

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Pennsylvania-American Water Company

Docket Nos. R-2023-3043189 (Water)
R-2023-3043190 (Wastewater)

PETITION TO INTERVENE AND ANSWER OF THE CITY OF SCRANTON

**PETITION TO INTERVENE AND
ANSWER**

Filed on behalf of:

The City of Scranton

Counsel of Record for this Party:

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Dated: January 5, 2024

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Docket Nos. R-2023-3043189 (Water)

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PETITION TO INTERVENE AND ANSWER OF THE CITY OF SCRANTON

AND NOW, comes the City of Scranton, by its counsel and files the instant Petition to Intervene in response to the Petition of Pennsylvania American Water Company (hereinafter “PAWC” or “Water Company”) pursuant to 52 Pa. Code §§ 5.61 – 5.76. In support of its Petition, the City of Scranton represents the following:

1. The Petitioner is:

The City of Scranton, (hereinafter “Scranton” or “the City”), a Home Rule Charter Pennsylvania City, whose address is 340 N. Washington Avenue, Scranton, PA 18503.

2. The name and address of Petitioner’s attorneys are:

Jessica Eskra, Esq.
jeskra@scrantonpa.gov
Katherine “Katie” Kennedy, Esq.
kkennedy@scrantonpa.gov
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3. Counsel for Scranton consents to the service of documents by electronic mail to kkennedy@scrantonpa.gov and jeskra@scrantonpa.gov as provided in 52 Pa. Code § 1.54(b)(3).

4. Respondent utility is:

Pennsylvania-American Water Company
800 West Hershey Park Drive, P.O. Box 888

Hershey, PA 17033-0888

5. On or about November 8, 2023, the Water Company submitted a rate filing. Supplement No. 45 to Tariff Water-PA P.U.C. No. 5 and Supplement No. 47 to Tariff Wastewater PA P.U.C. No. 16 (hereinafter “the rate filing”) propose a \$203.9 million increase in water and wastewater rates based on a fully projected future test year ending June 30, 2025. (Volume I, Statement of Specific Reasons).
6. According to the Company, if the entire rate request is approved as filed, the total bill for a Scranton residential water customer would increase by almost twenty-five percent (24.9%), meaning that a customer who uses approximately 3,201 gallons of water per month would see a price increase of approximately \$70.65 to \$88.24 on a monthly bill. (Volume I, Notice of Proposed Water and Wastewater Rate Changes).
7. Scranton/Petitioner seeks permission to intervene in the Water Company’s request for a rate increase filed with the Commission, as outlined above.
8. Eligibility to intervene in Commission proceedings is governed by 52 Pa. Code § 5.72, which provides in relevant part that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.”
52 Pa. Code § 5.72 (a).
9. Section 5.72 further provides that the right or interest may be one “which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.”
52 Pa. Code. § 5.72(a)(2).
10. Additionally, Section 5.72(a)(3) provides that the right of interest may be “of such nature that participation of the petition may be in the public interest.” 52 Pa. Code. § 5.72 (a)(3).

11. Scranton has standing to intervene because the City and its residents have or will suffer a direct, immediate, and substantial injury to an interest, as a result of this proceeding. *Energy Conservation Council of Pennsylvania v. P.U.C.*, 995 A.2d 465, 476 (Pa. Commw. 2010), *citing to Tripps Park v. Pa. P.U.C.*, 415 A.2d 967 (Pa. Commw. 1980); *Parents United for Better Schools v. School District of Phila.*, 646 A.2d 689 (Pa. Commw. 1994).
12. The City of Scranton, a Home Rule Charter Pennsylvania City located in Lackawanna County, is a “person” as defined by 1 Pa.C.S. § 1991.
13. Scranton is the home of over 75,000 residents, many of whom are residential customers of the Water Company. United States Census Bureau, *QuickFacts Scranton City Pennsylvania*, <https://www.census.gov/quickfacts/fact/table/scrantoncitypennsylvania/PST045223> (Accessed on January 4, 2024)(cited for population metrics only).
14. Approximately 17.8% of Scranton’s residents are at least sixty-five years of age. *Id.*
15. Approximately 19.6% of Scranton’s residents are identified as living in poverty. *Id.*
16. Additionally, the City of Scranton, itself, is a customer of the Water Company.
17. Scranton has a significant interest in the impact that the Water Company’s proposed rate increase will have on itself and its residents. These interests are not adequately represented by other participants in this matter.
18. Scranton’s position is particularly unique in this matter in that the Scranton Sewer Authority, a municipal authority of the City of Scranton incorporated and existing pursuant to the Municipal Authorities Act, as amended, 53 Pa. Cons. Stat. Ann. §§ 5601-5623, sold its combined sewer system to the Water Company on or about March 29, 2016. A true and accurate copy of the Asset Purchase Agreement (also referred to as “the APA” or “APA”) is attached hereto as Exhibit A.
19. All wastewater customers referred to in the Asset Purchase Agreement are residents of the City of Scranton. There are no other wastewater providers operating within city limits.

20. The Asset Purchase Agreement, “APA,” provides that PAWC will gradually bring SSA’s wastewater customers’ rates into alignment with PAWC’s Rate Zone 1 rates. *Please see Exhibit A.*
21. The Asset Purchase Agreement, as described and included in paragraph seventeen, above, contains reference to and material terms in relation to a Consent Decree issued in the matter of *U.S.A. v. Scranton Sewer Authority*, Civil Action No. 3:09–cv–1873, (M.D. Pa. December 13, 2012), attached and incorporated hereto as Exhibit B.
22. The APA, among other requirements, indicates that PAWC would bring Scranton’s impacted residential consumer wastewater rates in line with the average system rates in equal increments and also contemplates a wastewater rate freeze, stating that the Water Company would not ask for an increase in rates at first blush. *Please see Exhibit A.*
23. Thus, rate increases as to Scranton’s wastewater rates are governed and should remain governed in accordance with the APA and Consent Decree due to the unique relationship and need to protect Scranton residents as contemplated in the relevant documents.
24. The Office of Consumer Advocate (“OCA”) has alleged in its Formal Complaint and Public Statement (hereinafter “Formal Complaint”) that “PAWC’s proposed shift of wastewater costs to water customers likely would not produce just and reasonable rates.” *Please see Off. of the Consumer Advoc. ’s Formal Compl. And Pub. State.*, p. 6 (Nov. 17, 2023).
25. Based upon the foregoing, Scranton does not support the position of the Office of Consumer Advocate (“OCA”) in that the OCA is seemingly seeking a result that would cause undue economic hardship specifically for Scranton residents that is also in contradiction of the APA and Consent Decree, as outlined above.
26. Scranton and its residents are located within the Water Company’s service territory and will be directly affected by the outcome of this proceeding. Particularly, this proceeding will

impact the price that Scranton and its residents pay for water and wastewater, as well as the reliability and quality of those services.

27. Scranton has preliminarily reviewed the Water Company's rate filing, and objects to the request on the grounds that the proposed rate increases are likely to result in unjust and unreasonable rates that would impose significant economic hardship on itself and its residents, including but not limited to senior resident customers.
28. In light of rampant inflation across the economy in the last several years and due to anticipated future inflation¹, the proposed rate increase will undoubtedly overburden and already financially fatigued population within Scranton.
29. Scranton also supports CAUSE-PA in averring that the Water Company's proposed changes to its low-income assistance programs "are insufficient to remediate widespread and long-term rate unaffordability that will be worsened by any approved rate increase." *Please see Pet. to Intervene and Ans. of CAUSE-PA*, p. 5 (December 4, 2023).
30. Scranton also requests that the Commission further review PAWC's low-income programming, including alternative rate mechanisms in accordance with 66 Pa. C.S. § 1330, to ensure that the programming is adequately designed to meet the needs of the communities it serves, including but not limited to Scranton's low-income and elderly populations.
31. Scranton asserts that these matters, and any future modifications presented by intervening parties, must be thoroughly reviewed and investigated to ensure that all customers are able to access safe, affordable water and wastewater services within PAWC's service territory in the City of Scranton.

