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May 11, 2022

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Conyngham Township v. Sanitary Sewer Authority of the Borough of  
Shickshinny  
Docket No. C-2021-3023624

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission (Commission) please find the Motion for Stay of Sanitary Sewer Authority of the Borough of Shickshinny in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Please contact me if you have any questions regarding this filing.

Very Truly Yours,



Sean W. Logsdon, Esquire

SWL:

Cc: Administrative Law Judge Conrad Johnson (Via Electronic means)  
Sanitary Sewer Authority of the Borough of Shickshinny  
Vito J. DeLuca, Esquire (Via Electronic means)  
Stephanie M. Wimer, Esquire (Via Electronic means)

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**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**In the Matter of:**

<b>CONYNGHAM TOWNSHIP,</b>	:	
	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>COMPLAINT DOCKET</b>
	:	<b>NO. C-2021-3023624</b>
<b>SANITARY SEWER AUTHORITY OF THE BOROUGH OF SHICKSHINNY,</b>	:	
	:	
<b>Respondent</b>	:	
	:	

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that this day I served a copy of the foregoing Motion for Stay upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

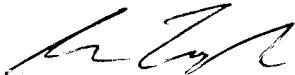
Via Email Only to:

Vito J. DeLuca, Esquire  
DeLuca Law Offices  
26 Pierce Street  
Kingston, PA 18704  
[vjd@delucalawoffices.com](mailto:vjd@delucalawoffices.com)

Via Email Only to:

Stephanie M. Wimer, Esquire  
PA Public Utility Commission  
Bureau of Investigation & Enforcement  
P.O. Box 3265  
Harrisburg, PA 17120  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Date: May 11, 2022

  
\_\_\_\_\_  
Sean W. Logsdon, Esquire  
Attorney for Sanitary Sewer  
Authority of the Borough of  
Shickshinny

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	:	<b>NO. C-2021-3023624</b>
<b>SANITARY SEWER AUTHORITY OF THE BOROUGH OF SHICKSHINNY,</b>	:	
	:	
<b>Respondent</b>	:	
	:	

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**MOTION FOR STAY OF THE SANITARY SEWER AUTHORITY  
OF THE BOROUGH OF SHICKSHINNY**

**TO ADMINISTRATIVE LAW JUDGE CONRAD A. JOHNSON:**

AND NOW COMES Sanitary Sewer Authority of the Borough of Shickshinny (SSABS or the "Authority"), pursuant to 52 Pa. Code § 5.103, to file this motion ("Motion") requesting that the Honorable Administrative Law Judge Conrad Johnson (the "ALJ") stay this proceeding pending disposition of a Declaratory Judgment action being filed by SSABS. Due to the short time frames in the current procedural schedule in this matter, including a telephonic hearing scheduled for May 17, 2022, SSABS respectfully also requests that the ALJ continue the May 17, 2022, hearing and direct all other Parties to file an Answer this Motion within ten days of the date it was served, and to issue a decision as soon as practical. Counsel for Conyngham Township and the Bureau of Investigations and Enforcement do not consent to this motion.

## **I. Introduction and Summary**

On January 8, 2021, SSABS was served with the Formal Complaint filed by Conyngham Township (the “Township”) against SSABS at Docket No. C-2021-3023624, alleging that SSABS is operating in the Township without a Certificate of Public Convenience. On January 27, 2021, SSABS filed an Answer and New Matter to the Formal Complaint. Also, on January 27, 2021, SSABS filed Preliminary Objections to the Formal Complaint. The preliminary objections raised the issue of the PUC’s jurisdiction over private contractual disputes.

In denying the Preliminary Objection to the jurisdictional objection, the ALJ’s opinion stated as follows:

Respondent argues the Parties’ rights are governed by a private contract, over which the Commission lacks jurisdiction. Complainant retorts that the Parties’ bulk service agreement was terminated by Respondent in late 2020, and Complainant’s rights are governed by the Code. On this issue Respondent’s argument is misplaced. The Commission has jurisdiction over contracts between a public utility and municipal corporation, which implicates the public interest. *See* 66 Pa.C.S. § 508, cited above. Additionally, the terms and conditions of the bulk service agreement, which are not before this administrative body at this stage of the proceeding, raise questions of fact that cannot be resolved upon a preliminary objection. Accordingly, Respondent’s objection that the Commission lacks jurisdiction over a private contract must be denied.

SSABS respectfully asserts and seeks a declaration that the September 11, 2020 unilateral termination of the Parties’ Sewage Treatment Agreement was void ab initio. This issue of whether the agreement was terminated or could have been terminated in September of 2020 goes directly to the jurisdiction of this court. Although the ALJ’s March 5, 2021 Order on the Preliminary Objections states that the Commission has jurisdiction over contracts between a public utility and a municipal corporation, which implicates the public interest, the SSABS respectfully asserts that it is not a public utility. The SSABS is a Municipal Authority, and its contract was/is with a Municipal Corporation.

## **II. Background**

### **A. Procedural History of the Instant Case**

1. As stated above, on January 6, 2021, SSABS was served with the Formal Complaint filed by the Township alleging that SSABS is operating in the Township of Conyngham without a Certificate of Public Convenience.
2. On January 26, 2021, SSABS filed an Answer and New Matter to the Formal Complaint.
3. Also, on January 26, 2021, SSABS filed Preliminary Objections to the Formal Complaint.
4. On March 5, 2021, Judge Johnson issued an Interim Order on the Preliminary Objections sustaining the objections in part and denying in part. SSABS's Preliminary Objections were sustained to the extent that the Township lacks standing to represent the residents of Conyngham Township.
5. The Preliminary Objections were denied in all other respects including the request to dismiss the Complaint.
6. The Matter was referred for mediation, however, no mediation was actually conducted and the process was unsuccessful.
7. On September 9, 2021 the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") filed a Notice of Intervention.
8. On October 15, 2021 a Forth Interim Order was issued for a litigation schedule and prehearing matters.

9. On January 13, 2021 a Joint Stipulation of Facts was filed by the Parties.

Attached as *Exhibit 3*.

10. Orders were issued on January 14, 2022, and March 1, 2022, granting SSABS's motion for a continuance while the Parties attempted to reach a settlement of this matter.

11. The matter is currently scheduled for telephonic hearing on May 17, 2022.

### **III. Relevance of the legal effect of the September 21, 2020 Termination Letter**

12. The sewage treatment agreement at issue, attached as *Exhibit 1*, is the operative document that was purported to be terminated by letter on September 11, 2020.

13. SSABS attempted to terminate the agreement based on the Township's failure to correct influx and infiltration issues related to Conyngham's sewer system, failure to meet with the Authority to discuss the issue, and failure to entertain an amendment to the agreement.

A copy of the September 11, 2020 letter is attached as *Exhibit 2*.

14. The agreement at issue, in Section 3.02, Term of the Agreement, states that, "[S]ubject to the covenants and conditions set forth herein, the term of this Service Agreement shall be for such period of time as the Authority shall provide Conyngham with Sewage treatment and disposal service in the treatment plant, or until terminated by mutual written agreement of the parties."

15. The SSABS has provided since the onset of the agreement and still provides sewage treatment and disposal service in the treatment plant. See Stipulation, Paragraph 19.

16. The Township has never, in writing, consented to the agreement being terminated nor has it stop sending wastewater to the plant.

17. In general, a contract for an indefinite period will be construed to be for a “reasonable time or terminable at will unless the intention of the parties can be ascertained.” *Major v. Flock Brewing Co.*, 2 Pa. D. & C.2d 496, 500 (Lycoming Ct.Com.Pl.1954), see also *Wyeth Pharms., Inc. v. Borough of W. Chester*, 126 A.3d 1055, 1064 (Pa. Commw. Ct. 2015). Despite the September 11, 2020 letter, the language of the agreement clearly indicates that the intention of the parties was to continue the agreement so long as SSABS provided sewage service to the Township.

