

Pennsylvania-American Water Company
Acquisition of the Wastewater Collection and Treatment System Owned by the York City
Sewer Authority (the "Authority") and Operated by the City of York (the "City")
(collectively referred to as "York")

Section 1329 Application Standard Data Requests
Docket No. A-2021-3024681

Rates/Ratemaking

1. Estimate the potential monthly incremental cost impact on existing and acquired customers following the actual results of the Buyer's most recently adjudicated base rate proceeding, whether litigated or settled, allocating the fair market value of the acquired system according to the Buyer's previously approved single-tariff pricing model.
 - a. In the case of a wastewater acquisition, a Buyer that employs a combined revenue requirement pursuant to 66 Pa. C.S. § 1311 will provide information assuming a combined water and wastewater revenue requirement consistent with its most recent adjudicated base rate proceeding.
 - b. If a Buyer has filed the thirty-day notice of 52 Pa. Code § 53.45(a), or has filed a rate case, it should calculate the above using data as proposed in its upcoming or filed rate case.

Response: Please refer to **Appendix A-18-d** of the Application. The notices contained in **Appendix A-18-d** provide an estimate of the cost impact on existing and acquired customers using the methodology approved by the Commission in the Settlement of Docket No. A-2019-3006880.

Provided by: Ashley E. Everette, American Water Works Service Company
Senior Director of Rates and Regulatory

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2. If the Buyer has a present intention to increase the acquired system's rates to a certain level, please state the basis for the targeted rate.

Response: Pennsylvania-American Water Company ("PAWC") will adopt York's existing rates at closing. PAWC anticipates moving the acquired system's rates into a PAWC-consolidated rate zone in future rate proceedings.

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3. Provide the annual depreciation expense using the purchase price/proposed rate base. If the exact depreciation expense is not available, provide the best estimate of the annual depreciation expense. Show how the depreciation expense is calculated.

Response: The estimated annual depreciation and amortization expense associated with the purchase price is \$5,744,000. As explained in PAWC Statement No. 3, PAWC proposes to record the acquired Utility Plant in Service (UPIS), at the net value. Please refer also to the tentative journal entry in **Appendix A-15-f**.

This depreciation expense is calculated as shown below:

UPIS at Acquisition:	\$235,000,000	
Composite depreciation rate:	2.44%	[Note 1]
Annual depreciation expense:	\$5,743,639	

Note 1: The composite depreciation rate is calculated for the acquired plant using the depreciation rates approved in PAWC's most recently-approved base rate case at Docket No. R-2020-3019369. PAWC will utilize depreciation rates that are approved and in effect at the time of the closing of the acquisition.

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Rates/Ratemaking

4. Provide an estimate of the annual revenue requirement of the municipal system under the Buyer's ownership. Provide the assumptions for the annual revenue requirement, including expected rate of return, expected depreciation expense, O&M expenses, etc.

Response: The estimated annual revenue requirement of the City's system under PAWC ownership is \$36,044,000. Please refer to the Direct Testimony of Ms. Everette at **Appendix A-14-a**, PAWC Statement No. 3, Exhibit AEE-1, for the assumptions for the annual revenue requirement shown above.

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Rates/Ratemaking

5. Other than the STAS, does Buyer's current water/wastewater tariff include any provisions that would fall under "pass-through costs or charges imposed by the Commonwealth of Pennsylvania"?

Response: No, other than the STAS, PAWC does not have any provisions in its tariff that would fall under pass-through costs or charges imposed by the Commonwealth of Pennsylvania.

PAWC's current wastewater tariff also includes the Distribution System Improvement Charge (DSIC). PAWC's Application requests that this charge be applied to York's customers, following the Company's next base rate increase (as required by the APA) and subject to inclusion in PAWC's wastewater LTIIP.

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Rates/Ratemaking

6. Provide a listing of any entities that currently receive free service from the Seller.

Response: Under York ownership, the City and Authority facilities are not billed for wastewater service. Upon closing, the Company will begin billing these entities pursuant to Section 6.04 of the Asset Purchase Agreement.

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Rates/Ratemaking

7. In the next rate case, does buyer anticipate including the acquired system in a combined revenue requirement?

Response: The Buyer anticipates including the Seller's wastewater system in a combined revenue requirement in the next rate case.

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Rates/Ratemaking

8. If Seller has increased rates in the last year, please state the date of the increase and provide a copy of the new rate schedule and the total annual revenues produced under the new rates.

Response: The Seller increased rates effective January 01, 2021. See attached ordinance that adopted the new rate schedule (also attached at **Appendix A-18-a.4** to the Application). The estimated total annual sewer revenues produced under the new rates for impacted customers is \$9,344,664.

**Provided by: Bernard J. Grundusky, Jr., Pennsylvania-American Water Company
Senior Director of Business Development**

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Rates/Ratemaking

9. Are there any leases, easements, and access to public rights-of-way that Buyer will need in order to provide service which will not be conveyed at closing? If yes, identify when the conveyance will take place and whether there will be additional costs involved.

Response: It is anticipated that any leases, easements, and access to public rights-of-way that Buyer will need in order to provide wastewater service will be conveyed prior to or at time of closing. See also APA Sections 4.09 and 6.09 as well as Schedule 4.09 attached to the Application at **Appendix A-24-a**, for further details in identifying all easements and obtaining any missing easements.

Provided by: Bernard J. Grundusky, Jr., Pennsylvania-American Water Company
Senior Director of Business Development

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Costs/Benefits

10. Provide a breakdown of the estimated transaction and closing costs. Provide invoices to support any transaction and closing costs that have already been incurred.

Response: PAWC estimates transaction and closing costs of \$1,150,000 to \$1,300,000. Please see the chart below for a breakdown of these estimated costs.

Area	Amount (Settlement)	Amount (Litigation)
Legal Services	\$400,000	\$500,000
Environmental	\$100,000	\$125,000
PUC Filing/copying/publication	\$10,000	\$12,500
Transfer Taxes	\$450,000	\$450,000
Title Insurance	\$80,000	\$80,000
Engineering Assessment Study	\$20,000	\$20,000
Customer Notice	\$44,000	\$44,000
Act 12 FMV Valuation	\$45,000	\$55,000
Total	\$1,149,000	\$1,286,500

Refer to **Appendix A-7** to the Application for a copy of the non-privileged invoices to support the transaction costs that have been incurred to date.

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Costs/Benefits

11. Please describe known and anticipated general expense savings and efficiencies under Buyer's ownership. State the basis for all assumptions used in developing these costs and provide all supporting documentation for the assumptions, if available.

Response: PAWC's national purchasing power will produce savings for expenses after ownership. Estimated cost savings include the following:

- a. PAWC's contract pricing for pipe: 37% below the market index
- b. PAWC's light duty vehicle purchasing: 2 2% below dealer invoice
- c. PAWC's chemical expense: 8.27% savings through negotiated pricing
- d. PAWC's power expense: at least \$0.01 per kwh less than the utility price to compare
- e. PAWC's natural gas: savings over \$2.50/Dth.

Other supply chain benefits include, but are not limited to, reliable and secure supply channels, improved warranties, price stability, strategic payment terms, discounting, and supplier responsiveness and support.

Additionally, as PAWC completes replacements of collection mains, it is expected that the reduction in inflow and infiltration will lower the wastewater treatment expense.

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Costs/Benefits

12. Please provide a copy of the Seller's request for proposals (if there was one) and any accompanying exhibits with respect to the proposed sale of the system.

Response: See **Attachment 12-a**; RFP for the sale of the City of York and York City Sewer Authority Municipal Wastewater System – dated July 10, 2020.

See **Attachment 12-b**; RFP for the sale of the City of York and York City Sewer Authority Municipal Wastewater System – revised September 25, 2020.

The RFP was further revised through communications in the data room made available to participating respondents.

Provided by: Bernard J. Grundusky, Jr., Pennsylvania-American Water Company
Senior Director of Business Development

REQUEST FOR PROPOSALS
FOR THE
SALE OF THE
CITY OF YORK AND YORK CITY SEWER AUTHORITY, YORK, PENNSYLVANIA
MUNICIPAL WASTEWATER SYSTEM

ISSUE DATE: July 10, 2020
INITIAL SUBMISSION DUE DATE: August 6, 2020
DEADLINE TO BE INFORMED OF QUALIFICATION: August 24, 2020
FINAL PROPOSAL DUE DATE: September 30, 2020



ISSUED BY:
THE CITY OF YORK
101 South George Street
York, Pennsylvania 17401

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SECTION 1 INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction and Purpose

The York City Sewer Authority (the "Authority") and The City of York, York County, Pennsylvania (the "City") own and operate of all of the assets comprising the City's municipal wastewater (collectively, the "System"). The Authority currently leases System assets to the City, which in turn operates the entire System, pursuant to a long-term lease, dated September 15, 1987, as amended, whose term extends to December 1, 2027 (the "Lease"). The City seeks proposals for purchase of the System through an Asset Purchase Agreement ("APA") with a qualified firm or other entity that will provide safe and reliable service, appropriate and necessary management, and operation and maintenance services associated with the System. The APA would be conditioned on termination of the Lease between the City and the Authority.

The most valuable assets of the System are the dedicated and experienced professionals who have worked diligently over the years to make the System what it is. The value that these individuals bring to this prospective transaction is immeasurable, and it is the intent of the City that this value be recognized throughout this procurement process.

This request for proposals ("RFP") provides to those interested in submitting proposals for the APA sufficient information to enable them to prepare and submit those proposals. This RFP contains instructions governing the requested proposals, including requirements for the information and material to be included and other requirements specific to this RFP.

The City desires to receive, from each party making an initial submission (a "Respondent") that is qualified by the review committee, a proposal that is fully responsive to this RFP, that indicates clear capability of providing quality sewer services to the System and to System customers ("Proposal") and that includes, but is not limited to:

- (a) a purchase price;
- (b) commitment to safe, reliable, and continuous system operation;
- (c) commitment to customer service and responsiveness; and
- (d) agreement to the service terms and conditions stated herein.

No alternative Proposals will be accepted. In its initial submission, each Respondent will be required to sign a certification in the form attached hereto as **Appendix E** ("Initial Submission Certification"), certifying to its bona fide belief in such capability and its intention to submit a full Proposal.

The APA will contain terms and conditions regarding System sale and detailed requirements for operating the System in conformity with the public interest, including without limitation: quality standards, customer responsiveness standards and short-term rate caps.

1.2 Communications

Attachment 12-a

All contact should be directed only to both of the Advisor Representatives listed below. Respondents should NOT contact any officials, staff or personnel at the City or the Authority regarding this RFP. Any such contact may be grounds for disqualification.

*Advisor
Representatives:*

Primary

Adeolu Bakare
McNees Wallace & Nurick LLC
316 N. George Street
York, PA 17401

Phone: (717) 237-5290
email: abakare@mcneeslaw.com

Alternate

Vasiliki Karandrikas
McNees Wallace & Nurick LLC
316 N. George Street
York, PA 17401

Phone: (717) 237-5274
email: vkandrikas@mcneeslaw.com

If a Respondent has any questions regarding this RFP, the Respondent must submit the questions by email (with the subject line "*Wastewater APA RFP Question*") to the Advisor Representatives and such questions must be submitted via email no later than the date indicated on the Calendar of Events (as hereinafter defined). The Respondent shall not attempt to contact the Advisor Representatives by any other means. A Respondent who submits a question after the deadline date for receipt of questions indicated on the Calendar of Events attached hereto as **Appendix C** (the "Calendar of Events") assumes the risk that its Proposal will not be responsive or competitive because the City is not able to respond before the Proposal receipt date or otherwise in sufficient time for the Respondent to prepare a responsive or competitive Proposal. The Calendar of Events may be revised and restated with notice to participating Respondents via the Data Room (defined below), and care will be taken to avoid, to the degree possible, a change to dates that would prejudice the responsiveness or competitiveness of any Proposal. If there is a conflict between any dates stated in herein and in the Calendar of Events, the Calendar of Events' dates will control.

All questions and responses will be posted to the Data Room hosted by the Advisor Representatives (the "Data Room") and are considered as addenda to, and part of, this RFP. Each Respondent shall be responsible for monitoring the Data Room for new or revised RFP information. The City shall not be bound by any verbal information nor shall it be bound by any written information that is either not contained within the RFP or formally issued as an addendum by the City via the Data Room. The City does not consider questions to be a protest of the RFP specifications or of the procurement.

The City will hold pre-Proposal conferences with Respondents as specified on the Calendar of Events. The purpose of these conferences is to provide opportunity for clarification of the RFP and to schedule a physical inspection of the System as part of each Respondent's due diligence activity. Respondents should forward all questions to the Advisor Representatives to ensure adequate time for analysis before the City provides an answer. Respondents may also ask questions at the conference. In view of the limited facilities available for the conference, Respondents should limit their representation to eight (8) individuals per Respondent. The pre-Proposal conference is for information only. Any answers furnished during the conference will not be official until they have

been verified, in writing, and posted in the Data Room. All questions and written answers will be posted in the Data Room as an addendum to, and shall become part of, this RFP.

Subsequent to issuance of this RFP, the City may modify, supplement, amend or restate provisions of this RFP at any time provided that the modifications are made available to all recipients of the RFP. If the City deems it necessary to revise any part of this RFP following the deadline for initial submissions, the Advisor Representatives will post an addendum to the Data Room. (Respondents will need to register with the Advisor Representatives, execute the Confidentiality and Data Room Usage Agreement attached hereto as **Appendix D** (the "Confidentiality and Data Room Usage Agreement") and obtain a password before Data Room access is granted.) At all times, it is the Respondent's responsibility to periodically check with the City, through the Advisor Representatives, for any new information, revisions, or addenda to the RFP. Answers to the questions asked during any questions and answers period also will be posted to the Data Room as an addendum to the RFP.

RESPONDENTS MAY NOT ATTEMPT TO COMMUNICATE WITH THE CITY (THROUGH THE ADVISOR REPRESENTATIVES OR OTHERWISE) AFTER THE INITIAL SUBMISSIONS ON AUGUST 6, 2020 AND UNTIL THE DEADLINE FOR THE RESPONDENTS TO BE INFORMED IF THEY ARE QUALIFIED ON AUGUST 24, 2020, EXCEPT RESPONDENTS MAY SUBMIT AMENDED INITIAL SUBMISSIONS, IF APPLICABLE, AND CONFIRM ACCESS TO THE DATA ROOM DURING THAT INTERIM PERIOD.

To be considered for selection, both initial submissions and Proposals must arrive at the offices of the Advisor Representatives on or before the times and dates specified for them in the Calendar of Events. Initial submissions and Proposals will not be accepted via email or facsimile transmission. Respondents who send materials by mail or other delivery service should allow sufficient delivery time to ensure timely receipt. If, due to inclement weather, natural disaster, or any other cause, including COVID-19 measures, the offices of the Advisor Representatives are closed on the applicable response date, the deadline for submission will be automatically extended until the next business day on which the office is open. The hour for submission shall remain the same. The City will reject, unopened, any late materials.

1.3 RFP Documents

It is the responsibility of each Respondent to inspect its copy of this RFP to determine that a complete set of the documents, including appendices, are included. If a Respondent believes that its copy of this RFP is incomplete, it should contact the Advisor Representatives. The City will make reasonable arrangements with the Respondent to provide any missing documents, including any addenda and/or clarifications, to this RFP.

Neither the City, nor its officials, agents, employees, or representatives, shall be responsible for errors, omissions, incomplete submissions or misinterpretations resulting from the Respondent's use of an incomplete set of RFP documents in preparing or submitting its Proposal.

The RFP documents have been made available only for the purpose of soliciting Proposals for sale of the System. No license or grant is conferred or implied to the Respondent or to any other person for any purpose.

1.4 Submission of Proposal and Proposal Security

A Proposal submitted in response to this RFP is deemed responsive if it complies with the provisions of Sections 3.2, 3.3 and 3.6. Each Respondent must read Sections 3.2, 3.3 and 3.6 carefully in order to obtain a complete understanding of the requirements for submission of its Proposal.

Firms submitting a Proposal are required to submit together with their initial submissions a certified check or cashier's check, payable to the City in the amount of Twenty Five Thousand Dollars (\$25,000.00), along with an executed Agreement for Proposal Security in the form attached hereto as **Appendix F** ("Agreement for Proposal Security"). Any Proposal security must be valid for a period of at least one hundred eighty (180) days. No Proposal shall be considered unless accompanied by the required Proposal security. The respective Proposal security(ies) ***will not be returned*** to any Respondent that withdraws its Proposal at any time after September 29, 2020, as indicated in the Calendar of Events. At any time, the City may ask for written confirmation from any Respondent that such Respondent's Proposal is still active, and if, after September 29, 2020, such Respondent does not provide such written confirmation within three (3) business days of such request by the City, the City may deem the Respondent to have withdrawn, and, if so, will send subsequent notice of such deemed withdrawal to the Respondent. The Proposal security submitted by the unsuccessful Respondents will be returned within ten (10) business days after the execution of the APA by and between the City, and the successful Respondent or earlier, if the Respondent is determined to be unqualified. The Proposal security of the selected Respondent will be credited towards the purchase price or returned promptly after the financial close under the APA.

1.5 Conditions with Respect to this RFP

By responding to this RFP, the Respondent acknowledges and consents to the following conditions relative to the submission, review and consideration of its Proposal:

- (a) The issuance of this RFP is not intended, and shall not be construed, to commit the City to execute any APA.
- (b) Neither the City, nor its respective agents, staff or consultants, will be liable for any claims or damages resulting from the solicitation or collection of Proposals, nor will there be any reimbursement to Respondents for the cost of preparing the Proposals or for participating in this RFP process.
- (c) All Proposals will become the property of the City and will not be returned.
- (d) Information of a confidential or proprietary nature will be kept confidential during and after the procurement process, subject to law, pursuant to Section 1.8 when such information is properly so identified by the Respondents, as further described in Section 1.8.

- (e) Failure of any Respondent to submit a Proposal that completely addresses the requirements of this RFP (including submission as part of such Proposal of all documents required to be submitted under the terms of this RFP) at the times and in the manner specified in this RFP, may result in the rejection of the Proposal in the sole discretion of the City.
- (f) All activities related to the RFP as contained herein shall be subject to compliance with all applicable federal, state and local laws, environmental regulations, and requirements.
- (g) Any and all initial submissions not received by 5:00 p.m. Eastern Time on August 6, 2020 will be returned, unopened, to the firm or person submitting such and will not be considered. Similarly, any and all Proposals not received by 2:00 p.m. Eastern Time on September 30, 2020 will be returned, unopened, to the firm or person submitting such and will not be considered.

1.6 Reservation of Rights and Options with Respect to this RFP

The City, in its sole discretion, reserves the following rights and options with regard to any Proposal:

- (a) To abandon the procurement process including the right to decline to award the APA for any reason.
- (b) To accept the Proposal that, in the City's judgment, best serves the interests of the City, the Authority and the citizens of the City of York and the municipalities served by the System.
- (c) To waive any condition, requirement or informality which would otherwise constitute non-conformance of the Proposal with the provisions of this RFP.
- (d) To reject any or all Proposals.
- (e) To reject incomplete or nonresponsive Proposals.
- (f) To change or alter the terms and conditions of this RFP so long as all of the parties who have indicated an interest or have otherwise submitted information receive copies of such changes.

1.7 Responsibilities of the Respondent in Connection with this RFP

It is the obligation and responsibility of each Respondent before submitting a Proposal to:

- (a) Review the terms of this RFP so that it is familiar with all aspects of it.

- (b) Inspect the System and related information to be able to determine, separate and apart from this RFP and any of the information provided by the City, the System assets it is agreeing to purchase and the obligations arising therefrom.
- (c) Analyze all applicable federal, state, and local laws, regulations, ordinances, permits, approvals and orders that may affect the cost, performance or furnishing of the Services required under the terms of this RFP.
- (d) Notify the Advisor Representatives in writing prior to the submission of responses to this RFP of any conflicts, errors, or discrepancies therein.

Each Respondent is responsible for obtaining whatever information it deems necessary and in undertaking all inspections, examinations, and studies it deems necessary to obtain sufficient data and information to enable it to submit a Proposal. Any document provided to one Respondent will be provided to all Respondents. By submitting a Proposal, a Respondent will be deemed to have acknowledged its opportunity to undertake all inspections and to examine all necessary data and information to enable it to submit a Proposal.

At any time prior to the receipt of Proposals by the City, Respondents may ask questions or request information. All such questions or information requests shall, together with the City's response thereto, be shared with all Respondents.

1.8 Confidential and Proprietary Information

If the Respondent chooses to include material of a proprietary nature in the initial submission or the Proposal, the City, in its sole discretion and subject to applicable law, will keep such material confidential, but only to the extent that it contains trade secrets which, if disclosed, would cause substantial injury to the Respondent's competitive position. However, the City will not assume any liability for any loss, damage or injury that may result from any disclosure or use of marked data or any disclosure of this or other information during the review of the initial submissions and Proposals. The Respondent must specifically identify the section(s) of its initial submission and/or Proposal that contains such information by properly marking each applicable page. Preferably, any sections which contain material of a proprietary nature shall be severable or removable to assist the City in protecting this information. The Respondent also shall include the following notice in the introduction of the relevant material:

"Material in the following sections labeled "Proprietary Information" contains information that is a trade secret which, if disclosed, would cause substantial injury to (Respondent's) competitive position. (Respondent) requests that such data be used only for the evaluation of the Proposal, and understands that disclosure will be limited only to the extent that the City determines is proper or to the extent that the City deems disclosure necessary according to law. If an APA is awarded to (Respondent), the City will have the right to use or disclose the data as may be provided in the applicable agreement executed with the Respondent."

Notwithstanding the above, Proposal forms and appendices (including cost information) and revisions and markups to the APA will not, under any circumstances, be considered proprietary or confidential information. Respondents are advised to read Section 4.3 of the RFP carefully regarding the limitations of Pennsylvania law.

SECTION 2 DESCRIPTION OF THE SYSTEM ASSETS

The System is primarily comprised of the wastewater treatment plant (the "Plant"), the interceptors (the "Interceptors") and the collection system (the "Collection System"). The Interceptors are the pipes that convey sewage flow from the interconnected municipalities and include 65,000 linear feet (lf) of sewer main ranging in size from 8 to 72 inches in diameter and in age from 10 to 55 years old. The Collection System encompasses the pipes that convey sewage flow from the properties within the City and is comprised of 489,000 lf of sanitary sewer pipe, ranging in size from 6 to 27 inches in diameter and ranging in age from 10 to 85 years old, and includes one pumping station within the Collection System area. As a whole, the System provides sewer collection, regional wastewater conveyance, wastewater treatment and industrial pretreatment compliance.

The Authority is permitted to discharge wastewater from the Plant through a National Pollutant Discharge Elimination System ("NPDES") permit, effective February 1, 2008, and discharges into Codorus Creek. The NPDES permit includes interim nutrient reporting requirements and final effluent nutrient limitations for total nitrogen and total phosphorous. An NPDES permit was reissued by the Pennsylvania Department of Environmental Protection ("PADEP") on September 1, 2017, and expires on August 31, 2022. The City received a Clean Water Act Section 308 Request for Information from the Federal Environmental Protection Agency ("EPA") on April 2, 2020, and provided a response on May 22, 2020. The EPA has not initiated any enforcement actions pursuant to the Request for Information.

The System serves the City and six additional municipalities: Manchester Township, West Manchester Township, York Township, North York Borough, West York Borough and Spring Garden Township. The City is a party to intermunicipal agreements with those municipalities, providing for sewage treatment and disposal. Those agreements also detail how additional reserve capacity in the Plant will be distributed among the municipalities. The City has a separate agreement with Springettsbury Township for the sale of a portion of the City's capacity.

The Plant itself was originally constructed in 1916 and has been enlarged and upgraded with six major projects. The Plant has a 26 million gallons per day ("MGD") hydraulic capacity and an organic capacity of 62,884 pounds per day and is located north of the City in Manchester Township on 41.6 acres.

The first major Plant project was completed in the early 1950s and converted the primary treatment plant to an activated sludge plant using the contact stabilization process. This project also added anaerobic sludge digestion. The rated plant capacity at the time was 18 MGD.

The next major upgrade was completed in the early 1980s and expanded the Plant from 18 MGD to the current rating of 26 MGD. This expansion was accomplished by the construction of an

8 MGD pure oxygen treatment system designated as Train 1 and the existing 18 MGD treatment facility was designated as Train 2. This upgrade also added chemical phosphorus removal.

By the mid-1980s, nitrification became a regulatory requirement, and the Plant was then again upgraded. This time, a third treatment train, Train 3, was added on acquired property adjacent to the existing Plant property. Train 3 provided the additional tankage required to accomplish nitrification and allowed the phosphorus removal process to be converted from chemical to biological removal. The project also added an effluent filtration system and converted the disinfection process from chlorine to ultraviolet ("UV") light disinfection. At the time, the City's UV disinfection system was the largest in the eastern United States of America. A state-of-the-art, plant-wide computer control and monitoring system was added along with an engine-driven, 1,500 kW cogeneration system using the digester gas. Most of the other existing treatment facilities were improved under this major project completed by 1990.

In 1996, a need to increase the disinfection peak hydraulic treatment capacity to 57 MGD prompted a new design to replace the original UV disinfection system. To replace the existing system, a low-pressure, high-intensity system was selected and was installed within the existing channels with minor modifications. The installation of the new system was sequenced to maintain continuous operation of the Plant.

By the mid-2000s, nitrogen removal was required, and the treatment process was again modified to meet the new biological nutrient removal ("BNR") requirement. At this time, the aeration system was modified to include de-nitrification while maintaining biological phosphorus removal. The BNR capacity of the Plant was set at an average daily flow rate of 18 MGD, which it was not expected to exceed within the 20 years thereafter.

In 2009, the Ostara Pearl® process was implemented to treat liquid remaining from sludge dewatering (centrate) by removing ammonia and phosphorus and converting it into a high-quality, environmentally safe fertilizer. The process reduces the ammonia and phosphorus load in the centrate returned to the BNR treatment process. At this same time, the Plant-wide computer control and monitoring system was updated with more modern software and hardware.

The existing 1,500 kilowatt ("kW") cogeneration system was replaced in 2010 with newer technology consisting of Capstone Microturbines with a rated capacity of 1,600 kW. The new generating facility replaced the internal combustion-engine-driven generators with three methane gas-fired microturbines and five natural gas-fired units to generate electricity.

SECTION 3 INSTRUCTIONS FOR PREPARATION AND SUBMISSION OF PROPOSALS

3.1 General Provisions

The Proposal process is divided into four phases:

Phase I: Initial Submission of Respondent Team Structure, Technical Capability and Financial Capability

Phase II: Review of Initial Submissions

Phase III: Respondents' Review and Inspection of System; and Discovery

Phase IV: Proposal Submission; Best and Final Offers; and Selection of Winning Bidder

All Proposals submitted by the Respondents must be submitted in accordance with the procedure set forth in this Section 3. *Failure to deliver timely the initial submission prior to the date and time indicated on the Calendar of Events will result in the automatic disqualification of the potential respondent.*

3.2 Initial Submission (Phase I)

Phase I requires the Respondent to submit its initial submission for qualification. The submission will be reviewed by a review committee. The following criteria must be addressed in the initial submission: (a) team structure; (b) technical capability; and (c) financial capability, all as set forth below. The review committee will give equal weight to each criterion, such that each criterion will be given a maximum of 30 points for an aggregate maximum of 90 points. In order to qualify to participate in the subsequent phases, the Respondent must score at least 20 points for each criterion, and must also score at least 70 points in the aggregate. Any Respondent that does not meet the minimum criteria after the initial submission or the amended initial submission will not be permitted to participate in the subsequent phases.

