depositary, then the Concessionaire shall also deposit with the Depositary 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 only apply to casualty events in which the cost of Restoration exceeds \$1,000,000. 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 City for Approval by the City the plans for the Restoration work and such work shall not be undertaken unless the plans for such work have been Approved by the City.

(b) *Rights of the City.* 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 City 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 City’s reasonable Restoration expenses, less amounts received by the City 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 City for all amounts spent in connection with any Restoration which was undertaken, (y) pay over or cause the Depository to pay over to the City, 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 City 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 City, to the extent, if any, of the reasonable expenses paid or incurred by the Depository and the City 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 City 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 City 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 City and the Depository a release of such lien executed by the lien or 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 City the certificate of the architect or engineer 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 City, (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.* If the Concessionaire obtains payment or performance bonds related to a Restoration (which the Concessionaire may or may not obtain in its sole discretion), the Concessionaire shall name the City and the Concessionaire and the Leasehold Mortgagee, as their interests may appear, as additional obligees, and shall deliver copies of any such bonds to the City promptly upon obtaining them. The claims of any such additional obligee with respect to such payment or performance bonds shall rank *pari passu* in priority of payment with the claims of all other additional obligees.

(f) *Benefit of City.* The requirements of this Section 13.3 are for the benefit only of the City, and no Contractor or other Person shall have or acquire any claim against the City as a result of any failure of the City 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 Depositary 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 City takes any action or actions at any time during the Term (including enacting 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 one percent (1%) of the Consideration, 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 neither of the following shall be an Adverse Action (A) the exercise by the City of its Reserved Powers for the protection of the public health, safety or welfare and (B) the imposition of a Tax of general application or an increase in Taxes of general application.

(b) Subject to the provisions of Section 14.3 and the other provisions of this Article 14, if an Adverse Action by the City occurs, the Concessionaire shall have the right to (i) be paid by the City 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 City 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.

(c) If an Adverse Action occurs, the Concessionaire shall give notice (the “AA-Preliminary Notice”) to the City 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 City 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 City shall, after receipt of the AA-Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the City may reasonably consider necessary. If the City wishes to dispute the occurrence of an Adverse Action or the amount of AA-Compensation, if any, claimed in the AA-Notice, the City 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 City 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 City from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the City may defer any such payment for an additional 90 days if the City 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 City, and the City shall pay an amount equal to the aggregate of (i) the Termination Compensation, plus (ii) without duplication, the reasonable out-of-pocket and documented 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 City from the date of receipt of the AA-Dispute Notice to the date on which payment is made, the City may defer any such payment for an additional 120 days if the City 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 City to the Concessionaire, so long as the City 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 City 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 City 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 City shall be released and forever discharged by the Concessionaire from any and all liability in respect of such Adverse Action.

Section 14.3. Right of City to Remedy an Adverse Action. If the City wishes to remedy the occurrence of an Adverse Action, the City shall give notice thereof to the Concessionaire within 30 days following the date of receipt of the AA-Notice. If the City 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 City 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 City 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 City shall, after receipt of any such notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the City may reasonably consider necessary.

(b) The Concessionaire shall notify the City 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, 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 City 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 City shall, after receipt of the Delay Event Notice, be entitled by notice to require the Concessionaire to provide such further supporting particulars as the City may reasonably consider necessary. If the City wishes to dispute the occurrence of a Delay Event or the Delay Event Remedy claimed in the Delay Event Notice, the City 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 City 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 City 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 City within 60 days of the CE-Notice.

(c) If the City 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 City 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.

ARTICLE 16

Defaults, Letters of Credit and Guarantee Agreement

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 City 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 City, 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 City, 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 City 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 City 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 City, 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 City, 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 present or any future 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 present or any future 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 City or its Representatives;

(vii) the failure by the Concessionaire or the Operator to pay when due all taxes, fees or other monetary obligations payable to the City 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 City to the Concessionaire;

(viii) the failure by the Concessionaire to pay any Operations 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 City Upon Concessionaire Default.* Upon the occurrence of a Concessionaire Default, the City 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 provisions of Articles 18 and 19, do any or all of the following as the City, in its discretion, shall determine:

(i) the City may terminate this Agreement by giving 30 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 City 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 City, 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 City 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 City may (without obligation to do so) make payment on behalf of the Concessionaire of such monies, and any amount so paid by the City shall be payable by the Concessionaire to the City within five Business Days after demand therefor;