18. Pennsylvania law disfavors perpetual contracts and, thus, requires a perpetual term to be expressed unequivocally. *Hutchison v. Sunbeam Coal Corp.*, 513 Pa. 192, 519 A.2d 385, 390 n. 5 (1986); *Leet v. Vinglas*, 366 Pa. Super 294; 531 A.2d 17 at 21 (Pa. Super 1987). Here, the perpetual term is expressed unequivocally.

19. Since this express provision is contained in the agreement, a declaration from the court is necessary as a threshold issue to determine whether or not the PUC has jurisdiction to hear this dispute.

20. The agreement also contains a dispute resolution provision in Section 7.07.

21. Arbitration was requested by the Township, and SSABS rejected the same as SSABS believed the agreement had already been terminated.

22. However, the clear language of the agreement requires arbitration, and one if not both parties should have petitioned the court to compel the same.

23. Because the September 11, 2020 letter is of no effect, the allegations regarding billing of Township residents by SSABS as alleged by the Township are, if anything, a breach of contract issue.

#### **IV. Legal Standard**

24. The criteria for obtaining a stay are set forth in *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983) ("Process Gas"). Under those criteria, a stay is warranted if:

- a. The Petitioner makes a strong showing that it is likely to prevail on the merits;
- b. The Petitioner has shown that without the requested relief, the Petitioner will suffer irreparable injury;
- c. The issuance of a stay will not substantially harm other interested parties in the proceedings.
- d. The issuance of a stay will not adversely affect the public interest.

25. In addition, appropriate circumstances, the Commission has exercised flexibility, granting a stay even though all four Process Gas criteria were not satisfied in a particular case. *See, e.g., Pa. Pub. Util. Comm 'n v. Pennsylvania Electric Company*, Docket Nos. M-2008-2036188 et al. (Opinion and Order entered March 25, 2010).

#### **V. The Commission Should Stay these Proceedings Pending SSABS's Declaratory Judgment Action**

##### **A. The Process Gas Criteria are Satisfied**

**1. Counsel for SSABS has Made a Strong Showing that September 11, 2021 termination letter is void ab initio, any unilateral termination of the agreement is against public policy and the clear intent of the parties, and the agreement contains an arbitration clause and said arbitration was not exercised or compelled.**



26. Pursuant to *Process Gas*, a petitioner need not demonstrate that it will win the case; it need only demonstrate that it has raised significant legal issues and made a substantial case on the merits. 502 Pa. at 554, 467 A.2d at 809.

27. Counsel for SSABS has raised significant legal issues and made a substantial case on the merits.

28. The agreement contains a provision for termination on page 8, which as stated above, clearly indicates that SSABS's attempt at terminating the agreement unilaterally is of no effect.

29. The agreement also contains an arbitration clause, which the parties should have been compelled to participate in, even if SSABS attempted to unilaterally terminate the agreement.

30. Although SSABS originally refused to arbitrate, the proper avenue would have been for the Township to compel arbitration, or file an action for breach of contract for what it perceived to be improper invoicing of Township ratepayers, it chose instead to file a formal complaint with the PUC.

31. The terms of the agreement and public policy dictate that the arbitration be conducted.

32. If this or any court determines that the agreement was unilaterally terminated, the Township cannot be compelled to pay for sewage services that it is utilizing.

33. In addition, the agreement at issue is a service agreement, SSABS, although purporting to terminate the agreement, never stopped providing service. Exhibit 1, paragraph 19.

34. The Township is also still participating in the agreement as it is still utilizing SSABS's plant, despite not paying for the service.

35. Although the Township has incessantly claimed that SSSBS's sending of invoices to Township residents was a violation of the PUC code, in reality, at most it was a breach of contract from which the Township and its residents suffered no damages. See Exhibit 1, Paragraphs 12, 13, 16.

36. The sewage rates paid by Township customers were exactly the same as the Conyngham Township Authority reduced the rate it typically charged its customers. See Exhibit 1, Paragraphs 12, 13, 16.

37. These points conclusively demonstrate that counsel for SSABS has raised a significant legal issue and made a substantial case on the merits.

**2. SSABS would be Irreparably Harmed if a Stay is Not Granted.**

38. SSABS has since the outset of the filing of the complaint, repeatedly and in good faith, attempted to negotiate a settlement with the Township and I&E.

39. Attempts to settle this matter have failed.

40. Whether the purported cancellation letter of September 11, 2020 was of legal effect is a threshold issue for not only this Court's jurisdiction, but also any enforcement proceedings through I&E.

41. The Township's Sewer Authority has taken the position that it cannot invoice its customers for sewage processing service because of the purported cancellation letter of September 11, 2020.

42. The Township has not paid SSABS for sewage processing services since the third quarter of 2021.

43. No Conyngham ratepayer has been billed by SSABS for sewage processing services since the third quarter of 2021 (October 2021).

44. SSABS has not received any compensation from the Township, and the Township has indicated that it will not pay for any services until a certificate of public convenience is obtained by SSABS or a new service agreement is established.

45. A new service agreement has not been established as the Township has used these proceedings as an attempt to establish PUC control over a local authority that was never intended to be a public utility under PUC regulation.

46. This again raises major public policy issues as Shickshinny Borough is a small economically impoverished area that sustains itself through affordable public services like the ones provided by SSABS.

47. The Township knows that the SSABS is a small local sewer Authority, with very reasonable rates, and SSABS at its inception, as well as currently, has no intention of procuring a certificate of public convenience, nor does it have the funds to procure said certificate.

48. SSABS has no method to nor does it intend to stop sewage service to the Township.

49. The Township has not indicated that it intends on building its own sewer plant or connecting to another plant, and it continues to send sewage to SSABS without payment.

50. I&E has indicated that it intends to seek a \$100,000 fine against SSABS for the alleged violation of the PUC code.

51. There is no violation of the PUC code as alleged by I&E unless a court of competent jurisdiction declares that the September 11, 202 letter is of legal effect.

52. Without a determination/declaration as to the legal effect of the September 11, 2020 letter, SSABS will be irreparably harmed in that:

- a. it must continue to provide service to the Township and financially support the same;
- b. the Township and its ratepayers are not paying for sewage processing service;
- c. SSABS is financially unable to procure a certificate of public convenience if required to do so.
- d. it faces the prospect of a \$100,000 fine as advanced by I&E without a declaration from the Court as to the effect of the September 11, 2020 letter.

53. It is unlikely that the SSABS's declaratory judgment action would be completed before the record closes in the instant proceeding, although the SSABS will seek an expedited hearing on the same.

54. SSABS would be irreparably harmed if it would be forced to try this case before it has an opportunity to obtain a declaration from a court of competent jurisdiction as to legal effect of the September 11, 2020 letter.

55. Forcing SSABS into a trial prematurely raises significant due process concerns.

56. There is no statutory deadline for completing this proceeding.

**3. The Other Interested Parties Will Not be Substantially Harmed if a Stay is Granted.**

57. The activity complained of in this complaint is the direct billing of Conyngham Township ratepayers by SSABS for a period of 3 quarters in 2021.

58. SSABS has not billed any resident/ratepayer of Conyngham Township since the October of 2021 (the 4<sup>th</sup> quarter of 2021).

59. Since the activity complained of has ceased, there is no harm to any other interested party.

60. I&E submitted a letter to the ALJ on November 23, 2021 indicting it was not submitting rebuttal testimony at that time, and reserving the right to object to or provide rebuttal testimony to any written testimony submitted by SSABS.

60. SSABS would agree that all interested parties should have the right to object to or provide rebuttal testimony to any written testimony submitted by SSABS.

61. Granting a stay at this time would not substantially harm any other Party to this proceeding, in fact, the Township continues to receive a windfall.