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ANSWER CONTINUES ON NEXT PAGE**

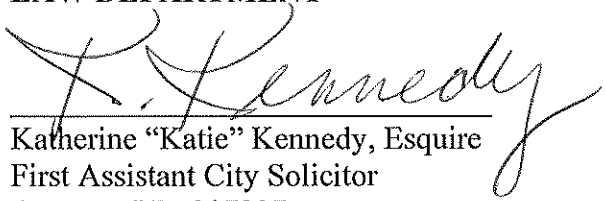
¹ A recent Consumer Affairs study, for example, found that food prices increased in American an average of 5.3% this year. However, in Pennsylvania, food prices increased by an astounding 8.2%. Consumer Affairs, *The Rising Cost of Groceries by State*, <https://www.consumeraffairs.com/finance/cost-of-groceries-by-state.html> (November 22, 2023).

WHEREFORE, the City of Scranton respectfully requests the Pennsylvania Utilities Commission to enter an order granting the City of Scranton status as an intervenor in this proceeding.

Respectfully submitted,

**CITY OF SCRANTON
LAW DEPARTMENT**

Date: January 5, 2024



Katherine "Katie" Kennedy, Esquire
First Assistant City Solicitor
Attorney I.D. 317237
340 N. Washington Ave.
Scranton, PA 18503
(570) 348-4105
COUNSEL FOR
SCRANTON POLICE DEPARTMENT

VERIFICATION

I, Paige Cognetti, Mayor for the City of Scranton, verify that the statements made in the foregoing Petition to Intervene and Answer are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904.



The Hon. Paige Cognetti, Mayor

EXHIBIT A

ASSET PURCHASE AGREEMENT

By and Between

THE SEWER AUTHORITY OF THE CITY OF SCRANTON

AS SELLER

and

PENNSYLVANIA-AMERICAN WATER COMPANY

AS BUYER

Dated as of March 29, 2016

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement"), dated as of March 29, 2016 (the "Effective Date"), is made and entered into by and between THE SEWER AUTHORITY OF THE CITY OF SCRANTON (the "Seller"), and PENNSYLVANIA-AMERICAN WATER COMPANY ("Buyer").

WITNESSETH:

WHEREAS, the Seller, acting by and through the Authority Board, owns and operates a wastewater collection and treatment system (the "System"); and

WHEREAS, Buyer owns and operates a public utility water system operating in or near the Seller's wastewater service area (the "Water System") which includes the City of Scranton (the "City") and the Borough of Dunmore (the "Borough") (the City and the Borough, together, the "Service Area"); and

WHEREAS, the Seller issued on March 3, 2015 a Request for Proposals ("RFP") regarding the management and/or sale of the System, as it explored ways to achieve operating efficiencies, to improve customer wastewater service, to keep future customer rates as low as possible and to raise capital to fund important infrastructure needs; and

WHEREAS, Buyer, among other parties, responded to the RFP and, subsequently, to Seller's request for Best and Final Offers ("BAFO"), and engaged in extensive discussions with the Seller including the Seller's response to Buyer's questions related to the RFP, the Seller's requests for clarification related to the BAFO, and Buyer's and the Seller's responses to such correspondence (collectively, the "Clarifying Correspondence"), which resulted in the Seller and Buyer entering into a Memorandum of Understanding, dated December 15, 2015, as modified on March 14, 2016 (the "MOU"), for the sale and transfer of the System; and

WHEREAS, Buyer, in reliance upon the representations, warranties and covenants of the Seller herein, desires to purchase and acquire from the Seller, and the Seller, in reliance upon the representations, warranties and covenants of Buyer herein, desires to sell, transfer, assign, convey and deliver to Buyer all of the assets of the System (other than the Excluded Assets), and in connection therewith, Buyer has agreed to assume certain ongoing obligations and liabilities of the Seller related to the operation of the System (including the Seller's obligations under the Consent Decree subject to the limitations contained herein), all on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual representations, warranties, covenants, and agreements herein contained, the receipt and sufficiency of which hereby are acknowledged, intending to be legally bound, the Parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

In addition to the capitalized terms defined elsewhere in this Agreement, the following terms, as used in this Agreement shall have the meanings set forth in this Article I:

"**Abstract Completion Date**" has the meaning specified in Section 6.01(a).

"**Abtractor**" has the meaning specified in Section 6.01(a).

"**Abtractor Search Result Chart**" has the meaning specified in Section 6.01(a).

"**Accrued PTO**" has the meaning specified in Section 7.04(c).

"**Accrued Sick Bank**" means the portion of the Accrued PTO comprising the total amount of accrued but unused paid sick days with respect to all Union Personnel as of the Closing Date.

"**Acquired Assets**" has the meaning specified in Section 2.01.

"**Acquired Authorizations**" has the meaning specified in Section 2.01(j).

"**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. 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, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning specified in the Preamble of this Agreement.

"**Allocation Schedule**" has the meaning specified in Section 3.03.

"**Amended CBA**" has the meaning specified in Section 7.04(f).

"**Amended Consent Decree**" has the meaning specified in Section 7.06(d).

"**Approved Revised CSO Control Measures Plan**" means any Revised CSO Control Measures Plan approved in accordance with Subsection XIX of the Consent Decree, or established through Dispute Resolution pursuant to Section XII of the Consent Decree.

"**Assignable Outstanding Indebtedness**" has the meaning specified in Section 7.11(a).

"**Assigned Contracts**" has the meaning specified in Section 2.01(c).

"**Assignment and Assumption Agreement**" has the meaning specified in Section 13.02(b).

"**Assumed Liabilities**" has the meaning specified in Section 2.04(a).

"**Authority Board**" has the meaning set forth in the Municipality Authorities Act of 1945 and the bylaws of the Seller.

"**Average System Rates**" means the "Rates for Rate Zone 1" contained in Buyer's Supplement No. 2 to Tariff Wastewater PA P.U.C. No. 15, 1st Revised Page No. 4 through 1st Revised Page No. 4.1 on file with the PaPUC, as amended.

"**Base Amount**" has the meaning specified in Section 3.01.

"**Borough**" has the meaning specified in the recitals to this Agreement.

"**Business Day**" means any day other than Saturday, Sunday, and any day on which commercial banks in Pennsylvania are authorized by Law to be closed.

"**Buyer**" has the meaning specified in the Preamble of this Agreement.

"**Buyer Fundamental Representations**" has the meaning specified in Section 8.01.

"**Buyer Indemnified Persons**" has the meaning specified in Section 8.02.

"**Buyer Parent**" means American Water Works Company, Inc.

"**Buyer Post-Signing Event**" has the meaning specified in Section 10.04.

"**Buyer Schedule Supplement**" has the meaning specified in Section 10.04.

"**CAGR**" has the meaning specified in Section 7.07(d).

"**CERCLA**" means the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended.

"**City**" has the meaning specified in the recitals to this Agreement.