RESPONDENT TEAM STRUCTURE (30 points)

To qualify as a potential winning bidder, the Respondent must demonstrate sufficient team structure with respect to the following areas:

- (a) Adequacy of proposed team structure to provide sufficient assurance that continuous, safe and reliable service will be furnished as well as all technical, environmental and financial obligations will be met.
- (b) Adequacy of definition of roles and responsibilities of key personnel.
- (c) Adequacy of disclosure of controlling interests and team integrity.

TECHNICAL CAPABILITY (30 points)

To qualify as a potential winning bidder, the Respondent must demonstrate technical capability with respect to the following areas of expertise:

- (a) Operation and maintenance of wastewater systems.
- (b) Customer service and responsiveness, including a commitment to ongoing improvements and enhancements thereto.
- (c) Customer safety, security and environmental responsibilities.

- (d) Ability to execute an efficient, timely and seamless transition plan.
- (e) Capability to undertake required capital improvements.
- (f) Ability to offer other System enhancements with a demonstrated knowledge of technologies.

FINANCIAL CAPABILITY (30 points)

To qualify as a potential winning bidder, the Respondent must demonstrate financial capability with respect to the following areas:

- (a) Financial capability to pay reasonable Price Consideration (defined below) and undertake other commitments required under the APA.
- (b) Financial ability to maintain and upgrade the System.
- (c) Adequate sources of operating capital.
- (d) Ability to secure financing.
- (e) Ability to finance future System expansion.

3.3 Format and Required Information for Initial Submission (Phase I continued)

All initial submissions should follow the format outlined below. The written initial submission shall be bound and prepared on 8-1/2" x 11" paper. A limited number of 11" x 17" fold-out sheets for exhibits are acceptable. One original and three (3) hard copies of the initial submission shall be submitted, with the original copy of the initial submission clearly marked as the original and must contain the original signed documents and the certified check. Initial submissions shall be enclosed in an opaque, sealed envelope or otherwise boxed, marked with the name and address of the Respondent and with the legend: ***"INITIAL SUBMISSION TO THE YORK MUNICIPAL WASTEWATER SYSTEM RFP."*** All pages are to be sequentially numbered. Unnecessarily elaborate initial submissions are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable. Any concerns with providing the required information should be communicated to the Advisor Representatives in a prompt manner.

- (a) Cover Page (to include identification of any team members)
- (b) Cover Letter (2 pages maximum)
- (c) Table of Contents
- (d) Executive Summary (optional)

(e) Respondent Information:

- (i) *Description of Respondent:* Provide a description of the entity or team, including a description of any team members and the anticipated legal relationship (governance and capital structure) among the team members (e.g., partners, shareholders, members, operators, subcontractors, etc.) as appropriate. All equity investors should be identified.
- (ii) *Roles of Team Members and Key Personnel:* Briefly outline the roles of the team members and key personnel. In doing so, please ensure that all the requirements as detailed in Section 3.2 are addressed.
- (iii) *Operator:* Specifically identify the entity or entities that will act as operator of the System under the proposed APA.
- (iv) *Contact Person:* Provide a single contact person for all future communication between the Advisor Representatives and the Respondent. Please identify the contact person's name, title, organization, address, telephone number, fax number and email address.
- (v) *Controlling Interest:* Identify the individuals or companies who hold a major or controlling interest in each entity or team member along with any anticipated or planned changes in controlling interest.
- (vi) *Expected Advisors:* Identify the companies and individuals who are expected to act as legal, financial or other advisors for the Respondent.
- (vii) *Comparable Projects:* Provide a list of comparable projects in which Respondent has participated. Respondents should specify how these comparable projects relate to the proposed APA, their specific role(s) on these other projects, and the extent to which any team members have worked together in prior projects.
- (viii) *References:* Provide a list of references for Respondent. Include each reference's organization, title, email and phone number. These references should be able to describe the relevant qualifications and capabilities of each team member seeking to take leading roles in the governance, operations, and maintenance of the System.
- (ix) *P3 Experience:* Provide at least three references, if available, in which the entity or team members have experience with public-private partnerships or long-term management contracts with government entities. Include each reference's organization, title, email and phone number.

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- (f) **Technical Capability:** Respondents must address the following areas with respect to technical capability:
 - (i) **Operation & Maintenance Expertise:** Respondents must provide evidence demonstrating the ability to operate and maintain facilities similar to the System. Specifically, Respondents should have:
 - A. substantial wastewater facility maintenance and operation experience.
 - B. advanced knowledge of wastewater facilities maintenance, repair, construction and practical application of equipment and materials in wastewater facility operations, as well as best practices and developments in the wastewater industry.
 - C. demonstrated understanding in wastewater facility aging behavior to assess and determine the applicability of remedial maintenance action.
 - D. all the capabilities necessary to operate and maintain the System successfully including wastewater fee management and operations, administration, marketing and public relations.
- (g) **Customer Service:** Respondents must demonstrate their commitment to achieving the highest standards of customer service and satisfaction. Specifically, the Respondent must highlight its experience and qualifications providing excellent customer service to the public using its wastewater services. Additionally, as a prerequisite, the Respondent will be expected to provide a plan to execute a seamless transition to winning bidder operations while maintaining the highest standards of customer service.
- (h) **Safety and Security:** Respondents must demonstrate their ability to address and resolve safety and security issues. Specifically, the Respondent must have:
 - (i) knowledge of wastewater and public safety and security techniques and methodologies, including cybersecurity readiness and response plans.
 - (ii) experience in emergency response support.
- (i) **Capital Improvements.** Respondents must demonstrate their ability to undertake efficiently the required capital improvements to the System during the term of the APA. Respondents must demonstrate expertise in relevant wastewater engineering standards, specifications, policies, practices and processes.
- (j) **Financial Capability:** Respondents should address the following areas with respect to financial capability:
 - (i) *Financial Capacity to Make Upfront Payment; Maintain the System Assets.* Respondents must demonstrate their financial capacity to pay the Price

Consideration (as defined below) and to operate and maintain the System. To demonstrate sufficient financial capacity, the Respondent must provide copies of audited financial statements for the past three years and the most recent credit report from Moody's Corporation, S&P Global Ratings, Fitch Group, Inc. or another third-party as deemed acceptable by the City together with any other relevant financial information. If audited financial statements cannot be provided, Respondents should provide enough financial information to demonstrate that they have the financial resources to successfully execute a project of this nature and scope.

- (ii) *Ability to Raise Financing.* Respondents must provide specific evidence demonstrating their ability to raise financing for a project of this nature and scope. Specific factors that will be assessed include:
 - A. capability of issuing debt and raising equity in the current capital market.
 - B. the number and size of past relevant transactions.
 - C. specific experiences on past relevant transactions.
- (k) Confidentiality and Data Room Usage Agreement. As part of the initial submissions, Respondents must execute and deliver the Confidentiality and Data Room Usage Agreement attached as **Appendix D** ("Confidentiality and Data Room Usage Agreement") as described in Section 1.2. Respondents will be required to sign the Confidentiality and Data Room Usage Agreement to have access to the due diligence process.
- (l) Certification of Capability and Proposal Intention. Respondents will be required to sign an Initial Submission Certification in the form attached hereto as **Appendix E** and as described in Section 1.1.
- (m) Certified check and executed Agreement for Proposal Security in the form attached hereto as **Appendix F** and as described in Section 1.4.

Respondents must also comply with the obligations set forth in the Calendar of Events, including mandatory pre-Proposal conferences, Respondent meetings and submissions of document comments. Failure to attend and/or timely submit will result in a Respondent's automatic disqualification, the deemed withdrawal of the Respondent, and the forfeiture of its Proposal security.

The Calendar of Events may be revised and restated with notice to the participating Respondent via the Data Room, and care will be taken to avoid, to the degree possible, a change to dates that would prejudice the responsiveness or competitiveness of any Proposal. If there is a conflict between any dates stated in herein and in the Calendar of Events, the Calendar of Events' dates will control.

3.4 Review of Initial Submissions (Phase II)

During Phase II, the review committee will review the initial submissions to determine the qualification of Respondents. In accordance with the Calendar of Events, Respondents will be informed of judged deficiencies in their initial submissions, in writing, during the week of August 10, 2020. Those Respondents receiving notice of technical deficiencies will have a one-time opportunity to amend their initial submission, consistent with Section 3.3 above, to attempt to address those issues. Such amendment must be received by August 19, 2020. Respondents will be informed no later than August 24, 2020, if they have been determined to be qualified.

During the period between the initial submissions on August 6, 2020, and the deadline for the Respondents to be informed if they are qualified on August 24, 2020 (the "No Communication Period"), Respondents may not attempt to communicate with the review committee, the City or the Authority (through the Advisor Representatives, or otherwise), except Respondents may submit their amended initial submissions as described above, if applicable, and confirm access to the Data Room with the Advisor Representatives.

The review committee (through the Advisor Representatives, the Data Room or otherwise) reserves the right to seek further clarification and additional information at any time, including during the No Communication Period, if it determines, in its sole discretion, that such clarification or information is necessary for consideration of the Respondent's qualifications, and, in such event, the applicable Respondent(s) shall communicate as instructed.

3.5 System Inspection, Due Diligence, Discovery (Phase III)

Promptly after selected Respondents have been notified that they are qualified to participate in subsequent phases ("Selected Respondents"), Phase III will begin. Selected Respondents will have the opportunity to conduct due diligence on the System assets through (a) scheduled System tours and additional inspections by Respondents or their agents, and (b) management presentations in the course of such tours.

On August 25, 2020, all Respondents will be provided drafts of the APA representing Appendix A ("Proposed Form of Asset Purchase Agreement") and accompanying exhibits, representing Appendix B ("Proposed Form of Asset Purchase Agreement Exhibits"), on which to comment. Under the Calendar of Events, Selected Respondents will submit a set of clean (Word format) and blackline comments (Word or PDF format) by September 15, 2020. On September 24, 2020, a final version of the APA and accompanying exhibits will be released by the City in advance of Proposal submissions.

A Respondent may withdraw itself at any time until September 29, 2020, provided that a written request to withdraw is timely received by the Advisor Representatives via email. The opening of all Proposals by the City will be on September 30, 2020. ***Once the Proposals have been opened by the City, Respondents may not withdraw their Proposals for a period of one hundred eighty (180) days, as more fully described in Section 4.2 below.***

3.6 Proposal Submission (Phase IV)

Phase IV involves the submission of final Proposals by all Selected Respondents. All Selected Respondents who submit a response to this RFP must comply with the requirements set forth in this Section 3.6 for submitting a final Proposal. ***Provided that the Proposal requirements are met and the Respondent is found to be qualified***, the award of the APA will be based on the amount of up-front payment (the "Price Consideration") **and** the additional consideration set forth in Appendix L ("Non-Price Consideration"). In accordance with Section 4.3, the contents of Proposals will not be disclosed at the time of opening of the Proposals.

- (a) Format. Each Proposal shall be in writing and formatted in accordance with the following outline:

Section 1.0 Executive Summary

Appendix G: Transmittal Letter

Appendix H: Non-Collusion Affidavit

Section 2.0 Project Team and Technical Capability Information

Appendix I: Statement of Ownership

Appendix J: Operator Information

Appendix K: Contract and Lobbyist Disclosure

Section 3.0 Business Proposal

Appendix L: Business Proposal

Section 4.0 Escrow Agreement and Proposal Cash Deposit

Appendix M: Escrow Agreement secured by Cash Deposit

- (b) Submission Instructions and Requirements. One original and three (3) hard copies of the Proposal shall be submitted to the Advisor Representatives in accordance with Section 1.2, with the original copy of the Proposal clearly marked as the original and must contain the original signature forms and other original documents. Proposals shall be enclosed in an opaque, sealed envelope or otherwise boxed, marked with the name and address of the Respondent and with the legend: "***PROPOSAL TO THE YORK MUNICIPAL WASTEWATER SYSTEM RFP.***" Unnecessarily elaborate Proposals are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable. Any concerns with providing the required information should be communicated to the Advisor Representatives in a prompt manner. In accordance with Section 4.3, the contents of the Proposal will not be made public until after the award of a contract.

THE SEALED PROPOSAL MUST BE RECEIVED BY THE ADVISOR REPRESENTATIVES NO LATER THAN 2:00 P.M. EASTERN TIME ON SEPTEMBER 30, 2020.

IN ADDITION, RESPONDENTS MUST SUBMIT THE PROPOSAL CASH DEPOSIT AND THE ESCROW AGREEMENT NO LATER THAN 2:00 P.M.

EASTERN TIME ONE DAY BEFOREHAND, ON SEPTEMBER 29, 2020. Wire instructions will be provided prior to that date.

- (c) Acknowledgment and Agreement. By submitting a Proposal, Respondents acknowledge and agree to the following conditions:
- (i) All Proposals submitted in response to this RFP shall become the property of the City. As such, after the award of the APA, or after the opening and rejection of all Proposals, Proposals submitted will become public records subject to public review under applicable law, subject to certain exceptions as described in Section 4.3.
 - (ii) The selection of a Proposal shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of the Respondent under the APA as may be executed between the Respondent and the City and the Authority.
 - (iii) Respondents and their representatives shall comply with the communications protocol set forth in Section 1.2 with respect to all communications concerning this RFP.
 - (iv) Only one Proposal from each Selected Respondent shall be considered, and each Selected Respondent may not be involved in more than one Proposal. For purposes of this subclause (iv), "Selected Respondent" shall mean and include any Affiliates of Respondent, where "Affiliate" means any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person or entity, where the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.
 - (v) Proposals shall comply with all content requirements of Sections 3.2, 3.3 and 3.6. Failure to comply with such requirements may result in a Respondent's Proposal being deemed non-responsive.
 - (vi) The receipt of a Proposal from any Respondent does not waive or abridge the rights of the City to find such Respondent is not qualified or that the Respondent's Proposal is non-responsive to the requirements of this RFP.

3.7 Best and Final Offer (Phase IV continued)

It is important for Selected Respondents to deliver their best offers in their Proposals. However, if the Price Consideration set forth in **Appendix L** of one or more of the qualifying Proposals (other than the offer setting forth the highest amount of Price Consideration) is within 10% of the amount of the Price Consideration in such highest offer, the City may allow the Selected Respondent whose offer sets forth the highest amount of Price Consideration and any Selected Respondent(s) whose offer is within 10% of such highest amount of Price Consideration (the

"Applicable Respondent") to increase the amount of proposed Price Consideration by submitting an increased offer to the City.

If such circumstances arise, the City will provide instructions to all Applicable Respondents for submitting such increased Proposals; however, the timing for submission of such increased Price Consideration will be at the sole and absolute discretion of the City. All other terms of the offer will remain the same. No Respondent should assume that it will be given the opportunity to increase the amount of Price Consideration offered in its Proposal under any other circumstances.

SECTION 4 SELECTION AND CONTINUING CONFIDENTIALITY

4.1 General

The objective of the City in seeking responses to this RFP is to enable the City to select an entity that will provide the Services in the most complete, dependable, cost effective, customer-oriented, environmentally sound manner to the residents of the City while at the same time providing appropriate financial compensation to the City. Each section of the initial submission and Proposal will be evaluated in terms of the reasonableness of the claims and/or commitments made, the completeness of the data provided, the reliability of the approach taken, the ability of the Respondent to perform, the qualifications to run the System over the long-term, strength of customer service commitment, and conformance with the requirements of the instructions provided in this RFP.

The project team of professionals together with staff of the City will evaluate the responses to this RFP and make recommendations to the City as to the technical, financial, and administrative aspects of each Proposal.

4.2 Winning Bid Award and APA Execution

Although this RFP is issued by the City, execution of the APA by the City and the Authority will be subject to final approval and authorization by the York City Council ("Council") and the Board of the Authority (the "Board"). A recommendation will be submitted to the Council and the Board shortly after the conclusion of the Proposal process. After selection of a Proposal and approval by the Council and the Board, the selected Respondent shall be required to execute the APA. Notwithstanding the execution of the APA, the Proposals of all other Respondents shall remain binding on said Respondents for a period of one hundred eighty (180) days thereafter (subject to earlier termination as a result of the financial close of the APA).

In the event that the finally selected Respondent is unable to meet its obligations under the APA at any time prior to financial close, or to achieve financial close, the City reserves the right to execute an APA with the next-best-qualified Respondent as determined by the City. ***Proposals will remain open and binding on Respondents for a period of one hundred eighty (180) days following the opening of Proposals for this purpose (subject to earlier termination as a result of financial close of the APA).***

4.3 Continuing Confidentiality

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All Proposals (together with initial submissions) are the property of the City and ***will not be returned***. At the conclusion of the procurement process, the City may dispose of any and all materials received from Respondents in whatever manner it deems appropriate. In no event will the City assume liability for any loss, damage or injury that may result from any disclosure or use of proprietary information.

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

Respondents are advised, however, that following the award of a contract or the opening and rejection of all Proposals, such submissions may be subject to public disclosure unless they are otherwise exempt from disclosure under another provision of the RTK Law. Records and information submitted by prospective Respondents that constitute "trade secrets" or "confidential proprietary information" as defined in the RTK Law are exempt from disclosure under Section 708(b)(11), 65 P.S. §67.708(b)(11). "Confidential proprietary information" includes commercial and financial information which is privileged or confidential to the submitting party and the disclosure of which would cause substantial harm to the competitive position of the person who submitted the information. Any such claims may be subject to review pursuant to the procedures set forth in the RTK Law. If the City, the Pennsylvania Office of Open Records or a court determines that such information does not qualify as a trade secret or confidential proprietary information, such information may be subject to public disclosure. Further, developments in the law or its interpretation or rulings or orders applicable to the City may subject any information provided to the City to public disclosure.

* * [Appendices follow] * *

APPENDIX C
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
CALENDAR OF EVENTS

July 10, 2020 (F)	RFP Issue Date
Aug. 6, 2020 (Thu)	Initial Submissions Due by 5:00 p.m. Eastern Time; Delivery of Proposal Security; Data Room
Week of Aug. 10, 2020	Respondents that Provide Deficient Initial Submissions Notified of Deficiency
Aug. 19, 2020 (W)	Amended Initial Submissions Due (<i>if applicable</i>)
Aug. 24, 2020 (M)	Deadline to Inform Each Respondent If Its Initial Submission Has Been Determined To Be Qualified
Aug. 25, 2020 (T)	Draft of Asset Purchase Agreement Issued
Weeks of Aug. 31 and Sept. 7, 2020	Pre-Proposal Conferences with Respondents; Schedule Physical System Inspections
Sept. 15, 2020 (Tu)	Receive Respondent Comments and Questions on Asset Purchase Agreement
Sept. 24, 2020 (Thu)	Issue Final Asset Purchase Agreement
Sept. 29, 2020 (Tu)	Deadline for Respondents to Withdraw and Receive Return of Proposal Security
Sept. 29, 2020 (Tu)	Proposal Cash Deposit Due by 2:00 p.m. Eastern Time
Sept. 30, 2020 (W)	Proposals Due by 2:00 p.m. Eastern Time
October 9, 2020 (F)	Receive Best and Final Offers (<i>if necessary</i>)
Oct. – Nov.	City Accepts Winning Bid, Pass Requisite Ordinances and Resolutions, Asset Purchase Agreement Executed by City and Authority

APPENDIX D
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
FORM OF
CONFIDENTIALITY AND DATA ROOM USAGE AGREEMENT

This Confidentiality and Data Site Usage Agreement ("Agreement") is made as of the date and by the entity written on the signature page hereto (the "Receiving Party") in favor of the City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of March 19, 2014, P.L. 52, 53 P.S. §35101 *et seq.* (the "City").

The City is prepared to make available to the Receiving Party certain confidential information, including through that certain virtual data site that is hosted for the City (the "Data Site" or "Data Room") and through the respective representatives, officials, trustees, officers, employees, advisors, consultants or agents of the City (the City's "Representatives").

1. Confidentiality. Subject to the provisions of paragraph 2 below, the Receiving Party will not disclose any Confidential Information (as defined below) to anyone except employees of the Receiving Party and those representatives of the Receiving Party on its "project team", in each case with a need to know for the sole purpose of the RFP and the Potential Transaction (each as defined below) and who have been informed by the Receiving Party of the confidentiality of such information and directed to keep it confidential pursuant to, and comply with, all the terms of this Agreement (collectively, "Team Members"). The Receiving Party agrees that it and its Team Members will use such information only for the purpose of preparing the Receiving Party's submittal in response to the City's Request for Proposals for Sale of the Municipal Wastewater System (the "RFP") and evaluating, negotiating and consummating a possible Asset Purchase Agreement ("Potential Transaction"), and for no other purpose. Upon the completion of the RFP process, or at such time if earlier that the Receiving Party is not pursuing the RFP process further, of which it is required to promptly advise the City, the Receiving Party acknowledges and agrees that its access to the Data Site shall be terminated and it further agrees to destroy, and cause all Team Members to destroy, all copies of Confidential Information in its or their possession, in whatever format or medium, or as otherwise directed by the City (and agrees to provide prompt written certification thereof to the City, upon the City's request). Notwithstanding the destruction of the Confidential Information, the Receiving Party will continue to be bound by the terms of this Agreement.

a. "Confidential Information" means all information disclosed, in writing, orally, visually, electronically or otherwise, by the City or any of its Representatives to the Receiving Party or the Team Members, including all documents, data and materials contained in the Data Site and all notes, analyses, compilations, studies, interpretations or other materials prepared by the Receiving Party or the Team Members that contain, reflect or are based upon, in whole or in part, any such information.

b. With respect to the Confidential Information, the Receiving Party specifically agrees to, and shall cause all its Team Members to:

Protect and preserve the confidential and proprietary nature of all Confidential Information;

Not disclose, give, sell or otherwise transfer or make available, directly or indirectly, any Confidential Information to any person or entity other than the Receiving Party, the Team Members (pursuant the terms hereof), the City or the

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City Representatives identified in Section 1.2 of the RFP ("Advisor Representatives") that provided such Confidential Information (but not any other Representatives of the City) (such other person or entity, a "Third Party");

Not disclose, give, sell or otherwise transfer or make available, directly or indirectly, any Confidential Information to any Team Member for any other purpose than the purposes expressly permitted herein;

Not use, transcribe or make records or copies of the Confidential Information except as necessary to prepare the Receiving Party's submission to the RFP or as may be automatically made on backup tapes or electronic archival systems that cannot reasonably be disabled;

Limit the dissemination of the Confidential Information within the Receiving Party's own organization and within the organizations of any Team Members to those individuals with a need to know for the sole purpose of the RFP and the Potential Transaction and who have been informed by the Receiving Party of the confidentiality of such information and directed to keep it confidential pursuant to, and comply with, all the terms of this Agreement;

Notify the City immediately, and in any event within five business days, of any loss or misplacement of Confidential Information, in whatever form, by the Receiving Party or any of its Team Members;

Notify the City immediately, and in any event within five business days, of any unauthorized use or disclosure of the Confidential Information or any violation or breach of any term of this Agreement by the Receiving Party or any of its Team Members; and

Cooperate fully and provide any assistance necessary or reasonably requested by the City or its Representatives to protect against the unauthorized use or disclosure of the Confidential Information or any violation of any term of this Agreement.

2. Exceptions.

a. The Receiving Party's and the Team Members' obligations with respect to keeping the Confidential Information confidential and with respect to the use of Confidential Information shall terminate with respect to any part of such information that becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Team Members in breach hereof.

b. Each of the Receiving Party and the Team Members shall not be precluded from disclosing or making use of any Confidential Information that was in its possession prior to the disclosure made by the City or which subsequently comes into its possession on a non-confidential basis from a source other than the City, which source was not, to the knowledge of the Receiving Party or any of its Team Members, under any contractual, legal or fiduciary obligation of confidentiality to the City or any other party, or that was independently developed by the Receiving Party without use of or reference to the Confidential Information.

3. Legally Compelled Disclosure. If the Receiving Party or a Team Member receives notice of it being, or attempting to be, legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil or criminal investigative demand, court order or otherwise) to disclose any Confidential Information to a Third Party or a court, the Receiving Party and the Team Member shall provide the City with immediate prior written notice (to the extent not legally prohibited) of such attempted or actual compelled disclosure, and in any event within 10 days of the Receiving Party's or the Team Member's knowledge thereof, so that the City may seek a protective order or other remedy. Neither the Receiving Party nor any Team Member shall oppose any action by the City (and shall, if and to the extent required by the City, cooperate with, assist and join with the City, at the City's expense, any reasonable action) to obtain an appropriate protective order, another reliable assurance that the confidential treatment will be accorded to the Confidential Information or other remedy. Thereafter, if, in the absence of a protective order, reliable assurance or other remedy, or the receipt of a written waiver by the City (specifically referencing this paragraph of this Agreement), the Receiving Party or the Team Member is nonetheless, upon advice of its, his or her legal counsel, required to disclose Confidential Information, the Receiving Party or the applicable Team Member may disclose only that portion of the Confidential Information that such legal counsel advises the Receiving Party is required to be disclosed. Nothing contained in this Agreement shall be deemed to require the Receiving Party or any of the Team Members to disclose any Confidential Information.

4. Communications to Advisor Representatives Only. Unless otherwise instructed by the City, all communications regarding the RFP, the Potential Transaction or any other potential transaction with the City related to the Municipal Wastewater System, requests for additional information, requests for meetings, and discussions or questions regarding procedures, will be submitted only to the Advisor Representatives and not to the City itself, any official, staff or personnel of the City or any other Representative of the City. Additionally, the Receiving Party agrees that neither it nor its Team Members will, directly or indirectly, contact any the City personnel in any manner or for any reason related to the subject matter of this Agreement or conduct any inspections, tours or other on-site activities without the prior written consent of the City (as communicated through the City's Advisor Representatives).

5. Rules of Data Site Use. The Data Site and all content within the Data Site may not be copied, reproduced, republished, uploaded, posted or transmitted; provided, however, that The City grants the Receiving Party and the Team Members non-exclusive, non-transferable, limited permission to access and display the web pages within the Data Site, solely on a computer or computers owned and operated by the Receiving Party and the Team Members, as applicable. All materials contained within the Data Site that are made available for downloading, access or other use shall constitute "Confidential Information" and shall be governed by the terms of this Agreement. The Receiving Party shall not, and shall cause its Team Members not to, attempt to (i) download, scan, copy, print or otherwise capture any of the information contained in the Data Site, except to view, print or download information for which the view, print or download capability, respectively, has been enabled as indicated in the Data Site, and, in such event, only through the Data Site's view, print or download native functions, or (ii) circumvent any of the security features of the Data Site, and will not enable or allow Third Parties to access the Data Site using the Receiving Party's or the Team Member's, as applicable, authorization to the Data Site.

6. Indemnification. The Receiving Party agrees that its compliance with this Agreement is of utmost importance and, accordingly, the Receiving Party agrees to indemnify, defend and hold harmless The City, its Representatives and any Third Party (to the extent a breach of this Agreement affects the rights or obligations of such Third Party) with respect to any claims, losses, damages and expenses (including reasonable attorneys' fees) that are attributable to or arise out of the Receiving Party's and or any Team Member's breach or violation of this Agreement. The obligations of the Receiving Party under this

Agreement and the indemnification provisions provided herein shall survive termination of this Agreement. Further, the Receiving Party agrees that neither The City nor any of its Representatives shall have any liability to the Receiving Party, the Team Members or any person asserting claims on behalf of the Receiving Party or its Team Members as a result of any matter associated with the transactions contemplated hereby, except in the case of willful misconduct of such party (and such exception shall apply only as to such party).