(iii) subject to the cure rights of the Leasehold Mortgagee set forth in Section 18.3, the City may cure the Concessionaire Default (but this shall not obligate the City 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 a City in curing or attempting to cure the Concessionaire Default, shall be payable by the Concessionaire to the City within five Business Days after written demand therefor; *provided, however*, that (A) the City shall not incur any liability to the Concessionaire for any act or omission of the City or any other Person in the course of remedying or attempting to remedy any Concessionaire Default and (B) the City's cure of any Concessionaire Default shall not affect the City's rights against the Concessionaire by reason of the Concessionaire Default;

(iv) the City may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a Concessionaire Default;

(v) the City may seek to recover their 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 City to terminate this Agreement pursuant to Section 16.1(b)(i), the City may terminate the Concessionaire's right of possession of the System, and in such event, the City or the City'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 City 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 City may, subject to applicable Law, distrain 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 Government Parties may close any and all portions of the System; and

(ix) immediately upon a Health and Safety Default the City 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 City may exercise any of its other rights and remedies provided for hereunder or at law or equity.

Section 16.2. Defaults by the City.

(a) *Events of Default.* The occurrence of any one or more of the following events during the Term shall constitute an "City Default" under this Agreement:

(i) if the City 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 City or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the City 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 City 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 City, or for such longer period as may be reasonably necessary to cure such failure, *provided*, in the latter case, that the City 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 City Encumbrance) created, incurred, assumed or suffered to exist by the City 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 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 City or any agency of the City; or

(iv) if the City (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 City files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future 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 City, or of all or any substantial part of its properties (in each case, to the extent applicable to a political subdivision), 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 City seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future 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 City, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the City or of all or any substantial part of its properties (in each case, to the extent applicable to a political subdivision), 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 City 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 against the City in any action, suit or proceeding brought against the City, 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 City 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 City under this Agreement becomes unenforceable against the City; 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 a City 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 City, or grants to the City the lawful authority, to perform its contractual obligations under this Agreement notwithstanding such judgment order or otherwise remedies the City Default and (ii) the City 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 City Default.* Upon the occurrence of a City Default, the Concessionaire may by notice to the City declare the City 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 City; *provided, however*, that the City shall be entitled to cure a City 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 City Default or (B) providing the Concessionaire with a written work plan within such 60-day period outlining the actions by which the City 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 City 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 City to comply in any material respect with such approved work plan following 60 days' notice of such failure from the Concessionaire to the City shall be deemed to be a City Default described in Section 16.2(a)(i) and the entitlement of the City to cure such City Default by the delivery of an approved work plan shall not apply thereto; and upon such termination the City shall be obligated to pay to the Concessionaire the System Concession Value plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a result of such termination;

(ii) the Concessionaire may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for a City Default;

(iii) the Concessionaire may seek to recover its Losses caused by the City 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 City 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 the amount then to be calculated equal to 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 Concessionaire's capital improvement program required pursuant to the Operating Standards.

(b) Such Letter of Credit shall be replaced on every anniversary of such Lease Year until the date that is two years after (i) the expiration of the Term and (ii) such time as there being 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. Upon the occurrence 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 City 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 City may recover will be reduced by the amount so drawn, and without the City'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 City has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the City 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 which is expiring. If the Concessionaire does not deliver to the City a Replacement Letter of Credit within such time period, the City shall have the right (in addition to all other rights and remedies provided in this Agreement and without the City'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 City has the right to draw under such Letter of Credit in the amount of such sight draft. After the Concessionaire delivers to the City a Replacement Letter of Credit complying with the provisions of this Agreement, the City 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 City prior to the expiration of the Term as a result of a Concessionaire Default, the City shall have the right (in addition to all other rights and remedies provided in this Agreement and without the City'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 City has the right to draw under such Letter of Credit in the amount of such sight draft, up to the amount due to the City pursuant to the terms of this Agreement.

(e) The City 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 City 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 City desires to assign its rights and obligations in accordance with Section 17.2 of this Agreement, 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 City, in either case identifying as beneficiary the appropriate party after the

assignment becomes effective, shall be delivered to the City, at no cost to 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 City'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 City, 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 City, *provided* that earnings thereon shall be paid to the Concessionaire not less frequently than quarterly. If, at any time during the Term, the City 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 City from such cash deposit or Eligible Investments in accordance with the terms of this Section 16.3 and all rights and remedies of the City 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 City 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 City'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 City 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 City 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 City, well and truly surrender and deliver to the City 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 City Encumbrances, (y) those created by or suffered to exist or consented to by the City 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 City;