"**City NPDES Permit**" means the National Pollutant Discharge Elimination System Permit No. PAI132203 issued by PaDEP to the City with respect to the MS4 System which became effective on November 1, 2014 and expires on October 31, 2019, including any revision or modification thereto.

"**City-Owned Real Property**" has the meaning specified in Section 6.02(d).

"**Clarifying Correspondence**" has the meaning specified in the recitals to this Agreement.

"**Closing**" means the consummation of the sale and purchase of the Acquired Assets and assumption of the Assumed Liabilities and the other transactions contemplated hereby, all in accordance with the terms and conditions of this Agreement.

"Closing Cash Balance" means the sum of (a) the aggregate amount of cash and cash equivalents in the bank accounts included in the Acquired Assets as of the Closing Effective Time *plus* (b) the lesser of (i) the aggregate amount paid by the Seller to cash-out the Accrued Sick Bank in accordance with Section 7.04(c), and (ii) \$450,000.

"Closing Cash Statement" has the meaning specified in Section 3.02(b).

"Closing Date" has the meaning specified in Section 13.01.

"Closing Effective Time" has the meaning specified in Section 13.01.

"Closing Outstanding Indebtedness Amount" has the meaning specified in Section 3.01(a).

"COBRA" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including Sections 2201 through 2208 of the Public Health Service Act and Part 6 of Subtitle B of the Employee Retirement Income Security Act of 1974, as amended.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collective Bargaining Agreement" means the Agreement between the Seller and the Union dated as of April 1, 2013 for the period April 1, 2013 to March 31, 2017, as may be amended from time to time.

"Combined Sewer Overflow" or **"CSO"** means any discharge from the Seller's Combined Sewer System at a CSO Outfall designated in the currently applicable Seller NPDES Permit.

"Combined Sewer System" means the portion of the Seller's System designed to convey municipal sewage, wastewaters (domestic, commercial, and industrial) and stormwater runoff in the same system of pipes to the Wastewater Treatment Plant.

"Combined Sewer System Assets" means the assets of the System designed and constructed to collect and convey municipal sewage (i.e., domestic, commercial and industrial) and stormwater through a single pipe-system to the Wastewater Treatment Plant or Combined Sewer Overflow structures, including (i) wastewater collection pipes, pumping stations and other assets used for wastewater collection, (ii) stormwater drains, pipes, collection basins, pumping stations and all other stormwater drainage assets used for stormwater collection, and (iii) catch basins, inlets, pipes and all other stormwater lateral facilities, in each case that connect wastewater and surface stormwater drains to the combined sewer mains that discharge to the Wastewater Treatment Plant or combined sewer overflow structures, but excluding the Municipal Separate Storm Sewer System. The term "Combined Sewer System Assets" also includes facilities constructed in accordance with Exhibit A of the Consent Decree.

"Compliance Schedule" has the meaning specified in Section 7.06(a).

"Consent Decree" means the order of the United States District Court for the Middle District of Pennsylvania dated January 31, 2013, among the EPA, PaDEP and the Seller,

including, among other requirements, the Long-Term Control Plan and Nine Minimum Controls Plan (as defined in the Consent Decree), as modified by the Notice of Non-Material Modification of Consent Decree filed December 18, 2015, and as may be further modified in accordance with the terms of this Agreement and approved in accordance with the terms of the Consent Decree.

"Consent Decree Required Information" has the meaning specified in Section 7.03(b).

"Contract" means any contract, agreement, purchase order, lease, sublease, license, sublicense, plan, indenture, loan agreement, security agreement, instrument or other document, commitment, arrangement, undertaking, practice or authorization that is binding on any Person or its property under applicable Law.

"CSO Control Measures" means the construction, control measures, actions and other activities set forth in Appendix A of the Consent Decree, including the Seller's Long-Term Control Plan, as approved by Federal and State regulatory authorities and as may be amended from time to time in accordance with the terms of the Consent Decree.

"CSO Outfall" means an outfall in the Combined Sewer System from which combined sewage and stormwater are discharged and so designated in the currently applicable Seller NPDES Permit.

"Cured" has the meaning specified in Section 6.02(a).

"Damages" means any and all losses, liabilities, obligations, damages, penalties, interest, Taxes, claims, actions, demands, causes of action, judgments, reasonable attorneys', consultants' and other professional fees, and all other reasonable costs and expenses sustained or incurred in investigating, preparing or defending or otherwise incident to any such claim, action, demand, cause of action or judgment or the enforcement of a Party's rights under Article VIII; *provided, however*, that **"Damages"** shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party in respect of a Third Party Claim.

"Easements" means all easements, rights of way, licenses, use agreements, occupancy agreements, leases and other agreements and appurtenances for and over the real property of third parties.

"Effective Date" has the meaning specified in the Preamble.

"Eligible Easement" means any Easement that is either:

(a) a Held Easement which is not subject to any Objection Notice or, if same was subject to an Objection Notice, the applicable Title Objection Items have been Cured pursuant to Section 6.02(a); or

(b) an Easement with respect to which the Seller has instituted condemnation proceedings in order to obtain the necessary right and title to such Easement, the period for making preliminary objections thereto has expired without any preliminary objections being made or, if preliminary objections were made, all such preliminary objections have been resolved and, in

any case, the only remaining issue is the fair value that will be paid to the landowner for the taking of such Easement.

"Environment" means any surface water, ground water, soil or subsurface strata, sediments or ambient air.

"Environmental Claims" means all notices of investigations, warnings, notice letters, notices of violations, Liens, orders, claims, demands, suits or administrative or judicial actions for any injunctive relief, fines, penalties, third party claims, or other claims asserting violations of Environmental Requirements or responsibility for Environmental Liabilities.

"Environmental Conditions" means the Release of Hazardous Materials or the presence of Hazardous Materials on, in, under or within any property (including the presence in the Environment), other than the presence of Hazardous Materials in locations and at concentrations that are naturally occurring.

"Environmental Liabilities" means any legal obligation or liability arising under Environmental Requirements or related to or arising out of any Environmental Condition, including those consisting of or relating to any (a) duty imposed by, breach of or noncompliance with any Environmental Requirements; (b) environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health and regulation of Hazardous Materials); (c) Remedial Action undertaken by any Person; (d) bodily injury (including illness, disability and death, and regardless of when any such bodily injury occurred, was incurred or manifested itself), property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real or personal property), or other losses or damages incurred by any other Person (including any employee or former employee of such Person); (e) any injury to, destruction of, or loss of natural resources, or costs of any natural resource damage assessments; (f) exposure of any Person to any Hazardous Materials; and (g) the presence or Release of any Hazardous Materials.

"Environmental Requirements" mean all present Laws (including common law), regulations, legally binding or otherwise enforceable requirements and Licenses and Permits relating to human health, pollution, or protection of the Environment (including ambient air, surface water, ground water, land surface or surface strata), including (i) those relating to emissions, discharges, Releases, or threatened Releases of Hazardous Materials, and (ii) those relating to the identification, generation, manufacture, processing, distribution, use, treatment, storage, disposal, release, recovery, transport or other handling of Hazardous Materials. Without limiting the foregoing, the term **"Environmental Requirements"** includes (1) CERCLA; the Superfund Amendments and Reauthorization Act, Public Law 99-499, 100 Stat. 1613; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Sections 11001-11050; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901-6992k ("RCRA"); the Safe Drinking Water Act, 42 U.S.C. Sections 300f to 300j-26; the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101-5127; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251-1387; the Oil Pollution Act of 1990, 33 U.S.C. Sections 2701--2761; the Clean Air Act, 42 U.S.C. Sections 7401-7671q; the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sections 2011 et seq.; the Low Level Radioactive Waste Policy Act, as amended, 42 U.S.C. Section 2021b et seq.; the

Occupational Safety and Health Act, 29 U.S.C. Sections 651-678, and the regulations promulgated pursuant to the above-listed federal statutes, and (2) counterpart Laws and regulations promulgated or issued by any state or local Governmental Authority.