7. Insider Trading. The Receiving Party acknowledges that it is aware that U.S. federal and state securities laws prohibit, among other things, any person who has received from an issuer material, non-public information concerning the matters that are the subject of this Agreement from purchasing or selling bonds or other securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such bonds or other securities. The Receiving Party and the Team Members will comply with all applicable laws related to the Confidential Information.

8. Disclosure Relating to Negotiations or Transaction Status. Without the prior written consent of The City, the Receiving Party and its Team Members shall not, directly or indirectly, (i) disclose to any Third Party (including any other potential participants directly or indirectly bidding on, or otherwise involved in, the RFP, the Potential Transaction, or any other potential transaction with the City related to the Municipal Wastewater System ("Potential Participants")) either the fact that discussions, negotiations or exchanges are taking place concerning possible transactions between the City and the Receiving Party or any of the terms, conditions or other facts with respect to any such possible transaction(s), including the status thereof and the Receiving Party's potential participation therein, and all such facts and information shall be "Confidential Information" hereunder, or (ii) enter into any agreement, arrangement or understanding (or any discussions which might lead to such agreement, arrangement or understanding), with any Third Party (including any other Potential Participants) regarding a possible transaction involving the City, and, in the case of (i) and (ii) above, only upon such Third Party executing a confidentiality and data room usage agreement acceptable to the City in favor of the City and its Representatives with the terms and conditions as set forth in this Agreement.

9. Non-Solicitation. In consideration of and as a condition to the Confidential Information being furnished to the Receiving Party, for a period of 24 months from the date hereof, the Receiving Party agrees and covenants to the City that neither the Receiving Party nor any of its Team Members or any other agent or representative will, directly or indirectly, solicit, interfere with or endeavor to entice away from employment or engagement with the City, encourage to terminate their employment or engagement with the City, offer to employ or engage, or employ or engage any employee of the City or any independent contractor of the City (including any vendor or supplier providing products or services to or on behalf of the City); provided, however, that the foregoing sentence shall not apply to any employee or independent contractor (i) responding to a general advertisement of employment or engagement not targeted at such person or (ii) whose employment or engagement has been terminated by the City prior to the commencement of any employment or engagement discussions with the Receiving Party or its Team Members.

10. Waiver. The failure of the City to insist, in any one or more instances, upon performance of any of the terms of this Agreement shall not be construed as a waiver or a relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term, and such failure shall in no way affect the validity of this Agreement or any of its terms. No waiver of any term of this Agreement shall be valid unless executed in writing and signed by the party to be bound thereby, and then only to the extent specified in such waiver. No waiver of any term of this Agreement shall be construed as a waiver of any other term of this Agreement, and no present waiver of any term of the Agreement shall be construed as a future waiver of such provision or condition.

11. Disclaimer of Warranty. All Confidential Information is provided "as is." The City does not make any representation or warranty of any kind, including any representation or warranty with respect to the Confidential Information, and does not make any representation or warranty (of any kind, including with respect to the Confidential Information) that is express or implied or any representation or warranty as to the quality, adequacy, completeness, accuracy, fitness for a particular purpose, sufficiency or freedom from defects of any Confidential Information. Neither the City nor any of its Representatives shall have any liability as a result of the Receiving Party's or any of its Team Members' reliance on, or use of, the Confidential Information. The Receiving Party agrees that unless and until the City executes and delivers a final definitive agreement regarding a transaction with respect to the Municipal Wastewater System, the City will not be under any legal, fiduciary or other obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement, and then only as specifically set forth in that agreement. The Receiving Party, for itself and on behalf of its Team Members, acknowledges and agrees that the City reserves the right, in its sole discretion, to consider and enter into transactions with other parties, to reject any and all proposals made by the Receiving Party or any of its Team Members with regard to any Potential Transaction between the City and the Receiving Party, and to terminate discussions and negotiations with the Receiving Party and its Team Members at any time. Neither the City nor any of its Representatives shall have any legal, fiduciary or other duty to the Receiving Party or its Team Members with respect to the manner in which any transaction process is conducted, unless a legal duty is otherwise expressly provided in a subsequent written agreement signed by the City with the Receiving Party or a Team Member.

12. Remedies. The Receiving Party acknowledges that the breach of any of the covenants or agreements contained in this Agreement by the Receiving Party or its Team Members will result in irreparable harm and continuing damages to the City, and that the City's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to the City at law or in equity, in the event of any such breach, the City may seek, and any court of competent jurisdiction may issue, an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant or agreement, including an injunction restraining the Receiving Party and its Team Members from disclosing, in whole or in part, any Confidential Information. Neither the Receiving Party nor any of its Team Members or any other agent or representative shall oppose the granting of any such relief, and the Receiving Party agrees to waive, and to cause its Team Members Representatives to waive, any requirement for the seeming or posting of any bond in connection with any such remedy. The Receiving Party shall pay all of the City's costs and expenses (including reasonable attorney's fees) incurred in enforcing such covenants or agreements. The remedies set forth above shall not be deemed to be the exclusive remedies for a breach by the Receiving Party or its Team Members of this Agreement, but shall be in addition to all other remedies available at law or equity to the City or its Representatives.

13. Ownership. All right, title and interest in the Confidential Information, including all additions, enhancements, modifications and derivative works of the Confidential Information, shall remain exclusively with the City, as applicable. No license, right, title or interest is granted herein, directly or indirectly, by implication or otherwise, to the Confidential Information or any other property of the City by virtue of the City or any of its Representatives disclosing said Confidential Information to the Receiving Party or its Team Members, except for a limited right of use as specifically set forth in this Agreement and except such license or other rights as may be mutually and expressly agreed upon between the parties by separate written agreement. All right, title and interest in the Confidential Information shall remain exclusively with the City.

14. Notices. All notices hereunder shall be in writing and personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, sent via United States certified mail, return receipt requested, postage prepaid, or sent by PDF or other electronic attachment via email, and addressed to the applicable party at its address in this Agreement, or at such other address as any party, by

written notice in the manner specified in this Section to the other party, may designate from time to time. All such notices shall be deemed to have been given and received (i) upon receipt (or refusal of receipt) if given in person or personally delivered by courier, (ii) two business days after being sent by a nationally recognized overnight delivery service with postage prepaid, (iii) five business days after being sent in the United States mail, certified, return receipt requested with postage prepaid, or (iv) upon acknowledgement of receipt by the receiving party in writing (including acknowledgment by confirmatory email from the receiving party) to the sending party. Copies of any notice may be sent by facsimile or by PDF or other electronic attachment via email, but such notice shall not be deemed to have been given unless also validly given and received as specified in the immediately preceding sentence. All notices to the City under this Agreement must include prominent reference to this Agreement on the first page of any such notice.

Address for Notices to the City:

The City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Adeolu Bakare
Phone: (717) 237-5290
email: abakare@mcneeslaw.com

And:

The City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Vicki Karandrikas
Phone: (717) 237-5274
email: vkarandrikas@mcneeslaw.com

15. Expenses. Except as expressly provided in the second sentence of paragraph 3, the Receiving Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the RFP, the Potential Transactions and the other transactions contemplated hereby and thereby.

16. Parties. This Agreement inures to the benefit of the City and its Representatives, and their respective successors and assigns, and is binding upon the Receiving Party, and its successors and permitted assigns. This Agreement shall not be construed to recognize or create a joint venture, partnership, consulting, employment or other joint business or agency relationship between or among any of the Receiving Party, the Team Members, the City or the City's Representatives. Notwithstanding anything herein to the contrary, neither this Agreement nor any rights or obligations hereunder may be assigned or transferred (directly or indirectly, by operation of law, merger, sale of equity interests, or otherwise) by the Receiving Party, and any such attempted assignment or transfer shall be null and void *ab initio*. The City reserves the right to assign this Agreement, including all of its rights, powers and privileges under this Agreement (including the right to enforce all of the terms of this Agreement), to any person or entity (including to the City) that negotiates to enter, or enters, into any transaction (even if the transaction takes another form) reasonably contemplated in the RFP or the Confidential Information or discussed between the City and the Receiving Party or its Team Members. The Receiving Party specifically acknowledges and agrees that the City and each of its Representatives are beneficiaries of this Agreement.

17. Governing Law and Venue. This Agreement and any disputes arising hereunder will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania applicable

to agreements made and to be performed within such Commonwealth, without regard to the conflict of laws principles thereof or of any jurisdiction. The Receiving Party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the state or federal courts located in York County, Pennsylvania, and irrevocably waives any objection to the laying of such venue, for any lawsuits, actions or other proceedings arising out of or relating to this Agreement and agrees not to commence any such lawsuit, action or other proceeding except in such courts. The Receiving Party irrevocably waives and agrees not to plead or claim that any such lawsuit, action or other proceeding brought in any such court has been brought in an inconvenient forum. **THE RECEIVING PARTY IRREVOCABLY AND ABSOLUTELY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH, ARISING UNDER OR RELATING TO THIS AGREEMENT, OR ANY MATTERS CONTEMPLATED HEREBY.** The Receiving Party agrees to take any and all action necessary or appropriate to effect any of its waivers set forth in this paragraph.

18. Severability. If any provision of this Agreement (including this provision) is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of either of the parties hereto would not be materially and adversely affected thereby: (a) such provisions shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (c) the remaining provision of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance; and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

19. Entire Agreement. This Agreement (a) constitutes the entire agreement and supersedes all written and oral communications between the Receiving Party or its Team Members and the City or its Representatives relating to the subject matter hereof, and (b) may be modified or amended only by a written instrument specifically stating that it modifies this Agreement, signed by the Receiving Party and the City.

20. Construction. Whenever used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender includes every gender; "any" shall mean "any and all"; "or" shall be inclusive; "including" shall mean "including without limitation"; the words "hereof," "herein" and "hereunder" shall refer to this Agreement as a whole and not to any particular paragraph or provision of this Agreement; each of the terms "person" and "entity" as used in this Agreement shall be broadly interpreted to include the media and any corporation, partnership, group, individual or other entity; and reference to a particular paragraph of this Agreement shall include all subparagraphs thereof. The paragraph headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. By signing this Agreement, the Receiving Party acknowledges that it either has consulted with or has had the opportunity to consult with its own legal counsel. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring The City or the Receiving Party by virtue of the authorship of any of the provisions of this Agreement.

21. Signature Page. Delivery of an executed signature page to this Agreement by facsimile, pdf or other electronic transmission shall constitute delivery of an originally executed signature page.

[signature page follows]

Attachment 12-a

IN WITNESS WHEREOF, the Receiving Party has executed this Agreement as of the date written below.

DATED: _____, 2020

RECEIVING PARTY:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State or Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

Address for Notices:

Email: _____

Facsimile: () _____ - _____

Phone: () _____ - _____

**APPENDIX E
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

INITIAL SUBMISSION CERTIFICATION

In connection with the undersigned Respondent's initial submission to that certain Request for Proposals, issued July 10, 2020, as it may be amended from time to time (the "RFP"), by the City of York (the "City"), the undersigned Respondent hereby certifies to the City as follows (and all capitalized terms used but not defined herein shall have the meaning assigned to them in the RFP):

1. The undersigned Respondent has the bona fide belief that Respondent has the capability of (i) providing the appropriate and necessary management, operation and maintenance services associated with the System, (ii) providing, or securing the provision by a qualified firm or other entity of, design and construction services for improvements to the System, and (iii) appropriately servicing the System's customers, and that all such services will be provided consistently on a quality basis.

2. The undersigned Respondent intends to submit a proposal that is fully responsive to the RFP.

DATED: _____, 2020

RESPONDENT:

 (full legal name with applicable entity suffix)
 A(n) _____
 (entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

**APPENDIX F
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

AGREEMENT FOR PROPOSAL SECURITY

This initial submission to Proposal is accompanied by bid security in the form of a Check or Cashier's Check drawn on the following banking institution:

(Name of Banking Institution)

(Address)

in the amount of Twenty Five Thousand United States Dollars (\$25,000.00). (Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the RFP (defined below).)

The undersigned Respondent hereby agrees that if it should withdraw its Proposal in response to that certain Request for Proposals, issued July 10, 2020, as it may be amended from time to time (the "RFP"), by the City of York, or be deemed under the terms of the RFP to have withdrawn its Proposal, at any time after September 29, 2020 (as indicated in the Calendar of Events), then the certified or cashier's check herewith submitted as Proposal security shall be due and payable thereunder to the City as liquidated damages for such late withdrawal. Otherwise said check or the amount thereof submitted by an unsuccessful Respondent will be returned (with no interest) within ten (10) business days after the execution of the Asset Purchase Agreement by and between the City and the successful Respondent, and said check or the amount thereof submitted by the selected Respondent will be returned (with no interest) promptly after the closing under the Asset Purchase Agreement.

**Attach Cashier's or
Certified Check Made
Payable to the City of York**

DATED: _____, 2020

RESPONDENT:

(full legal name with applicable entity suffix)
A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

**APPENDIX G
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

TRANSMITTAL LETTER

City of York
c/o McNeese Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Adeolu Bakare
Phone: (717) 237-5290
email: abakare@mcneese.com

Re: Response to the City of York (the "**City**") Request for Proposals for the Sale of the City of York and City of York Sewer Authority's (the "**Authority**") Municipal Wastewater System

Dear York City:

The entity written on the signature page hereto (the "**Respondent**") hereby submits this Transmittal Letter and the attached Proposal (together, this "**Proposal**") in response to the Request for Proposals issued by the City on July 10, 2020, as amended from time to time ("**RFP**").

The undersigned Respondent hereby unconditionally and irrevocably offers to enter into the Asset Purchase Agreement as attached as **Appendices A and B** to the RFP (the "**Agreement**") for identified wastewater facilities owned and operated by the City and the Authority. Capitalized terms not otherwise defined in this Transmittal Letter have the meanings set forth in the Agreement.

The Respondent, by its undersigned duly authorized representative, hereby covenants, certifies, represents and warrants to the City as follows in connection with this Proposal:

1. ***RFP and Appendices Acknowledgement.*** The Respondent acknowledges receipt of the RFP and the following Appendices to the RFP, updated as applicable:

Appendix

- Appendix A – Proposed Form of Asset Purchase Agreement
- Appendix B – Proposed Form of Exhibits to Asset Purchase Agreement
- Appendix C – Calendar of Events
- Appendix D – Confidentiality and Data Site Usage Agreement
- Appendix E – Initial Submission Certification
- Appendix F – Agreement for Proposal Security
- Appendix G – Transmittal Letter
- Appendix H – Non-Collusion Affidavit
- Appendix I – Statement of Ownership
- Appendix J – Operator Information
- Appendix K – Contract and Lobbyist Disclosure

Appendix L – Business Proposal
Appendix M – Escrow Agreement

2. ***Due Authorization.*** The submission of this Proposal has been duly authorized by, and is, in all respects, binding, upon the Respondent.
3. ***Completeness; Warranty as to Proposal Information.*** The Respondent has submitted its initial submission and all required RFP Appendices, and such Appendices are a part of, and are hereby incorporated into, this Proposal. All information and statements contained in the Proposal are current, true, correct and complete, and are made with full knowledge, and consent, that the City will rely on such information and statements in determining which Proposals are responsive and responsible, in ultimately selecting the Proposal deemed most advantageous to the City, and in executing the Agreement.
4. ***Identity of Operator.*** The Operator following consummation of the Agreement will be the entity identified on **Appendix J** to the RFP.
5. ***Final Agreements.*** The Respondent agrees to enter into the Agreement in the form identified as "Binding Proposal, Execution Version" or "Execution Version" as posted in the Data Site (as such term is defined in Confidentiality and Data Site Usage Agreement in favor of the City (the "**Confidentiality Agreement**")) for this procurement (except for filling in indicated blanks and completion of Schedules as provided therein).
6. ***Price Consideration.*** The amount of the Price Consideration offered by Respondent will be the total set forth in **Appendix L** to the RFP.
7. ***Non-Price Consideration.*** The Non-Price Consideration offered by Respondent will be as set forth in **Appendix L** to the RFP.
8. ***Proposal Effective Period.*** This Proposal and offer shall remain in effect and irrevocable until 5:00 p.m. Eastern Time on the date that is 180 days after the Bid Date (as such term "Bid Date" is defined in the Escrow Agreement in the form prescribed in **Appendix M** to the RFP (the "**Escrow Agreement**")), and hereinafter the "**Bid Date**"), for the avoidance of doubt, as such date has been amended by the updated Calendar of Events posted on the Data Site (5:00 p.m. Eastern Time on the date that is 180 days after the Bid Date, the "**Termination Time**"). However, if the City does not give written notice to the Respondent that the City is prepared to enter into the Agreement on or prior to 5:00 p.m. Eastern Time on the date that is 60 days after the Bid Date, then, notwithstanding that this offer and the terms of this Proposal shall remain open until the Termination Time, the Proposal Cash Deposit (as hereinafter defined) and all interest or income earned thereon shall be returned to the Respondent in accordance with the Escrow Agreement.
9. ***Agreement Execution.*** If, at any time prior to the Termination Time, the City should give written notice to the Respondent, at the address specified below, that they are prepared to enter into the Agreement with the Respondent, the Respondent will, within two business days of its receipt of such notice, execute and deliver the Agreement to the City and within five business days of such notice re-deliver its Proposal Cash Deposit (as hereinafter defined) if the same had previously been returned to Respondent for any reason.

10. **Proposal Cash Deposit.** The offer set forth in this Proposal is secured by a cash deposit in the amount of \$5,000,000 (the "**Proposal Cash Deposit**") with the Escrow Agent as provided in the Escrow Agreement.

11. **Debarment.** Neither the Respondent, the Operator nor any Team Member (as such term is defined in Confidentiality Agreement) is currently suspended, debarred or prohibited from doing business with any governmental entity.

12. **Contract Disclosures.** Except as disclosed in **Appendix K** to the RFP, neither Respondent nor any member of Respondent's team (nor any Team Member, as such term is defined in Confidentiality Agreement) has entered into any arrangement with any person or entity involving a finder's fee, fee splitting, firm affiliation or relationship with any broker-dealer, payments to consultants, lobbyists or commissioned representatives or other contractual arrangements that could present a real or perceived conflict of interest.

13. **No Litigation.** There is no action, suit or proceeding, at law or in equity, before any court or similar governmental entity, against the Respondent, wherein an unfavorable decision, ruling or finding would have a materially adverse effect on the ability of the Respondent to perform its obligations under the Agreement or which, in any way, would have a materially adverse effect on the validity or enforceability of the obligations proposed to be undertaken by the Respondent, or any agreement or instrument entered into by the Respondent in connection with the transaction contemplated thereby.

14. **Certain Representations.** The Respondent represents and warrants that: (i) Respondent has full power and authority to make this offer and submit this Proposal; (ii) Respondent will have full power and authority to execute and deliver the Agreement pursuant to the terms hereof; (iii) such actions do not and will not violate the terms of any of the Respondent's organizational documents or any agreement binding upon it or the terms of any Applicable Law; (iv) no further consent to this offer or Proposal or to the execution of the Agreement pursuant to the terms hereof is required to be obtained from any other person, entity or governmental entity; and (v) this offer and Proposal constitute, and the Agreement, if and when executed pursuant to the terms thereof, will constitute duly authorized, valid and legally binding obligations of the Respondent enforceable in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or transfers, or other laws affecting creditor's rights generally, and subject to general principles of equity (regardless of whether in law or in equity).

15. **Material Changes.** The Respondent has disclosed in Attachment A to this Transmittal Letter all material changes from the information provided in the Respondent's initial submission to the RFP.

[remainder of page intentionally left blank; paragraph 16 follows]

16. **Principal Contact.** The principal contact person of the Respondent who will serve as the interface between the City (through the City's Advisor Representatives, as set forth in the RFP and the Confidentiality Agreement) and the Respondent for all communications is:

FULL NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____

FAX: _____

EMAIL: _____

IN WITNESS WHEREOF, the Receiving Party has executed this Transmittal Letter as of the date first written below.

Submitted by:

RESPONDENT:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

Date: _____

**APPENDIX H
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

NON-COLLUSION AFFIDAVIT

I, _____,
(designated signatory's full legal name)

a resident of _____, in the
(municipality or other jurisdiction)

State/Commonwealth of _____, of full age, being duly sworn
(State/Commonwealth)

according to law, on my oath depose and say that:

(1) I am the _____ of _____,
(designated signatory's title) (Respondent's full legal name)

a(n), _____ ("**Respondent**"),
(entity type and State/Commonwealth of formation)

making the proposal in response to Request for Proposals for Sale of Municipal Wastewater System issued by the City of York on July 10, 2020, as amended from time to time (the "**Proposal**"), and that I executed said Proposal with full authority to do so; and

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

(3) Unless otherwise required by law, the pricing information that is set forth in the Proposal has not been knowingly disclosed by the Respondent or any of its agents or representatives, directly or indirectly, and will not knowingly be disclosed by the Respondent or any of its agents or representatives, directly or indirectly, to any other Respondent, any potential Respondent or any competitor prior to execution of the Agreement; and

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

[signature page and notary acknowledgment follow]

Attachment 12-a

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

(full legal name of Respondent)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Name: _____
(print designated signatory's name, same as above)

Title: _____
(print designated signatory's title, same as above)

_____))
(State/Commonwealth)) ss:
COUNTY OF _____)

On this, the ____ day of _____, 2020, before me, a Notary Public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained and further acknowledged that he/she executed the same.

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

Notary Public

My commission expires:

**APPENDIX J
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

OPERATOR INFORMATION

If the Respondent is not the Operator, the Respondent must clearly identify the entity or entities that will serve as the Operator upon consummation of the Agreement. For the proposed Operator, please provide the following information. Additional pages may be attached.

1. **Name (full legal) & Address of Proposed Operator:**

2. **Operator's Primary Representative (including phone, fax and email):**

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

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

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

**APPENDIX K
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

CONTRACT AND LOBBYIST DISCLOSURE

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

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

RESPONDENT:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

**APPENDIX L
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
BUSINESS PROPOSAL**

PRICE CONSIDERATION: 75 POINTS MAXIMUM

The amount of the Price Consideration that the undersigned Respondent offers to pay for the System defined in the Request for Proposals issued by the City of York on July 10, 2020, is US\$ _____ [in numbers], _____ [in words] United States Dollars.

NON-PRICE CONSIDERATION: 25 POINTS MAXIMUM

The undersigned Respondent offers the following as Non-Price Consideration:

1. Respondent offers and explains its commitment to establish and continue operating a customer service center within the City of York. The customer service center must be staffed by in-person customer service representatives and remain open for walk-in service and telephone service during normal business hours. Normal business hours shall be understood to mean, at minimum, 9:00 a.m. – 5:00 p.m., excluding Sundays and Federal holidays.
2. Respondent offers and explains its commitment to offer employment to all employees of the City who are assigned to the System as of the Closing Date. Respondent's plan must include, at minimum, the following: (1) Prior to employment, Respondent will issue an appropriate notification to all potential employees explaining the wages and benefits offered; and (2) Respondent agrees to follow all applicable federal labor laws regarding the recognition of a union following an asset purchase sale and negotiate in good faith with any union whom it is required by law to recognize.
3. Respondent, as applicable, meets the definition of “local business enterprise” or “small business enterprise” as set forth in Section 136.02 of the City of York Small and Disadvantaged Business Enterprise Program and provides supporting data to such effect.
4. Respondent offers its plan to minimize rate increases for customers served by the System, including a minimum 3-year moratorium on future rate increases.
5. Respondent offers its plans for any other commitments that would add value for the customers of the System.

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RESPONDENT:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

**APPENDIX M
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
CASH DEPOSIT ESCROW AGREEMENT**

THIS CASH DEPOSIT ESCROW AGREEMENT (this "Escrow Agreement") is made and entered into this ___ day of _____, 2020¹ (the "Commencement Date") by and among Fulton Bank N.A., as escrow agent (the "Escrow Agent"), The City of York, York County, Pennsylvania (the "City"), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, and the entity identified as the Respondent on the signature page hereto (the "Respondent").

RECITALS

WHEREAS, the City has solicited offers from respondents to enter into an Asset Purchase Agreement, as may be amended from time to time (the "Agreement") regarding the City's Wastewater Utility System (the "Proposed Transaction") in accordance with that certain Request for Proposals, dated July 10, 2020, as amended from time to time (the "RFP" and, together with the Agreement, the "Bid Documents"), and, for the avoidance of doubt, the Escrow Agent is not a party to the Bid Documents or any document related thereto other than this Escrow Agreement; and

WHEREAS, the Respondent intends to submit an offer in response to the RFP; and

WHEREAS, the Respondent's offer will be secured by a cash deposit in the amount of Five Million United States Dollars (\$5,000,000) (the "Cash Deposit"); and

WHEREAS, the Respondent's offer will be unconditional and irrevocable until 5:00 p.m. Eastern Time on the date that is 180 days after the final Proposal due date under the RFP (the final Proposal due date under the RFP, which date may not be amended for purposes of this Agreement by the City after such date has come to pass, being referred to hereinafter as the "Bid Date"), for the avoidance of doubt, as such date has been amended by the updated Calendar of Events posted on the Data Site (the date that is 180 days after the Bid Date, the "Offer Termination Date").

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

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

¹ This Agreement must be dated no later than the date that the Proposal Cash Deposit is due from Respondents under Section 3.6(b) of the RFP, as amended, including as amended by the updated Calendar of Events posted on the Data Site. This is a reminder, pursuant to the RFP, that the Proposal Cash Deposit and this signed Agreement are due NO LATER THAN 2:00 P.M. EASTERN TIME on such date.

to be held in trust for the Respondent and the City pursuant to the terms of this Escrow Agreement.

Section 2. On or before 2:00 p.m. Eastern Time on the Commencement Date, the Cash Deposit will be provided to the Escrow Agent by the Respondent and deposited into the Escrow Account. Upon receipt of the Cash Deposit, the Escrow Agent shall immediately issue a receipt to the Respondent, confirming that the Escrow Agent has received the Cash Deposit in the form attached hereto as Schedule 2. **All risk of loss, if any, in regard to such investments or reduction of the Cash Deposit resulting from such investments shall be borne solely by the Respondent, other than losses arising from the Escrow Agent's gross negligence, fraud, bad faith or willful misconduct.** The Escrow Agent shall calculate the market value on a monthly basis on the first business day of the month as of close of business on the preceding business day. If there is a deficit (a "Deficit") that reduces the market value of the Cash Deposit below Five Million United States Dollars (\$5,000,000) (the "Benchmark"), the Escrow Agent shall promptly give notice in the form attached hereto as Schedule 3 to the City and the Respondent of the amount of such deficit ("Deficit Notice"). The Respondent agrees to replenish the Cash Deposit to reach the Benchmark through an additional deposit ("Deficit Deposit") by 2:00 p.m. Eastern Time on the third business day following receipt by the Respondent of the Deficit Notice. The Escrow Agent shall provide notice to the City and the Respondent within one business day following the deadline for the Deficit Deposit established in the Deficit Notice if the Respondent has not fully replenished the Cash Deposit by such deadline.