(d) the City 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 City shall be liable for all costs, expenses and amounts incurred in connection with the System Operations on and after the Reversion Date;

(f) the City 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 City or its nominee for the remainder of their respective terms; *provided, however*, that if the City 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 City or its nominee as of the Reversion Date and the Concessionaire shall surrender the System to the City and shall cause all Persons claiming under or through the Concessionaire to do likewise, and the City 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 City does not exercise such option, the Concessionaire shall, unless the City 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 City, and the Concessionaire shall promptly deliver to the City 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 City 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 other then existing records and information relating to the System as the City may request;

(i) the Concessionaire shall execute and deliver to the City a quitclaim deed in recordable form or other release or other instrument reasonably required by the City or its title insurer to evidence such expiration or termination;

(j) the Concessionaire shall assist the City in such manner as the City 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 City, take all steps as may be necessary to enforce the provisions of the Operating Agreements pertaining to the surrender of the System;

(k) the City and the Concessionaire shall make appropriate adjustments, including adjustments relating to any Operating Agreements assigned to the City, 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 City and the Concessionaire acknowledge that certain adjustments or readjustments may have to be made when a third party provides to the City 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 City 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 City 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 City 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 Other Than Pursuant to Agreement. If this Agreement is terminated by the City other than pursuant to Section 16.1 or is 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 City shall pay to the Concessionaire the greater of (A) 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 as of the date of such termination, cancellation, rescinding or voiding, plus, without duplication, the reasonable out-of-pocket and documented costs and expenses incurred by the Concessionaire as a direct result of such termination, cancellation, rescinding or voiding. The City 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.

Section 16.6. Guarantee Agreement. In order to better secure compliance by the Concessionaire with all of its obligations respecting the operation and maintenance of the System and the performance of the Utility Services pursuant to this Agreement, and to protect the City against the consequences of failure to fulfill its obligations, the Concessionaire must provide the City with the Guarantee Agreement. The City reserves the right to stop System Operations by the Concessionaire unless the Guarantee Agreement is in place and effective. The rights reserved to the City under the Guarantee Agreement are in addition to any rights that the City may have under this Agreement, at law or in equity. The City is entitled to demand payment under the Guarantee Agreement upon the occurrence of a Concessionaire Default which the Concessionaire has failed to cure within the applicable cure period herein provided. The City may only demand payment equal to the City's actual damages resulting from such uncured Concessionaire Default. If this Agreement is terminated by the City prior to the expiration of the Term as a result of a Concessionaire Default, the City shall have the right (in addition to all other rights and remedies provided in this Agreement and without the City'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.

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. 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 a Transferee, unless (i) the City has Approved (based upon a determination in accordance with Section 17.1(b)) such proposed Transferee (unless it is a Leasehold Mortgagee permitted under Article 18) and (ii) the proposed Transferee (unless it is a Leasehold Mortgagee permitted under Article 18) enters into an agreement with the City in form and substance satisfactory to the City, 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) Approval of a proposed Transferee may be withheld if the City determines that (i) such proposed Transfer is prohibited by applicable Law, (ii) such proposed Transferee's entering into this Agreement with the City 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 City (unless the City shall have received indemnification, as determined in the City'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 City 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.

(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 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 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 City 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).

Section 17.2. Assignment by the City. The City shall have the right to Transfer any or all of the City'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 City under this Agreement and any agreement entered into by the City 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 City 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.

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) 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 City interest hereunder or its reversionary interests and estates in and to the System or any part thereof;

(d) the City shall have no 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 City of express obligations set forth herein, the Leasehold Mortgagee shall not be entitled to seek any damages or other amounts against the City for any or all of the same;

(e) the City shall have no obligation to any Leasehold Mortgagee in the enforcement of the rights and remedies of the City under this Agreement or by Law provided, except as expressly set forth in this Agreement and unless such Leasehold Mortgagee has provided the City 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 City;

(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 City hereunder;