"**EPA**" means the United States Environmental Protection Agency, or a successor Governmental Authority with substantially similar power and authority thereto.

"**Equipment and Machinery**" means (i) all equipment, tangible personal property, machinery, office furniture and equipment, fixtures, tooling, spare maintenance or replacement parts, environmental testing equipment, and vehicles, (ii) any rights to warranties applicable to the foregoing, and licenses received from manufacturers of any such item, and (iii) any related claims, credits, and rights of recovery with respect thereto.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**Escrow Account**" has the meaning specified in Section 3.01(b).

"**Escrow Agent**" means Delaware Trust Company.

"**Escrow Agreement**" means the Escrow Agreement, in substantially the form attached hereto as Exhibit C, dated as of the Closing Date, among Buyer, the Seller and the Escrow Agent.

"**Escrow Amount**" has the meaning specified in Section 3.01(b).

"**Escrow Fund**" means, at any given time, the portion of the Escrow Amount (together with any interest or other earnings thereon) then remaining in the Escrow Account.

"**Escrow Release Date**" means the date that is eighteen (18) months following the Closing Date.

"**Essential Easement**" means any Easement that is necessary for or used in connection with the use and operation of any Essential System Asset or to provide continuous and unimpeded rights of way for the Essential System Assets (including access thereto).

"**Essential System Assets**" means (a) the Waste Water Treatment Plant, (b) all pumping stations, outfalls and other "above ground" Combined Sewer System Assets and all appurtenances relating thereto, and (c) easements for all Combined Sewer System Assets which in any way relate to railroad properties and rights-of-way, and collection system mains and laterals and other lines comprising the System, wherever located, which have a diameter of twelve (12) inches or more, including those Essential System Assets at the locations identified on Schedule 6.01.

"**Estimated Closing Cash Balance**" has the meaning specified in Section 3.02(a).

"**Estimated Closing Cash Increase**" has the meaning specified in Section 3.02(a).

"**Estimated Closing Cash Reduction**" has the meaning specified in Section 3.02(a).

"Estimated Closing Cash Statement" has the meaning specified in Section 3.02(a).

"Estimated Withdrawal Liability Amount" has the meaning specified in Section 2.07(b).

"Excess Offsets and Credits" has the meaning specified in Section 7.06(e).

"Excluded Accounts Receivable" has the meaning specified in Section 2.02(l).

"Excluded Assets" has the meaning specified in Section 2.02.

"Excluded Liability" or **"Excluded Liabilities"** means any and all liabilities, debts or obligations of any nature, whether known or unknown, absolute, accrued, contingent, liquidated, unliquidated, due or to become due or otherwise and whether or not required to be reflected on a balance sheet prepared in accordance with GASB, in each case which are not Assumed Liabilities.

"Executive Officers" of the Seller are the Executive Director, the Director of Compliance, the Director of Engineering and the Chief Financial Officer.

"Files and Records" means all files and records of or relating to the Seller or the System, whether in hard copy or magnetic or other format including customer and supplier records, customer lists (both current and prospective), records of sales calls, manuals, books, files, records, engineering data, procedures, systems, instructions, drawings, blueprints, plans, designs, specifications, equipment lists, parts lists, equipment maintenance records, equipment warranty information, plant plans, specifications and drawings, sales and advertising material, computer software, and records relating to Transferred Personnel, and whether stored on-site or off-site.

"Final Order" means a Governmental Approval by a Governmental Authority as to which (a) no request for stay of the action is pending, no such stay is in effect and if any time period is permitted by statute or regulation for filing any request for such stay, such time period has passed, (b) no petition for rehearing of the action is pending and the time for filing any such petition or application has passed, (c) such Governmental Authority does not have the action under reconsideration on its own motion and (d) no appeal to a court or administrative tribunal or a request for stay by a court or administrative tribunal of the Governmental Authority's action is pending or in effect and the deadline for filing any such appeal or request for stay has passed.

"Financial Statements" has the meaning specified in Section 4.05.

"GASB" means the Government Accounting Standards Board.

"Governmental Approval" means any consent, approval, authorization, order, adjudication, award, decision, judgment, writ, decree, ruling, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority of competent jurisdiction.

"Governmental Authority" means any government, court, department, commission, board, bureau, municipality, agency or instrumentality of the United States, or of any state,

county, city or political subdivision thereof, or any foreign governmental body, including the PaPUC, the EPA, PaDEP and the Authority Board.

"Hazardous Materials" means: (a) any substance that is a "hazardous substance," "hazardous waste," "solid waste," "municipal waste," "industrial waste," "flammable material," "radioactive material," "hazardous material," "pollutant," or "contaminant" or words of similar meaning and regulatory effect under any applicable Environmental Requirements, (b) petroleum or petroleum product (including crude oil and any fraction thereof) or waste oil, (c) any natural or synthetic gas (whether in liquid or gaseous state), (d) any asbestos or polychlorinated biphenyls, (e) Mold, and (f) any mixture or solution of the foregoing, and all derivatives or synthetic substitutes of the foregoing.

"Held Easement" means, as of any particular date, each Easement that has been obtained by the Seller prior such date.

"Indemnified Party" means any Buyer Indemnified Person or Seller Indemnified Person, as applicable, entitled to indemnification pursuant to Article VIII.

"Indemnifying Party" means a Party which is obligated to indemnify an Indemnified Party pursuant to Article VIII.

"Independent Third Party" has the meaning specified in Section 7.05(b).

"Industrial Pretreatment Program" means the program for regulation and management of discharges to the System from Industrial Users as defined in 40 C.F.R. §403.3 which is sufficient to satisfy the requirements of the Amended Consent Decree (including the revised Nine Minimum Controls Plan) and the Seller NPDES Permit as transferred to Buyer, including any amendments or revisions thereto.

"Intellectual Property" means any and all of the following in any jurisdiction throughout the world: (a) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (b) copyrights, including all applications and registrations, and works of authorship, whether or not copyrightable; (c) trade secrets and confidential know-how; (d) patents and patent applications; (e) websites and internet domain name registrations; and (f) all other intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing.

"Intellectual Property Assets" has the meaning specified in Section 2.01(g).

"Knowledge", "to the Knowledge of", and phrases of similar import, means the actual knowledge, after reasonable inquiry, of (A) with respect to Seller, the Executive Officers, or (B), with respect to Buyer, Kathy L. Pape.

"Law" means any law, statute, regulation, ordinance, rule, order, judicial, administrative or regulatory decree, judgment, adjudication, consent decree, settlement agreement, governmental requirement or common law doctrine enacted, promulgated, entered into, agreed or imposed by any Governmental Authority.

"Leased Real Property" means any parcel of land, building, fixtures or other real property leased, subleased, licensed or occupied pursuant to any leasehold or other real property right or interest.

"Liability Cap" has the meaning specified in Section 8.05(c).