Section 3. The Escrow Agent shall invest and reinvest the Cash Deposit in Eligible Investments (as defined in Schedule 4 hereto) at the written direction of an Authorized Respondent Representative (as defined below) without distinction between principal and income. The Escrow Agent may conclusively rely upon such written instructions as to the suitability of the directed investments hereunder. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. In the absence of investment instructions from the Authorized Respondent Representative (as defined below), the Escrow Agent shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Eligible Investments. The "Authorized Respondent Representatives" are set forth on the signature page hereto. Any interest or other earnings on the Funds shall become part of the Cash Deposit and shall be disbursed in accordance with the provisions of this Escrow Agreement. The Escrow Agent will provide monthly statements to the City and the Respondent that will show accrued interest along with any deposits and withdrawals from the Escrow Account. It is further understood and agreed by all parties hereto that the City is not responsible in any way for the investments by the Escrow Agent of the Cash Deposit or the investment earnings thereon, nor is the City responsible for the actions of the Escrow Agent.

Section 4. The Funds shall at all times be held in a separate account by the Escrow Agent and shall be disbursed only pursuant to the terms and conditions of Section 5 below.

Section 5. The Escrow Agent shall liquidate all applicable investments and pay to the Respondent (as directed in writing by the Respondent) all Funds in the Escrow Account upon the occurrence of any one of the following conditions: (i) as soon as practicable upon receipt of a

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statement signed by the City Authorized Representative (as defined below) addressed to the Respondent and the Escrow Agent to the effect that the Respondent *has not* been selected as the potential buyer; or (ii) as soon as practicable upon receipt of a statement signed by the City Authorized Representative at any time, and addressed to the Respondent and the Escrow Agent, to the effect that the Respondent did not tender a bid by the Bid Date (which statement the City Authorized Representative (as defined below) shall be required to deliver promptly after the Bid Date); or (iii) as soon as practicable upon the failure of the City Authorized Representative to provide by 5:00 p.m. Eastern Time on the date that is 60 days after the Bid Date, or such later time as may be determined by mutual consent of both the City Authorized Representative and the Respondent (the "Escrow Deadline"), a statement signed by the City Authorized Representative addressed to the Escrow Agent that any entity has been selected as the potential buyer pursuant to the Bid Documents. The "City Authorized Representative" is the Business Administrator of the City.

The Escrow Agent shall (as directed in writing by the City Authorized Representative), liquidate all applicable investments and pay to the City all Funds in the Escrow Account upon the occurrence of any one of the following conditions: (a) upon receipt of a statement, in a form substantially similar to that attached hereto as Schedule 5 (a "City Statement"), signed by the City Authorized Representative directing disbursement to the City of the Funds in accordance with the applicable terms or provisions of the Bid Documents; or (b) upon receipt of a statement signed by the City Authorized Representative and signed by an Authorized Respondent Representative that the closing is taking place under the Agreement; or (c) as soon as possible after 5:00 p.m. Eastern Time on the Offer Termination Date (the "Closing Escrow Deadline").

Notwithstanding anything in this Escrow Agreement to the contrary, the selection, or the identification in any statement, by the City or the Respondent or any other entity as the potential buyer shall in no way obligate the City to enter into any agreement, or close the Proposed Transaction, with such potential buyer.

If the City Authorized Representative and the Respondent mutually consent to extend the Offer Termination Date, the Escrow Deadline or the Closing Escrow Deadline to a date certain (the later of which, the "Extended Escrow Deadline"), the City Authorized Representative must provide prompt, but in any event prior to the termination of this Escrow Agreement, notice in writing to the Escrow Agent of such Extended Escrow Deadline, and the term of this Escrow Agreement shall thereby automatically be extended to coincide with the Extended Escrow Deadline.

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

Section 7. The Escrow Agent shall be responsible, in fulfilling its duties under this Escrow Agreement, to a standard of care that could fairly be attributable to an experienced corporate escrow agent. The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Escrow Agreement or any other agreement. In no event shall the Escrow Agent be liable, directly or indirectly, for any (i) damages or expenses arising out of the services provided hereunder, other than damages which result from the Escrow Agent's failure to act in accordance with the standards set forth in this agreement, or (ii) special, punitive, remote or speculative damages, even if the Escrow Agent has been advised of the possibility of such damages, except in cases of its gross negligence, fraud, bad faith or willful misconduct. This Escrow Agreement and all information received by the Escrow Agent is sensitive (in that it pertains to information which may be pertinent to public bidding), is confidential and may not be disclosed by the Escrow Agent to any third party without the express written permission of the City Authorized Representative and the Respondent, except as set forth in this Section 7. To the extent that the Escrow Agent deems it necessary in the carrying out of its duties to consult with its outside counsel, such outside counsel shall be informed by the Escrow Agent of the confidentiality of such information and directed to keep it confidential pursuant to the terms of this Section 7. In the event the Escrow Agent is presented with a request or demand for information or documents by any court or other administrative or governmental agency regarding this Escrow Agreement or any information or documents related thereto that may be known to the Escrow Agent or be in its possession, the Escrow Agent shall immediately give notice to the City and the Respondent, and the City and the Respondent shall each have the opportunity to contest such request, demand or process by any means available to them before such information or documents are released or communicated by the Escrow Agent; *provided, however*, that the Escrow Agent shall not be obligated to withhold such release beyond that time as may be ordered by the court or agency, unless the demand or request is quashed or the time to produce it otherwise extended. Such confidentiality provisions shall survive the termination of this Escrow Agreement and any breach thereof may subject the Escrow Agent or its agents, attorneys, custodians or nominees (collectively, "Agents") to liability. The Escrow Agent has the right to perform any of its duties hereunder through the Agents appointed by it with due care, so long as such Agents are informed of the confidentiality obligations of the Escrow Agent imposed by this Escrow Agreement and agree to abide by such obligations.

Section 8. Except as to matters covered in Section 7, to the fullest extent permitted by law, the Escrow Agent shall not be liable for any action taken by it without gross negligence, willful misconduct or fraud, and in good faith, and believed by it to be authorized or within the rights or powers conferred upon it by this Escrow Agreement, and may consult with legal counsel of its own choice (whether specially retained or regularly employed) and shall have full and complete authorization and protection for any action so taken or suffered by it in accordance with the terms of this Escrow Agreement, upon such advice of such counsel. The Respondent shall be liable for and shall reimburse and indemnify the Escrow Agent and hold the Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable out-of-pocket attorney's fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Escrow Agreement or being Escrow Agent hereunder (including Losses incurred by Escrow Agent in connection with its successful defense, in whole or in part, of any claim of or based on gross negligence, fraud, bad faith or willful misconduct on its part); *provided*

that nothing contained herein shall require Escrow Agent to be indemnified for Losses caused by its gross negligence, fraud, bad faith or willful misconduct. The terms of this indemnification shall survive the termination of the Escrow Agreement and the resignation or removal of the Escrow Agent.

Section 9. The Escrow Agent shall charge the escrow fees pursuant to its schedule of fees attached as Schedule 1. The full amount of the Initial Escrow Agent Fee and the full amount of one year's Annual Escrow Agent Fee shall be payable by the Respondent to Escrow Agent as set forth on such Schedule 1. Except as otherwise expressly provided in this Escrow Agreement, each party hereto shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Escrow Agreement.

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

Section 11. Neither the Respondent, nor the City hereto shall have any right, title or interest in or possession of the Funds except as specifically provided in this Escrow Agreement and shall not have the ability to pledge, convey, hypothecate or grant as security the Funds unless and until such Funds have been paid or are required to be paid to such party or parties pursuant hereto. Accordingly, the Escrow Agent shall be in sole possession of the Funds and will not act as custodian of any of the parties under this Escrow Agreement for the purposes of perfecting a security interest therein, and no creditor of any party hereto shall have any right to have or to hold the Funds as collateral for any obligation and shall not be able to obtain a security interest in any assets (tangible or intangible) contained in or relating to the Funds.

Section 12. There shall not be any, and the Escrow Agent shall not be bound by any, amendment, modification, cancellation or rescission of this Escrow Agreement unless the same shall be in writing and signed by the Escrow Agent, the City and the Respondent. Any waiver of, or consent to depart from, the requirements of any provision of this Escrow Agreement shall be effective only if it is in writing and signed by (i) the City on behalf of the City, (ii) the Escrow Agent on behalf of the Escrow Agent or (iii) the Respondent on behalf of the Respondent, 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 hereto to exercise, and no delay in exercising, any right under this Escrow 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 13. All notices hereunder shall be in writing and personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, sent via United States certified mail, return receipt requested, postage prepaid, or sent by PDF or other electronic attachment via email, and addressed to the applicable party at its address in this Escrow Agreement, or at such other address as any party, by written notice in the manner specified in this Section to the other parties, may designate from time to time. All such notices shall be deemed to have been given and

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received (i) upon receipt (or refusal of receipt) if given in person or personally delivered by courier, (ii) two business days after being sent by a nationally recognized overnight delivery service with postage prepaid, (iii) five business days after being sent in the United States mail, certified, return receipt requested with postage prepaid, or (iv) upon acknowledgement of receipt by the receiving party in writing (including acknowledgment by confirmatory email from the receiving party) to the sending party. Copies of any notice may be sent by facsimile or by PDF or other electronic attachment via email, but such notice shall not be deemed to have been given unless also validly given and received as specified in the immediately preceding sentence.

If to the Escrow Agent:

Fulton Bank, N.A.
212 Locust Street
Locust Court Building, 6th Floor
Harrisburg, PA 17101
Attn: Marcus Hite, Senior Vice President, Municipal Banking
Phone: (717) 849-2323
Email: mwhite@fultonbank.com

If to the City:

The City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Adeolu Bakare
Phone: (717) 237-5290
email: abakare@mcneeslaw.com

and:

The City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Vicki Karandrikas
Phone: (717) 237-5274
email: vkarandrikas@mcneeslaw.com

If to the Respondent: As set forth on the signature page hereto.

Notwithstanding anything herein to the contrary, the Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Escrow Agreement sent by facsimile transmission or by PDF or other electronic attachment via email; *provided, however*, that each of the parties hereto desiring to provide any directions or instructions by facsimile or via email shall provide to the Escrow Agent an executed incumbency certificate in the form attached hereto as Schedule 6 listing the names, titles, email addresses and telephone numbers of the persons with authority to act

hereunder, which incumbency certificate shall be amended and restated and re-executed whenever such party determines to add or a delete a person from the listing. If the Respondent or the City elects to give the Escrow Agent instructions or directions by facsimile or via email, and the Escrow Agent acts upon such instructions or directions, the Escrow Agent's understanding of such instructions and directions shall be deemed controlling; *provided* that such instructions or directions are consistent with the applicable provisions of this Escrow Agreement. The Escrow Agent shall not be liable for any losses, costs or expenses arising, directly or indirectly, from the Escrow Agent's reliance upon and compliance with such instructions or directions notwithstanding whether such instructions or directions conflict or are inconsistent with a subsequent written instruction, other than any losses which result from the Escrow Agent's gross negligence, fraud, bad faith or willful misconduct; *provided* that the instructions or directions being complied with are consistent with the applicable provisions of this Escrow Agreement. The Respondent and the City agree to assume all risks arising out of the use of the foregoing electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 14. This Escrow Agreement and all rights and obligations of the parties hereto arising out of or relating to this Escrow Agreement or the negotiation, execution or performance hereof, including any tort obligations, are governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict or choice of law rule or principle that would result in the imposition of the laws of another jurisdiction. ALL PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. Any action or proceeding against any party hereto relating to this Escrow Agreement may be brought and enforced in the federal or state courts in the Commonwealth of Pennsylvania in York County, and each of the parties hereto 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.

Section 15. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written evidence of such assignment in form satisfactory to the Escrow Agent shall be submitted to and accepted by the Escrow Agent and the parties hereto provide their written consent.

Section 16. The Escrow Agent reserves the right to resign at any time by giving written notice of resignation, specifying the effective date thereof. Within 30 days after receiving the aforesaid notice, the parties to this Escrow Agreement agree to appoint a successor escrow agent to which the Escrow Agent shall distribute the Funds then held hereunder, less the Escrow Agent's fees hereunder. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of the 30-day period, the Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable out-of-pocket attorneys' fees which are incurred in connection with such a proceeding shall be paid, one-half by the City and one-half by the Respondent.

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

Section 17. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Respondent, the City, or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

Section 18. Nothing contained in this Escrow Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between or among any of the parties hereto. Except as expressly provided herein to the contrary, no term or provision hereof shall be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Escrow Agreement.

Section 19. This Escrow Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. A signature to this Escrow Agreement delivered by facsimile or email of a PDF document shall be deemed an original signature hereto and such delivery shall be deemed to have the same legal effect as delivery of an original signed copy of this Escrow Agreement.

Section 20. Notwithstanding anything to the contrary contained herein, parties hereto hereby acknowledge that, for federal, state and local income tax purposes, any interest, income and gain earned on or derived from the Cash Deposit or the Funds (the "Income") shall be income of the Respondent. All taxes payable on the Income shall be paid by the Respondent, whether or not the Income was distributed by the Escrow Agent during any particular year, as and to the extent required under the provisions of the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code") and other applicable tax law. The Escrow Agent shall, within the time period required by applicable law, file all required reports required to be filed by the U.S. Internal Revenue Service with respect to all Income hereunder. The Respondent agrees to provide to the Escrow Agent all forms and information necessary to accomplish such reporting or as reasonably requested by the Escrow Agent. The Escrow Agent shall, for each calendar year-end (and fiscal year-end(s) of the Respondent and the City) (or portion(s) thereof) that it holds the Escrow Amount, report the Income of the Escrow Amount on IRS Forms 1099 which shall show the Respondent as "payee." On or before the execution and delivery of this Escrow Agreement, the Respondent has provided to the Escrow Agent a properly completed Form W-9. Notwithstanding anything to the contrary herein, the Escrow Agent shall have no duty to prepare or file any other federal or state tax report or return with respect to any funds held pursuant to this Escrow Agreement or any income earned thereon. The Respondent is required to prepare and file any and all income or other tax returns applicable to the Escrowed Funds with all applicable federal, state

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and local departments of revenue in all years income is earned in any particular tax year as and to the extent required under the provisions of the Code, and other applicable tax law. The Escrow Agent shall have no responsibility for the preparation or filing of any tax or information return with respect to any transaction, whether or not related to the Agreement, that occurs outside the Escrowed Funds.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the date first hereinabove written.

RESPONDENT:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

Address for Notices:

Email: _____

Facsimile: () _____ - _____

Phone: () _____ - _____

Federal Employer ID #: _____

For purposes of the Agreement, the "Authorized Respondent Representatives" are:

<u>Name(s)</u>	<u>Title(s)</u>
_____	_____
_____	_____
_____	_____

IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the date first hereinabove written.

ESCROW AGENT:

FULTON BANK, N.A.

By: _____

Name:

Title:

[Signature Page to Cash Deposit Escrow Agreement]

IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the date first hereinabove written.

CITY:

THE CITY OF YORK

By: _____

Name:

Title:

COMMONWEALTH OF PENNSYLVANIA)

)

ss:

COUNTY OF YORK)

)

On this, the ____ day of _____, 202__, before me, a Notary Public, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed for The City of York to the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained.

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

Notary Public

My commission expires:

SCHEDULE 1

ESCROW AGENT SCHEDULE OF FEESEscrow Agent Fees (per Escrow Account required):

Initial Escrow Agent Fee \$ []
 - Payable by the Respondent at the inception of the Escrow Account

Annual Escrow Agent Fee (rate guaranteed for a period of 3 years) \$ []
 - Payable by the Respondent annually in Arrears. The Escrow Agent will pro rate the fees for accounts shorter than a full year.

Additionally, the Escrow Agent will be reimbursed by the Respondent for those customary out-of-pocket expenses as set forth in the other terms of this Escrow Agreement.

The above fees are contingent on the investment of funds in money market mutual funds of or available to Escrow Agent, including any proprietary fund for which the Escrow Agent or an affiliate is an investment advisor or provides other services to such fund and receives reasonable compensation for such services. Charges for any services not specifically covered in this Schedule will be billed commensurate with the services rendered, with prior written notice to all parties to this Escrow Agreement. In the event that federal, state or local laws and regulations impose new or additional duties on Escrow Agent in the conduct of its business as an escrow agent under this Escrow Agreement, then Escrow Agent may increase its fees and expense reimbursement rates under this Escrow Agreement upon at least 30 days' prior written notice to the parties to the Agreement reasonably in proportion to such new duties. In the event any extraordinary circumstances arise, Escrow Agent reserve the right to renegotiate our fees accordingly with all parties to the Agreement.

SCHEDULE 2

FORM OF CASH DEPOSIT RECEIPT

Fulton Bank, N.A., as escrow agent (the "Escrow Agent"), hereby confirms receipt of \$ _____ on _____, 202__ from _____ (the "Respondent"), for deposit into the Escrow Account created under the Cash Deposit Escrow Agreement, dated _____, 202__ (as such may be amended, the "Escrow Agreement"), by and among the Escrow Agent, the Respondent, and The City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, which will be held pursuant to the terms of the Escrow Agreement.

FULTON BANK, N.A.

By: _____
Name:
Title:

SCHEDULE 3

FORM OF DEFICIT NOTICE

Pursuant to Section 2 of the Cash Deposit Escrow Agreement, dated _____, 202__ (as such may be amended, the "Escrow Agreement"), by and among Fulton Bank, N.A., as escrow agent (the "Escrow Agent"), _____ (the "Respondent"), The City of York, York County, Pennsylvania (the "City"), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, and the Escrow Agent hereby informs the Respondent, the City that there is a deficit of \$_____ (a "Deficit") that has reduced the market value of the Cash Deposit (as defined in the Escrow Agreement) below Five Million United States Dollars (\$5,000,000) (the "Benchmark").

Pursuant to Section 2 of the Escrow Agreement, the Respondent has agreed to replenish the Cash Deposit to reach the Benchmark through an additional deposit by 2:00 p.m. Eastern Time on the third business day following receipt (determined pursuant to Section 13 of the Escrow Agreement) by the Respondent of this Deficit Notice.

Sincerely,

FULTON BANK, N.A.

By: _____
Name:
Title:

SCHEDULE 4

ELIGIBLE INVESTMENTS

For purposes of this Escrow Agreement, "Eligible Investments" mean (i) obligations issued by or guaranteed by the United States of America or any agency or instrumentality thereof, (ii) insured certificates of deposit of or interest bearing accounts with national banks or corporations endowed with trust powers, having capital and surplus in excess of \$200,000,000, (iii) commercial paper of finance companies organized under the laws of any state of the United States of America that at the time of investment is rated A-1 by Standard & Poor's Financial Services LLC ("S&P") or P-1 by Moody's Investors Service, Inc. ("Moody's"), (iv) money market mutual funds that are registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940, as amended (the "1940 Act"), and operated in accordance with Rule 2a-7 of the 1940 Act and that at the time of investments are rated AAA by S&P and/or Aaa by Moody's, including such funds for which the Escrow Agent or an affiliate of the Escrow Agent provides investment advice or other services provided that such funds comply with this subsection (iv), or (v) any other investment mutually agreed upon by the Respondent and the City Authorized Representative as evidenced by a jointly executed writing delivered to the Escrow Agent. Initially, in the absence of other written direction, the Escrowed Funds shall be invested in Federated Prime Fund #396 – CUSIP 60934N708.

SCHEDULE 5

FORM OF CITY STATEMENT

Fulton Bank, N.A.
212 Locust Street, Locust Court Building, 6th Floor
Harrisburg, PA 17101
Attn: Marcus Hite, Senior Vice President, Municipal Banking
Email: mhite@fultonbank.com

Re: The York Wastewater Utility System Cash Deposit Escrow Agreement - City Statement of Disbursement

Ladies and Gentlemen:

Pursuant to Section 5(a) of the Cash Deposit Escrow Agreement, dated _____, 202__, by and among Fulton Bank, N.A., as escrow agent (the "Escrow Agent"), and The City of York, York County, Pennsylvania (the "City"), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, and _____, as amended, modified or supplemented from time to time in accordance with the terms thereof, the undersigned hereby submits, on behalf of the City, this City Statement directing the Escrow Agent to liquidate all investments in the Escrow Account and pay to the City all Funds in the Escrow Account. The City represents that its and the City Authorized Representative's actions are in keeping with the Bid Documents described in the Escrow Agreement.

The disbursement of Funds should be made to:

Account No.: _____
Routing No.: _____
Bank: _____
Address: _____

Dated: _____

THE CITY OF YORK

By: _____
Name:
Title:

SCHEDULE 6

FORM OF INCUMBENCY CERTIFICATE

TO PERMIT DIRECTIONS AND INSTRUCTIONS BY FACSIMILE OR VIA EMAIL UNDER THE CASH DEPOSIT ESCROW AGREEMENT

Reference is hereby made to the Cash Deposit Escrow Agreement, dated _____, 202__, by and among Fulton Bank, N.A., as escrow agent (the "Escrow Agent"), and The City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, and _____, as amended from time to time in accordance with the terms thereof (the "Escrow Agreement").

Pursuant to Section 13 of the Escrow Agreement, the undersigned party to the Escrow Agreement desires to provide directions and instructions by facsimile or via email and hereby lists and certifies the names, titles, email addresses and telephone numbers of the persons with authority to act for the undersigned party under the Escrow Agreement. This Incumbency Certificate shall be amended and restated by the undersigned party in the event such party determines to add or a delete a person from the listing below.

<u>Name</u>	<u>Title</u>	<u>Email Address</u>	<u>Telephone No.</u>	<u>Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(Escrow Agreement Party Providing this Certificate)

By: _____
Name:
Title:

REVISED 9/25/2020

REQUEST FOR PROPOSALS
FOR THE
SALE OF THE
CITY OF YORK AND YORK CITY SEWER AUTHORITY, YORK, PENNSYLVANIA
MUNICIPAL WASTEWATER SYSTEM

ISSUE DATE: July 10, 2020
INITIAL SUBMISSION DUE DATE: October 12, 2020
DEADLINE TO BE INFORMED OF QUALIFICATION: October 26, 2020
FINAL PROPOSAL DUE DATE: December 2, 2020



ISSUED BY:
THE CITY OF YORK
101 South George Street
York, Pennsylvania 17401

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APPENDICES

- Appendix A – *Proposed Form of Asset Purchase Agreement*
(delivered to all Selected Respondents on October 26, 2020)
- Appendix B – *Proposed Form of Asset Purchase Agreement Exhibits*
(delivered to all Selected Respondents on October 26, 2020)
- Appendix C – Calendar of Events
- Appendix D – Confidentiality and Data Room Usage Agreement
- Appendix E – Initial Submission Certification
- Appendix F – Agreement for Proposal Security
- Appendix G – Transmittal Letter
- Appendix H – Non-Collusion Affidavit
- Appendix I – Statement of Ownership
- Appendix J – Operator Information
- Appendix K – Contract and Lobbyist Disclosure
- Appendix L – Business Proposal
- Appendix M – Escrow Agreement

SECTION 1 INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction and Purpose

The York City Sewer Authority (the "Authority") and The City of York, York County, Pennsylvania (the "City") own and operate all of the assets comprising the City's municipal wastewater (collectively, the "System"). The Authority currently leases System assets to the City, which in turn operates the entire System, pursuant to a long-term lease, dated September 15, 1987, as amended, whose term extends to December 1, 2027 (the "Lease"). The City seeks proposals for purchase of the System through an Asset Purchase Agreement ("APA") with a qualified firm or other entity that will provide safe and reliable service, appropriate and necessary management, and operation and maintenance services associated with the System. The APA would be conditioned on termination of the Lease between the City and the Authority.

The most valuable assets of the System are the dedicated and experienced professionals who have worked diligently over the years to make the System what it is. The value that these individuals bring to this prospective transaction is immeasurable, and it is the intent of the City that this value be recognized throughout this procurement process.

This request for proposals ("RFP") provides to those interested in submitting proposals for the APA sufficient information to enable them to prepare and submit those proposals. This RFP contains instructions governing the requested proposals, including requirements for the information and material to be included and other requirements specific to this RFP.

The City desires to receive, from each party making an initial submission (a "Respondent") that is qualified by the review committee, a proposal that is fully responsive to this RFP, that indicates clear capability of providing quality sewer services to the System and to System customers ("Proposal") and that includes, but is not limited to:

- (a) a purchase price;
- (b) commitment to safe, reliable, and continuous system operation;
- (c) commitment to customer service and responsiveness; and
- (d) agreement to the service terms and conditions stated herein.

No alternative Proposals will be accepted. In its initial submission, each Respondent will be required to sign a certification in the form attached hereto as **Appendix E** ("Initial Submission Certification"), certifying to its bona fide belief in such capability and its intention to submit a full Proposal.

The APA will contain terms and conditions regarding System sale and detailed requirements for operating the System in conformity with the public interest, including without limitation: quality standards, customer responsiveness standards and short-term rate caps.

1.2 Communications

All contact should be directed only to both of the Advisor Representatives listed below. Respondents should NOT contact any officials, staff or personnel at the City or the Authority regarding this RFP. Any such contact may be grounds for disqualification.

*Advisor
Representatives:*

Primary

Adeolu Bakare
McNees Wallace & Nurick LLC
316 N. George Street
York, PA 17401

Phone: (717) 237-5290
email: abakare@mcneeslaw.com

Alternate

Vasiliki Karandrikas
McNees Wallace & Nurick LLC
316 N. George Street
York, PA 17401

Phone: (717) 237-5274
email: vkandrikas@mcneeslaw.com

If a Respondent has any questions regarding this RFP, the Respondent must submit the questions by email (with the subject line "*Wastewater APA RFP Question*") to the Advisor Representatives and such questions must be submitted via email no later than the date indicated on the Calendar of Events (as hereinafter defined). The Respondent shall not attempt to contact the Advisor Representatives by any other means. A Respondent who submits a question after the deadline date for receipt of questions indicated on the Calendar of Events attached hereto as **Appendix C** (the "Calendar of Events") assumes the risk that its Proposal will not be responsive or competitive because the City is not able to respond before the Proposal receipt date or otherwise in sufficient time for the Respondent to prepare a responsive or competitive Proposal. The Calendar of Events may be revised and restated with notice to participating Respondents via the Data Room (defined below), and care will be taken to avoid, to the degree possible, a change to dates that would prejudice the responsiveness or competitiveness of any Proposal. If there is a conflict between any dates stated in herein and in the Calendar of Events, the Calendar of Events' dates will control.

All questions and responses will be posted to the Data Room hosted by the Advisor Representatives (the "Data Room") and are considered as addenda to, and part of, this RFP. Each Respondent shall be responsible for monitoring the Data Room for new or revised RFP information. The City shall not be bound by any verbal information nor shall it be bound by any written information that is either not contained within the RFP or formally issued as an addendum by the City via the Data Room. The City does not consider questions to be a protest of the RFP specifications or of the procurement.

The City will hold pre-Proposal conferences with Respondents as specified on the Calendar of Events. The purpose of these conferences is to provide opportunity for clarification of the RFP and to schedule a physical inspection of the System as part of each Respondent's due diligence activity. Respondents should forward all questions to the Advisor Representatives to ensure adequate time for analysis before the City provides an answer. Respondents may also ask questions at the conference. In view of the limited facilities available for the conference, Respondents should limit their representation to eight (8) individuals per Respondent. The pre-Proposal conference is for information only. Any answers furnished during the conference will not be official until they have

been verified, in writing, and posted in the Data Room. All questions and written answers will be posted in the Data Room as an addendum to, and shall become part of, this RFP.