62. All parties would be able to continue to prepare their cases during the stay, and will have the opportunity to present their cases fully when the stay is lifted.

**4. The Public Interest will not be Adversely Affected if a Stay is Granted.**

63. The public interest favors giving all persons a fair trial, regardless of the allegations they face.

64. If a stay is denied, SSABS would be denied a fair trial because it would be required to go to trial while a threshold issue as to the legal effect of the alleged termination is outstanding.

65. This Court cannot decide the effect of the September 11, 2020 letter as it is not a contract between a public utility and municipal corporation, it is a contract between a municipal corporation and a municipal authority.

66. The public interest favors efficiency in administrative proceedings.

67. If a stay is not granted, and an action is filed where the Court of Common Pleas of Luzerne County holds that the September 11, 2020 letter is without legal effect, SSABS would need to file a motion to reopen the record or a motion for a rehearing.

68. The ALJ or the Commission could deny such a motion.

69. Even if the ALJ or the Commission would grant such a motion, the result would be a substantial waste of resources for all Parties and the Commission because SSABS would need to file Direct Testimony/evidence based on the proceedings in Luzerne County, the other Parties would need to file Rebuttal Testimony, etc.

70. The better approach would be to stay this case and establish a new schedule for the completion of any further litigation in this matter, if necessary, when the Declaratory Judgment action is completed.

71. It would be particularly wasteful to rush to trial, and then need to reopen the record in order to introduce more evidence and hold a second trial.

**B. Even if the Process Gas Criteria are Not Satisfied, the ALJ Should Exercise Flexibility and Grant a Stay Based on the Facts of this Particular Case**

72. Even if the ALJ concludes that SSABS has failed to satisfy all four prongs of the Process Gas test, the ALJ should exercise the flexibility discussed in *Pennsylvania Electric Company, supra*, and grant the request for a stay pending disposition of the declaratory judgment action.

73. Counsel for SSABS has made a strong case on the merits for the Declaratory Judgment action.

74. Counsel for SSABS has made clear that the declaratory judgment action request seeks to protect SSABS's due process rights in this and other upcoming proceedings, as well as the rights of the ratepayers in Conyngham Township and Shickshinny Borough to continued reasonable rates and quality service.

75. The ALJ should exercise his discretion to protect those rights where, as here, there would be no material adverse impact, or any adverse impact on the rights of the other Parties to this case or the public interest.

76. In the alternative, if the ALJ finds that it has jurisdiction to hear the threshold issue of the legal effect of termination letter, SSABS respectfully requests that the Parties be granted a limited period of time to provide written testimony, rebuttal testimony and legal argument solely on that issue.

## **VI. Request for Expedited Treatment**

77. SSABS filed this Motion within a reasonable time after settlement negotiations between the parties broke down.

78. Answers to motions are ordinarily required to be filed within twenty days of the date the motion is served. 52 Pa. Code § 5.103(c).

79. Twenty days from the date of service of this Motion would be after the date of the record hearing in this proceeding.

80. In order to permit the ALJ to issue a decision on the Motion and for SSABS to finalize its declaratory judgment action in Luzerne County, SSABS requests that the May 17, 2022 hearing be continued, and that the ALJ direct the other Parties to this proceeding to file their Answers within ten days of service of the Motion.

## **VII. Conclusion**

WHEREFORE, for all of the above reasons, SSABS respectfully requests that the Honorable Administrative Law Judge Conrad Johnson:

- (1) continue the telephonic hearing scheduled for May 17, 2022;
- (2) direct the other Parties to this proceeding to file Answers to this Motion within ten days of the date the Motion was served;
- (3) grant a stay of this matter pending disposition of the Declaratory Judgment Action being filed by SSABS in the Court of Common Pleas of Luzerne County once proper jurisdiction is determined;



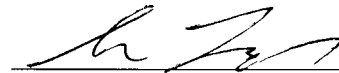
(4) direct the SSABS to file their declaratory judgment action within 10 days of the order staying this matter, seeking an expedited hearing from the Court on the same;

(5) direct the SSABS to provide the ALJ and all Parties to this proceeding with a status report on the declaratory judgment proceeding every sixty days, and to notify the ALJ and all Parties to this proceeding within ten days after the Luzerne County Court of Common Pleas issues its decision in that proceeding.

DATE: 5/11/2022

Respectfully submitted,

By:



Sean W. Logsdon, Esquire

ID # 93096

sean@karpowichlaw.com

For Sanitary Sewer Authority of the  
Borough of Shickshinny

85 Drasher Road

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Exhibit 1

DONALD G. *K*ARPOWICH ATTORNEY-AT-LAW, P.C.

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January 12, 2022

**Via Electronic Filing**


Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Conyngham Township v. Sanitary Sewer Authority of the Borough of  
Shickshinny  
Docket No. C-2021-3023624

Dear Secretary Chiavetta:

Enclosed for filing is Joint Stipulation of Facts in the above-referenced proceedings.  
Copies will be provided as indicated on the Certificate of Service.

Very Truly Yours,



Sean W. Logsdon, Esquire

SWL:

Cc: Sanitary Sewer Authority of the Borough of Shickshinny  
Vito J. DeLuca, Esquire (Via Electronic means)  
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<b>Respondent</b>	:	
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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that this day I served a copy of the foregoing Joint Stipulations of Fact upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

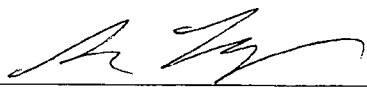
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P.O. Box 3265  
Harrisburg, PA 17120  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Date: January 12, 2022

  
\_\_\_\_\_  
Sean W. Logsdon, Esquire  
Attorney for Sanitary Sewer  
Authority of the Borough of  
Shickshinny

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Conyngam Township	:	
	:	
v.	:	Docket No. C-2021-3023624
	:	
Sanitary Sewer Authority of the Borough of Shickshinny	:	

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**JOINT STIPULATION OF FACTS**

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Pursuant to the Fourth Interim Order for Litigation Schedule and Prehearing Matters dated October 15, 2021 of presiding Administrative Law Judge (“ALJ”) Conrad A. Johnson, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), Conyngam Township (“Township”) and the Sanitary Sewer Authority of the Borough of Shickshinny (“Authority”), by their undersigned attorneys, agree and stipulate to the following facts regarding the above-captioned matter.

**STIPULATION OF FACTS**

1. The Department of Environmental Resources, now the Pennsylvania Department of Environmental Protection (“DEP”), ordered the Township to join with the Borough of Shickshinny to undergo a project of preservation and improvement of the purity of the waters of the Commonwealth pursuant to the provisions of the Clean Streams Law (“Preservation Project”).
2. The Township, on May 7, 1973, passed a joint resolution with the Borough of Shickshinny to undertake the Preservation Project.
3. The Township employed an engineering firm to undertake and recommend a

site for the processing plant and incorporated the Conyngham Township Sewer Authority (“CTSA”) to undertake the Preservation Project.

4. The Township passed a resolution finding the site recommended in its feasibility study acceptable for the erection of a processing plant for the purpose as ordered by the Commonwealth of Pennsylvania.

5. The Authority was formed on September 25, 1973 as a municipal authority for the purpose of constructing, improving, furnishing and equipping a sanitary sewage system and treatment works, to acquire land necessary to effectuate this purpose and to perform any necessary items incidental to this purpose.

6. The general scope of the Authority’s activities includes, but is not limited to, providing treatment of domestic wastewater and discharging the treated wastewater to the Susquehanna River in accordance with a permit issue by DEP.

7. The sole municipality that joined the Authority is the municipality that formed it, which is the Borough of Shickshinny.

8. The sewer lines located in the Township are owned and maintained by the CTSA, and those lines convey sewage to the Authority’s processing plant located on property owned by the Authority located in the Township.