"Licenses and Permits" mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, adjudications, variances, waivers, privileges, approvals or other Governmental Approvals issued, granted, approved or allowed by or obtained from, or required to be obtained from, any Governmental Authority, including environmental permits, operating permits and approvals.

"Lien" means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, option, warrant, lease, sublease, right to possession, hypothecation, easement, right-of-way, encroachment, or other encumbrance, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any property.

"Long Term Control Plan" means the plan submitted and approved by EPA and PaDEP under Section V.B. of the Consent Decree.

"Material Adverse Effect" means any event, occurrence, fact, condition or change that, individually or in the aggregate, is materially adverse to (a) the business, condition (financial or otherwise), assets, liabilities or results of operations of the System, taken as a whole, or (b) the ability of the Seller to consummate the transactions contemplated hereby; *provided, however*, that for purposes of the foregoing clause (a), a "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the sewer system industry (including sewer system owners, operators and service providers); (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action by the Seller required or permitted by this Agreement or any action taken (or omitted to be taken) by the Seller with the written consent of or at the written request of Buyer; (vi) any changes in applicable Laws or accounting rules or the enforcement, implementation or interpretation thereof; (vii) any natural or man-made disaster or acts of God; or (viii) any failure, in and of itself, by the Seller to meet any internal or published projections, forecasts or revenue or earnings predictions with respect to the System (*provided* that the underlying causes of such failure shall not (subject to the other provisions of this definition) be excluded from the determination of a Material Adverse Effect), except, in the case of the foregoing clauses (i), (ii), (iii), (iv), (vi) and (vii), to the extent such event, occurrence, fact, condition or change has a materially disproportionate effect on the Seller as compared to other similar situated Persons engaged in the industry in which the Seller operates.

"Material Change" has the meaning specified in Section 7.05(h).

"Material Contracts" has the meaning specified in Section 4.18.

"Material Terms" has the meaning specified in Section 7.05(b).

"Maximum Liability Cap" has the meaning specified in Section 8.05(c).

"Missing Easements" means, as of any particular date, each Easement that is appurtenant to any Combined Sewer System Asset or necessary for access to any Combined Sewer System Asset or for the operation of any Combined Sewer System Asset (including Easements for utilities and power to any Combined Sewer System Asset) or otherwise is necessary for or used in connection with the operation of the System or to provide continuous and unimpeded rights of way for the Combined Sewer System Assets (including access thereto) that either (a) has not been obtained by the Seller prior such date or (b) if such Easement has been obtained by the Seller prior such date, such Easement is unrecorded or such Easement is not sufficient to operate the System as currently conducted.

"Mold" means any mold, fungus, bacteria, viral, or microbial matter or pathogenic organisms of a type or quantity that (a) results in or could reasonably result in a significant risk to human health or the Environment or obligations under Environmental Requirements to undertake Remedial Actions, or (b) would materially and negatively impact the value of any of the Acquired Assets.

"MOU" has the meaning specified in the recitals to this Agreement.

"Multiemployer Plan" has the meaning specified in Section 4.12(c).

"Municipal Separate Storm Sewer System" or **"MS4 System"** means the current and any future assets and facilities, built, operated or maintained, or real property (**"MS4 System Real Property"**) and Stormwater System Assets owned by the City, the Borough or the Seller, and used for the purpose of capturing, conveying and discharging stormwater separate from any sewage or wastewaters.

"Nine Minimum Controls Plan" means the plan set forth in Appendix A of the Consent Decree as may be revised and updated in accordance with the Nine Minimum Controls requirements referenced in Section V.A of the Consent Decree.

"Non-Union Personnel" means Personnel who are not members of the Union.

"Nonassignable Assets" has the meaning specified in Section 2.06(a).

"Noticed Proposal" has the meaning specified in Section 7.05(g).

"Noticed Proposal Period" has the meaning specified in Section 7.05(g).

"Objection Notice" has the meaning specified in Section 6.02(a).

"Off-Site Location" means a location other than property on which the System is located.

"Outside Date" means October 15, 2016, as may be extended pursuant to Section 14.01(f).

"Outstanding Indebtedness" means the aggregate amount of outstanding indebtedness and other obligations of the Seller (including all principal and accrued but unpaid interest, fees, indemnities, compensation, expenses and other amounts payable, and including any termination fees, prepayment penalties, redemption premium, "breakage" costs or similar payments associated with the payment, prepayment or redemption of such amounts of Outstanding Indebtedness), as of the Closing Effective Time, and all arbitrage rebate amounts and trustee or paying agent fees and expenses payable under or with respect to the following bonds, notes and other debt instruments (including any and all indentures, debentures, mortgages or other Contracts relating to any of the following): (i) Sewer Revenue Bonds, Series of 2011A, (ii) Sewer Revenue Bonds, Series of 2011B, (iii) Sewer Revenue Bonds, Series of 2014, (iv) Sewer Revenue Bonds, Series of 2015, (v) PENNVEST Promissory Note #71192, (vi) PENNVEST Promissory Note #71162, (vii) PENNVEST Promissory Note #71281, (viii) PENNVEST Promissory Note #27682, (ix) PENNVEST Promissory Note #79906, (x) PENNVEST Promissory Note #71375, , (xi) PENNVEST Promissory Note #27881, (xii) \$4,000,000 line of credit from First National Commonwealth Bank and (xiii) \$2,000,000 line of credit from First National Commonwealth Bank.

"Owned Real Property" means all land owned in fee simple, together with all buildings, structures, improvements and fixtures located thereon, and all easements, rights of way, licenses, privileges, air rights and other rights and interests appurtenant thereto.

"PaDEP" means the Pennsylvania Department of Environmental Protection.

"PaPUC" means the Pennsylvania Public Utility Commission.

"Party" means Buyer or the Seller, and the term **"Parties"** means collectively Buyer and the Seller.

"PCB Equipment" means PCB equipment as defined in 40 C.F.R. Part 761.

"Permitted Liens" means (a) Liens securing the Outstanding Indebtedness which (i) will be repaid and fully and unconditionally released, satisfied and discharged of record at the Closing or (ii) secure only that portion of the Outstanding Indebtedness that is assumed by Buyer at Closing, if any, pursuant to and in accordance with Section 3.01 and Section 7.11; (b) statutory Liens for Taxes not yet due and payable or which are being contested in good faith by appropriate procedures and for which appropriate reserves have been recorded in the Interim Financial Statements; (c) Liens in the nature of zoning restrictions, easements, rights-of-way or other restrictions of record on the use of the Real Property that, in the reasonable judgment of Buyer will not materially impair the continued use of the Real Property, the System and the Acquired Assets including the easements and rights-of-way for all wastewater lines and other facilities comprising the System, as the System and other Acquired Assets are currently being and have historically been used; (d) the Liens set forth on Schedule 1.01; and (e) mechanic's, materialman's, carrier's, repairer's and other similar Liens arising or incurred in the ordinary course of business under applicable Law or that are not yet due and payable or are being contested in good faith and by appropriate proceedings, in any case (i) for which reserves have been established on the Interim Financial Statements and (ii) that do not, and would not reasonably be expected to, individually or in the aggregate, materially and adversely affect the

value, or materially impair the continued use, of such Acquired Assets in the same or similar manner as currently being used; *provided, however*, that nothing contained in herein shall be construed as relieving the Seller of its obligation hereunder to deliver the Acquired Assets to Buyer on the Closing Date in the condition required under Article XIII of this Agreement.

"Person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, or unincorporated organization, or any Governmental Authority or other entity.