Subsequent to issuance of this RFP, the City may modify, supplement, amend or restate provisions of this RFP at any time provided that the modifications are made available to all recipients of the RFP. If the City deems it necessary to revise any part of this RFP following the deadline for initial submissions, the Advisor Representatives will post an addendum to the Data Room. (Respondents will need to register with the Advisor Representatives, execute the Confidentiality and Data Room Usage Agreement attached hereto as **Appendix D** (the "Confidentiality and Data Room Usage Agreement") and obtain a password before Data Room access is granted.) At all times, it is the Respondent's responsibility to periodically check with the City, through the Advisor Representatives, for any new information, revisions, or addenda to the RFP. Answers to the questions asked during any questions and answers period also will be posted to the Data Room as an addendum to the RFP.

RESPONDENTS MAY NOT ATTEMPT TO COMMUNICATE WITH THE CITY (THROUGH THE ADVISOR REPRESENTATIVES OR OTHERWISE) AFTER THE INITIAL SUBMISSIONS ON OCTOBER 12, 2020 AND UNTIL THE DEADLINE FOR THE RESPONDENTS TO BE INFORMED IF THEY ARE QUALIFIED ON OCTOBER 26, 2020, EXCEPT RESPONDENTS MAY SUBMIT AMENDED INITIAL SUBMISSIONS, IF APPLICABLE, AND CONFIRM ACCESS TO THE DATA ROOM DURING THAT INTERIM PERIOD.

To be considered for selection, both initial submissions and Proposals must arrive at the offices of the Advisor Representatives on or before the times and dates specified for them in the Calendar of Events. Initial submissions and Proposals will not be accepted via email or facsimile transmission. Respondents who send materials by mail or other delivery service should allow sufficient delivery time to ensure timely receipt. If, due to inclement weather, natural disaster, or any other cause, including COVID-19 measures, the offices of the Advisor Representatives are closed on the applicable response date, the deadline for submission will be automatically extended until the next business day on which the office is open. The hour for submission shall remain the same. The City will reject, unopened, any late materials.

1.3 RFP Documents

It is the responsibility of each Respondent to inspect its copy of this RFP to determine that a complete set of the documents, including appendices, are included. If a Respondent believes that its copy of this RFP is incomplete, it should contact the Advisor Representatives. The City will make reasonable arrangements with the Respondent to provide any missing documents, including any addenda and/or clarifications, to this RFP.

Neither the City, nor its officials, agents, employees, or representatives, shall be responsible for errors, omissions, incomplete submissions or misinterpretations resulting from the Respondent's use of an incomplete set of RFP documents in preparing or submitting its Proposal.

The RFP documents have been made available only for the purpose of soliciting Proposals for sale of the System. No license or grant is conferred or implied to the Respondent or to any other person for any purpose.

1.4 Submission of Proposal and Proposal Security

A Proposal submitted in response to this RFP is deemed responsive if it complies with the provisions of Sections 3.2, 3.3 and 3.6. Each Respondent must read Sections 3.2, 3.3 and 3.6 carefully in order to obtain a complete understanding of the requirements for submission of its Proposal.

Firms submitting a Proposal are required to submit together with their initial submissions a certified check or cashier's check, payable to the City in the amount of Twenty Five Thousand Dollars (\$25,000.00), along with an executed Agreement for Proposal Security in the form attached hereto as **Appendix F** ("Agreement for Proposal Security"). Any Proposal security must be valid for a period of at least one hundred eighty (180) days. No Proposal shall be considered unless accompanied by the required Proposal security. The respective Proposal security(ies) ***will not be returned*** to any Respondent that withdraws its Proposal at any time after December 2, 2020, as indicated in the Calendar of Events. At any time, the City may ask for written confirmation from any Respondent that such Respondent's Proposal is still active, and if, after December 2, 2020, such Respondent does not provide such written confirmation within three (3) business days of such request by the City, the City may deem the Respondent to have withdrawn, and, if so, will send subsequent notice of such deemed withdrawal to the Respondent. The Proposal security submitted by the unsuccessful Respondents will be returned within ten (10) business days after the execution of the APA by and between the City, and the successful Respondent or earlier, if the Respondent is determined to be unqualified. The Proposal security of the selected Respondent will be credited towards the purchase price or returned promptly after the financial close under the APA.

1.5 Conditions with Respect to this RFP

By responding to this RFP, the Respondent acknowledges and consents to the following conditions relative to the submission, review and consideration of its Proposal:

- (a) The issuance of this RFP is not intended, and shall not be construed, to commit the City to execute any APA.
- (b) Neither the City, nor its respective agents, staff or consultants, will be liable for any claims or damages resulting from the solicitation or collection of Proposals, nor will there be any reimbursement to Respondents for the cost of preparing the Proposals or for participating in this RFP process.
- (c) All Proposals will become the property of the City and will not be returned.
- (d) Information of a confidential or proprietary nature will be kept confidential during and after the procurement process, subject to law, pursuant to Section 1.8 when such information is properly so identified by the Respondents, as further described in Section 1.8.

- (e) Failure of any Respondent to submit a Proposal that completely addresses the requirements of this RFP (including submission as part of such Proposal of all documents required to be submitted under the terms of this RFP) at the times and in the manner specified in this RFP, may result in the rejection of the Proposal in the sole discretion of the City.
- (f) All activities related to the RFP as contained herein shall be subject to compliance with all applicable federal, state and local laws, environmental regulations, and requirements.
- (g) Any and all initial submissions not received by 5:00 p.m. Eastern Time on October 12, 2020 will be returned, unopened, to the firm or person submitting such and will not be considered. Similarly, any and all Proposals not received by 2:00 p.m. Eastern Time on December 2, 2020 will be returned, unopened, to the firm or person submitting such and will not be considered.

1.6 Reservation of Rights and Options with Respect to this RFP

The City, in its sole discretion, reserves the following rights and options with regard to any Proposal:

- (a) To abandon the procurement process including the right to decline to award the APA for any reason.
- (b) To accept the Proposal that, in the City's judgment, best serves the interests of the City, the Authority and the citizens of the City of York and the municipalities served by the System.
- (c) To waive any condition, requirement or informality which would otherwise constitute non-conformance of the Proposal with the provisions of this RFP.
- (d) To reject any or all Proposals.
- (e) To reject incomplete or nonresponsive Proposals.
- (f) To change or alter the terms and conditions of this RFP so long as all of the parties who have indicated an interest or have otherwise submitted information receive copies of such changes.

1.7 Responsibilities of the Respondent in Connection with this RFP

It is the obligation and responsibility of each Respondent before submitting a Proposal to:

- (a) Review the terms of this RFP so that it is familiar with all aspects of it.

- (b) Inspect the System and related information to be able to determine, separate and apart from this RFP and any of the information provided by the City, the System assets it is agreeing to purchase and the obligations arising therefrom.
- (c) Analyze all applicable federal, state, and local laws, regulations, ordinances, permits, approvals and orders that may affect the cost, performance or furnishing of the Services required under the terms of this RFP.
- (d) Notify the Advisor Representatives in writing prior to the submission of responses to this RFP of any conflicts, errors, or discrepancies therein.

Each Respondent is responsible for obtaining whatever information it deems necessary and in undertaking all inspections, examinations, and studies it deems necessary to obtain sufficient data and information to enable it to submit a Proposal. Any document provided to one Respondent will be provided to all Respondents. By submitting a Proposal, a Respondent will be deemed to have acknowledged its opportunity to undertake all inspections and to examine all necessary data and information to enable it to submit a Proposal.

At any time prior to the receipt of Proposals by the City, Respondents may ask questions or request information. All such questions or information requests shall, together with the City's response thereto, be shared with all Respondents.

1.8 Confidential and Proprietary Information

If the Respondent chooses to include material of a proprietary nature in the initial submission or the Proposal, the City, in its sole discretion and subject to applicable law, will keep such material confidential, but only to the extent that it contains trade secrets which, if disclosed, would cause substantial injury to the Respondent's competitive position. However, the City will not assume any liability for any loss, damage or injury that may result from any disclosure or use of marked data or any disclosure of this or other information during the review of the initial submissions and Proposals. The Respondent must specifically identify the section(s) of its initial submission and/or Proposal that contains such information by properly marking each applicable page. Preferably, any sections which contain material of a proprietary nature shall be severable or removable to assist the City in protecting this information. The Respondent also shall include the following notice in the introduction of the relevant material:

"Material in the following sections labeled "Proprietary Information" contains information that is a trade secret which, if disclosed, would cause substantial injury to (Respondent's) competitive position. (Respondent) requests that such data be used only for the evaluation of the Proposal, and understands that disclosure will be limited only to the extent that the City determines is proper or to the extent that the City deems disclosure necessary according to law. If an APA is awarded to (Respondent), the City will have the right to use or disclose the data as may be provided in the applicable agreement executed with the Respondent."

Notwithstanding the above, Proposal forms and appendices (including cost information) and revisions and markups to the APA will not, under any circumstances, be considered proprietary or confidential information. Respondents are advised to read Section 4.3 of the RFP carefully regarding the limitations of Pennsylvania law.

SECTION 2 DESCRIPTION OF THE SYSTEM ASSETS

The System is primarily comprised of the wastewater treatment plant (the "Plant"), the interceptors (the "Interceptors") and the collection system (the "Collection System"). The Interceptors are the pipes that convey sewage flow from the interconnected municipalities and include 65,000 linear feet (lf) of sewer main ranging in size from 8 to 72 inches in diameter and in age from 10 to 55 years old. The Collection System encompasses the pipes that convey sewage flow from the properties within the City and is comprised of 489,000 lf of sanitary sewer pipe, ranging in size from 6 to 27 inches in diameter and ranging in age from 10 to 85 years old, and includes one pumping station within the Collection System area. As a whole, the System provides sewer collection, regional wastewater conveyance, wastewater treatment and industrial pretreatment compliance.

The Authority is permitted to discharge wastewater from the Plant through a National Pollutant Discharge Elimination System ("NPDES") permit, effective February 1, 2008, and discharges into Codorus Creek. The NPDES permit includes interim nutrient reporting requirements and final effluent nutrient limitations for total nitrogen and total phosphorous. An NPDES permit was reissued by the Pennsylvania Department of Environmental Protection ("PADEP") on September 1, 2017, and expires on August 31, 2022. The City received a Clean Water Act Section 308 Request for Information from the Federal Environmental Protection Agency ("EPA") on April 2, 2020, and provided a response on May 22, 2020. The EPA has not initiated any enforcement actions pursuant to the Request for Information.

The System serves the City and six additional municipalities: Manchester Township, West Manchester Township, York Township, North York Borough, West York Borough and Spring Garden Township. The City is a party to intermunicipal agreements with those municipalities, providing for sewage treatment and disposal. Those agreements also detail how additional reserve capacity in the Plant will be distributed among the municipalities. The City has a separate agreement with Springettsbury Township for the sale of a portion of the City's capacity.

The Plant itself was originally constructed in 1916 and has been enlarged and upgraded with six major projects. The Plant has a 26 million gallons per day ("MGD") hydraulic capacity and an organic capacity of 62,884 pounds per day and is located north of the City in Manchester Township on 41.6 acres.

The first major Plant project was completed in the early 1950s and converted the primary treatment plant to an activated sludge plant using the contact stabilization process. This project also added anaerobic sludge digestion. The rated plant capacity at the time was 18 MGD.

The next major upgrade was completed in the early 1980s and expanded the Plant from 18 MGD to the current rating of 26 MGD. This expansion was accomplished by the construction of an

8 MGD pure oxygen treatment system designated as Train 1 and the existing 18 MGD treatment facility was designated as Train 2. This upgrade also added chemical phosphorus removal.

By the mid-1980s, nitrification became a regulatory requirement, and the Plant was then again upgraded. This time, a third treatment train, Train 3, was added on acquired property adjacent to the existing Plant property. Train 3 provided the additional tankage required to accomplish nitrification and allowed the phosphorus removal process to be converted from chemical to biological removal. The project also added an effluent filtration system and converted the disinfection process from chlorine to ultraviolet ("UV") light disinfection. At the time, the City's UV disinfection system was the largest in the eastern United States of America. A state-of-the-art, plant-wide computer control and monitoring system was added along with an engine-driven, 1,500 kW cogeneration system using the digester gas. Most of the other existing treatment facilities were improved under this major project completed by 1990.

In 1996, a need to increase the disinfection peak hydraulic treatment capacity to 57 MGD prompted a new design to replace the original UV disinfection system. To replace the existing system, a low-pressure, high-intensity system was selected and was installed within the existing channels with minor modifications. The installation of the new system was sequenced to maintain continuous operation of the Plant.

By the mid-2000s, nitrogen removal was required, and the treatment process was again modified to meet the new biological nutrient removal ("BNR") requirement. At this time, the aeration system was modified to include de-nitrification while maintaining biological phosphorus removal. The BNR capacity of the Plant was set at an average daily flow rate of 18 MGD, which it was not expected to exceed within the 20 years thereafter.

In 2009, the Ostara Pearl® process was implemented to treat liquid remaining from sludge dewatering (centrate) by removing ammonia and phosphorus and converting it into a high-quality, environmentally safe fertilizer. The process reduces the ammonia and phosphorus load in the centrate returned to the BNR treatment process. At this same time, the Plant-wide computer control and monitoring system was updated with more modern software and hardware.

The existing 1,500 kilowatt ("kW") cogeneration system was replaced in 2010 with newer technology consisting of Capstone Microturbines with a rated capacity of 1,600 kW. The new generating facility replaced the internal combustion-engine-driven generators with three methane gas-fired microturbines and five natural gas-fired units to generate electricity.

SECTION 3 INSTRUCTIONS FOR PREPARATION AND SUBMISSION OF PROPOSALS

3.1 General Provisions

The Proposal process is divided into four phases:

Phase I: Initial Submission of Respondent Team Structure, Technical Capability and Financial Capability

Phase II: Review of Initial Submissions

Phase III: Respondents' Review and Inspection of System; and Discovery

Phase IV: Proposal Submission; Best and Final Offers; and Selection of Winning Bidder

All Proposals submitted by the Respondents must be submitted in accordance with the procedure set forth in this Section 3. *Failure to deliver timely the initial submission prior to the date and time indicated on the Calendar of Events will result in the automatic disqualification of the potential respondent.*

3.2 Initial Submission (Phase I)

Phase I requires the Respondent to submit its initial submission for qualification. The submission will be reviewed by a review committee. The following criteria must be addressed in the initial submission: (a) team structure; (b) technical capability; and (c) financial capability, all as set forth below. The review committee will give equal weight to each criterion, such that each criterion will be given a maximum of 30 points for an aggregate maximum of 90 points. In order to qualify to participate in the subsequent phases, the Respondent must score at least 20 points for each criterion, and must also score at least 70 points in the aggregate. Any Respondent that does not meet the minimum criteria after the initial submission or the amended initial submission will not be permitted to participate in the subsequent phases.

RESPONDENT TEAM STRUCTURE (30 points)

To qualify as a potential winning bidder, the Respondent must demonstrate sufficient team structure with respect to the following areas:

- (a) Adequacy of proposed team structure to provide sufficient assurance that continuous, safe and reliable service will be furnished as well as all technical, environmental and financial obligations will be met.
- (b) Adequacy of definition of roles and responsibilities of key personnel.
- (c) Adequacy of disclosure of controlling interests and team integrity.

TECHNICAL CAPABILITY (30 points)

To qualify as a potential winning bidder, the Respondent must demonstrate technical capability with respect to the following areas of expertise:

- (a) Operation and maintenance of wastewater systems.
- (b) Customer service and responsiveness, including a commitment to ongoing improvements and enhancements thereto.
- (c) Customer safety, security and environmental responsibilities.

- (d) Ability to execute an efficient, timely and seamless transition plan.
- (e) Capability to undertake required capital improvements.
- (f) Ability to offer other System enhancements with a demonstrated knowledge of technologies.

FINANCIAL CAPABILITY (30 points)

To qualify as a potential winning bidder, the Respondent must demonstrate financial capability with respect to the following areas:

- (a) Financial capability to pay reasonable Price Consideration (defined below) and undertake other commitments required under the APA.
- (b) Financial ability to maintain and upgrade the System.
- (c) Adequate sources of operating capital.
- (d) Ability to secure financing.
- (e) Ability to finance future System expansion.

3.3 Format and Required Information for Initial Submission (Phase I continued)

All initial submissions should follow the format outlined below. The written initial submission shall be bound and prepared on 8-1/2" x 11" paper. A limited number of 11" x 17" fold-out sheets for exhibits are acceptable. One original and three (3) hard copies of the initial submission shall be submitted, with the original copy of the initial submission clearly marked as the original and must contain the original signed documents and the certified check. Initial submissions shall be enclosed in an opaque, sealed envelope or otherwise boxed, marked with the name and address of the Respondent and with the legend: ***"INITIAL SUBMISSION TO THE YORK MUNICIPAL WASTEWATER SYSTEM RFP."*** All pages are to be sequentially numbered. Unnecessarily elaborate initial submissions are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable. Any concerns with providing the required information should be communicated to the Advisor Representatives in a prompt manner.

- (a) Cover Page (to include identification of any team members)
- (b) Cover Letter (2 pages maximum)
- (c) Table of Contents
- (d) Executive Summary (optional)

(e) Respondent Information:

- (i) *Description of Respondent:* Provide a description of the entity or team, including a description of any team members and the anticipated legal relationship (governance and capital structure) among the team members (e.g., partners, shareholders, members, operators, subcontractors, etc.) as appropriate. All equity investors should be identified.
- (ii) *Roles of Team Members and Key Personnel:* Briefly outline the roles of the team members and key personnel. In doing so, please ensure that all the requirements as detailed in Section 3.2 are addressed.
- (iii) *Operator:* Specifically identify the entity or entities that will act as operator of the System under the proposed APA.
- (iv) *Contact Person:* Provide a single contact person for all future communication between the Advisor Representatives and the Respondent. Please identify the contact person's name, title, organization, address, telephone number, fax number and email address.
- (v) *Controlling Interest:* Identify the individuals or companies who hold a major or controlling interest in each entity or team member along with any anticipated or planned changes in controlling interest.
- (vi) *Expected Advisors:* Identify the companies and individuals who are expected to act as legal, financial or other advisors for the Respondent.
- (vii) *Comparable Projects:* Provide a list of comparable projects in which Respondent has participated. Respondents should specify how these comparable projects relate to the proposed APA, their specific role(s) on these other projects, and the extent to which any team members have worked together in prior projects.
- (viii) *References:* Provide a list of references for Respondent. Include each reference's organization, title, email and phone number. These references should be able to describe the relevant qualifications and capabilities of each team member seeking to take leading roles in the governance, operations, and maintenance of the System.
- (ix) *P3 Experience:* Provide at least three references, if available, in which the entity or team members have experience with public-private partnerships or long-term management contracts with government entities. Include each reference's organization, title, email and phone number.

- (f) Technical Capability: Respondents must address the following areas with respect to technical capability:
 - (i) Operation & Maintenance Expertise: Respondents must provide evidence demonstrating the ability to operate and maintain facilities similar to the System. Specifically, Respondents should have:
 - A. substantial wastewater facility maintenance and operation experience.
 - B. advanced knowledge of wastewater facilities maintenance, repair, construction and practical application of equipment and materials in wastewater facility operations, as well as best practices and developments in the wastewater industry.
 - C. demonstrated understanding in wastewater facility aging behavior to assess and determine the applicability of remedial maintenance action.
 - D. all the capabilities necessary to operate and maintain the System successfully including wastewater fee management and operations, administration, marketing and public relations.
- (g) Customer Service: Respondents must demonstrate their commitment to achieving the highest standards of customer service and satisfaction. Specifically, the Respondent must highlight its experience and qualifications providing excellent customer service to the public using its wastewater services. Additionally, as a prerequisite, the Respondent will be expected to provide a plan to execute a seamless transition to winning bidder operations while maintaining the highest standards of customer service.
- (h) Safety and Security: Respondents must demonstrate their ability to address and resolve safety and security issues. Specifically, the Respondent must have:
 - (i) knowledge of wastewater and public safety and security techniques and methodologies, including cybersecurity readiness and response plans.
 - (ii) experience in emergency response support.
- (i) Capital Improvements. Respondents must demonstrate their ability to undertake efficiently the required capital improvements to the System during the term of the APA. Respondents must demonstrate expertise in relevant wastewater engineering standards, specifications, policies, practices and processes.
- (j) Financial Capability: Respondents should address the following areas with respect to financial capability:
 - (i) *Financial Capacity to Make Upfront Payment; Maintain the System Assets.* Respondents must demonstrate their financial capacity to pay the Price

Consideration (as defined below) and to operate and maintain the System. To demonstrate sufficient financial capacity, the Respondent must provide copies of audited financial statements for the past three years and the most recent credit report from Moody's Corporation, S&P Global Ratings, Fitch Group, Inc. or another third-party as deemed acceptable by the City together with any other relevant financial information. If audited financial statements cannot be provided, Respondents should provide enough financial information to demonstrate that they have the financial resources to successfully execute a project of this nature and scope.

- (ii) *Ability to Raise Financing.* Respondents must provide specific evidence demonstrating their ability to raise financing for a project of this nature and scope. Specific factors that will be assessed include:
 - A. capability of issuing debt and raising equity in the current capital market.
 - B. the number and size of past relevant transactions.
 - C. specific experiences on past relevant transactions.
- (k) Confidentiality and Data Room Usage Agreement. As part of the initial submissions, Respondents must execute and deliver the Confidentiality and Data Room Usage Agreement attached as **Appendix D** ("Confidentiality and Data Room Usage Agreement") as described in Section 1.2. Respondents will be required to sign the Confidentiality and Data Room Usage Agreement to have access to the due diligence process.
- (l) Certification of Capability and Proposal Intention. Respondents will be required to sign an Initial Submission Certification in the form attached hereto as **Appendix E** and as described in Section 1.1.
- (m) Certified check and executed Agreement for Proposal Security in the form attached hereto as **Appendix F** and as described in Section 1.4.

Respondents must also comply with the obligations set forth in the Calendar of Events, including mandatory pre-Proposal conferences, Respondent meetings and submissions of document comments. Failure to attend and/or timely submit will result in a Respondent's automatic disqualification, the deemed withdrawal of the Respondent, and the forfeiture of its Proposal security.

The Calendar of Events may be revised and restated with notice to the participating Respondent via the Data Room, and care will be taken to avoid, to the degree possible, a change to dates that would prejudice the responsiveness or competitiveness of any Proposal. If there is a conflict between any dates stated in herein and in the Calendar of Events, the Calendar of Events' dates will control.

3.4 Review of Initial Submissions (Phase II)

During Phase II, the review committee will review the initial submissions to determine the qualification of Respondents. In accordance with the Calendar of Events, Respondents will be informed of judged deficiencies in their initial submissions, in writing, during the week of October 12, 2020. Those Respondents receiving notice of technical deficiencies will have a one-time opportunity to amend their initial submission, consistent with Section 3.3 above, to attempt to address those issues. Such amendment must be received by October 23, 2020. Respondents will be informed no later than October 26, 2020, if they have been determined to be qualified.

During the period between the initial submissions on October 12, 2020, and the deadline for the Respondents to be informed if they are qualified on October 26, 2020 (the "No Communication Period"), Respondents may not attempt to communicate with the review committee, the City or the Authority (through the Advisor Representatives, or otherwise), except Respondents may submit their amended initial submissions as described above, if applicable, and confirm access to the Data Room with the Advisor Representatives.

The review committee (through the Advisor Representatives, the Data Room or otherwise) reserves the right to seek further clarification and additional information at any time, including during the No Communication Period, if it determines, in its sole discretion, that such clarification or information is necessary for consideration of the Respondent's qualifications, and, in such event, the applicable Respondent(s) shall communicate as instructed.

3.5 System Inspection, Due Diligence, Discovery (Phase III)

Promptly after selected Respondents have been notified that they are qualified to participate in subsequent phases ("Selected Respondents"), Phase III will begin. Selected Respondents will have the opportunity to conduct due diligence on the System assets through (a) scheduled System tours and additional inspections by Respondents or their agents, and (b) management presentations in the course of such tours.

On October 26, 2020, all Respondents will be provided drafts of the APA representing Appendix A ("Proposed Form of Asset Purchase Agreement") and accompanying exhibits, representing Appendix B ("Proposed Form of Asset Purchase Agreement Exhibits"), on which to comment. Under the Calendar of Events, Selected Respondents will submit a set of clean (Word format) and blackline comments (Word or PDF format) by November 13, 2020. On November 25, 2020, a final version of the APA and accompanying exhibits will be released by the City in advance of Proposal submissions.

A Respondent may withdraw itself at any time until December 1, 2020, provided that a written request to withdraw is timely received by the Advisor Representatives via email. The opening of all Proposals by the City will be on December 2, 2020. ***Once the Proposals have been opened by the City, Respondents may not withdraw their Proposals for a period of one hundred eighty (180) days, as more fully described in Section 4.2 below.***

3.6 Proposal Submission (Phase IV)

Phase IV involves the submission of final Proposals by all Selected Respondents. All Selected Respondents who submit a response to this RFP must comply with the requirements set forth in this Section 3.6 for submitting a final Proposal. ***Provided that the Proposal requirements are met and the Respondent is found to be qualified***, the award of the APA will be based on the amount of up-front payment (the "Price Consideration") ***and*** the additional consideration set forth in Appendix L ("Non-Price Consideration"). In accordance with Section 4.3, the contents of Proposals will not be disclosed at the time of opening of the Proposals.

- (a) Format. Each Proposal shall be in writing and formatted in accordance with the following outline:

Section 1.0 Executive Summary

Appendix G: Transmittal Letter

Appendix H: Non-Collusion Affidavit

Section 2.0 Project Team and Technical Capability Information

Appendix I: Statement of Ownership

Appendix J: Operator Information

Appendix K: Contract and Lobbyist Disclosure

Section 3.0 Business Proposal

Appendix L: Business Proposal

Section 4.0 Escrow Agreement and Proposal Cash Deposit

Appendix M: Escrow Agreement secured by Cash Deposit

- (b) Submission Instructions and Requirements. One original and three (3) hard copies of the Proposal shall be submitted to the Advisor Representatives in accordance with Section 1.2, with the original copy of the Proposal clearly marked as the original and must contain the original signature forms and other original documents. Proposals shall be enclosed in an opaque, sealed envelope or otherwise boxed, marked with the name and address of the Respondent and with the legend: ***"PROPOSAL TO THE YORK MUNICIPAL WASTEWATER SYSTEM RFP."*** Unnecessarily elaborate Proposals are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable. Any concerns with providing the required information should be communicated to the Advisor Representatives in a prompt manner. In accordance with Section 4.3, the contents of the Proposal will not be made public until after the award of a contract.

THE SEALED PROPOSAL MUST BE RECEIVED BY THE ADVISOR REPRESENTATIVES NO LATER THAN 2:00 P.M. EASTERN TIME ON DECEMBER 2, 2020.

IN ADDITION, RESPONDENTS MUST SUBMIT THE PROPOSAL CASH DEPOSIT AND THE ESCROW AGREEMENT NO LATER THAN 2:00 P.M.

EASTERN TIME ONE DAY BEFOREHAND, ON DECEMBER 1, 2020. Wire instructions will be provided prior to that date.