(h) while any Leasehold Mortgage is outstanding, the City 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 City for the payment of all sums owing to the City 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 City 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 City has been provided notice by the holder thereof in accordance with the Leasehold Mortgagee Notice Requirements, the City 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 City in accordance with the Leasehold Mortgagee Notice Requirements (or any subsequent change of address notice given to the City pursuant to the requirements of Section 20.1). With respect to a Leasehold Mortgage regarding which the City has been provided notice in accordance with the Leasehold Mortgage Notice Requirements, unless the Leasehold Mortgagee has otherwise advised the City in writing, all payments to the Concessionaire to be made by the City 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 City, 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 City shall not exercise its right to terminate this Agreement by reason of such Concessionaire Default. In furtherance of the foregoing, the City shall permit the Leasehold Mortgagee and its Representatives the same access to the System as is permitted to the Concessionaire hereunder. The City 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 City 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. If 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 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 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 City 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 the Leasehold Mortgagee or is Approved by the City 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 City, in a notice delivered to the City, within 30 days after the City 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 City, 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 in accordance with the provisions

of this Agreement but for such termination; (iii) provided the City furnishes a statement or invoice for such costs the Leasehold Mortgagee pays or causes to be paid to the City all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the City 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 defaults under this Agreement (curable by the payment of money) existing immediately prior to the termination of this Agreement, or, if such defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) commits to the City in the New Agreement to proceed both promptly and diligently, upon the execution of the New Agreement, to cure all such other 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 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 City'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 City, 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 City, 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 City 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 City and the Leasehold Mortgagee could violate applicable provisions of the Laws of the Commonwealth of Pennsylvania governing procurement by the City then, in lieu of entering in a New Agreement and in satisfaction of their obligations under this Section 18.5, the City 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 City as contemplated by Section 18.1(vi), in the Concessionaire's name, place and stead, to obtain and participate in such arbitration upon notice to the City 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 City 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. City'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 City shall have 30 days after the date on which such Leasehold Mortgagee shall serve notice upon the City 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 City shall have the right and option (the "City'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 City'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 City's Option. If the City's Option is duly and timely exercised, the City shall purchase and all Leasehold Mortgagees shall assign their Leasehold Mortgages to the City (or its designee) on the date which is 90 days after the date on which a Leasehold Mortgagee's Notice is served upon the City. The closing shall take place at a mutually convenient time and place.

(c) The purchase price payable by the City shall be equal to the aggregate amounts secured by such Leasehold Mortgages (including principal, interest, fees, premiums, breakage 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 City 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 City, 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 City 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 City 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 City'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 City shall have the right to receive all notices of default under any Leasehold Mortgage, but the City 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 City has made the determination contemplated by Section 18.5(c) or (ii) the City, 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 City 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 City 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 City 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 the Leasehold Mortgagee or is Approved by the City 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 City 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 City, in a notice delivered to the City within the later of 30 days after the City 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 City, 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 nominee) shall pay or cause to be paid to the City all reasonable costs and expenses (including legal fees), Taxes, fees, charges and disbursements paid or incurred by the City 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 City 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 defaults under this Agreement (including all such 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 defaults cannot be cured by the payment of money, such Leasehold Mortgagee (or its designee or nominee) shall commit to the City 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 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 City a notice as provided in Section 18.9(d)(i), the City 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 City 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 Allentown, 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 City, 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 City 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 City 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. City Liability and Further Remedies. In fulfillment of its obligations under this Agreement, the City shall take any and all actions necessary, including, without limitation, using their best efforts to lease City assets or to borrow funds, in order to finance any obligation to pay the System Concession Value or any other amounts due and payable to the Concessionaire arising from this Agreement; *provided*, that in connection with any borrowing or leasing, the City 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 City 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 City from their obligations under this Agreement, or alter or modify any of their obligations under this Agreement, to pay the System Concession Value or any other amounts arising hereunder, notwithstanding their inability to lease or borrow any funds.

ARTICLE 20

Miscellaneous

Section 20.1. 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 City:

Attention: _____

with a copy to:

Attention: _____

(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 20.2. 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 20.3. Amendment. This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

Section 20.4. 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 20.5. 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 City to have the same rights after the aforesaid determination of invalidity or unenforceability as before, the City 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 20.6. 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 20.7. 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 the County of Lehigh, 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 City may be made, either by registered or certified mail addressed as provided for in Section 20.1 or by personal delivery on the City Clerk of the City. Service of process on the Concessionaire may be made either by registered or certified mail addressed as provided for in Section 20.1 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 City. The City 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 20.8. 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.

Section 20.9. 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 20.10. 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 20.11. Inurement and Binding Effect. This Agreement shall inure to the benefit of the Parties and their respective permitted successors and assigns and be binding upon the Parties and their respective successors and assigns.

Section 20.12. 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 20.13. 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 20.14. Non-Liability of Public Officials. The Concessionaire and any assignee or Contractor may not charge any official, officer, employee, advisor or consultant of the City personally with any liability or expenses of defense or hold any official, officer, employee, advisor or consultant of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

Section 20.15. Charter Limitations and Appropriations. This Agreement is subject to the City of Allentown Home Rule Charter, and the liability of the City under this Agreement is limited to the amounts which have been or may be, from time to time, appropriated therefore by the City.