"Personnel" means the employees of the Seller, and includes Union Personnel and Non-Union Personnel.

"Policies" and **"Policy"** have the meanings specified in Section 4.17(a).

"Post-Closing Withdrawal Liability Payoff Amount" has the meaning specified in Section 2.07(d).

"Proposal" means any written agreement, offer or proposal (including a letter of intent, term sheet, form of definitive agreement or definitive agreement) for a Sale Transaction.

"Proposal Notice" has the meaning specified in Section 7.05(b).

"Purchase Price" has the meaning specified in Section 3.01.

"R&W Insurance Policy" has the meaning specified in Section 10.01.

"R&W Premium" has the meaning specified in Section 10.01.

"Rate Increase(s)" has the meaning specified in Section 7.07(a).

"RCRA" means the Resource Conservation and Recovery Act, as amended.

"Real Property" has the meaning specified in Section 4.08(a).

"Real Property Lease" has the meaning specified in Section 4.08(b).

"Regulated Asbestos Containing Material" means regulated asbestos containing material as defined by 40 C.F.R. § 61.141.

"Related Agreements" means all agreements, instruments, ordinances and other documents contemplated by or executed and delivered by Buyer or Seller pursuant to this Agreement or in connection with the transactions contemplated hereby.

"Release" means any actual or threatened spilling, leaking, pumping, pouring, injecting, emptying, discharging, emitting, escaping, leaching, dumping, disposal, or release or migration of Hazardous Materials into the Environment, including the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Materials.

"Remedial Action" means any and all actions to (a) investigate, clean up, remediate, remove, treat, contain or in any other way address any Hazardous Materials in the Environment, (b) prevent the Release or threat of Release or minimize the further Release of any Hazardous Materials so it does not migrate or endanger public health or welfare or the indoor or outdoor Environment, and (c) perform pre-remedial studies and investigations and post-remedial monitoring, maintenance and care. The term **"Remedial Action"** includes any action which constitutes (i) a "removal", "remedial action" or "response" as defined by Section 101 of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25); (ii) a "corrective action" as defined in RCRA, 42 U.S.C. § 6901 et seq.; or (iii) a "response" or "interim response" as defined in the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §6020.103.

"Representative" means, with respect to any Person, any director, officer, agent, employee, general partner, member, shareholder, advisor or other authorized representative of such Person.

"Retained Equipment and Machinery" has the meaning specified in Section 2.02(i).

"Review Period" has the meaning specified in Section 3.02(c).

"Revised CSO Control Measures Plan" means any revisions, amendments or changes to the CSO Control Measures Plan that is submitted and approved by EPA and PaDEP in accordance with the Consent Decree.

"RFP" has the meaning specified in the recitals to this Agreement.

"ROFR Sale Transaction" has the meaning specified in Section 7.05(d).

"ROFR Sale Transaction Negotiation Period" has the meaning specified in Section 7.05(d).

"Sale Proposal Review Period" has the meaning specified in Section 7.05(b).

"Sale Transaction" means any proposed sale, lease, liquidation or transfer of all or substantially all of the System or the Acquired Assets by Buyer, and including any other assets of Buyer or its Affiliates included in such proposed transaction; *provided*, that the term "Sale Transaction" excludes any sale or transfer of the equity interests, or all or substantially all the assets, of Buyer, Buyer Parent or any of their respective Affiliates.

"Schedules" means the disclosure schedules delivered by the Seller and Buyer respectively, concurrently with the execution and delivery of this Agreement, and as may be updated by a Seller Schedule Supplement or a Buyer Schedule Supplement, respectively.

"Seller" has the meaning specified in the Preamble of this Agreement.

"Seller Indemnified Persons" has the meaning specified in Section 8.03.

"Seller NPDES Permit" means the National Pollutant Discharge Elimination System Permit No. PA0026492 issued by PaDEP to the Seller with respect to the System.

"Seller Post-Signing Event" has the meaning specified in Section 9.03.

"Seller Proposal Notice" has the meaning specified in Section 7.05(c).

"Seller Schedule Supplement" has the meaning specified in Section 9.03.

"Seller Successor" has the meaning specified in Section 15.13(c).

"Seller's Benefit Obligations" have the meaning specified in Section 4.12.

"Seller's Plans" have the meaning specified in Section 4.12.

"Service Area" has the meaning specified in the recitals to this Agreement.

"Stormwater System Assets" means all assets owned by the Seller, the City or the Borough and used exclusively in the operation or maintenance of the MS4 System, including (i) drains, pipes and collection basins and all other stormwater drainage assets used exclusively for stormwater collection, conveyance and discharge; (ii) catch basins, inlets, pipes and all other stormwater lateral facilities (the **"Stormwater Lateral Facilities"**) that connect surface stormwater drains to storm conveyances which discharge to surface waters, and (iii) the City NPDES Permit. Stormwater System Assets shall not include the Combined Sewer System Assets or any other property that is jointly used for (a) the collection, transportation and treatment of stormwater or otherwise in the operation of the stormwater system and (b) the operation of the System, including the Stormwater Lateral Facilities that connect surface stormwater drains to Combined Sewer System Assets mains.

"Straddle Period" has the meaning specified in Section 7.01.

"Substantially Comparable Compensation and Benefits" means wages, health/welfare, including holidays, vacation time, sick time, bereavement benefits and any personal days, as applicable, and retirement benefits that are, on an actuarial basis, substantially comparable to the aggregate value of Seller's then current wages, health/welfare plans and retirement benefit plans for current employees as of the Closing Date; provided however that any changes to Seller's wages, health/welfare and retirement benefits shall only be as allowed for by Section 9.01.

"Supplies" means all lubricants, spare parts, fuel, chemicals, raw materials, and other supplies and inventory, and all rights to warranties received from suppliers with respect to the foregoing, and related claims, credits, and rights of recovery with respect thereto.

"System" has the meaning specified in the recitals to this Agreement.

"Target Cash" means \$38,340,626.

"Tax" or **"Taxes"** means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains,

windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"Tax Return" means any return, declaration, form, report, claim, informational return (including all Forms 1099), election, disclosure, estimate or statement required to be filed with any Governmental Authority with respect to Taxes, including any schedule or attachment thereto or amendment thereof.

"Taxing Authority" means, with respect to any Tax or Tax Return, the Governmental Authority that imposes such Tax or requires a Person to file such Tax Return and the agency (if any) charged with the collection of such Tax or the administration of such Tax Return, in each case, for such Governmental Authority.

"Threshold Amount" has the meaning specified in Section 8.05(a).

"Title Commitment" has the meaning specified in Section 6.02(a).

"Title Company" has the meaning specified in Section 6.02(a).

"Title Objection Items" has the meaning specified in Section 6.02(a).

"Title Policy" has the meaning specified in Section 2.03.

"Transaction Expense Amount" means the sum of (a) the R&W Premium, *plus* (b) the aggregate amount of Transfer Taxes for which the Seller is responsible pursuant to Section 3.04 being paid by Buyer at the Closing, if any.

"Transfer Taxes" has the meaning specified in Section 3.04.

"Transferred Personnel" has the meaning specified in Section 7.04(a).

"Transition Plan" has the meaning specified in Section 7.06(d).

"Trustees" has the meaning specified in Section 2.07(a).

"UCC Search" has the meaning specified in Section 6.03.

"Union" means Teamsters Union Local 229.

"Union Personnel" means Personnel who are members of the Union.

"Variance Adjustment" has the meaning specified in Section 7.07(d).