9. The Authority provides sewage treatment service to the Borough of Shickshinny and a portion of the Township, among other areas.

10. The Authority and the Township entered into a Sewage Treatment Agreement on November 18, 1992 wherein the Authority agreed to provide sewage treatment and

disposal services to the Township as a single bulk customer (“Sewage Treatment Agreement”). A copy of the Sewage Treatment Agreement will be entered as Joint Exhibit A.

11. By letter dated September 11, 2020, the Authority notified the Township that it was cancelling the Sewage Treatment Agreement. A copy of the September 11, 2020 letter will be entered as Joint Exhibit B.

12. Prior to the termination of the bulk services agreement, CTSA was charging its ratepayers/customers located in the Township a rate of \$134.00 per EDU per quarter.

13. On January 1, 2021, April 1, 2021, and July 1, 2021, the Authority sent a quarterly invoice directly to ratepayers/customers located in the Township a rate of \$75.00 per quarter.

14. There are approximately 220 residential customers and eight commercial customers located in the Township.

15. From January 1, 2021 to September 23, 2021, the Authority collected an approximate total of \$54,684.68 from ratepayers located in the Township.

16. From January 1, 2021 to the first calendar year quarter of 2022, CTSA has been billing its ratepayers/customers located in the Township at the reduced rate of \$59.00 per EDU per quarter.

17. Because of the PUC intervention, the Authority did not invoice customers located in the Township for the fourth calendar year quarter of 2021.

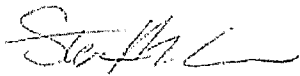
18. The Authority did not invoice customers located in the Township for the first calendar year quarter of 2022.

19. The Authority has continually provided sewage processing and disposal service to Township residents and customers from the onset of the agreement to the present.

20. Neither the CTSA nor any individual ratepayer or customer has paid for the sewage processing or disposal service provided by the Authority since September 1, 2021.

21. The Authority has no control over who sells or leases properties in the Township.

As agreed on this 12<sup>th</sup> day of January 2022:



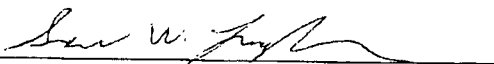
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Stephanie M. Wimer, Esq.  
Senior Prosecutor  
Bureau of Investigation and Enforcement



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Vito J. DeLuca, Esq.  
Counsel for  
Conyngham Township



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Sean W. Logsdon, Esq.  
Counsel for the Sanitary Sewer  
Authority of the Borough of Shickshinny



## Exhibit 2

SEWAGE TREATMENT AGREEMENT

THIS SEWAGE TREATMENT AGREEMENT, dated this <sup>18<sup>th</sup></sup> day of <sup>November</sup>, 1992, by and between the SANITARY SEWER AUTHORITY OF THE BOROUGH OF SHICKSHINNY, Luzerne County, Pennsylvania, on the one hand, and the TOWNSHIP OF CONYNGHAM, Luzerne County, Pennsylvania, on the other hand.

WITNESSETH:

WHEREAS, the Authority presently owns, operates and maintains the Authority Sewage Collection System and the Treatment Plant, for rendering Sewage collection, transportation, treatment and disposal service in and for, inter alia, the Borough of Shickshinny, Pennsylvania; and

WHEREAS, Conyngham is presently contemplating the acquisition and construction of the Conyngham Sewage Collection System, for rendering Sewage collection and transportation, but not treatment or disposal service, in and for portions of Conyngham Township; and

WHEREAS, the Authority heretofore undertook the acquisition and construction of the Treatment Plant and incurred Costs of Construction and expenses related thereto; and

WHEREAS, Conyngham has requested certain Treatment Plant Capacity in the Treatment Plant; and

WHEREAS, Conyngham desires to acquire and reserve Treatment Plant Capacity for its present and future use, and to provide for the terms under which additional Treatment Plant Capacity may be acquired from the Authority hereafter, and to share in the costs and expenses of operating and maintaining the Treatment Plant; and

WHEREAS, Conyngham desires to contract, under the terms hereof, for Sewage treatment and disposal services by the Authority in the Treatment Plant; and

WHEREAS, the Authority, pursuant to the request of Conyngham, agrees under the terms hereof to provide Conyngham, as a single, bulk customer, with Sewage treatment and disposal services in the Treatment Plant, under the terms and conditions set forth herein.

## ARTICLE I

### Definitions

SECTION 1.01. Defined Terms. The terms defined in this Section 1.01, whenever used or referred to in this Service Agreement, shall have the respective meanings indicated unless a different meaning clearly appears from the context.

"Authority" shall mean the Sanitary Sewer Authority of the Borough of Shickshinny of Luzerne County, Pennsylvania, a municipal authority of the Commonwealth, acting by and through its members, including any Person duly authorized acting in behalf of such Authority;

"Authority Sewage Collection System" shall mean the Sewage collection and transportation system facilities presently existing or hereafter to be acquired and/or constructed by the Authority, for use and operation by the Authority, and to the extent permitted hereunder, for use by Conyngham for the transportation of Sewage from the Conyngham Sewage Collection System, together with all appurtenant facilities and properties which have been acquired or hereafter shall be acquired in connection therewith;

"BOD" shall mean biological oxygen demand or the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees (20) Centigrade expressed in milligrams per liter (mg/l). The procedure shall include thiourea or other suitable inhibitors to prevent nitrification from simultaneously occurring and affecting BOD results;

"Bonds" shall mean the notes, bonds or other debt obligations authorized and issued by the Authority the proceeds of which have been or will be applied for the purposes of financing Costs of acquisition or construction of the Treatment Plant and/or the Authority Sewage Collection System, or to refund the same;

"Certified Public Accountant" shall mean a person, who shall be Independent, appointed the governing body of a Municipality, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the Commonwealth;

"Charge" shall mean the charge payable by Conyngham to the Authority calculated pursuant to Article V hereof;

"Commonwealth" shall mean the Commonwealth of Pennsylvania;

"Completion Date" shall mean the date of substantial completion of the Conyngham Sewage Collection System as certified by Conyngham's Consulting Engineers;

"Consulting Engineer" or "Consulting Engineers" shall mean a Person who shall be Independent, appointed, by the governing body of a Municipality, as applicable and appropriate, qualified to pass upon engineering questions relating to Sewage collection, transportation, treatment and/or disposal systems and having a favorable reputation for skill and experience in supervising construction and operation of such systems. He shall be a professional engineer duly registered under laws of the Commonwealth. If such person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth;

"Consulting Engineer's Certificate" shall mean a certificate executed by the Consulting Engineers;

"Conyngham" shall mean the Township of Conyngham, Luzerne County, Pennsylvania, a political subdivision of the Commonwealth acting by and through its Board of Supervisors;

"Conyngham Sewage Collection System" shall mean the Sewage collection and transportation system facilities presently existing or hereafter to be acquired and/or constructed by Conyngham and/or located in Conyngham Township, as contemplated by the Project, together with any and all appurtenant facilities and properties which have been acquired or hereafter shall be acquired in connection therewith;

"Costs", "Costs of Acquisition" or "Costs of Construction", without intending to limit any proper definition thereof under sound accounting or engineering practice, shall mean and include, solely with respect to the Treatment Plant:

A. Obligations incurred and payments made or required to be made by the Authority to workmen and laborers or to contractors, builders, suppliers and materialmen;

B. Interest on Bonds during the acquisition or construction period with respect to any particular series of Bonds;

C. Reasonable administrative expenses of the Authority during the period of any acquisition or construction, including the financing thereof;

D. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of

settlement or comprised of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the Treatment Plant; amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;

E. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable for carrying out purposes of the Authority relating to the Treatment Plant, including, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Treatment Plant and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;

F. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental regulatory authority related to construction of any part of the Treatment Plant, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;

G. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations therefor, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction and the financing thereof;