- (c) Acknowledgment and Agreement. By submitting a Proposal, Respondents acknowledge and agree to the following conditions:
- (i) All Proposals submitted in response to this RFP shall become the property of the City. As such, after the award of the APA, or after the opening and rejection of all Proposals, Proposals submitted will become public records subject to public review under applicable law, subject to certain exceptions as described in Section 4.3.
 - (ii) The selection of a Proposal shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of the Respondent under the APA as may be executed between the Respondent and the City and the Authority.
 - (iii) Respondents and their representatives shall comply with the communications protocol set forth in Section 1.2 with respect to all communications concerning this RFP.
 - (iv) Only one Proposal from each Selected Respondent shall be considered, and each Selected Respondent may not be involved in more than one Proposal. For purposes of this subclause (iv), "Selected Respondent" shall mean and include any Affiliates of Respondent, where "Affiliate" means any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such person or entity, where the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.
 - (v) Proposals shall comply with all content requirements of Sections 3.2, 3.3 and 3.6. Failure to comply with such requirements may result in a Respondent's Proposal being deemed non-responsive.
 - (vi) The receipt of a Proposal from any Respondent does not waive or abridge the rights of the City to find such Respondent is not qualified or that the Respondent's Proposal is non-responsive to the requirements of this RFP.

3.7 Best and Final Offer (Phase IV continued)

It is important for Selected Respondents to deliver their best offers in their Proposals. However, if the Price Consideration set forth in **Appendix L** of one or more of the qualifying Proposals (other than the offer setting forth the highest amount of Price Consideration) is within 10% of the amount of the Price Consideration in such highest offer, the City may allow the Selected Respondent whose offer sets forth the highest amount of Price Consideration and any Selected Respondent(s) whose offer is within 10% of such highest amount of Price Consideration (the

"Applicable Respondent") to increase the amount of proposed Price Consideration by submitting an increased offer to the City.

If such circumstances arise, the City will provide instructions to all Applicable Respondents for submitting such increased Proposals; however, the timing for submission of such increased Price Consideration will be at the sole and absolute discretion of the City. All other terms of the offer will remain the same. No Respondent should assume that it will be given the opportunity to increase the amount of Price Consideration offered in its Proposal under any other circumstances.

SECTION 4 SELECTION AND CONTINUING CONFIDENTIALITY

4.1 General

The objective of the City in seeking responses to this RFP is to enable the City to select an entity that will provide the Services in the most complete, dependable, cost effective, customer-oriented, environmentally sound manner to the residents of the City while at the same time providing appropriate financial compensation to the City. Each section of the initial submission and Proposal will be evaluated in terms of the reasonableness of the claims and/or commitments made, the completeness of the data provided, the reliability of the approach taken, the ability of the Respondent to perform, the qualifications to run the System over the long-term, strength of customer service commitment, and conformance with the requirements of the instructions provided in this RFP.

The project team of professionals together with staff of the City will evaluate the responses to this RFP and make recommendations to the City as to the technical, financial, and administrative aspects of each Proposal.

4.2 Winning Bid Award and APA Execution

Although this RFP is issued by the City, execution of the APA by the City and the Authority will be subject to final approval and authorization by the York City Council ("Council") and the Board of the Authority (the "Board"). A recommendation will be submitted to the Council and the Board shortly after the conclusion of the Proposal process. After selection of a Proposal and approval by the Council and the Board, the selected Respondent shall be required to execute the APA. Notwithstanding the execution of the APA, the Proposals of all other Respondents shall remain binding on said Respondents for a period of one hundred eighty (180) days thereafter (subject to earlier termination as a result of the financial close of the APA).

In the event that the finally selected Respondent is unable to meet its obligations under the APA at any time prior to financial close, or to achieve financial close, the City reserves the right to execute an APA with the next-best-qualified Respondent as determined by the City. ***Proposals will remain open and binding on Respondents for a period of one hundred eighty (180) days following the opening of Proposals for this purpose (subject to earlier termination as a result of financial close of the APA).***

4.3 Continuing Confidentiality

All Proposals (together with initial submissions) are the property of the City and ***will not be returned***. At the conclusion of the procurement process, the City may dispose of any and all materials received from Respondents in whatever manner it deems appropriate. In no event will the City assume liability for any loss, damage or injury that may result from any disclosure or use of proprietary information.

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

Respondents are advised, however, that following the award of a contract or the opening and rejection of all Proposals, such submissions may be subject to public disclosure unless they are otherwise exempt from disclosure under another provision of the RTK Law. Records and information submitted by prospective Respondents that constitute "trade secrets" or "confidential proprietary information" as defined in the RTK Law are exempt from disclosure under Section 708(b)(11), 65 P.S. §67.708(b)(11). "Confidential proprietary information" includes commercial and financial information which is privileged or confidential to the submitting party and the disclosure of which would cause substantial harm to the competitive position of the person who submitted the information. Any such claims may be subject to review pursuant to the procedures set forth in the RTK Law. If the City, the Pennsylvania Office of Open Records or a court determines that such information does not qualify as a trade secret or confidential proprietary information, such information may be subject to public disclosure. Further, developments in the law or its interpretation or rulings or orders applicable to the City may subject any information provided to the City to public disclosure.

* * [Appendices follow] * *

APPENDIX C
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
CALENDAR OF EVENTS

July 10, 2020 (F)	RFP Issue Date
Sept. 25, 2020 (F)	Posting of Notice of Amended RFP Schedule, including extension of Initial Submission Date
Oct. 12, 2020 (M)	Initial Submission Due Date by 12:00 p.m. Eastern Time; Delivery of Proposal Security; Data Room
Week of Oct. 19, 2020	Respondents that Provide Deficient Initial Submissions Notified of Deficiency
October 26, 2020 (M)	Deadline to Inform Each Additional Respondent(s) if its Initial Submission Has Been Determined To Be Qualified (<i>if applicable</i>)
Oct. 26, 2020 (M)	Draft of Asset Purchase Agreement Issued
Oct. 12 to Nov. 6, 2020	Pre-Proposal Conferences with Respondents; Schedule Physical System Inspections
Nov. 13, 2020 (F)	Receive Respondent Comments and Questions on Asset Purchase Agreement
Nov. 17, 2020 (T)	Deadline for Respondent Data Requests
Nov. 25, 2020 (W)	Issue Final Asset Purchase Agreement
Nov. 30, 2020 (M)	Deadline for Responses to Respondent Data Requests
Dec. 1, 2020 (T)	Deadline for Respondents to Withdraw and Receive Return of Proposal Security
Dec. 1, 2020 (T)	Proposal Cash Deposit Due by 2:00 p.m. Eastern Time
Dec. 2, 2020 (W)	Proposals Due by 2:00 p.m. Eastern Time
Dec. 9, 2020 (W)	Receive Best and Final Offers (<i>if necessary</i>)
Dec. 10-14, 2020	City Accepts Winning Proposal or Rejects Proposals
Dec. 30, 2020 (W)	City Executes Asset Purchase Agreement with Winning Bidder and Authority

APPENDIX D
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
FORM OF
CONFIDENTIALITY AND DATA ROOM USAGE AGREEMENT

This Confidentiality and Data Site Usage Agreement ("Agreement") is made as of the date and by the entity written on the signature page hereto (the "Receiving Party") in favor of the City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of March 19, 2014, P.L. 52, 53 P.S. §35101 *et seq.* (the "City").

The City is prepared to make available to the Receiving Party certain confidential information, including through that certain virtual data site that is hosted for the City (the "Data Site" or "Data Room") and through the respective representatives, officials, trustees, officers, employees, advisors, consultants or agents of the City (the City's "Representatives").

1. Confidentiality. Subject to the provisions of paragraph 2 below, the Receiving Party will not disclose any Confidential Information (as defined below) to anyone except employees of the Receiving Party and those representatives of the Receiving Party on its "project team", in each case with a need to know for the sole purpose of the RFP and the Potential Transaction (each as defined below) and who have been informed by the Receiving Party of the confidentiality of such information and directed to keep it confidential pursuant to, and comply with, all the terms of this Agreement (collectively, "Team Members"). The Receiving Party agrees that it and its Team Members will use such information only for the purpose of preparing the Receiving Party's submittal in response to the City's Request for Proposals for Sale of the Municipal Wastewater System (the "RFP") and evaluating, negotiating and consummating a possible Asset Purchase Agreement ("Potential Transaction"), and for no other purpose. Upon the completion of the RFP process, or at such time if earlier that the Receiving Party is not pursuing the RFP process further, of which it is required to promptly advise the City, the Receiving Party acknowledges and agrees that its access to the Data Site shall be terminated and it further agrees to destroy, and cause all Team Members to destroy, all copies of Confidential Information in its or their possession, in whatever format or medium, or as otherwise directed by the City (and agrees to provide prompt written certification thereof to the City, upon the City's request). Notwithstanding the destruction of the Confidential Information, the Receiving Party will continue to be bound by the terms of this Agreement.

a. "Confidential Information" means all information disclosed, in writing, orally, visually, electronically or otherwise, by the City or any of its Representatives to the Receiving Party or the Team Members, including all documents, data and materials contained in the Data Site and all notes, analyses, compilations, studies, interpretations or other materials prepared by the Receiving Party or the Team Members that contain, reflect or are based upon, in whole or in part, any such information.

b. With respect to the Confidential Information, the Receiving Party specifically agrees to, and shall cause all its Team Members to:

Protect and preserve the confidential and proprietary nature of all Confidential Information;

Not disclose, give, sell or otherwise transfer or make available, directly or indirectly, any Confidential Information to any person or entity other than the Receiving Party, the Team Members (pursuant the terms hereof), the City or the

City Representatives identified in Section 1.2 of the RFP ("Advisor Representatives") that provided such Confidential Information (but not any other Representatives of the City) (such other person or entity, a "Third Party");

Not disclose, give, sell or otherwise transfer or make available, directly or indirectly, any Confidential Information to any Team Member for any other purpose than the purposes expressly permitted herein;

Not use, transcribe or make records or copies of the Confidential Information except as necessary to prepare the Receiving Party's submission to the RFP or as may be automatically made on backup tapes or electronic archival systems that cannot reasonably be disabled;

Limit the dissemination of the Confidential Information within the Receiving Party's own organization and within the organizations of any Team Members to those individuals with a need to know for the sole purpose of the RFP and the Potential Transaction and who have been informed by the Receiving Party of the confidentiality of such information and directed to keep it confidential pursuant to, and comply with, all the terms of this Agreement;

Notify the City immediately, and in any event within five business days, of any loss or misplacement of Confidential Information, in whatever form, by the Receiving Party or any of its Team Members;

Notify the City immediately, and in any event within five business days, of any unauthorized use or disclosure of the Confidential Information or any violation or breach of any term of this Agreement by the Receiving Party or any of its Team Members; and

Cooperate fully and provide any assistance necessary or reasonably requested by the City or its Representatives to protect against the unauthorized use or disclosure of the Confidential Information or any violation of any term of this Agreement.

2. Exceptions.

a. The Receiving Party's and the Team Members' obligations with respect to keeping the Confidential Information confidential and with respect to the use of Confidential Information shall terminate with respect to any part of such information that becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Team Members in breach hereof.

b. Each of the Receiving Party and the Team Members shall not be precluded from disclosing or making use of any Confidential Information that was in its possession prior to the disclosure made by the City or which subsequently comes into its possession on a non-confidential basis from a source other than the City, which source was not, to the knowledge of the Receiving Party or any of its Team Members, under any contractual, legal or fiduciary obligation of confidentiality to the City or any other party, or that was independently developed by the Receiving Party without use of or reference to the Confidential Information.

3. Legally Compelled Disclosure. If the Receiving Party or a Team Member receives notice of it being, or attempting to be, legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil or criminal investigative demand, court order or otherwise) to disclose any Confidential Information to a Third Party or a court, the Receiving Party and the Team Member shall provide the City with immediate prior written notice (to the extent not legally prohibited) of such attempted or actual compelled disclosure, and in any event within 10 days of the Receiving Party's or the Team Member's knowledge thereof, so that the City may seek a protective order or other remedy. Neither the Receiving Party nor any Team Member shall oppose any action by the City (and shall, if and to the extent required by the City, cooperate with, assist and join with the City, at the City's expense, any reasonable action) to obtain an appropriate protective order, another reliable assurance that the confidential treatment will be accorded to the Confidential Information or other remedy. Thereafter, if, in the absence of a protective order, reliable assurance or other remedy, or the receipt of a written waiver by the City (specifically referencing this paragraph of this Agreement), the Receiving Party or the Team Member is nonetheless, upon advice of its, his or her legal counsel, required to disclose Confidential Information, the Receiving Party or the applicable Team Member may disclose only that portion of the Confidential Information that such legal counsel advises the Receiving Party is required to be disclosed. Nothing contained in this Agreement shall be deemed to require the Receiving Party or any of the Team Members to disclose any Confidential Information.

4. Communications to Advisor Representatives Only. Unless otherwise instructed by the City, all communications regarding the RFP, the Potential Transaction or any other potential transaction with the City related to the Municipal Wastewater System, requests for additional information, requests for meetings, and discussions or questions regarding procedures, will be submitted only to the Advisor Representatives and not to the City itself, any official, staff or personnel of the City or any other Representative of the City. Additionally, the Receiving Party agrees that neither it nor its Team Members will, directly or indirectly, contact any the City personnel in any manner or for any reason related to the subject matter of this Agreement or conduct any inspections, tours or other on-site activities without the prior written consent of the City (as communicated through the City's Advisor Representatives).

5. Rules of Data Site Use. The Data Site and all content within the Data Site may not be copied, reproduced, republished, uploaded, posted or transmitted; provided, however, that The City grants the Receiving Party and the Team Members non-exclusive, non-transferable, limited permission to access and display the web pages within the Data Site, solely on a computer or computers owned and operated by the Receiving Party and the Team Members, as applicable. All materials contained within the Data Site that are made available for downloading, access or other use shall constitute "Confidential Information" and shall be governed by the terms of this Agreement. The Receiving Party shall not, and shall cause its Team Members not to, attempt to (i) download, scan, copy, print or otherwise capture any of the information contained in the Data Site, except to view, print or download information for which the view, print or download capability, respectively, has been enabled as indicated in the Data Site, and, in such event, only through the Data Site's view, print or download native functions, or (ii) circumvent any of the security features of the Data Site, and will not enable or allow Third Parties to access the Data Site using the Receiving Party's or the Team Member's, as applicable, authorization to the Data Site.

6. Indemnification. The Receiving Party agrees that its compliance with this Agreement is of utmost importance and, accordingly, the Receiving Party agrees to indemnify, defend and hold harmless The City, its Representatives and any Third Party (to the extent a breach of this Agreement affects the rights or obligations of such Third Party) with respect to any claims, losses, damages and expenses (including reasonable attorneys' fees) that are attributable to or arise out of the Receiving Party's and or any Team Member's breach or violation of this Agreement. The obligations of the Receiving Party under this

Agreement and the indemnification provisions provided herein shall survive termination of this Agreement. Further, the Receiving Party agrees that neither The City nor any of its Representatives shall have any liability to the Receiving Party, the Team Members or any person asserting claims on behalf of the Receiving Party or its Team Members as a result of any matter associated with the transactions contemplated hereby, except in the case of willful misconduct of such party (and such exception shall apply only as to such party).

7. Insider Trading. The Receiving Party acknowledges that it is aware that U.S. federal and state securities laws prohibit, among other things, any person who has received from an issuer material, non-public information concerning the matters that are the subject of this Agreement from purchasing or selling bonds or other securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such bonds or other securities. The Receiving Party and the Team Members will comply with all applicable laws related to the Confidential Information.

8. Disclosure Relating to Negotiations or Transaction Status. Without the prior written consent of The City, the Receiving Party and its Team Members shall not, directly or indirectly, (i) disclose to any Third Party (including any other potential participants directly or indirectly bidding on, or otherwise involved in, the RFP, the Potential Transaction, or any other potential transaction with the City related to the Municipal Wastewater System ("Potential Participants")) either the fact that discussions, negotiations or exchanges are taking place concerning possible transactions between the City and the Receiving Party or any of the terms, conditions or other facts with respect to any such possible transaction(s), including the status thereof and the Receiving Party's potential participation therein, and all such facts and information shall be "Confidential Information" hereunder, or (ii) enter into any agreement, arrangement or understanding (or any discussions which might lead to such agreement, arrangement or understanding), with any Third Party (including any other Potential Participants) regarding a possible transaction involving the City, and, in the case of (i) and (ii) above, only upon such Third Party executing a confidentiality and data room usage agreement acceptable to the City in favor of the City and its Representatives with the terms and conditions as set forth in this Agreement.

9. Non-Solicitation. In consideration of and as a condition to the Confidential Information being furnished to the Receiving Party, for a period of 24 months from the date hereof, the Receiving Party agrees and covenants to the City that neither the Receiving Party nor any of its Team Members or any other agent or representative will, directly or indirectly, solicit, interfere with or endeavor to entice away from employment or engagement with the City, encourage to terminate their employment or engagement with the City, offer to employ or engage, or employ or engage any employee of the City or any independent contractor of the City (including any vendor or supplier providing products or services to or on behalf of the City); provided, however, that the foregoing sentence shall not apply to any employee or independent contractor (i) responding to a general advertisement of employment or engagement not targeted at such person or (ii) whose employment or engagement has been terminated by the City prior to the commencement of any employment or engagement discussions with the Receiving Party or its Team Members.

10. Waiver. The failure of the City to insist, in any one or more instances, upon performance of any of the terms of this Agreement shall not be construed as a waiver or a relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term, and such failure shall in no way affect the validity of this Agreement or any of its terms. No waiver of any term of this Agreement shall be valid unless executed in writing and signed by the party to be bound thereby, and then only to the extent specified in such waiver. No waiver of any term of this Agreement shall be construed as a waiver of any other term of this Agreement, and no present waiver of any term of the Agreement shall be construed as a future waiver of such provision or condition.

11. Disclaimer of Warranty. All Confidential Information is provided "as is." The City does not make any representation or warranty of any kind, including any representation or warranty with respect to the Confidential Information, and does not make any representation or warranty (of any kind, including with respect to the Confidential Information) that is express or implied or any representation or warranty as to the quality, adequacy, completeness, accuracy, fitness for a particular purpose, sufficiency or freedom from defects of any Confidential Information. Neither the City nor any of its Representatives shall have any liability as a result of the Receiving Party's or any of its Team Members' reliance on, or use of, the Confidential Information. The Receiving Party agrees that unless and until the City executes and delivers a final definitive agreement regarding a transaction with respect to the Municipal Wastewater System, the City will not be under any legal, fiduciary or other obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement, and then only as specifically set forth in that agreement. The Receiving Party, for itself and on behalf of its Team Members, acknowledges and agrees that the City reserves the right, in its sole discretion, to consider and enter into transactions with other parties, to reject any and all proposals made by the Receiving Party or any of its Team Members with regard to any Potential Transaction between the City and the Receiving Party, and to terminate discussions and negotiations with the Receiving Party and its Team Members at any time. Neither the City nor any of its Representatives shall have any legal, fiduciary or other duty to the Receiving Party or its Team Members with respect to the manner in which any transaction process is conducted, unless a legal duty is otherwise expressly provided in a subsequent written agreement signed by the City with the Receiving Party or a Team Member.

12. Remedies. The Receiving Party acknowledges that the breach of any of the covenants or agreements contained in this Agreement by the Receiving Party or its Team Members will result in irreparable harm and continuing damages to the City, and that the City's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to the City at law or in equity, in the event of any such breach, the City may seek, and any court of competent jurisdiction may issue, an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant or agreement, including an injunction restraining the Receiving Party and its Team Members from disclosing, in whole or in part, any Confidential Information. Neither the Receiving Party nor any of its Team Members or any other agent or representative shall oppose the granting of any such relief, and the Receiving Party agrees to waive, and to cause its Team Members Representatives to waive, any requirement for the seeming or posting of any bond in connection with any such remedy. The Receiving Party shall pay all of the City's costs and expenses (including reasonable attorney's fees) incurred in enforcing such covenants or agreements. The remedies set forth above shall not be deemed to be the exclusive remedies for a breach by the Receiving Party or its Team Members of this Agreement, but shall be in addition to all other remedies available at law or equity to the City or its Representatives.

13. Ownership. All right, title and interest in the Confidential Information, including all additions, enhancements, modifications and derivative works of the Confidential Information, shall remain exclusively with the City, as applicable. No license, right, title or interest is granted herein, directly or indirectly, by implication or otherwise, to the Confidential Information or any other property of the City by virtue of the City or any of its Representatives disclosing said Confidential Information to the Receiving Party or its Team Members, except for a limited right of use as specifically set forth in this Agreement and except such license or other rights as may be mutually and expressly agreed upon between the parties by separate written agreement. All right, title and interest in the Confidential Information shall remain exclusively with the City.

14. Notices. All notices hereunder shall be in writing and personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, sent via United States certified mail, return receipt requested, postage prepaid, or sent by PDF or other electronic attachment via email, and addressed to the applicable party at its address in this Agreement, or at such other address as any party, by

written notice in the manner specified in this Section to the other party, may designate from time to time. All such notices shall be deemed to have been given and received (i) upon receipt (or refusal of receipt) if given in person or personally delivered by courier, (ii) two business days after being sent by a nationally recognized overnight delivery service with postage prepaid, (iii) five business days after being sent in the United States mail, certified, return receipt requested with postage prepaid, or (iv) upon acknowledgement of receipt by the receiving party in writing (including acknowledgment by confirmatory email from the receiving party) to the sending party. Copies of any notice may be sent by facsimile or by PDF or other electronic attachment via email, but such notice shall not be deemed to have been given unless also validly given and received as specified in the immediately preceding sentence. All notices to the City under this Agreement must include prominent reference to this Agreement on the first page of any such notice.

Address for Notices to the City:

The City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Adeolu Bakare
Phone: (717) 237-5290
email: abakare@mcneeslaw.com

And:

The City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Vicki Karandrikas
Phone: (717) 237-5274
email: vkarandrikas@mcneeslaw.com

15. Expenses. Except as expressly provided in the second sentence of paragraph 3, the Receiving Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the RFP, the Potential Transactions and the other transactions contemplated hereby and thereby.

16. Parties. This Agreement inures to the benefit of the City and its Representatives, and their respective successors and assigns, and is binding upon the Receiving Party, and its successors and permitted assigns. This Agreement shall not be construed to recognize or create a joint venture, partnership, consulting, employment or other joint business or agency relationship between or among any of the Receiving Party, the Team Members, the City or the City's Representatives. Notwithstanding anything herein to the contrary, neither this Agreement nor any rights or obligations hereunder may be assigned or transferred (directly or indirectly, by operation of law, merger, sale of equity interests, or otherwise) by the Receiving Party, and any such attempted assignment or transfer shall be null and void *ab initio*. The City reserves the right to assign this Agreement, including all of its rights, powers and privileges under this Agreement (including the right to enforce all of the terms of this Agreement), to any person or entity (including to the City) that negotiates to enter, or enters, into any transaction (even if the transaction takes another form) reasonably contemplated in the RFP or the Confidential Information or discussed between the City and the Receiving Party or its Team Members. The Receiving Party specifically acknowledges and agrees that the City and each of its Representatives are beneficiaries of this Agreement.

17. Governing Law and Venue. This Agreement and any disputes arising hereunder will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania applicable

to agreements made and to be performed within such Commonwealth, without regard to the conflict of laws principles thereof or of any jurisdiction. The Receiving Party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the state or federal courts located in York County, Pennsylvania, and irrevocably waives any objection to the laying of such venue, for any lawsuits, actions or other proceedings arising out of or relating to this Agreement and agrees not to commence any such lawsuit, action or other proceeding except in such courts. The Receiving Party irrevocably waives and agrees not to plead or claim that any such lawsuit, action or other proceeding brought in any such court has been brought in an inconvenient forum. **THE RECEIVING PARTY IRREVOCABLY AND ABSOLUTELY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH, ARISING UNDER OR RELATING TO THIS AGREEMENT, OR ANY MATTERS CONTEMPLATED HEREBY.** The Receiving Party agrees to take any and all action necessary or appropriate to effect any of its waivers set forth in this paragraph.

18. Severability. If any provision of this Agreement (including this provision) is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of either of the parties hereto would not be materially and adversely affected thereby: (a) such provisions shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (c) the remaining provision of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance; and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

19. Entire Agreement. This Agreement (a) constitutes the entire agreement and supersedes all written and oral communications between the Receiving Party or its Team Members and the City or its Representatives relating to the subject matter hereof, and (b) may be modified or amended only by a written instrument specifically stating that it modifies this Agreement, signed by the Receiving Party and the City.

20. Construction. Whenever used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender includes every gender; "any" shall mean "any and all"; "or" shall be inclusive; "including" shall mean "including without limitation"; the words "hereof," "herein" and "hereunder" shall refer to this Agreement as a whole and not to any particular paragraph or provision of this Agreement; each of the terms "person" and "entity" as used in this Agreement shall be broadly interpreted to include the media and any corporation, partnership, group, individual or other entity; and reference to a particular paragraph of this Agreement shall include all subparagraphs thereof. The paragraph headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. By signing this Agreement, the Receiving Party acknowledges that it either has consulted with or has had the opportunity to consult with its own legal counsel. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring The City or the Receiving Party by virtue of the authorship of any of the provisions of this Agreement.

21. Signature Page. Delivery of an executed signature page to this Agreement by facsimile, pdf or other electronic transmission shall constitute delivery of an originally executed signature page.

[signature page follows]

IN WITNESS WHEREOF, the Receiving Party has executed this Agreement as of the date written below.

DATED: _____, 2020

RECEIVING PARTY:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State or Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

Address for Notices:

Email: _____

Facsimile: () _____ - _____

Phone: () _____ - _____

**APPENDIX E
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

INITIAL SUBMISSION CERTIFICATION

In connection with the undersigned Respondent's initial submission to that certain Request for Proposals, issued July 10, 2020, as it may be amended from time to time (the "RFP"), by the City of York (the "City"), the undersigned Respondent hereby certifies to the City as follows (and all capitalized terms used but not defined herein shall have the meaning assigned to them in the RFP):

1. The undersigned Respondent has the bona fide belief that Respondent has the capability of (i) providing the appropriate and necessary management, operation and maintenance services associated with the System, (ii) providing, or securing the provision by a qualified firm or other entity of, design and construction services for improvements to the System, and (iii) appropriately servicing the System's customers, and that all such services will be provided consistently on a quality basis.

2. The undersigned Respondent intends to submit a proposal that is fully responsive to the RFP.

DATED: _____, 2020

RESPONDENT:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

**APPENDIX F
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

AGREEMENT FOR PROPOSAL SECURITY

This initial submission to Proposal is accompanied by bid security in the form of a Check or Cashier's Check drawn on the following banking institution:

(Name of Banking Institution)

(Address)

in the amount of Twenty Five Thousand United States Dollars (\$25,000.00). (Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the RFP (defined below).)

The undersigned Respondent hereby agrees that if it should withdraw its Proposal in response to that certain Request for Proposals, issued July 10, 2020, as it may be amended from time to time (the "RFP"), by the City of York, or be deemed under the terms of the RFP to have withdrawn its Proposal, at any time after December 2, 2020 (as indicated in the Calendar of Events), then the certified or cashier's check herewith submitted as Proposal security shall be due and payable thereunder to the City as liquidated damages for such late withdrawal. Otherwise said check or the amount thereof submitted by an unsuccessful Respondent will be returned (with no interest) within ten (10) business days after the execution of the Asset Purchase Agreement by and between the City and the successful Respondent, and said check or the amount thereof submitted by the selected Respondent will be returned (with no interest) promptly after the closing under the Asset Purchase Agreement.