"WARN Act" has the meaning specified in Section 4.13(d)(i).

"Wastewater Treatment Plant" means the wastewater treatment plant owned and operated by the Seller located at Cedar Avenue and Breck Street, Scranton, PA, with a permitted

average flow capacity of 20 million gallons per day, as authorized by PaDEP Water Quality Management Part II Permit No. 3510401.

"**Water System**" has the meaning specified in the Preamble of this Agreement.

"**Withdrawal Liability**" has the meaning specified in Section 2.07(a).

"**Withdrawal Liability Escrow Account**" has the meaning specified in Section 3.01(c).

"**Withdrawal Liability Escrow Amount**" has the meaning specified in Section 2.07(b).

"**Withdrawal Liability Escrow Release Date**" has the meaning specified in Section 2.07(c).

"**Withdrawal Liability Payoff Amount**" has the meaning specified in Section 2.07(a).

Other Defined Terms	Defined in Section:
Act 11	Section 7.09(a)(x)
Accounting Referee	Section 3.02(c)(iii)
Disputed Amounts	Section 3.02(c)(iii)
DOJ	Section 7.06(c)
Excluded Intellectual Property	Section 2.02(d)
Interim Financial Statements	Section 4.05
Post-Closing Adjustment	Section 3.02(b)(ii)
Resolution Period	Section 3.02(c)(ii)
Statement of Objections	Section 3.02(c)(ii)

ARTICLE II.

TERMS OF PURCHASE AND ASSUMPTION OF LIABILITIES

Section 2.01. **Purchase and Sale of Acquired Assets.** Subject to the terms and conditions set forth in this Agreement, at the Closing, Buyer shall purchase from the Seller and the Seller shall sell, transfer, assign, convey and deliver to Buyer, free and clear of all Liens other than Permitted Liens, all of the Seller's right, title and interest in and to all assets, properties, business, goodwill and rights of the Seller of every kind and description, whether tangible or intangible, real, personal or mixed, wherever situated, in each case used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of, the operation or conduct of the System (whether or not any such assets have any value for accounting purposes or are carried or reflected on the books or financial statements of the Seller), but in all cases other than the Excluded Assets (the foregoing, collectively, the "Acquired Assets"), including:

(a) all real property and appurtenant interests, Easements, rights of way, property rights and privileges owned, licensed or leased by the Seller including the Real Property, leases or licenses or other arrangements by or between the Seller and third Persons of the Real Property or other Acquired Assets (and any guaranties or other credit enhancement in connection therewith), and fixtures;

(b) all cash and cash equivalents, including accounts receivable;

(c) subject to Section 2.06, all rights in, to and under the Contracts listed on Schedule 2.01(c) (including any Contracts which may be added to Schedule 2.01(c) by the Seller following the date hereof and prior to the Closing at the written request or with the prior written consent of Buyer in accordance with Section 2.06(c)) (collectively, the "Assigned Contracts");

(d) all Supplies;

(e) all personal property and fixed assets, including all Equipment and Machinery owned, leased or licensed or otherwise used or usable by the Seller, and all system pipes, auxiliary equipment and plant equipment, other than the Retained Equipment and Machinery;

(f) all prepaid expenses and security deposits (including letters of credit and other noncash deposits);

(g) all Intellectual Property owned, licensed or otherwise used by the Seller, other than the Excluded Intellectual Property (the "Intellectual Property Assets");

(h) all other intangible assets, including, the benefit of third party representations, warranties and guarantees, correspondence and the computer software and programs (whether proprietary or not), including the intangible assets listed on Schedule 2.01(h);

(i) subject to Section 2.02(p), all Files and Records;

(j) subject to Section 2.06, all Licenses and Permits of or held by the Seller (to the extent transferrable to Buyer under applicable Law) (the "Acquired Authorizations"), including all Licenses and Permits which are environmental permits, the Seller NPDES Permit, other operating permits and those items listed or described on Schedule 4.16 hereto;

(k) all rights to any action, suit, claim or proceeding of any nature available to or being pursued by the Seller in respect of the System or any other Acquired Asset, whether arising by way of claim, counterclaim, right of recoupment or otherwise;

(l) the Combined Sewer System Assets; and

(m) all goodwill of the System.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SELLER MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, INCLUDING ANY REPRESENTATION AS TO THE PHYSICAL CONDITION OR VALUE OF ANY OF THE ACQUIRED ASSETS OR THE SYSTEM, OR

THE FUTURE PROFITABILITY OR FUTURE EARNINGS PERFORMANCE OF THE ACQUIRED ASSETS OR THE SYSTEM OR ANY FUTURE RATEMAKING THAT MAY BE ALLOWED BY THE PAPUC FOR ANY OF THE ACQUIRED ASSETS. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.

Section 2.02. **Excluded Assets**. Notwithstanding anything herein to the contrary, the Acquired Assets shall not include the following assets, properties and rights of Seller (the "Excluded Assets"):

- (a) the Stormwater System Assets;
- (b) the Seller's telephone numbers and fax numbers;
- (c) all Contracts other than the Assigned Contracts;
- (d) all Intellectual Property set forth on Schedule 2.02(d) (the "Excluded Intellectual Property");
- (e) the corporate seals, organizational documents, minute books, Tax Returns, books of account or other records having to do with the organization of Seller, all employee-related or employee benefit-related files or records, other than personnel files of Transferred Personnel, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;
- (f) all insurance policies of Seller and rights to applicable claims and proceeds thereunder, except as otherwise provided in Section 7.13 and Section 15.04;
- (g) all Seller's Plans and trusts or other assets attributable thereto;
- (h) the assets, properties and rights specifically set forth on Schedule 2.02(h);
- (i) the Equipment and Machinery specifically set forth on Schedule 2.02(i) (the "Retained Equipment and Machinery");
- (j) the City NPDES Permit;
- (k) any unamortized debt expenses;
- (l) the accounts receivable set forth on Schedule 2.02(l) (the "Excluded Accounts Receivable"), which Schedule shall be delivered by Buyer to the Seller not less than three (3) Business Days prior to the Closing Date, and which Excluded Accounts Receivable shall be written off by the Seller concurrently with the Closing, and all Liens related thereto;
- (m) all Liens held by the Seller with respect to accounts of customers of the System which are not transferrable to Buyer under applicable Law, other than Liens relating to the Excluded Accounts Receivable;

(n) the rights which accrue or will accrue to the Seller under this Agreement and the Related Agreements;

(o) the MS4 System Real Property, including the MS4 System Real Property listed on Schedule 2.02(o); and

(p) all privileged materials, documents and records of the Seller related solely to the sale of the System, including all such privileged materials, documents and records related solely to the negotiation, execution, delivery, or performance of this Agreement.

Section 2.03. **Conveyance of Title.** At the Closing, the Seller shall (i) sell, transfer, assign, convey and deliver to Buyer good and valid title to the Acquired Assets (other than Owned Real Property, Leased Real Property and Easements), (ii) grant, bargain, sell, transfer, assign and convey to Buyer all of the Seller's right, title and interest in and to a valid fee simple estate in the Owned Real Property included in the Acquired Assets, (iii) assign, transfer and convey to Buyer all of the Seller's right, title and interest in and to a valid leasehold estate in the Leased Real Property included in the Acquired Assets, and (iv) assign, transfer and convey to Buyer all of the Seller's right, title and interest in and to any and all Easements included in the Acquired Assets, including all Easements that are necessary for or used in connection with the operation of the System or to provide continuous and unimpeded rights of way for the Combined Sewer System Assets (including access thereto), in each case free and clear of all Liens, other than Permitted Liens. The Acquired Assets shall be conveyed by special warranty deeds, bills of sale, assignments and other instruments of transfer or conveyance reasonably satisfactory to Buyer and the Title Company. Title to the Real Property shall be insurable by the Title Company, at regular rates, as a good and marketable title, free and clear of all Liens and exceptions to coverage, except for Permitted Liens and otherwise as provided for in Section 6.02(a) below, pursuant to an owner's policy of title insurance on the American Land Title Association's ("ALTA") Owner's Form 2006 (the "Title Policy").