Section 20.16. Filing with PUC. In accordance with Section 507 of the Public Utility Code of Pennsylvania, the City shall file an executed copy of this Agreement with the PUC.

Section 20.17. 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 City has caused this Agreement to be duly executed on its behalf by its Mayor pursuant to due authorization of the its City Council 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.

CITY OF ALLENTOWN

By: _____
Mayor

By: _____
(Name)
(Title)

SCHEDULE 1A¹

Sewer Utility System

Notwithstanding anything to the contrary contained in this Schedule 1A, all of the real property described herein is subject to the exclusions and reservations set forth in the definition of “Sewer Utility System” in Section 1.1 of the Allentown Water and Sewer Utility System Concession and Lease Agreement to which this Schedule 1A is attached, including, without limitation, the reservation of oil, gas and mineral rights, water rights, air rights and development rights by the City of Allentown (the “City”) as the fee simple owner of such real property.

¹ The legal descriptions contained in this Schedule 1A have been taken verbatim from the legal descriptions contained in the vesting deeds or eminent domain documents pursuant to which the City, acquired fee simple title to the properties. Therefore, references herein to “Grantor”, “Grantee”, “hereby conveyed”, “herein conveyed”, “parties of the first part”, “parties of the second part”, any variations thereof or like verbiage, and any defined terms used but not defined herein, have the meanings given to such terms in the applicable vesting deed or eminent domain document.

SCHEDULE 1B¹

Water Plant and Distribution System

Notwithstanding anything to the contrary contained in this Schedule 1B, all of the real property described herein is subject to the exclusions and reservations set forth in the definition of “Water Plant and Distribution System” in Section 1.1 of the Allentown Water and Sewer Utility System Concession and Lease Agreement to which this Schedule 1B is attached, including, without limitation, the reservation of oil, gas and mineral rights, water rights, air rights and development rights by the City of Allentown (the “City”) as the fee simple owner of such real property.

¹ The legal descriptions contained in this Schedule 1B have been taken verbatim from the legal descriptions contained in the vesting deeds or eminent domain documents pursuant to which the City, acquired fee simple title to the properties. Therefore, references herein to “Grantor”, “Grantee”, “hereby conveyed”, “herein conveyed”, “parties of the first part”, “parties of the second part”, any variations thereof or like verbiage, and any defined terms used but not defined herein, have the meanings given to such terms in the applicable vesting deed or eminent domain document.

SCHEDULE 1C¹

Retained Water Supply System

¹ The legal descriptions contained in this Schedule 1C have been taken verbatim from the legal descriptions contained in the vesting deeds or eminent domain documents pursuant to which the City, acquired fee simple title to the properties. Therefore, references herein to “Grantor”, “Grantee”, “hereby conveyed”, “herein conveyed”, “parties of the first part”, “parties of the second part”, any variations thereof or like verbiage, and any defined terms used but not defined herein, have the meanings given to such terms in the applicable vesting deed or eminent domain document.

SCHEDULE 2A

Sewer 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

Required Capital Improvements

1.0 Required Capital Improvements

The Concessionaire will be solely responsible for all capital improvements related to the System (the “Facilities”) that are required to be completed during the Term in accordance with the terms of the Concession Agreement, including all capital improvements required by the Operating Standards and by Changes in Law. The Concessionaire, in accordance with all other requirements of the Agreement, will fully fund and complete the design and preparation of all construction documents and construction work for the demolition, reconstruction, structural repairs and restoration of any and all of the Facilities at its sole cost and expense.

1.1 Required Capital Improvements

Includes all costs and expenses incurred in connection with the remediation of violations set forth in the EPA Administrative Orders.

1.2 Amounts and Limits of Work

The amount and limits of the work shall be proposed by the Concessionaire for approval by the City of Allentown (the “City”), as appropriate, based on the Facilities’ actual deficiencies, conditions and findings as provided and analyzed by an independent professional engineer. All Facility reconstruction, structural repairs and restorations must ensure that the operating level of the Facility is sustained over the life of the Concession Agreement. An annual Capital Asset Management Plan (“CAMP”) must be performed by a qualified engineer.