**Attach Cashier's or
Certified Check Made
Payable to the City of York**

DATED: _____, 2020

RESPONDENT:

(full legal name with applicable entity suffix)
A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

**APPENDIX G
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

TRANSMITTAL LETTER

City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Adeolu Bakare
Phone: (717) 237-5290
email: abakare@mcneeslaw.com

Re: Response to the City of York (the "**City**") Request for Proposals for the Sale of the City of York and City of York Sewer Authority's (the "**Authority**") Municipal Wastewater System

Dear York City:

The entity written on the signature page hereto (the "**Respondent**") hereby submits this Transmittal Letter and the attached Proposal (together, this "**Proposal**") in response to the Request for Proposals issued by the City on July 10, 2020, as amended from time to time ("**RFP**").

The undersigned Respondent hereby unconditionally and irrevocably offers to enter into the Asset Purchase Agreement as attached as **Appendices A and B** to the RFP (the "**Agreement**") for identified wastewater facilities owned and operated by the City and the Authority. Capitalized terms not otherwise defined in this Transmittal Letter have the meanings set forth in the Agreement.

The Respondent, by its undersigned duly authorized representative, hereby covenants, certifies, represents and warrants to the City as follows in connection with this Proposal:

1. ***RFP and Appendices Acknowledgement.*** The Respondent acknowledges receipt of the RFP and the following Appendices to the RFP, updated as applicable:

Appendix

- Appendix A – Proposed Form of Asset Purchase Agreement
- Appendix B – Proposed Form of Exhibits to Asset Purchase Agreement
- Appendix C – Calendar of Events
- Appendix D – Confidentiality and Data Site Usage Agreement
- Appendix E – Initial Submission Certification
- Appendix F – Agreement for Proposal Security
- Appendix G – Transmittal Letter
- Appendix H – Non-Collusion Affidavit
- Appendix I – Statement of Ownership
- Appendix J – Operator Information
- Appendix K – Contract and Lobbyist Disclosure

Appendix L – Business Proposal
Appendix M – Escrow Agreement

2. ***Due Authorization.*** The submission of this Proposal has been duly authorized by, and is, in all respects, binding, upon the Respondent.
3. ***Completeness; Warranty as to Proposal Information.*** The Respondent has submitted its initial submission and all required RFP Appendices, and such Appendices are a part of, and are hereby incorporated into, this Proposal. All information and statements contained in the Proposal are current, true, correct and complete, and are made with full knowledge, and consent, that the City will rely on such information and statements in determining which Proposals are responsive and responsible, in ultimately selecting the Proposal deemed most advantageous to the City, and in executing the Agreement.
4. ***Identity of Operator.*** The Operator following consummation of the Agreement will be the entity identified on **Appendix J** to the RFP.
5. ***Final Agreements.*** The Respondent agrees to enter into the Agreement in the form identified as "Binding Proposal, Execution Version" or "Execution Version" as posted in the Data Site (as such term is defined in Confidentiality and Data Site Usage Agreement in favor of the City (the "**Confidentiality Agreement**")) for this procurement (except for filling in indicated blanks and completion of Schedules as provided therein).
6. ***Price Consideration.*** The amount of the Price Consideration offered by Respondent will be the total set forth in **Appendix L** to the RFP.
7. ***Non-Price Consideration.*** The Non-Price Consideration offered by Respondent will be as set forth in **Appendix L** to the RFP.
8. ***Proposal Effective Period.*** This Proposal and offer shall remain in effect and irrevocable until 5:00 p.m. Eastern Time on the date that is 180 days after the Bid Date (as such term "Bid Date" is defined in the Escrow Agreement in the form prescribed in **Appendix M** to the RFP (the "**Escrow Agreement**"), and hereinafter the "**Bid Date**"), for the avoidance of doubt, as such date has been amended by the updated Calendar of Events posted on the Data Site (5:00 p.m. Eastern Time on the date that is 180 days after the Bid Date, the "**Termination Time**"). However, if the City does not give written notice to the Respondent that the City is prepared to enter into the Agreement on or prior to 5:00 p.m. Eastern Time on the date that is 60 days after the Bid Date, then, notwithstanding that this offer and the terms of this Proposal shall remain open until the Termination Time, the Proposal Cash Deposit (as hereinafter defined) and all interest or income earned thereon shall be returned to the Respondent in accordance with the Escrow Agreement.
9. ***Agreement Execution.*** If, at any time prior to the Termination Time, the City should give written notice to the Respondent, at the address specified below, that they are prepared to enter into the Agreement with the Respondent, the Respondent will, within two business days of its receipt of such notice, execute and deliver the Agreement to the City and within five business days of such notice re-deliver its Proposal Cash Deposit (as hereinafter defined) if the same had previously been returned to Respondent for any reason.

10. **Proposal Cash Deposit.** The offer set forth in this Proposal is secured by a cash deposit in the amount of \$5,000,000 (the "**Proposal Cash Deposit**") with the Escrow Agent as provided in the Escrow Agreement.

11. **Debarment.** Neither the Respondent, the Operator nor any Team Member (as such term is defined in Confidentiality Agreement) is currently suspended, debarred or prohibited from doing business with any governmental entity.

12. **Contract Disclosures.** Except as disclosed in **Appendix K** to the RFP, neither Respondent nor any member of Respondent's team (nor any Team Member, as such term is defined in Confidentiality Agreement) has entered into any arrangement with any person or entity involving a finder's fee, fee splitting, firm affiliation or relationship with any broker-dealer, payments to consultants, lobbyists or commissioned representatives or other contractual arrangements that could present a real or perceived conflict of interest.

13. **No Litigation.** There is no action, suit or proceeding, at law or in equity, before any court or similar governmental entity, against the Respondent, wherein an unfavorable decision, ruling or finding would have a materially adverse effect on the ability of the Respondent to perform its obligations under the Agreement or which, in any way, would have a materially adverse effect on the validity or enforceability of the obligations proposed to be undertaken by the Respondent, or any agreement or instrument entered into by the Respondent in connection with the transaction contemplated thereby.

14. **Certain Representations.** The Respondent represents and warrants that: (i) Respondent has full power and authority to make this offer and submit this Proposal; (ii) Respondent will have full power and authority to execute and deliver the Agreement pursuant to the terms hereof; (iii) such actions do not and will not violate the terms of any of the Respondent's organizational documents or any agreement binding upon it or the terms of any Applicable Law; (iv) no further consent to this offer or Proposal or to the execution of the Agreement pursuant to the terms hereof is required to be obtained from any other person, entity or governmental entity; and (v) this offer and Proposal constitute, and the Agreement, if and when executed pursuant to the terms thereof, will constitute duly authorized, valid and legally binding obligations of the Respondent enforceable in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or transfers, or other laws affecting creditor's rights generally, and subject to general principles of equity (regardless of whether in law or in equity).

15. **Material Changes.** The Respondent has disclosed in Attachment A to this Transmittal Letter all material changes from the information provided in the Respondent's initial submission to the RFP.

[remainder of page intentionally left blank; paragraph 16 follows]

16. **Principal Contact.** The principal contact person of the Respondent who will serve as the interface between the City (through the City's Advisor Representatives, as set forth in the RFP and the Confidentiality Agreement) and the Respondent for all communications is:

FULL NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____

FAX: _____

EMAIL: _____

IN WITNESS WHEREOF, the Receiving Party has executed this Transmittal Letter as of the date first written below.

Submitted by:

RESPONDENT:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

Date: _____

[Signature Page to Transmittal Letter]

**APPENDIX H
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

NON-COLLUSION AFFIDAVIT

I, _____,
(designated signatory's full legal name)

a resident of _____, in the
(municipality or other jurisdiction)

State/Commonwealth of _____, of full age, being duly sworn
(State/Commonwealth)

according to law, on my oath depose and say that:

(1) I am the _____ of _____,
(designated signatory's title) (Respondent's full legal name)

a(n), _____ ("**Respondent**"),
(entity type and State/Commonwealth of formation)

making the proposal in response to Request for Proposals for Sale of Municipal Wastewater System issued by the City of York on July 10, 2020, as amended from time to time (the "**Proposal**"), and that I executed said Proposal with full authority to do so; and

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

(3) Unless otherwise required by law, the pricing information that is set forth in the Proposal has not been knowingly disclosed by the Respondent or any of its agents or representatives, directly or indirectly, and will not knowingly be disclosed by the Respondent or any of its agents or representatives, directly or indirectly, to any other Respondent, any potential Respondent or any competitor prior to execution of the Agreement; and

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

[signature page and notary acknowledgment follow]

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

(full legal name of Respondent)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Name: _____
(print designated signatory's name, same as above)

Title: _____
(print designated signatory's title, same as above)

_____))
(State/Commonwealth)) ss:
COUNTY OF _____)

On this, the ____ day of _____, 2020, before me, a Notary Public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained and further acknowledged that he/she executed the same.

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

Notary Public

My commission expires:

**APPENDIX J
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM**

OPERATOR INFORMATION

If the Respondent is not the Operator, the Respondent must clearly identify the entity or entities that will serve as the Operator upon consummation of the Agreement. For the proposed Operator, please provide the following information. Additional pages may be attached.

1. **Name (full legal) & Address of Proposed Operator:**

2. **Operator's Primary Representative (including phone, fax and email):**

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

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

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

**APPENDIX K
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
CONTRACT AND LOBBYIST DISCLOSURE**

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

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

RESPONDENT:

_____ (full legal name with applicable entity suffix)

A(n) _____ (entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

**APPENDIX L
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
BUSINESS PROPOSAL**

PRICE CONSIDERATION: 75 POINTS MAXIMUM

The amount of the Price Consideration that the undersigned Respondent offers to pay for the System defined in the Request for Proposals issued by the City of York on July 10, 2020, is US\$ _____ [in numbers], _____ [in words] United States Dollars.

NON-PRICE CONSIDERATION: 25 POINTS MAXIMUM

The undersigned Respondent offers the following as Non-Price Consideration:

1. Respondent offers and explains its commitment to establish and continue operating a customer service center within the City of York. The customer service center must be staffed by in-person customer service representatives and remain open for walk-in service and telephone service during normal business hours. Normal business hours shall be understood to mean, at minimum, 9:00 a.m. – 5:00 p.m., excluding Sundays and Federal holidays.
2. Respondent offers and explains its commitment to offer employment to all employees of the City who are assigned to the System as of the Closing Date. Respondent's plan must include, at minimum, the following: (1) Prior to employment, Respondent will issue an appropriate notification to all potential employees explaining the wages and benefits offered; and (2) Respondent agrees to follow all applicable federal labor laws regarding the recognition of a union following an asset purchase sale and negotiate in good faith with any union whom it is required by law to recognize.
3. Respondent, as applicable, meets the definition of “local business enterprise” or “small business enterprise” as set forth in Section 136.02 of the City of York Small and Disadvantaged Business Enterprise Program and provides supporting data to such effect.
4. Respondent offers its plan to minimize rate increases for customers served by the System, including a minimum 3-year moratorium on future rate increases.
5. Respondent offers its plans for any other commitments that would add value for the customers of the System.

RESPONDENT:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

**APPENDIX M
CITY OF YORK
REQUEST FOR PROPOSALS FOR SALE OF MUNICIPAL WASTEWATER SYSTEM
CASH DEPOSIT ESCROW AGREEMENT**

THIS CASH DEPOSIT ESCROW AGREEMENT (this "Escrow Agreement") is made and entered into this ___ day of _____, 2020¹ (the "Commencement Date") by and among Fulton Bank N.A., as escrow agent (the "Escrow Agent"), The City of York, York County, Pennsylvania (the "City"), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, and the entity identified as the Respondent on the signature page hereto (the "Respondent").

RECITALS

WHEREAS, the City has solicited offers from respondents to enter into an Asset Purchase Agreement, as may be amended from time to time (the "Agreement") regarding the City's Wastewater Utility System (the "Proposed Transaction") in accordance with that certain Request for Proposals, dated July 10, 2020, as amended from time to time (the "RFP" and, together with the Agreement, the "Bid Documents"), and, for the avoidance of doubt, the Escrow Agent is not a party to the Bid Documents or any document related thereto other than this Escrow Agreement; and

WHEREAS, the Respondent intends to submit an offer in response to the RFP; and

WHEREAS, the Respondent's offer will be secured by a cash deposit in the amount of Five Million United States Dollars (\$5,000,000) (the "Cash Deposit"); and

WHEREAS, the Respondent's offer will be unconditional and irrevocable until 5:00 p.m. Eastern Time on the date that is 180 days after the final Proposal due date under the RFP (the final Proposal due date under the RFP, which date may not be amended for purposes of this Agreement by the City after such date has come to pass, being referred to hereinafter as the "Bid Date"), for the avoidance of doubt, as such date has been amended by the updated Calendar of Events posted on the Data Site (the date that is 180 days after the Bid Date, the "Offer Termination Date").

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

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

¹ This Agreement must be dated no later than the date that the Proposal Cash Deposit is due from Respondents under Section 3.6(b) of the RFP, as amended, including as amended by the updated Calendar of Events posted on the Data Site. This is a reminder, pursuant to the RFP, that the Proposal Cash Deposit and this signed Agreement are due NO LATER THAN 2:00 P.M. EASTERN TIME on such date.

to be held in trust for the Respondent and the City pursuant to the terms of this Escrow Agreement.

Section 2. On or before 2:00 p.m. Eastern Time on the Commencement Date, the Cash Deposit will be provided to the Escrow Agent by the Respondent and deposited into the Escrow Account. Upon receipt of the Cash Deposit, the Escrow Agent shall immediately issue a receipt to the Respondent, confirming that the Escrow Agent has received the Cash Deposit in the form attached hereto as Schedule 2. **All risk of loss, if any, in regard to such investments or reduction of the Cash Deposit resulting from such investments shall be borne solely by the Respondent, other than losses arising from the Escrow Agent's gross negligence, fraud, bad faith or willful misconduct.** The Escrow Agent shall calculate the market value on a monthly basis on the first business day of the month as of close of business on the preceding business day. If there is a deficit (a "Deficit") that reduces the market value of the Cash Deposit below Five Million United States Dollars (\$5,000,000) (the "Benchmark"), the Escrow Agent shall promptly give notice in the form attached hereto as Schedule 3 to the City and the Respondent of the amount of such deficit ("Deficit Notice"). The Respondent agrees to replenish the Cash Deposit to reach the Benchmark through an additional deposit ("Deficit Deposit") by 2:00 p.m. Eastern Time on the third business day following receipt by the Respondent of the Deficit Notice. The Escrow Agent shall provide notice to the City and the Respondent within one business day following the deadline for the Deficit Deposit established in the Deficit Notice if the Respondent has not fully replenished the Cash Deposit by such deadline.

Section 3. The Escrow Agent shall invest and reinvest the Cash Deposit in Eligible Investments (as defined in Schedule 4 hereto) at the written direction of an Authorized Respondent Representative (as defined below) without distinction between principal and income. The Escrow Agent may conclusively rely upon such written instructions as to the suitability of the directed investments hereunder. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. In the absence of investment instructions from the Authorized Respondent Representative (as defined below), the Escrow Agent shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Eligible Investments. The "Authorized Respondent Representatives" are set forth on the signature page hereto. Any interest or other earnings on the Funds shall become part of the Cash Deposit and shall be disbursed in accordance with the provisions of this Escrow Agreement. The Escrow Agent will provide monthly statements to the City and the Respondent that will show accrued interest along with any deposits and withdrawals from the Escrow Account. It is further understood and agreed by all parties hereto that the City is not responsible in any way for the investments by the Escrow Agent of the Cash Deposit or the investment earnings thereon, nor is the City responsible for the actions of the Escrow Agent.

Section 4. The Funds shall at all times be held in a separate account by the Escrow Agent and shall be disbursed only pursuant to the terms and conditions of Section 5 below.

Section 5. The Escrow Agent shall liquidate all applicable investments and pay to the Respondent (as directed in writing by the Respondent) all Funds in the Escrow Account upon the occurrence of any one of the following conditions: (i) as soon as practicable upon receipt of a

statement signed by the City Authorized Representative (as defined below) addressed to the Respondent and the Escrow Agent to the effect that the Respondent *has not* been selected as the potential buyer; or (ii) as soon as practicable upon receipt of a statement signed by the City Authorized Representative at any time, and addressed to the Respondent and the Escrow Agent, to the effect that the Respondent did not tender a bid by the Bid Date (which statement the City Authorized Representative (as defined below) shall be required to deliver promptly after the Bid Date); or (iii) as soon as practicable upon the failure of the City Authorized Representative to provide by 5:00 p.m. Eastern Time on the date that is 60 days after the Bid Date, or such later time as may be determined by mutual consent of both the City Authorized Representative and the Respondent (the "Escrow Deadline"), a statement signed by the City Authorized Representative addressed to the Escrow Agent that any entity has been selected as the potential buyer pursuant to the Bid Documents. The "City Authorized Representative" is the Business Administrator of the City.

The Escrow Agent shall (as directed in writing by the City Authorized Representative), liquidate all applicable investments and pay to the City all Funds in the Escrow Account upon the occurrence of any one of the following conditions: (a) upon receipt of a statement, in a form substantially similar to that attached hereto as Schedule 5 (a "City Statement"), signed by the City Authorized Representative directing disbursement to the City of the Funds in accordance with the applicable terms or provisions of the Bid Documents; or (b) upon receipt of a statement signed by the City Authorized Representative and signed by an Authorized Respondent Representative that the closing is taking place under the Agreement; or (c) as soon as possible after 5:00 p.m. Eastern Time on the Offer Termination Date (the "Closing Escrow Deadline").

Notwithstanding anything in this Escrow Agreement to the contrary, the selection, or the identification in any statement, by the City or the Respondent or any other entity as the potential buyer shall in no way obligate the City to enter into any agreement, or close the Proposed Transaction, with such potential buyer.

If the City Authorized Representative and the Respondent mutually consent to extend the Offer Termination Date, the Escrow Deadline or the Closing Escrow Deadline to a date certain (the later of which, the "Extended Escrow Deadline"), the City Authorized Representative must provide prompt, but in any event prior to the termination of this Escrow Agreement, notice in writing to the Escrow Agent of such Extended Escrow Deadline, and the term of this Escrow Agreement shall thereby automatically be extended to coincide with the Extended Escrow Deadline.

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

Section 7. The Escrow Agent shall be responsible, in fulfilling its duties under this Escrow Agreement, to a standard of care that could fairly be attributable to an experienced corporate escrow agent. The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Escrow Agreement or any other agreement. In no event shall the Escrow Agent be liable, directly or indirectly, for any (i) damages or expenses arising out of the services provided hereunder, other than damages which result from the Escrow Agent's failure to act in accordance with the standards set forth in this agreement, or (ii) special, punitive, remote or speculative damages, even if the Escrow Agent has been advised of the possibility of such damages, except in cases of its gross negligence, fraud, bad faith or willful misconduct. This Escrow Agreement and all information received by the Escrow Agent is sensitive (in that it pertains to information which may be pertinent to public bidding), is confidential and may not be disclosed by the Escrow Agent to any third party without the express written permission of the City Authorized Representative and the Respondent, except as set forth in this Section 7. To the extent that the Escrow Agent deems it necessary in the carrying out of its duties to consult with its outside counsel, such outside counsel shall be informed by the Escrow Agent of the confidentiality of such information and directed to keep it confidential pursuant to the terms of this Section 7. In the event the Escrow Agent is presented with a request or demand for information or documents by any court or other administrative or governmental agency regarding this Escrow Agreement or any information or documents related thereto that may be known to the Escrow Agent or be in its possession, the Escrow Agent shall immediately give notice to the City and the Respondent, and the City and the Respondent shall each have the opportunity to contest such request, demand or process by any means available to them before such information or documents are released or communicated by the Escrow Agent; *provided, however*, that the Escrow Agent shall not be obligated to withhold such release beyond that time as may be ordered by the court or agency, unless the demand or request is quashed or the time to produce it otherwise extended. Such confidentiality provisions shall survive the termination of this Escrow Agreement and any breach thereof may subject the Escrow Agent or its agents, attorneys, custodians or nominees (collectively, "Agents") to liability. The Escrow Agent has the right to perform any of its duties hereunder through the Agents appointed by it with due care, so long as such Agents are informed of the confidentiality obligations of the Escrow Agent imposed by this Escrow Agreement and agree to abide by such obligations.

Section 8. Except as to matters covered in Section 7, to the fullest extent permitted by law, the Escrow Agent shall not be liable for any action taken by it without gross negligence, willful misconduct or fraud, and in good faith, and believed by it to be authorized or within the rights or powers conferred upon it by this Escrow Agreement, and may consult with legal counsel of its own choice (whether specially retained or regularly employed) and shall have full and complete authorization and protection for any action so taken or suffered by it in accordance with the terms of this Escrow Agreement, upon such advice of such counsel. The Respondent shall be liable for and shall reimburse and indemnify the Escrow Agent and hold the Escrow Agent harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable out-of-pocket attorney's fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Escrow Agreement or being Escrow Agent hereunder (including Losses incurred by Escrow Agent in connection with its successful defense, in whole or in part, of any claim of or based on gross negligence, fraud, bad faith or willful misconduct on its part); *provided*

that nothing contained herein shall require Escrow Agent to be indemnified for Losses caused by its gross negligence, fraud, bad faith or willful misconduct. The terms of this indemnification shall survive the termination of the Escrow Agreement and the resignation or removal of the Escrow Agent.

Section 9. The Escrow Agent shall charge the escrow fees pursuant to its schedule of fees attached as Schedule 1. The full amount of the Initial Escrow Agent Fee and the full amount of one year's Annual Escrow Agent Fee shall be payable by the Respondent to Escrow Agent at as set forth on such Schedule 1. Except as otherwise expressly provided in this Escrow Agreement, each party hereto shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Escrow Agreement.

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

Section 11. Neither the Respondent, nor the City hereto shall have any right, title or interest in or possession of the Funds except as specifically provided in this Escrow Agreement and shall not have the ability to pledge, convey, hypothecate or grant as security the Funds unless and until such Funds have been paid or are required to be paid to such party or parties pursuant hereto. Accordingly, the Escrow Agent shall be in sole possession of the Funds and will not act as custodian of any of the parties under this Escrow Agreement for the purposes of perfecting a security interest therein, and no creditor of any party hereto shall have any right to have or to hold the Funds as collateral for any obligation and shall not be able to obtain a security interest in any assets (tangible or intangible) contained in or relating to the Funds.

Section 12. There shall not be any, and the Escrow Agent shall not be bound by any, amendment, modification, cancellation or rescission of this Escrow Agreement unless the same shall be in writing and signed by the Escrow Agent, the City and the Respondent. Any waiver of, or consent to depart from, the requirements of any provision of this Escrow Agreement shall be effective only if it is in writing and signed by (i) the City on behalf of the City, (ii) the Escrow Agent on behalf of the Escrow Agent or (iii) the Respondent on behalf of the Respondent, 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 hereto to exercise, and no delay in exercising, any right under this Escrow 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 13. All notices hereunder shall be in writing and personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, sent via United States certified mail, return receipt requested, postage prepaid, or sent by PDF or other electronic attachment via email, and addressed to the applicable party at its address in this Escrow Agreement, or at such other address as any party, by written notice in the manner specified in this Section to the other parties, may designate from time to time. All such notices shall be deemed to have been given and

received (i) upon receipt (or refusal of receipt) if given in person or personally delivered by courier, (ii) two business days after being sent by a nationally recognized overnight delivery service with postage prepaid, (iii) five business days after being sent in the United States mail, certified, return receipt requested with postage prepaid, or (iv) upon acknowledgement of receipt by the receiving party in writing (including acknowledgment by confirmatory email from the receiving party) to the sending party. Copies of any notice may be sent by facsimile or by PDF or other electronic attachment via email, but such notice shall not be deemed to have been given unless also validly given and received as specified in the immediately preceding sentence.

If to the Escrow Agent:

Fulton Bank, N.A.
212 Locust Street
Locust Court Building, 6th Floor
Harrisburg, PA 17101
Attn: Marcus Hite, Senior Vice President, Municipal Banking
Phone: (717) 849-2323
Email: mwhite@fultonbank.com

If to the City:

The City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Adeolu Bakare
Phone: (717) 237-5290
email: abakare@mcneeslaw.com

and:

The City of York
c/o McNees Wallace Nurick LLC
316 N. George Street
York, PA 17401
Attn: Vicki Karandrikas
Phone: (717) 237-5274
email: vkarandrikas@mcneeslaw.com

If to the Respondent: As set forth on the signature page hereto.

Notwithstanding anything herein to the contrary, the Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Escrow Agreement sent by facsimile transmission or by PDF or other electronic attachment via email; *provided, however*, that each of the parties hereto desiring to provide any directions or instructions by facsimile or via email shall provide to the Escrow Agent an executed incumbency certificate in the form attached hereto as Schedule 6 listing the names, titles, email addresses and telephone numbers of the persons with authority to act

hereunder, which incumbency certificate shall be amended and restated and re-executed whenever such party determines to add or a delete a person from the listing. If the Respondent or the City elects to give the Escrow Agent instructions or directions by facsimile or via email, and the Escrow Agent acts upon such instructions or directions, the Escrow Agent's understanding of such instructions and directions shall be deemed controlling; *provided* that such instructions or directions are consistent with the applicable provisions of this Escrow Agreement. The Escrow Agent shall not be liable for any losses, costs or expenses arising, directly or indirectly, from the Escrow Agent's reliance upon and compliance with such instructions or directions notwithstanding whether such instructions or directions conflict or are inconsistent with a subsequent written instruction, other than any losses which result from the Escrow Agent's gross negligence, fraud, bad faith or willful misconduct; *provided* that the instructions or directions being complied with are consistent with the applicable provisions of this Escrow Agreement. The Respondent and the City agree to assume all risks arising out of the use of the foregoing electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 14. This Escrow Agreement and all rights and obligations of the parties hereto arising out of or relating to this Escrow Agreement or the negotiation, execution or performance hereof, including any tort obligations, are governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict or choice of law rule or principle that would result in the imposition of the laws of another jurisdiction. ALL PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. Any action or proceeding against any party hereto relating to this Escrow Agreement may be brought and enforced in the federal or state courts in the Commonwealth of Pennsylvania in York County, and each of the parties hereto 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.

Section 15. No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written evidence of such assignment in form satisfactory to the Escrow Agent shall be submitted to and accepted by the Escrow Agent and the parties hereto provide their written consent.

Section 16. The Escrow Agent reserves the right to resign at any time by giving written notice of resignation, specifying the effective date thereof. Within 30 days after receiving the aforesaid notice, the parties to this Escrow Agreement agree to appoint a successor escrow agent to which the Escrow Agent shall distribute the Funds then held hereunder, less the Escrow Agent's fees hereunder. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of the 30-day period, the Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable out-of-pocket attorneys' fees which are incurred in connection with such a proceeding shall be paid, one-half by the City and one-half by the Respondent.

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

Section 17. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Respondent, the City, or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

Section 18. Nothing contained in this Escrow Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between or among any of the parties hereto. Except as expressly provided herein to the contrary, no term or provision hereof shall be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Escrow Agreement.

Section 19. This Escrow Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. A signature to this Escrow Agreement delivered by facsimile or email of a PDF document shall be deemed an original signature hereto and such delivery shall be deemed to have the same legal effect as delivery of an original signed copy of this Escrow Agreement.