H. Expenses of audits; initial compensation of the Trustee or Paying Agent with respect to Bonds of any series; fees and expenses, if any, of the Trustee, or Paying Agent relating to a construction fund; if any; financing costs, fees and expenses, including compensation and expenses of a financial advisor, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses; advertising expenses; premiums for insurance or contracts of suretyships insuring bondholders against the risk of nonpayment of the

principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by the Authority in connection with financing acquisition or construction and issuing Bonds;

I. Other costs, charges and expenses incident to completion of any improvements, alterations, extensions or additions to the Treatment Plant which properly are chargeable to the cost of acquisition or construction under sound accounting or engineering practice;

J. Reimbursement to the Authority for advances made by it or them for any of the above items, including any interest paid or required to be paid by the Authority with respect to any such advances, or for any other costs incurred by the Authority or for work done by the Authority with the Treatment Plant which properly are chargeable as costs related to financing acquisition or construction;

K. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;

L. Any sums required to reimburse the Authority or to pay any indebtedness incurred by the Authority, including payment of obligations of the Authority, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and

M. Interest on and issuing costs of any Bonds issued by the Authority in anticipation of receipt of federal or state grants applied to pay such costs, less any interest income earned thereon;

Whenever any "Costs", "Costs of Acquisition" or "Costs of Construction" are incurred in connection with the Treatment Plant, the same shall be equitably apportioned on the basis of sound and acceptable engineering and/or accounting principles;

"DER" shall mean the Department of Environmental Resources of the Commonwealth;

"Discharge" shall mean the volume of Sewage discharged into the Treatment Plant, at any particular point in time, measured in accordance with Section 4.03;

"EDU" shall mean equivalent dwelling unit;

"Fiscal Year" shall mean the fiscal year of the applicable Authority or Municipality as provided by laws of the Commonwealth which, unless otherwise stated, shall be a calendar year;

"GPD" shall mean gallons per day of Discharge;

"Independent" shall mean, with respect to the Certified Public Accountant and Consulting Engineers, a Person who is independent in fact and who is not a member of the Board, officer or employee of any Municipality, or any elected or appointed official or employee of any Municipality, or which is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the Board, officer or employee of any Municipality, or an elected or appointed official or employee of any Municipality; Provided however, that the fact that such person is retained regularly by any Municipality shall not make such person an employee within the meaning of this definition;

"MGD" shall mean millions of gallons per day of Discharge;

"Municipality" or "Municipalities" shall mean, individually or collectively, as applicable and appropriate, the Authority and/or Conyngham;

"Operating and Maintenance Costs" shall have the meaning described in Section 5.01 hereof;

"Person" or "Persons" shall mean an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipality, a municipality authority or any other group or legal entity;

"Project" shall mean the planning, designing, financing, acquisition and construction of the Conyngham Sewage Collection System, by Conyngham, or by any Person located in Conyngham Township, and other related and necessary appurtenant facilities;

"Service Agreement" shall mean this document and all modifications, alterations, amendments and supplements hereto made and part hereof, which term sometimes is referred to in this document by use of such words as "hereto", "hereby", "herein", "hereof", "hereunder" or other descriptive words or phrases having similar import;

"Sewage" shall mean domestic sewage and/or industrial wastes as such terms usually and customarily are used by sanitary engineers;

"Treatment Plant" shall mean the Sewage treatment and disposal facilities constructed by the Authority as of the date hereof,

together with all appurtenant facilities and properties, and together with any additions, improvements, enlargements and/or modifications thereto from time to time acquired or constructed.

"Treatment Plant Capacity" shall mean the contractual right to discharge Sewage into the Treatment Plant, in an amount which may be amended, from time to time, under the terms hereof, calculated to be the higher of:

A. Average daily Discharge during the entire Fiscal Year in question; or

B. Average daily Discharge during the three consecutive months in which the greatest Discharge has been measured within the Fiscal Year in question; or

C. Otherwise may be prescribed by applicable laws; provided, however, that such contractual right shall not be deemed to vest any legal ownership or title to the Treatment Plant in Conyngham, which legal ownership or title shall remain exclusively in the Authority throughout the term hereof and thereafter;

"TS" shall mean total solids;

"United States" shall mean the United States of America; and

## ARTICLE II

### Construction and Operation of Sewage Collection Systems; Connection to Authority Sewage Collection System by Conyngham

SECTION 2.01. Construction and Operation of Sewage Collection Systems. Conyngham shall pay all Costs and expenses related to the acquisition, construction, operation and maintenance of the Conyngham Sewage Collection System.

SECTION 2.02. Connection to Authority Sewage Collection System. Conyngham shall pay all costs and expenses of making and maintaining continuously during the term hereof connection of the Conyngham Sewage Collection System to the Treatment Plant, at such point or points of connection as shall be mutually agreed upon by both the Authority and Conyngham.

SECTION 2.03. Cooperation; Sharing of Information. Conyngham agrees to the extent possible and economically practicable, to cooperate and share pertinent information with the Authority in facilitating the construction, maintenance and/or operation of the Sewage Collection Systems. Provided, however, that the Authority shall not be financially or otherwise responsible for the Conyngham



Sewage Collection System and Conyngham shall not be financially or otherwise responsible for the Treatment Plant or the Authority Sewage Collection System except to the extent required hereunder.

### ARTICLE III

#### Conyngham to Constitute Bulk Customer of Authority; Term of Agreement

SECTION 3.01. Conyngham to Constitute Bulk Customer of Authority. The Authority agrees to operate and maintain continuously the Treatment Plant, and any enlargements, additions, improvements and modifications thereto and to provide Conyngham, as a single, bulk customer, Sewage treatment and disposal services in the Treatment Plant throughout the term hereof, as provided for herein.

SECTION 3.02. Term of Agreement. Subject to the covenants and conditions set forth herein, the term of this Service Agreement shall be for such period of time as the Authority shall provide Conyngham with Sewage treatment and disposal service in the Treatment Plant, or until terminated by mutual written agreement of the Parties.

### ARTICLE IV

#### Right to Discharge; Treatment Plant Capacity

SECTION 4.01. Right to Discharge. In consideration of the payment by Conyngham of the charges herein provided, and in further consideration of the performance by Conyngham of the covenants and agreements herein provided, Conyngham shall have the right to discharge Sewage into the Treatment Plant as herein set forth.

SECTION 4.02. Treatment Plant Capacity. It is agreed that during the term of this Sewage Treatment Agreement, Conyngham shall have a Treatment Plant Capacity which shall not exceed 435 EDUs without the Authority's express written approval. The number of EDUs served by Conyngham shall initially be determined on the basis of the annual statements required by Conyngham under Section 6.01.

It is further covenanted and agreed that the daily discharge by each EDU served by Conyngham shall not exceed 230 GPD without the Authority's express written approval. Such discharge shall be determined in accordance with Section 4.03.

In order to assure the financial feasibility and financial integrity of the Treatment Plant, Conyngham covenants and agrees that it will not discharge into the Treatment Plant, Sewage in

excess of 230 GPD for each of such EDU, and that it shall not exceed a maximum of 435 EDUs, except as may be permitted hereunder. The Authority covenants and agrees that it will not discharge, or permit the discharge, of Sewage into the Treatment Plant which will jeopardize or compromise Conyngham's Treatment Plant Capacity.

In the event that the discharge shall exceed 230 GPD for each EDU served by Conyngham, then, in the sole discretion of the Authority, Conyngham shall be deemed to have received from the Authority an additional amount of Treatment Plant Capacity in increments of 1 EDU for each increment of discharge of 230 GPD or less. Payment of appropriate additional charges under Article V shall thereupon be due and shall be paid in full at the time payment is due for the first quarterly billing period after such additional Treatment Plant Capacity is received or deemed to have been received by Conyngham.