1.3 Required Components of Scope of Work

The scope of work submitted by the Concessionaire for the Required Capital Improvements, must meet the performance requirements established in the Operating Standards and must be in accordance with all applicable Laws and ordinances and must consist, at a minimum, of the following if applicable:

SCHEDULE 8

Form of Legal Opinion of the City

[Dilworth To Prepare]

SCHEDULE 9

Form of Legal Opinion of the Concessionaire

[Letterhead of Counsel to the Concessionaire]

[Closing Date]

[City]

Ladies and Gentleman:

We have acted as special counsel to _____, a _____ (the “Concessionaire”), in connection with the lease of the Allentown Water and Sewer Utility System, and the grant of the right to operate the Allentown Water and Sewer Utility System, from the City to the Concessionaire pursuant to the Allentown Water and Sewer Utility System Concession and Lease Agreement, dated as of _____, 20__ (the “Agreement”), by and among the City and Concessionaire. This opinion is being delivered to you pursuant to Section 2.4(b) of the Agreement. Capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Agreement.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of (i) the Agreement; and (ii) such other records and writings as we have deemed necessary as the basis for the opinions set forth below. In connection with such examination, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to authentic, original documents of all documents submitted to us via facsimile or otherwise as certified, conformed or photostatic copies, and the completeness of all records of corporate proceedings provided to us.

We express no opinion as to the applicability or effect of the laws of any state or jurisdiction other than the laws of the State of [•].

Based on and subject to the foregoing and the qualifications referred to below, we are of the opinion that, on the date hereof:

1. The Concessionaire is duly organized, validly existing and in good standing as a _____ under the laws of the _____.
2. The Concessionaire has the power and authority to enter into the Agreement and to do all acts and things and execute and deliver all other documents as are required under the Agreement to be done, observed or performed by the Concessionaire in accordance with the terms thereof.
3. The Concessionaire has duly authorized, executed and delivered the Agreement, and the Agreement constitutes a valid and legally binding obligation of the Concessionaire, enforceable against it in accordance with its terms, subject only to

applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.

This opinion is rendered solely for your information in connection with the transaction described above and may not be relied upon by you in any other capacity or for any other purpose and may not be used or relied upon by any other Person for any purpose without our express prior written consent.

Very truly yours,

[Counsel to the Concessionaire]

SCHEDULE 10

Form of Memorandum of Lease

**MEMORANDUM OF ALLENTOWN WATER AND SEWER UTILITY SYSTEM
CONCESSION AND LEASE AGREEMENT**

THIS MEMORANDUM OF ALLENTOWN WATER AND SEWER UTILITY SYSTEM CONCESSION AND LEASE AGREEMENT (this "Memorandum") is dated as of the _____ day of _____, 2012, and effective as of the _____ day of _____, 2012, by and between the **CITY OF ALLENTOWN**, a municipality and 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 "Landlord"), and _____, a _____ ("Tenant").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant have entered into the Allentown Water and Sewer Utility System Concession and Lease Agreement dated as of _____, 2012 (the "Agreement"); and

WHEREAS, pursuant to the Agreement, Landlord has leased to Tenant the Property (the "Lease"), and the parties to the Agreement have signed this Memorandum to evidence certain terms and conditions of the Agreement pertaining to the Lease.

NOW, THEREFORE, Landlord and Tenant, intending to be legally bound hereby, set forth the following information with respect to the Lease:

1. The name of Landlord is the City of Allentown.
2. The name of Tenant is _____.
3. The addresses of the parties to the Agreement are:

Landlord: _____

Attn: _____

Tenant: _____

Attn: _____

4. The Agreement is dated as of _____, 2012.

5. The description of the demised premises as set forth in the Lease is as set forth on Exhibit A attached hereto and made a part hereof (the “Property”).
6. The date of commencement of the term of the Lease is _____, 2012 (the “Commencement Date”).
7. The initial term of the Lease expires on the _____ anniversary of the Commencement Date (or such later date as required pursuant to the terms of the Agreement to effect a Delay Event Remedy (as defined in the Agreement) or to provide AA-Compensation (as defined in the Agreement) through an extension of the term of the Lease), unless sooner terminated in accordance with the provisions of the Agreement.
8. The Agreement provides for rights of extension of the Lease: (i) if a Delay Event (as defined in the Agreement) occurs as described in Section 15.1(d) of the Agreement, then Tenant shall have the right to extend the initial term of the Lease for a period that would be sufficient so to compensate Tenant and to restore Tenant to the same economic position as Tenant would have been in had such Delay Event not occurred, all in accordance with the terms and conditions of Section 15.1(d) of the Agreement.
9. The Tenant does not have a right of purchase of or refusal on the Property or any part thereof.
10. Information regarding the Lease may be obtained from either of the undersigned parties hereto at their respective addresses noted in Section 3 above.
11. All terms and conditions of the Agreement are hereby incorporated herein by reference as if fully set forth herein. This Memorandum has been entered into for the sole purpose of placing the Agreement of record and shall not be deemed to amend, modify, supplement, or change any of the terms and conditions of the Agreement in any respect whatsoever. To the extent of any conflict between this Memorandum and the Agreement, the terms of the Agreement shall govern and control. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