Section 20. Notwithstanding anything to the contrary contained herein, parties hereto hereby acknowledge that, for federal, state and local income tax purposes, any interest, income and gain earned on or derived from the Cash Deposit or the Funds (the "Income") shall be income of the Respondent. All taxes payable on the Income shall be paid by the Respondent, whether or not the Income was distributed by the Escrow Agent during any particular year, as and to the extent required under the provisions of the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code") and other applicable tax law. The Escrow Agent shall, within the time period required by applicable law, file all required reports required to be filed by the U.S. Internal Revenue Service with respect to all Income hereunder. The Respondent agrees to provide to the Escrow Agent all forms and information necessary to accomplish such reporting or as reasonably requested by the Escrow Agent. The Escrow Agent shall, for each calendar year-end (and fiscal year-end(s) of the Respondent and the City) (or portion(s) thereof) that it holds the Escrow Amount, report the Income of the Escrow Amount on IRS Forms 1099 which shall show the Respondent as "payee." On or before the execution and delivery of this Escrow Agreement, the Respondent has provided to the Escrow Agent a properly completed Form W-9. Notwithstanding anything to the contrary herein, the Escrow Agent shall have no duty to prepare or file any other federal or state tax report or return with respect to any funds held pursuant to this Escrow Agreement or any income earned thereon. The Respondent is required to prepare and file any and all income or other tax returns applicable to the Escrowed Funds with all applicable federal, state

and local departments of revenue in all years income is earned in any particular tax year as and to the extent required under the provisions of the Code, and other applicable tax law. The Escrow Agent shall have no responsibility for the preparation or filing of any tax or information return with respect to any transaction, whether or not related to the Agreement, that occurs outside the Escrowed Funds.

Section 21. Notwithstanding anything to the contrary contained herein, parties hereto hereby acknowledge that Respondent may, in lieu of submitting the Cash Deposit, submit a bid bond in the form attached hereto as Schedule 7 in an amount equal to the Cash Deposit.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the date first hereinabove written.

RESPONDENT:

(full legal name with applicable entity suffix)

A(n) _____
(entity type and State/Commonwealth of formation)

By: _____

Print Name: _____

Print Title: _____

Address for Notices:

Email: _____

Facsimile: () _____ - _____

Phone: () _____ - _____

Federal Employer ID #: _____

For purposes of the Agreement, the "Authorized Respondent Representatives" are:

<u>Name(s)</u>	<u>Title(s)</u>
_____	_____
_____	_____
_____	_____

*[Signature Page to Cash Deposit Escrow Agreement;
required Respondent notarization block on the following page]*

IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the date first hereinabove written.

ESCROW AGENT:

FULTON BANK, N.A.

By: _____

Name:

Title:

[Signature Page to Cash Deposit Escrow Agreement]

IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the date first hereinabove written.

CITY:

THE CITY OF YORK

By: _____

Name:

Title:

COMMONWEALTH OF PENNSYLVANIA)

)

ss:

COUNTY OF YORK)

)

On this, the ____ day of _____, 202__, before me, a Notary Public, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed for The City of York to the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained.

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

Notary Public

My commission expires:

SCHEDULE 1

ESCROW AGENT SCHEDULE OF FEESEscrow Agent Fees (per Escrow Account required):

Initial Escrow Agent Fee \$ []
 - Payable by the Respondent at the inception of the Escrow Account

Annual Escrow Agent Fee (rate guaranteed for a period of 3 years) \$ []
 - Payable by the Respondent annually in Arrears. The Escrow Agent will pro rate the fees for accounts shorter than a full year.

Additionally, the Escrow Agent will be reimbursed by the Respondent for those customary out-of-pocket expenses as set forth in the other terms of this Escrow Agreement.

The above fees are contingent on the investment of funds in money market mutual funds of or available to Escrow Agent, including any proprietary fund for which the Escrow Agent or an affiliate is an investment advisor or provides other services to such fund and receives reasonable compensation for such services. Charges for any services not specifically covered in this Schedule will be billed commensurate with the services rendered, with prior written notice to all parties to this Escrow Agreement. In the event that federal, state or local laws and regulations impose new or additional duties on Escrow Agent in the conduct of its business as an escrow agent under this Escrow Agreement, then Escrow Agent may increase its fees and expense reimbursement rates under this Escrow Agreement upon at least 30 days' prior written notice to the parties to the Agreement reasonably in proportion to such new duties. In the event any extraordinary circumstances arise, Escrow Agent reserve the right to renegotiate our fees accordingly with all parties to the Agreement.

SCHEDULE 2

FORM OF CASH DEPOSIT RECEIPT

Fulton Bank, N.A., as escrow agent (the "Escrow Agent"), hereby confirms receipt of \$ _____ on _____, 202__ from _____ (the "Respondent"), for deposit into the Escrow Account created under the Cash Deposit Escrow Agreement, dated _____, 202__ (as such may be amended, the "Escrow Agreement"), by and among the Escrow Agent, the Respondent, and The City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, which will be held pursuant to the terms of the Escrow Agreement.

FULTON BANK, N.A.

By: _____
Name:
Title:

SCHEDULE 3

FORM OF DEFICIT NOTICE

Pursuant to Section 2 of the Cash Deposit Escrow Agreement, dated _____, 202__ (as such may be amended, the "Escrow Agreement"), by and among Fulton Bank, N.A., as escrow agent (the "Escrow Agent"), _____ (the "Respondent"), The City of York, York County, Pennsylvania (the "City"), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, and the Escrow Agent hereby informs the Respondent, the City that there is a deficit of \$ _____ (a "Deficit") that has reduced the market value of the Cash Deposit (as defined in the Escrow Agreement) below Five Million United States Dollars (\$5,000,000) (the "Benchmark").

Pursuant to Section 2 of the Escrow Agreement, the Respondent has agreed to replenish the Cash Deposit to reach the Benchmark through an additional deposit by 2:00 p.m. Eastern Time on the third business day following receipt (determined pursuant to Section 13 of the Escrow Agreement) by the Respondent of this Deficit Notice.

Sincerely,

FULTON BANK, N.A.

By: _____
Name:
Title:

SCHEDULE 4**ELIGIBLE INVESTMENTS**

For purposes of this Escrow Agreement, "Eligible Investments" mean (i) obligations issued by or guaranteed by the United States of America or any agency or instrumentality thereof, (ii) insured certificates of deposit of or interest bearing accounts with national banks or corporations endowed with trust powers, having capital and surplus in excess of \$200,000,000, (iii) commercial paper of finance companies organized under the laws of any state of the United States of America that at the time of investment is rated A-1 by Standard & Poor's Financial Services LLC ("S&P") or P-1 by Moody's Investors Service, Inc. ("Moody's"), (iv) money market mutual funds that are registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940, as amended (the "1940 Act"), and operated in accordance with Rule 2a-7 of the 1940 Act and that at the time of investments are rated AAA by S&P and/or Aaa by Moody's, including such funds for which the Escrow Agent or an affiliate of the Escrow Agent provides investment advice or other services provided that such funds comply with this subsection (iv), or (v) any other investment mutually agreed upon by the Respondent and the City Authorized Representative as evidenced by a jointly executed writing delivered to the Escrow Agent. Initially, in the absence of other written direction, the Escrowed Funds shall be invested in Federated Prime Fund #396 – CUSIP 60934N708.

SCHEDULE 5

FORM OF CITY STATEMENT

Fulton Bank, N.A.
212 Locust Street, Locust Court Building, 6th Floor
Harrisburg, PA 17101
Attn: Marcus Hite, Senior Vice President, Municipal Banking
Email: mhite@fultonbank.com

Re: The York Wastewater Utility System Cash Deposit Escrow Agreement - City Statement of Disbursement

Ladies and Gentlemen:

Pursuant to Section 5(a) of the Cash Deposit Escrow Agreement, dated _____, 202__, by and among Fulton Bank, N.A., as escrow agent (the "Escrow Agent"), and The City of York, York County, Pennsylvania (the "City"), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, and _____, as amended, modified or supplemented from time to time in accordance with the terms thereof, the undersigned hereby submits, on behalf of the City, this City Statement directing the Escrow Agent to liquidate all investments in the Escrow Account and pay to the City all Funds in the Escrow Account. The City represents that its and the City Authorized Representative's actions are in keeping with the Bid Documents described in the Escrow Agreement.

The disbursement of Funds should be made to:

Account No.: _____

Routing No.: _____

Bank: _____

Address: _____

Dated: _____

THE CITY OF YORK

By: _____

Name:

Title:

SCHEDULE 6

FORM OF INCUMBENCY CERTIFICATE

**TO PERMIT DIRECTIONS AND INSTRUCTIONS BY FACSIMILE OR
VIA EMAIL UNDER THE CASH DEPOSIT ESCROW AGREEMENT**

Reference is hereby made to the Cash Deposit Escrow Agreement, dated _____, 202__, by and among Fulton Bank, N.A., as escrow agent (the "Escrow Agent"), and The City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of November 24, 2015, P.L. 67, 11 Pa.C.S. §10101 *et seq.*, and _____, as amended from time to time in accordance with the terms thereof (the "Escrow Agreement").

Pursuant to Section 13 of the Escrow Agreement, the undersigned party to the Escrow Agreement desires to provide directions and instructions by facsimile or via email and hereby lists and certifies the names, titles, email addresses and telephone numbers of the persons with authority to act for the undersigned party under the Escrow Agreement. This Incumbency Certificate shall be amended and restated by the undersigned party in the event such party determines to add or a delete a person from the listing below.

<u>Name</u>	<u>Title</u>	<u>Email Address</u>	<u>Telephone No.</u>	<u>Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(*Escrow Agreement Party Providing this Certificate*)

By: _____

Name:

Title:

SCHEDULE 7

FORM OF BID BOND

KNOW ALL MEN, That we, _____,
as Principal, and _____,
(a _____ corporation authorized to transact business in Pennsylvania, and having its
principal office at _____), as Surety, are held and
firmly bound unto The City of York, York County, Pennsylvania, as Obligee, in the sum of Five Million
Dollars (\$5,000,000.00), lawful money of the United States of America, for payment of which we bind
ourselves, and each of our respective heirs, legal representatives, successors and assigns, jointly and
severally, by these presents, on this ____ day of _____, 2020.

WHEREAS, the said Principal is herewith submitting to the Obligee a proposal in response to that
certain Request for Proposals, dated _____, as amended from time to time, and it is a condition of the
Obligee's receipt and consideration of said proposal that the proposal be accompanied by bid security;

THEREFORE, the condition of this obligation is that if 180 days shall pass from the date this
obligation is delivered to the Obligee, then this obligation shall be void; but otherwise it shall remain in full
force, and the Principal and Surety will pay to the Obligee as liquidated damages or on account of Obligee's
actual damages, as Obligee shall elect, the face amount of this bond, provided that the Surety's obligation
hereunder shall not exceed the face amount of this bond.

The Surety agrees that its obligation hereunder shall be in no manner defeated or impaired by any
postponement of the advertised date for receiving bids or by any extensions by the Principal of the period
during which his proposal shall remain irrevocable and subject to acceptance by the Obligee; and the Surety
hereby waives notice of any such postponement or extension.

This Bond shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.
The Principal and the Surety agree that exclusive jurisdiction and venue for any litigation concerning this
Bond and the transactions contemplated shall exist in the York County, Pennsylvania, Court of Common
Pleas. The Principal and the Surety consent to such jurisdiction and venue and agree that all service of
process, including any instrument to institute suit, shall be effective if served in accordance with
Pennsylvania law.

The Principal and Surety acknowledge that all reference herein to the Principal in singular,
masculine form, shall include the plural, feminine and neuter, as may be appropriate to the Principal.

IN WITNESS WHEREOF, the Principal and Surety, intending to be legally bound have executed
this bond the day and year aforementioned.

Witness _____ (SEAL)

Witness _____ (SEAL)
Principal

(Sign as instructed on Proposal Form)

Attorney-in-fact
Surety

(attach power of attorney and authorizing
resolution)

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Costs/Benefits

13. Please provide a copy of the proposal and exhibits of the Buyer for the purchase of Seller's system.

Response: See Attachment 13-a (**CONFIDENTIAL**) PAWC's Initial Submission to City of York RFP – August 6, 2020. While not a proposal, the Initial Submission is provided here in the event the question is intended to elicit any documents responsive to the RFP.

See Attachment 13-b (**CONFIDENTIAL**) PAWC's Response to the City of York RFP – Dated December 9, 2020

See Attachment 13-c (**CONFIDENTIAL**) PAWC's BAFO Response to the City of York RFP – Dated December 17, 2020

Provided by: Bernard J. Grundusky, Jr., Pennsylvania-American Water Company
Senior Director of Business Development

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Costs/Benefits

14. Provide a copy of the Buyer's offer to purchase the Seller's system and the Seller's response to that offer.

Response: See Attachment 13-a (**CONFIDENTIAL**) PAWC's Initial Submission to City of York RFP – August 6, 2020. While not an offer to purchase the Seller's system, the Initial Submission is provided here in the event the question is intended to elicit any documents responsive to the RFP.

See Attachment 13-b (**CONFIDENTIAL**) PAWC's Response to the City of York RFP – Dated December 9, 2020

See Attachment 13-c (**CONFIDENTIAL**) PAWC's BAFO Response to the City of York RFP – Dated December 17, 2020

Provided by: Bernard J. Grundusky, Pennsylvania-American Water Company
Senior Director of Business Development

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Appraisals

15. For each UVE in this case, please provide the following, if not already provided:
- a. A list of valuations of utility property performed by the UVE;
 - b. A list of appraisals of utility property performed by the UVE
 - c. A list of all dockets in which the UVE submitted testimony to a public utility commission related to the appraisal of utility property; and
 - d. An electronic copy of or electronic link to testimony in which the UVE testified on public utility fair value acquisitions in the past two years.

Response: Jerome C. Weinert, Principal and Director - AUS Consultants

- a. Please see Mr. Weinert's Curriculum Vitae attached to **Appendix A-14-b** of the Application, Direct Testimony of Jerome C. Weinert (PAWC Statement No. 4).
- b. Please see Mr. Weinert's response to a. above.
- c. Please see below list of dockets in which Mr. Weinert submitted testimony to a public utility commission related to the appraisal of utility property:

A-2016-2580061 – New Garden
A-2017-2606103 – McKeesport
A-2018-3001582 – East Bradford
A-2018-3002437 – Sadsbury
A-2018-3004933 – Exeter
A-2019-3006880 – Steelton
A-2019-3008491 – Cheltenham
A-2019-3009052 – East Norriton

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A-2019-3014248 – Kane
A-2020-3019634 – Royersford
A-2020-3019859 - Valley Township Water
A-2020-3020178 - Valley Township Wastewater
A-2020-3021460 – Upper Pottsgrove Wastewater

- d. In the past two years, Mr. Weinert submitted testimony in the below dockets. Links to the dockets where Mr. Weinert testified are below:
- i. City of McKeesport – A-2017-2606103
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2017-2606103
 - ii. East Bradford Township A-2018-3001582
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2018-3001582
 - iii. Sadsbury Township – A-2018-3002437
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2018-3002437
 - iv. Exeter Township – A-2018-3004933
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2018-3004933
 - v. Steelton Borough – A-2019-3006880
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2019-3006880
 - vi. Cheltenham Township – A-2019-3008491
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2019-3008491
 - vii. East Norriton – A-2019-3009052
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2019-3009052
 - viii. Kane – A-2019-3014248
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2019-3014248
 - ix. Borough of Royersford – A-2020-3019634
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2020-3019634
 - x. Valley Township – A-2020-3019859
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2020-3019859

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- xi. Valley Township – A-2020-3020178
<https://www.puc.pa.gov/docket/A-2020-3020178>
- xii. Upper Pottsgrove Township - A-2020-3021460
<https://www.puc.pa.gov/docket/A-2020-3021460>

Response: **Dylan W. D'Ascendis, CRRA, CVA, Director, ScottMadden, Inc.**

- a. Please see Mr. D'Ascendis' Curriculum Vitae attached as Attachment A to **Appendix A-13-b**, Direct Testimony of Dylan W. D'Ascendis, York Statement No. 2.
- b. Please see Mr. Dylan D'Ascendis' response to a., above.
- c. Please see Mr. D'Ascendis' response to a., above.
- d. In the past two years, Mr. D'Ascendis submitted testimony in the below dockets. Links to the dockets where Mr. D'Ascendis testified are below:
 - i. Steelton Borough – A-2019-3006880
http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2019-3006880
 - ii. Delaware County Regional Water Quality Control Authority – A-2019-3015173 <https://www.puc.pa.gov/docket/A-2019-3015173>

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Appraisals

16. Please explain each discount rate used in the appraisals, including explanations of the capital structure, cost of equity and cost of debt. State the basis for each input. Provide all sources, documentation, calculations and/or workpapers used in determining the inputs.

Response: **Jerome C. Weinert, Principal and Director - AUS Consultants**

Please see the Direct Testimony of Jerome C. Weinert, Application **Appendix A-14-b** (PAWC Statement No. 4) at p. 5-6. Information on the discount rate can also be found in Application **Appendix A-5.1** (AUS Appraisal), the section entitled "Cost of Capital/Required Return" and at **CONFIDENTIAL Appendix A-4.1** to the Application (AUS electronic workpapers).

Response: **Dylan W. D'Ascendis, CRRA, CVA, Director, ScottMadden, Inc.**

Please see the Direct Testimony of Dylan W. D'Ascendis, **Appendix A-13-b**, Attachment A to **Appendix A-13-b**, York Statement No. 2. Information on the discount rate can also be found in **Appendix A-5.2** (ScottMadden Appraisal), Section VI.D., p. 6-7 and in Appendix J to the appraisal.

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Appraisals

17. Please explain whether the UVE used replacement cost or reproduction cost and why that methodology was chosen.

Response: **Jerome C. Weinert, Principal and Director - AUS Consultants**

AUS Consultants used replacement cost. Please see Direct Testimony of Jerome C. Weinert, Application **Appendix A-14-b** (PAWC Statement No. 4) at p. 6 for an explanation of why the replacement cost was chosen.

Response: **Dylan W. D'Ascendis, CRRA, CVA, Director, ScottMadden, Inc.**

ScottMadden used an original cost new ("OCN") method to calculate the trended original cost ("TOC") of the assets. The TOC was arrived at by using the Handy-Whitman Index and the Producers Pricing Index which results in a current reproduction value. Please see the Direct Testimony of Dylan W. D'Ascendis, **Appendix A-13-b**, York Statement No. 2. for an explanation of why this method was chose.

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Appraisals

18. Please provide a copy of the source for the purchase price and number of customers for each comparable acquisition used in the appraisals.

Response: **Jerome C. Weinert, Principal and Director - AUS Consultants**

The source of the purchase prices used in the comparable sales approach to the Market Approach was the Asset Purchase Agreements in those transactions. Those Asset Purchase Agreements are confidential and therefore copies are not provided. However, the purchase price for each transaction is publicly available at the links provided in Response 15(d). Mr. Weinert compared purchase price to original cost less depreciation, replacement cost new less depreciation, Earnings Before Interest Taxes Depreciation and Amortizations (EBITDA) and customers in the comparable sales approach. The purchase price and customers associated with each transaction used in the Market Approach are provided in Mr. Weinert's Direct Testimony, Application **Appendix A-14-b** (PAWC Statement No. 4) at pp. 14-17.

Response: **Dylan W. D'Ascendis, CRRA, CVA, Director, ScottMadden, Inc**

Please see **Appendix A-5.2** (ScottMadden Appraisal) to the Application, Appendix G.

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Appraisals

19. Have Buyer's and Seller's UVE corresponded with regard to their respective fair market value appraisals of the assets at issue in this case? If yes, provide the following information:
- a. Identify the nature and date(s) of correspondence;
 - b. Identify the type(s) of correspondence (i.e. written, verbal, etc); and,
 - c. Provide copies of any written correspondence exchanged between the UVEs.

Response: **Jerome C. Weinert, Principal and Director - AUS Consultants**

Yes. The Buyer's and Seller's UVE did speak by telephone regarding the City's customer counts on June 8, 2021. In that conversation, I indicated that I had customer counts as of December 31, 2018, for the City customers and the communities the City contracted to treat their wastewater. I also pointed out that the contracted treatment services represented intangible assets which need to be valued and included in the cost approach in order to make the cost approach equivalent to the results of the income and market approaches. Other than that conversation, there has been no contact concerning their respective fair market value appraisals of the assets at issue in this case.

Response: **Dylan W. D'Ascendis, CRRA, CVA, Director, ScottMadden, Inc**

- a. I discussed customer count data and the necessity to recognize the value of intangible assets with PAWC witness Jerome Weinert on June 8, 2021.
- b. The discussion was verbal.
- c. There was no written correspondence exchanged between the UVEs.

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Miscellaneous

20. Are there any outstanding compliance issues that the Seller's system has pending with the PA Department of Environmental Protection. If yes, provide the following information:
- a. Identify the compliance issue(s);
 - b. Provide an estimated date of compliance;
 - c. Explain Buyer's anticipated or actual plan for remediation;
 - d. Provide Buyer's estimated costs for remediation; and,
 - e. Indicate whether the cost of remediation was or is anticipated to be factored into either or both fair market valuation appraisals offered in this proceeding.

Response:

- a. Yes, there are compliance issues with the York system. The United States Environmental Protection Agency ("EPA") issued a Notice of Potential Violations and Opportunity to Confer dated December 10, 2020, attached as **Appendix A-20-f**.

On April 13, 2021, DEP issued a Notice of Violation for the March 27, 2021 discharge of sewage sludge from the wastewater treatment plant to the facility stormwater collection and conveyance system and to Lightner Creek, waters of the Commonwealth. The discharge was not authorized by permit or regulations and thereby constitutes violations of NPDES Permit No. PA0026263 and The Clean Streams Law, attached as **Appendix A-20-f**.

- b. As a result of issues that are the subject of EPA's Notice of Potential Violations and Opportunity to Confer, the Authority, City, PAWC, EPA, and DEP have begun negotiations on a corrective action plan to address these deficiencies. The final corrective action plan will

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include a schedule for achieving compliance. This corrective action plan will be negotiated and assumed by PAWC at Closing.

Regarding the DEP Notice of Violation, DEP requested a report that includes the circumstances leading to the incident, the details of the incident itself, and the measures taken to alleviate the problem, with associated dates and times.

- c. Regarding EPA's Notice of Potential Violations and Opportunity to Confer, the final corrective action plan will have a list of corrective actions.

Regarding DEP's Notice of Violation, the report must include the measures taken to alleviate the problem, with associated dates and times.

- d. As of the filing of this Application, the estimated costs for remediation are unknown. However, based upon our due diligence PAWC anticipates its proposed capital budget as attached to **PAWC EXHIBIT MJG-1** will be sufficient to address these compliance issues.
- e. **AUS Consultants:** The AUS Consultants' appraisal considered any system remediation in its depreciation deduction in the cost approach and the capital expenditures deducted from future cash flows prior to arriving at the net cash flows to discount. The market approach used the cost approach conclusion as a basis of comparison to market sales and as such the depreciation deduction taken in the cost approach also recognizes any remediation cost in the market approach.

ScottMadden, Inc.: Please see the Direct Testimony of Dylan W. D'Ascendis, **Appendix A-13-b** to the Application (York Statement No. 2) for an explanation of the capital improvements included in Mr. D'Ascendis valuation appraisal (see also **Appendix A-5.2** (ScottMadden Appraisal) at, Appendix I).

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**Provided by: Michael J. Guntrum, Pennsylvania-American Water Company
Senior Project Engineer**

Dylan W. D'Ascendis, CRRA, CVA, Director, ScottMadden, Inc

Jerome C. Weinert, Principal and Director - AUS Consultants

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Miscellaneous

21. Are there any outstanding compliance issues that the Seller's system has pending with the US Environmental Protection Agency? If yes, provide the following information:
- a. Identify the compliance issue(s);
 - b. Provide an estimated date of compliance;
 - c. Explain Buyer's anticipated or actual plan for remediation;
 - d. Provide Buyer's estimated costs for remediation; and
 - e. Indicate whether the cost of remediation was or is anticipated to be factored into either or both fair market valuation appraisals offered in this proceeding.

Response:

- a. Yes, there are compliance issues with the York system. The United States Environmental Protection Agency ("EPA") issued a Notice of Potential Violations and Opportunity to Confer dated December 10, 2020), attached as **Appendix A-20-f**.
- b. As a result of issues that are the subject of EPA's Notice of Potential Violations and Opportunity to Confer, the Authority, City, PAWC, EPA, and DEP have begun negotiations on a corrective action plan to address these deficiencies. The final corrective action plan will include a schedule for achieving compliance. This corrective action plan will be negotiated and assumed by PAWC at Closing.
- c. The final corrective action plan will have a list of corrective actions.
- d. As of the filing of this Application, the estimated costs for remediation are unknown. However, based upon our due diligence

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PAWC anticipates its proposed capital budget as attached to **PAWC EXHIBIT MJG-1** will be sufficient to address these compliance issues.

- e. **AUS Consultants**: The AUS Consultants' appraisal considered any system remediation in its depreciation deduction in the cost approach and the capital expenditures deducted from future cash flows prior to arriving at the net cash flows to discount. The market approach used the cost approach conclusion as a basis of comparison to market sales and as such the depreciation deduction taken in the cost approach also recognizes any remediation cost in the market approach.

ScottMadden, Inc. Please see the Direct Testimony of Dylan W. D'Ascendis, **Appendix A-13-b** to the Application (York Statement No. 9) for an explanation of the capital improvements included in Mr. D'Ascendis valuation appraisal (see also Application **Appendix A-5.2**, Appendix I).

Provided by: Michael J. Guntrum, Pennsylvania-American Water Company
Senior Project Engineer

Dylan W. D'Ascendis, CRRA, CVA, Director, ScottMadden, Inc

Jerome C. Weinert, Principal and Director - AUS Consultants

VERIFICATION

I, Dylan W. D'Ascendis, CRRA, CVA, Partner for ScottMadden, Inc. hereby state that the facts above set forth above are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I

understand that the statements made herein are made subject to the penalties of 18 Pa. Cons. Stat. §4904 (relating to unsworn falsification to authorities).

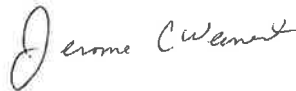


Dylan W. D'Ascendis, CRRA, CVA, Partner
ScottMadden, Inc

Dated: 6/24/2021

VERIFICATION

I, Jerome C. Weinert, P.E., hereby state that the facts above set forth above are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. Cons. Stat. §4904 relating to unsworn falsification to authorities.



Jerome C. Weinert, P.E. Principal and Director
AUS Consultants, Inc.

Dated: June 16, 2021

VERIFICATION

I Bernard J. Grundusky, Senior Director of Business Development, Pennsylvania-American Water Company, state that the facts set forth above are true and correct to the best of my knowledge. I understand that the statements herein are made subject to the penalties of 18 Pa C.S. §4904 (relating to unsworn falsification to authorities).

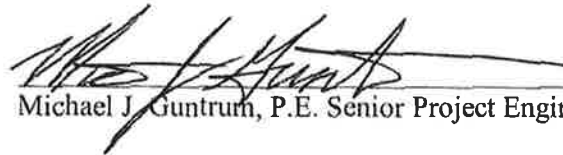


Bernard J. Grundusky
Senior Director of Business Development
Pennsylvania-American Water Company

Date: 6/25/21

VERIFICATION

I, MICHAEL J. GUNTRUM hereby state that the facts above set forth above are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. Cons. Stat. §4904 relating to unsworn falsification to authorities.



Michael J. Guntrum, P.E. Senior Project Engineer

Dated: 6/28/21

VERIFICATION

I, Ashley E. Everette, hereby state that the facts above set forth above are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. Cons. Stat. §4904 relating to unsworn falsification to authorities.

6/28/2021
Date



Ashley E. Everette, Sr. Director of Rates and
Regulatory American Water, Mid-Atlantic Division