Nothing in this Section or elsewhere in this Service Agreement shall be interpreted to prevent the Authority from allocating to any Person, including Conyngham, Treatment Plant Capacity in excess of that set aside for Conyngham hereunder, provided that any such allocation shall not cause a violation of any requirements of a governmental agency and the terms of such allocation shall be set forth in writing and incorporated herein.

SECTION 4.03. Measurement of Flow. The volume of Discharge by Conyngham shall be determined by inspection at least monthly by the Authority of a Sewage flow meter, which will be located at the point or points of connection of the Conyngham Sewage Collection System to the Authority Sewage Collection System. Such Sewage flow meter shall be selected by the Authority, but shall be purchased and installed by the Authority as part of the Project; and shall be maintained by the Authority, the cost of which maintenance shall be reimbursed to the Authority as a separate charge hereunder. The Authority shall notify Conyngham prior to undertaking any major repairs or replacements with respect to such flow meter. At the request of the Authority, the meter shall be of a type that provides for telemetering of Discharge information to the Treatment Plant. The volume of Discharge attributable to Conyngham into the Treatment Plant shall be the total flow measured at the meter.

Metered flow shall be inspected and recorded by the Authority daily commencing upon the Completion Date, a monthly summary of which information shall be forwarded to Conyngham within ten (10) days thereafter. Conyngham may, at its option, have a representative present when such inspection and recording is conducted by the Authority. The readings set forth in said flow meter shall constitute conclusive evidence of the amount of Discharge by Conyngham into the Treatment Plant.

SECTION 4.04. Completion. Upon substantial completion of the construction of the Project, Conyngham shall deliver to the Authority a Consulting Engineers' Certificate which shall recite the fact of such substantial completion. Upon completion, payment of the charges hereunder shall begin to accrue.

SECTION 4.05. Financing Amounts Payable Hereunder. In the event that Conyngham fails to pay any amount hereunder when such amount is due, the Authority may finance such amount in any reasonable manner and upon any reasonable terms as the Authority may approve. The Authority shall be entitled to reimbursement from Conyngham for any amount borrowed, together with any interest, penalties, charges and financing costs paid in connection therewith.

SECTION 4.06. Further Upgrading of Treatment Plant. If, pursuant to any case law, statutes, regulations, rules, guidelines, permits, approvals and/or other standard or requirement of any local, state or federal agencies who have a right to control the treatment and/or disposal of Sewage, the Authority is required to further upgrade or modify the method of Sewage treatment provided by the Treatment Plant, which requirement results in Costs of acquisition or construction to be incurred by the Authority, then Conyngham shall pay a pro rata share of such reasonable Costs arising directly from such upgrading as its then total Treatment Plant Capacity bears to the total capacity of the Treatment Plant so upgraded. Conyngham shall not be required to pay Costs associated with expanding (but not upgrading) the Treatment Plant which will not result in additional Treatment Plant Capacity to Conyngham unless agreed to by it in writing, which writing shall include the terms upon which it will participate in such expansion.

SECTION 4.07. Additions to Treatment Plant.

(a) If Conyngham desires to discharge Sewage into the Treatment Plant, in excess of the Treatment Plant Capacity available to it hereunder by acquisition or otherwise, Conyngham shall notify the Authority in writing that it requests construction of additional Treatment Plant Capacity in the Treatment Plant. Within ninety (90) days of receipt of such notification, the Authority shall notify Conyngham, in writing, of its decision regarding the means and schedule of construction of additional Treatment Plant Capacity, which decision shall be in the Authority's sole discretion.

(b) If the Authority agrees to the construction of such additional Treatment Plant Capacity, it shall use its best efforts to obtain reasonable financing, if necessary, and construct the enlargements, additions, improvements or modifications to the Treatment Plant necessary to provide the total additional Treatment Plant Capacity requested. No such enlargement of the Treatment Plant shall provide additional Treatment Plant Capacity in an

amount less than that which is recommended by the Authority's Consulting Engineers as being appropriate for and consistent with the treatment configuration then existing in the Treatment Plant and site limitations. Conyngham will pay for all of the Costs and expenses associated with additional Treatment Plant Capacity received by it. Any other Person including the Authority, participating in such expansion shall share on a pro rata basis in the Costs thereof with Conyngham. Payment of such Costs shall be made in accordance with this Article.

SECTION 4.08. Additions and Upgrading. If, concurrently, a project is required to be undertaken pursuant to Section 4.06 and Section 4.07 and it becomes impossible to directly relate the Costs to either the upgrading requirement or to expansion, such Costs shall be allocated or equitably apportioned on the basis of sound and acceptable engineering and/or accounting principals.

## ARTICLE V

### Charges

SECTION 5.01. Charges. Conyngham agrees to pay to the Authority quarterly, beginning on the Completion Date, and continuing thereafter for as long as this Service Agreement is in effect, subject to the other provisions hereof, a Charge as its share of the costs for Sewage treatment services rendered by the Authority in the Treatment Plant. Said Charge shall be determined in the following manner: Conyngham shall be charged for each EDU served by Conyngham. The Charge per EDU shall be a sum equal to seventy-five (75%) percent of the EDU Charge at any given time made by the Authority to its users within the Borough of Shickshinny. On the date of execution of this agreement, the EDU Charge to Shickshinny Borough users is Two Hundred Forty (\$240.00) Dollars per annum [Sixty (\$60.00) Dollars per quarter]. Consequently, on the date of this agreement, the Charge to Conyngham for the discharge of Sewage into the Treatment Plant shall be One Hundred Eighty (\$180.00) Dollars per annum [Forty-Five (\$45.00) Dollars per quarter] for each EDU served by Conyngham.

Any change in the EDU Charge for the operation and maintenance of the Treatment Plant, made by the Authority to its users within the Borough of Shickshinny shall result in an equivalent proportionate increase or decrease in the Charge made to Conyngham by the Authority, based upon the same ratio. The Authority agrees to notify Conyngham of any change in its charges to users within the Borough of Shickshinny within thirty (30) days after such change becomes effective. Any resulting change in the Charge to Conyngham resulting therefrom will take effect with the first quarterly payment due after such notice to Conyngham.

Any change in the number of EDUs served by Conyngham shall result in an equivalent increase or decrease in the Charge per EDU made by the Authority to Conyngham, based upon the foregoing formula. Each party agrees to notify the other of any such change within thirty (30) days after such change occurs. Any resulting change in the Charge to Conyngham resulting therefrom will take effect with the first quarterly payment due after such notice.

Written records and accounts of all EDUs served by Conyngham shall be prepared and maintained by Conyngham and shall be available to the Authority upon its request.

Any major or extraordinary replacements or repairs, as certified by the Authority's Consulting Engineers, shall be shared by the Authority and Conyngham on the basis of the Treatment Plant Capacity of each at the time. If such repairs or replacements require financing by the Authority, the debt service thereon shall be shared on a pro rata basis in accordance with the Treatment Plant Capacity of each Party.

## ARTICLE VI

### Estimates and Payment of Charges

SECTION 6.01. Estimates of Charges. Within 60 days after being required in writing by the Authority prior to the completion of the Project and on or before November 1 of each Fiscal Year after the commencement of services hereunder, to assist the Authority in determining its budget and rate setting, Conyngham will prepare and submit to the Authority a Statement approved by Conyngham's Consulting Engineers showing, in reasonable detail, the number of EDUs then being served by Conyngham, which statement shall include the number of EDUs and the property addresses of each EDU. Within thirty (30) days from receipt of such statement, the Authority shall prepare and submit to Conyngham, a statement approved by the Authority's Consulting Engineers showing in reasonable detail for the next Fiscal Year: (1) the estimated amounts to be paid by Conyngham during the next Fiscal Year as its estimated charges, determined in accordance with the provisions hereof; (2) the amount, if any, to be credited against the estimated charges for the next Fiscal Year as the result of any overpayments or adjustments of payments during the current or any preceding year; (3) any additional Charge as provided for in Sections 7.05 and 7.06; and (4) the amount of any prior bill not paid, plus interest and costs pursuant to this agreement. Provided, however, for the first Fiscal Year or part thereof following commencement of services hereunder such charges shall be estimated by the Authority's Consulting Engineers.