[Signatures on Following Page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

LANDLORD:

CITY OF ALLENTOWN

By: _____

Name: _____

Title: _____

COMMONWEALTH OF PENNSYLVANIA)

) SS:

COUNTY OF LEHIGH)

On this ___ day of _____, 2012, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of the **CITY OF ALLENTOWN**, a municipality and 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, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Allentown by himself/herself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

TENANT:

By: _____

Name: _____

Title: _____

STATE OF _____)

) SS:

COUNTY OF _____)

On this _____ day of _____, 2012, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a _____, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself/herself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

Exhibit A

Legal Description of Property

Tax Parcel Numbers:

SCHEDULE 11

Key Employees

SCHEDULE 12

List of Permits and Authorizations

SCHEDULE 13

Insurance Policies

SCHEDULE 14³

Remaining Amortized Rent

3 This schedule will include 80% of the Consideration amortized quarterly on a mortgage style basis, over 50 years, assuming an interest rate of 8% per annum.

SCHEDULE 15

Delivery Points

System Ordinance

Guarantee Agreement

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, and to induce the City of Allentown, a municipality and a city of the third class of the Commonwealth of Pennsylvania (the “City”) to enter into that certain Allentown Water and Sewer Utility System Concession and Lease Agreement dated _____, 20__ (the “Concession Agreement”) between the City and _____, a _____ (the “Concessionaire”) and a wholly-owned [indirect] subsidiary of the _____, a _____ (the “Guarantor”) and with full knowledge that the City would not have entered into such Concession Agreement unless the Guarantor executed this Guarantee Agreement, the Guarantor agrees as follows:

1. Guarantee of Concession Agreement. The Guarantor does hereby unconditionally guarantee that the Concessionaire will fully and timely perform all of its covenants and satisfy all of its liabilities and obligations contained in the Concession Agreement or any other document or instrument executed by the Concessionaire in connection therewith.

The Guarantor’s obligations hereunder shall be direct and immediate and not conditional or contingent upon the City’s pursuit of its rights or remedies against the Concessionaire, and shall remain in full force and effect notwithstanding: (i) the invalidity or unenforceability against the Concessionaire of the Concession Agreement or any other document or instrument executed by the Concessionaire in connection therewith on account of any acts or omissions of the Concessionaire, (ii) amendments or modifications to the Concession Agreement or any other document or instrument executed by the Concessionaire in connection therewith whether with or without the Guarantor’s knowledge or consent, (iii) compromises or waivers of compliance with, or of any event of default or default under, the Concession Agreement or any other document or instrument executed by the Concessionaire in connection therewith granted by the City whether with or without the Guarantor’s knowledge or consent, (iv) the discharge of the Concessionaire from its obligations under the Concession Agreement or any other document or instrument executed by the Concessionaire in connection therewith as a result of any proceeding initiated under the United States Bankruptcy Code, as the same may be amended, or any similar state or federal law, or any limitation of the liability of the Concessionaire as a result of any such proceedings, (v) the merger or consolidation of the Guarantor into or with any corporation or any sale, lease or transfer of any or all of the assets of the Guarantor, or (vi) any other action taken by the City or the Concessionaire that would, in the absence of this clause, result in the release or discharge by operation of law of the Guarantor, from any or all of its obligations hereunder.

2. Indemnification for Expenses of Enforcement. The Guarantor does hereby unconditionally agree to indemnify and save the City harmless from and against any and all loss, damage, cost and expense (including reasonable attorneys’ fees) arising from or in connection with the enforcement of the Guarantor’s obligations hereunder.

3. Representations and Warranties. The Guarantor represents and warrants: (i) that it has full power to execute and deliver this Guarantee Agreement and to perform its obligations hereunder, (ii) that such actions have been duly authorized by all necessary corporate action, (iii) that this Guarantee Agreement constitutes the valid and binding agreement of the Guarantor, enforceable against it in accordance with its terms (subject, as to the enforcement of remedies, to general principles of equity and to bankruptcy, insolvency and similar laws affecting creditors' rights generally), and (iv) that the execution of this Guarantee Agreement does not, and the performance by the Guarantor of its obligations hereunder will not, constitute a violation of any provisions of law now in effect under which it is authorized to do business or of its Certificate of Incorporation or its By-laws, or of any material agreement, indenture, note or other instrument which is binding upon it.

4. Defaults. During the continuance of any default in any of the terms of the Concession Agreement or any other document or instrument executed by the Concessionaire in connection therewith or of this Guarantee Agreement the City may, for the purposes of the guarantee herein contained, proceed against the Guarantor without regard to any particular order, and without taking action first against the Concessionaire or against any other person, firm, company, partnership or corporation, and any liability under this Guarantee Agreement shall not be reduced or impaired by reason of the City's failure to take any action against others.

5. Remedies Cumulative. All rights, powers and remedies of the City hereunder or under any agreement between the City and the Concessionaire, now, or at any time hereinafter in force, shall be cumulative and not alternative, and shall be in addition to all rights, powers and remedies given to the City by law. No exercise of, delay in exercising, or omission to exercise, any rights, powers, remedies and/or discretion by the City shall be deemed a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

6. Waiver of Notice. The Guarantor does hereby waive notice of acceptance of this Guarantee Agreement, notice of default or any event of default by the Concessionaire under the Concession Agreement or any other document or instrument executed by the Concessionaire in connection therewith, as the same may be amended from time to time, or of the Guarantor's default under this Guarantee Agreement, notice of nonpayment, partial payment, presentment, demand, protest, notice of protest, dishonor, notice of dishonor, and all other notices to which the Guarantor might otherwise be entitled, or which might otherwise be required by law to be given by the City. The Guarantor agrees that there are no conditions or limitations to the undertakings set forth herein except those specified herein.

7. Continuing Guaranty. This Guarantee Agreement is and shall be continuing and irrevocable and shall apply to all obligations of the Concessionaire to the City under the Concession Agreement.

8. Bankruptcy. The obligations of the Guarantor hereunder shall include the obligations to reimburse the City for any payments received by the City from the

Concessionaire in the event that the Concessionaire becomes a debtor under the United States Bankruptcy Code and such payments are avoided under the United States Bankruptcy Code and recovered from the City. Notwithstanding anything in this Guarantee Agreement to the contrary, if during any preferential period (as established by the United States Bankruptcy Code or other applicable law), the Concessionaire has made payments to the City, this Guarantee Agreement shall not be terminated unless and until a final, non-appealable decision by a court of competent jurisdiction or other agreement has been entered or reached pursuant to which the City shall be entitled to retain all such moneys paid during such preferential period. The Guarantor hereby waives all rights of subrogation it may have with respect to the Concessionaire and further agrees not to attempt to collect from the Concessionaire any amounts paid by the Guarantor to the City hereunder.

9. Binding on Successors. This Guarantee Agreement shall be binding on the successors and assigns of the Guarantor, and shall inure to the benefit of any successors or assigns of the City.

10. Governing Law. This Guarantee Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, regardless of the laws that might govern under that state's principles of conflicts of laws. The Guarantor irrevocably agrees to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania within the County of Lehigh (including the federal courts located therein) in respect of all matters arising out of this Guarantee Agreement.

11. Notices. Any notice, demand, request, consent, approval or other communication which may be given hereunder shall be sufficient if by hand-delivery; certified or registered mail, return receipt requested; telex; telecopier; or air courier to the parties set forth below. Such notices shall be deemed given: at the time personally delivered, if delivered by hand; at the time received if sent certified or registered mail; when answered back, if telexed; when receipt acknowledged, if telecopied; and the first business day after timely delivery to the courier, if sent by air courier.

Notice to the Guarantor shall be sent to:

Notice to the City shall be sent to:

City of Allentown
[435 Hamilton Street, Room 227
Allentown, PA 18101]
Attention: _____

12. Entire Agreement. This Guarantee Agreement sets forth the entire agreement between the Guarantor and the City with respect to the subject matter hereof

and supersedes and cancels any and all prior discussions, correspondence, agreements or undertakings between such parties with respect to such subject matter. This Guarantee Agreement may not be modified or amended except by written agreement signed by the party to be charged.

IN WITNESS WHEREOF, the Guarantor has duly executed and delivered this Guarantee Agreement this _____ day of _____, ____.

Guarantor

By: _____

By: _____

Attest:

Sludge Agreement

Collective Bargaining Agreement