SECTION 6.02. Payment of Charges. Conyngham agrees to pay its charges quarterly in advance on or before the fifteen day of January, April, July and October of each year, in accordance with a statement prepared by the Authority and forwarded to Conyngham.

SECTION 6.03. Reports. The Authority shall cause to be prepared and certified by an officer of the Authority, commencing after the commencement of services hereunder, an itemized report setting forth, in reasonable detail: (a) the actual EDU Charge made to Shickshinny Borough users for the preceding year; and (b) the charges paid by Conyngham for such year determined in accordance with Article 5. Such report shall be forwarded to Conyngham within thirty (30) days of receipt of annual audited financial statements of the Authority's accounts prepared by a Certified Public Accountant and required to be filed with the Department of Community Affairs under laws of the Commonwealth, together with a copy of such audited financial statements.

SECTION 6.04. Interest on Late Payments. If Conyngham does not make full payment of any Charge due on or before the specified payment date, there shall be added to the amount thereof interest at a rate equal to ten (10%) percent per annum, commencing on the first day of the month following due date.

## ARTICLE VII

### Effluent Quality Restrictions

SECTION 7.01. Uniform Standards. The Authority has adopted or will adopt uniform Sewage quality standards which will comply with the requirements of all regulatory authorities. Conyngham will refrain from discharging or permitting the discharge of Sewage from the Conyngham Sewage Collection System into the Treatment Plant that would violate any of such standards. The Authority will make no changes in said standards except upon reasonable prior written notice to Conyngham and all such standards will apply equally to both Conyngham and the Authority.

SECTION 7.02. Compelling Compliance with Standards. Conyngham shall enact and keep in full force and effect at all times during the term hereof, an ordinance, satisfactory to the Authority, prohibiting, and providing adequate penalties for, the discharge into the Conyngham Sewage Collection System of anything violating the above-mentioned Sewage quality restrictions of the Authority, and Conyngham covenants to enforce the provisions thereof when brought to its attention. Such ordinance shall also prohibit and/or regulate the discharge into Conyngham's Sewage Collection System by industries of industrial waste, as defined in the applicable industrial pretreatment regulations of the Authority. Conyngham shall not permit any discharge into the

Conyngam Sewage Collection System except in the manner and in accordance with the provisions of said ordinance, as applicable.

SECTION 7.03. Sampling Facilities. The Authority may install, maintain and operate, sampling equipment or facilities at or near the point or points that the Conyngam Sewage Collection System discharges into the Authority Sewage Collection System, and Conyngam hereby consents to collection of Sewage samples by the Authority therefrom. Additionally, the Authority may install, maintain and operate sampling, equipment or facilities at such points of discharge in the Conyngam Sewage Collection System from any user thereof whose discharge of Sewage, in the opinion of the Authority's Consulting Engineers, may be detrimental to the operation of the Treatment Plant, and to obtain samples therefrom.

SECTION 7.04. Reports of Samples. In the event that any report received by the Authority analyzing any sample, shall state, in substance, that Sewage discharged from the Conyngam Sewage Collection System or from a particular user thereof violates the quality standards and restrictions as established for the Treatment Plant by the Authority, it shall have the right to appeal such determination by requesting verification of same by future sampling. Such future samples, as herein referred to, shall be submitted both to an independent water quality lab acceptable to the Authority and to the laboratory making the original evaluation that Sewage being discharged was in violation of such standards and restrictions. If the results of analyzing the split sample or samples of the two laboratories are consistent within normal tolerances of testing procedures, then these results shall be considered final; provided, however, that no such right of appeal shall operate to stay remedial action taken by the Authority. The expense of such additional laboratory determinations shall be borne by the Authority should the determination be made that such Sewage is not in violation of the applicable quality standards, or by Conyngam if such final determination supports the findings of a violation of the above-mentioned standards and restrictions.

SECTION 7.05. Treatment of Harmful Wastes. If any Sewage discharge by Conyngam into the Treatment Plant is in violation of the Authority's standards as determined by this Article and requires special treatment or would be harmful to the Treatment Plant, then Conyngam will pay the entire Costs of providing any special treatment as a separate charge, and Conyngam on written notice of violation from the Authority shall immediately act to enforce or have enforced those quality standard ordinances or resolutions by providing or requiring pretreatment of such waste in such manner as is provided by said ordinances or resolutions, or compel disconnection from Conyngam Sewage Collection System of the property from which harmful waste is being discharged.

SECTION 7.06. Reimbursement for Damages from Improper Discharge. Conyngam shall pay the cost of any damage to the

Treatment Plant or the Authority Sewage Collection System resulting from discharge of improper Sewage from the Conyngham Sewage Collection system and all fines and penalties, if any, imposed upon the Authority due to a violation of the above-mentioned quality standards and restrictions, within 90 days after notice by the Authority accompanied by the itemized certificate of the Authority's Consulting Engineers, and shall indemnify and hold harmless the Authority with respect thereto.

SECTION 7.07. Dispute Resolution. If a dispute arises concerning a determination by the Authority's Consulting Engineers hereunder, both parties to such dispute shall appoint an Independent third Person to review the dispute within thirty (30) days of a written demand for dispute resolution issued by either party. Such third Person selected shall render a decision on the dispute within thirty (30) days of the submission of the dispute, unless otherwise extended by agreement of the parties. The decision shall be binding upon all parties. All costs and expenses of retaining such Independent third Person and any other costs incurred in presiding over any disputes arising hereunder shall be borne by the Authority, in the event the decision of the Authority's Consulting Engineers is determined to have been erroneous, or otherwise by Conyngham. If it is determined that neither party was correct in its position giving rise to the dispute, then both parties shall share in such costs equally.

## ARTICLE VIII

### Governmental Grants and Subsidies; Permits

SECTION 8.01. Applications. The Authority may, in its discretion, make applications to the Commonwealth and to the United States and their appropriate agencies, for available grants, subsidies or other payments and for all permits and approvals in respect of the construction, operation and/or maintenance of the Treatment Plant and the Authority Sewage Collection System, which amounts (if appropriate) may be applied to reduce the amounts payable by Conyngham hereunder, on an equitable and proportional basis, in accordance with the terms hereof.

SECTION 8.02. Compliance with Law and Conditions for Grants. Each party will take all such action, within its legal powers, as may be required to comply with all applicable laws, regulations and permits applicable to their respective sewage collection systems and with agreements relating to applicable Federal and Commonwealth grants and subsidies.



## ARTICLE IX

### Connections to each Sewage Collection System; Sewer Rentals or Charges Imposed by Conyngham

SECTION 9.01. Mandatory Connection Ordinance. Conyngham covenants that it will enact an ordinance satisfactory to the Authority, requiring all owners of improved property located within Conyngham which legally can be required to be connected to the Conyngham Sewage Collection System to connect therewith and providing for enforcement of such ordinance as permitted by law. Conyngham also covenants that it will keep such ordinance or a subsequent ordinance or ordinances requiring such connections in full force and effect continuously during the term hereof and to enforce the same as may be permitted by law.

SECTION 9.02. Rate Ordinance. Conyngham covenants that it will enact an ordinance or adopt a resolution imposing sewer rentals or charges upon owners of improved property which shall be connected to the Conyngham Sewage Collection System for use thereof. Conyngham also covenants to thereafter keep such resolution or ordinance or a subsequent resolution or ordinance, imposing such sewer rentals or charges in full force and effect continuously during the term hereof.

SECTION 9.03. Enforcement of Rate Ordinance. Conyngham covenants to continue to enforce any such ordinance or resolution, in effect at any particular time under Section 9.02 and to collect or cause to be collected all amounts becoming due thereunder. If any amounts becoming due thereunder shall not be paid, in accordance with provisions of such resolution or ordinance at the time in effect, Conyngham covenants to take or cause to be taken all necessary action to reduce the same to liens and to enforce or cause to be enforced payment of the liens and/or to enforce or cause to be enforced payment of such sewer rentals or charges in any other manner permitted by law.

SECTION 9.04. Sewer Rates Sufficient to Pay All Charges. Conyngham covenants that sewer rentals or charges imposed by it pursuant to Section 9.02, together with any fees, fines and/or penalties resulting from enforcement of the resolution or ordinance in effect at the time under Section 9.01, and together with any other amounts available for the purpose, shall be at least such that amounts which reasonably may be collected therefrom in each Fiscal Year following the completion Date, together with: (1) any sums received periodically by it from any Person pursuant to any agreement between it and such Person whereby Sewage of such Person shall be accepted by it for collection in the Conyngham Sewage Collection System; (2) any other sums received by it on account of operation of the Conyngham Sewage Collection System; and (3) any other money required to be deposited in its sewer revenue account

or other fund or account pursuant to provisions of an applicable agreement of lease, trust indenture, loan agreement or borrowing documents enforceable against Conyngham will be sufficient to provide funds for the following purposes:

A. Payment by Conyngham in such Fiscal Year of debt service, coverage requirements, if any, operating and maintenance expenses and other costs and expenses relating to the Conyngham Sewage Collection System; and

B. Payment by Conyngham in each Fiscal Year of all other charges payable for services rendered in connection herewith under the terms hereof.

If such collections, receipts, appropriations and deposits in any such Fiscal Year for Conyngham shall be less than the sum of requirements of subparagraphs A and B above, Conyngham covenants that it promptly will adjust or cause to be adjusted, in the manner permitted by law, the sewer rentals or charges so that amounts thereafter to be collected therefrom, together with the other collections, receipts, appropriations and deposits, as aforesaid, shall enable it to comply with requirements of this Section and to eliminate deficiencies of any prior Fiscal Year.

## ARTICLE X

### Miscellaneous

SECTION 10.01. Insurance; Repairs and Reconstruction. The Authority will insure, or cause to be insured, the Treatment Plant and the Authority Sewage Collection System with a responsible company or companies authorized and qualified to do business under laws of the Commonwealth of Pennsylvania, against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in said Commonwealth and as shall be reviewed and approved, at least annually, by the Authority's Consulting Engineers or other insurance advisor. Such insurance policies shall be nonassessable. Immediately upon the occurrence of any loss or damage to any part of said Treatment Plant or the Authority Sewage Collection System which is covered by insurance, the Authority will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specification prepared by the Authority's Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the cost of such repair, replacement or reconstruction.

SECTION 10.02. Inspection. Each party shall provide the other, from time to time, all information relevant to the proper administration of their responsibilities under this Service Agreement, or in respect to the interpretation hereof, as, and in such form and detail as, may be reasonably requested and each shall, at all reasonable times and from time to time, permit their representatives to examine and inspect their respective records and physical facilities relevant to the subject matter of this Service Agreement.

SECTION 10.03. Force Majeure. Notwithstanding any other provision of this Service Agreement, no party hereto shall be responsible in damages to the other for any failure to comply with this Service Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, breakdown of the Treatment Plant or any Sewage Collection System, or other event beyond its reasonable control. The party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with Costs thereof to be shared, if applicable, to the extent provided elsewhere herein.

SECTION 10.04. Indemnity. Each party agrees to indemnify and save harmless the other party against all costs, losses or damage on account of any injury to persons or property occurring in the performance of this Service Agreement due to the negligence of such party or its agents or employees.

SECTION 10.05. Severability. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Service Agreement shall be affected; and this Service Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

SECTION 10.06. Headings. The headings in this Service Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

SECTION 10.07. Effective Date. This Service Agreement shall become effective as of the date hereof.

SECTION 10.08. Waiver. The failure of a party hereto to insist upon strict performance of this Service Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

SECTION 10.09. Counterparts. This Service Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 10.10. Successors and Assigns. Conyngham shall not voluntarily assign this Service Agreement without the consent of

the Authority, except that Conyngham may assign its rights hereunder to any Person, inter alia, for purposes of undertaking the Project. Subject to the foregoing this Service Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

SECTION 10.11. Supersedes Prior Agreements. This Service Agreement supersedes and repeals any prior agreement, contracts, and understanding, written or oral, by or among the parties hereto with respect to the subject matter contained herein. This Service Agreement contains the entire agreement among the parties hereto, and no oral statements or representations or prior written matter not contained in this instrument shall have any force and effect.

SECTION 10.12. Modification. This Service Agreement may not be modified or amended except in a writing signed by the parties hereto.

SECTION 10.13. Pennsylvania Law. This Service Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth.

IN WITNESS WHEREOF, the parties hereto have caused this Service Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

SANITARY SEWER AUTHORITY OF THE  
BOROUGH OF SHICKSHINNY,  
Luzerne County, Pennsylvania

BY: James Bach  
Chairman

(CORPORATE SEAL)

ATTEST:

Roseann McLaughlin  
Secretary

TOWNSHIP OF CONYNGHAM,  
Luzerne County, Pennsylvania

BY: Joseph Petroski  
Chairman

(CORPORATE SEAL)

ATTEST:

Luc Remensnyder  
Secretary

## Exhibit 3

DONALD G. *K*ARPOWICH ATTORNEY-AT-LAW, P.C.

85 Drasher Road  
Drums, PA 18222

Phone: (570) 788-6647  
Fax: (570) 788-0654  
www.karpowichlaw.com

September 11, 2020

**Via Facsimile (570) 542-2412 and First Class & Certified Mail**

Conyngham Township Supervisors  
10 Pond Hill Road  
Shickshinny, PA 18655

**RE: Cancellation of Sewage Treatment Agreement dated November 18, 1992 by  
and between Sanitary Sewer Authority of the Borough of Shickshinny and the  
Township of Conyngham**

Dear Chairperson:

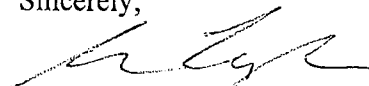
As you may be aware, my office serves as the Solicitor for the Sanitary Sewer Authority for the Borough of Shickshinny (SSABS). Please allow this letter to serve as notice that the SSABS is cancelling the Sewage Treatment Agreement, referenced above, dated November 18, 1992, between SSABS and the Township of Conyngham (Township).

Please note that for quite some time now, the SSABS has been contacting the Township regarding operations at the plant and the large amount of Influx and Infiltration coming from the Township into the treatment system. I most recently corresponded with the Township Solicitor, Vito J. DeLuca, Esquire, on July 21, 2020, regarding setting up a meeting between the SSABS and the Township's Sewer Authority. In an effort to keep maintain the relationship, the SSABS has also proposed the possibility of amending the Sewage Treatment Agreement without success. I also requested on behalf of the SSABS an Influx and Infiltration Reduction Plan from the Township in order to address the increased infiltration from the Township entering the Shickshinny Sewer treatment facility. To date, no plan has been provided.

As such, it is simply unfeasible for the SSABS to continue to operate under this agreement while the Township has continued to breach its duties under the same. This notice of cancellation takes effect immediately. The residents and rate payers in the Township will be invoiced directly for the treatment service provided by the SSABS.

If you have any questions or concerns, please do not hesitate to contact the undersigned.

Sincerely,



Sean W. Logsdon, Esquire,  
Shickshinny Sewer Authority Solicitor

SWL

cc: Shickshinny Sewer Authority