Section 2.04. **Assumption of Liabilities.**

(a) On the terms and subject to the conditions set forth in this Agreement and excluding the Excluded Liabilities, Buyer shall assume and agrees to pay, perform and discharge when due, only the following liabilities and obligations of the Seller and no others (the "Assumed Liabilities"): (1) liabilities and obligations arising under the Consent Decree (whether arising from, related to, or based on events or circumstances occurring prior to, on or after the Closing Date, and including the Seller's obligations and covenants set forth in the Consent Decree regarding implementation of the CSO Control Measures to be performed on or after the Closing) but excluding any Environmental Liabilities arising from the non-compliance events and conditions described in Schedule 4.14, (2) in the event that Buyer and the Union have agreed prior to the Closing to enter into the Amended CBA effective as of immediately following the Closing, liabilities and obligations under the Amended CBA (*provided*, that for the avoidance of doubt, in no event shall the Assumed Liabilities include any liabilities or obligations with respect to the Accrued PTO, which shall be cashed-out and paid in full to the applicable Union Personnel by the Seller in accordance with Section 7.04(c) (and in any event shall constitute an Excluded Liability)), (3) all liabilities and obligations related to the System or the Acquired Assets to the extent arising from, related to, or based on events or circumstances occurring after

the Closing, (4) all liabilities and obligations of the Seller arising under or to be performed under the executory portions of the Assigned Contracts after the Closing; *provided, however*, that Buyer will not assume or be responsible for any liabilities or obligations that arise from the Seller's breach of or default under any Assigned Contracts on or prior to the Closing Date, all of which liabilities and obligations constitute Excluded Liabilities, and (5) in the event that Buyer elects to assume any portion of the Outstanding Indebtedness at the Closing pursuant to Section 3.01, the Seller's obligations relating to such portion of the Outstanding Indebtedness so assumed by Buyer (but only to the extent of the Outstanding Indebtedness actually assumed by Buyer).

(b) Buyer shall not assume or be liable to pay any liabilities or obligations relating to the Excluded Liabilities or any other liabilities or obligations that are not Assumed Liabilities.

Section 2.05. **Subsequent Documentation; Further Acts.** At any time and from time to time after the Closing Date, the Seller shall, upon the request of Buyer, and Buyer shall, upon the request of the Seller, at the cost of requesting Party, promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate, (a) the sale, transfer, assignment, conveyance and delivery hereunder of the Acquired Assets to Buyer, (b) the assumption by Buyer of any of the Assumed Liabilities, and (c) the vesting in Buyer of all right, title and interest in the Acquired Assets and the System as provided herein.

Section 2.06. **Certain Transfers; Assignment of Contracts.**

(a) Notwithstanding anything to the contrary in this Agreement, and subject to the provisions of this Section 2.06(a) and Section 2.06(b), to the extent that the sale, transfer, assignment, conveyance and delivery, or attempted sale, transfer, assignment, conveyance and delivery, to Buyer of any Assigned Contract or other Acquired Asset would result in a violation of applicable Law, or would require the consent, authorization, approval or waiver of any Person (other than the Parties hereto), including any Governmental Authority, and such consent, authorization, approval or waiver shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, transfer, assignment, conveyance and delivery, or an attempted sale, transfer, assignment, conveyance and delivery, thereof (any such Acquired Asset, a "Nonassignable Asset"). For a period of six (6) months following the Closing, the Seller and Buyer shall use commercially reasonable efforts (at the Seller's cost and expense), and shall cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution, novation or amendment required to sell, transfer, assign, convey and deliver any such Nonassignable Asset to Buyer; *provided, however*, that in no event shall Buyer be required to pay any consideration therefor. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, the Seller shall sell, transfer, assign, convey and deliver to Buyer the relevant Nonassignable Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration, and such Nonassignable Asset shall thereafter constitute and be deemed an "Acquired Asset" for all purposes hereunder. Any applicable sales, transfer and other similar

Taxes in connection with such sale, transfer, assignment, conveyance and delivery shall be paid by Buyer and Seller pursuant to the provisions of Section 3.04(a).

(b) Until such time as a Nonassignable Asset is transferred to Buyer pursuant to this Section 2.06, Buyer and the Seller shall cooperate in any commercially reasonable and economically feasible arrangements (such as subleasing, sublicensing or subcontracting) to provide to the Parties the economic and, to the extent permitted under applicable Law, operational equivalent of the transfer of such Nonassignable Asset to Buyer at the Closing and the performance by Buyer of its obligations with respect thereto, and to the extent that the Seller transfers and turns over the economic and beneficial rights with respect to each such Nonassignable Asset, Buyer shall, to such extent and to the extent permitted under applicable Law and the terms of any applicable Contract that constitutes a Nonassignable Asset, as agent or subcontractor for the Seller, pay, perform and discharge the liabilities and obligations of the Seller thereunder from and after the Closing Date, but only to the extent that such liabilities and obligations would constitute Assumed Liabilities if the applicable consent or approval had been obtained on or prior to the Closing Date and such Nonassignable Asset had been assigned to Buyer at Closing. To the extent permitted under applicable Law, the Seller shall, at Buyer's expense, hold in trust for and pay to Buyer promptly upon receipt thereof, such Nonassignable Asset and all income, proceeds and other monies received by the Seller with respect to such Nonassignable Asset in connection with the arrangements under this Section 2.06.

(c) If, following the date hereof and prior to the Closing, Buyer identifies any Contract to which the Seller is a party which is not set forth on Schedule 2.01(c) as of the date hereof and Buyer desires for such Contract to be included in the Acquired Assets as an Assigned Contract, and Buyer reasonably determines that such Contract is used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of, the operation or conduct of the System, Buyer shall give notice of such determination to the Seller and, unless the Seller disagrees in good faith with Buyer's determination that such Contract is used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of, the operation or conduct of the System (in which case the Seller shall give Buyer notice of such disagreement and the Parties shall work together in good faith to resolve such dispute), the Seller shall, promptly following receipt of such notice, deliver to Buyer an updated Schedule 2.01(c) reflecting the addition of such Contract, and such Contract shall thereafter constitute and be deemed an "Assigned Contract" for all purposes hereunder (including, for the avoidance of doubt, the provisions of Section 2.06(a) and Section 2.06(b) to the extent applicable to such Contract from and after the Closing).

(d) In the event that, during the twelve (12) month period following the Closing, Buyer identifies any Contract to which the Seller was a party as of the Closing and which was not set forth on Schedule 2.01(c) (as may be updated pursuant to Section 2.06(c)) and (i) Buyer desires for such Contract to be assigned to Buyer and deemed an Assigned Contract as provided in this Section 2.06(d), and (ii) Buyer reasonably determines such Contract was, prior to the Closing, used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of, the operation or conduct of the System, unless the Seller disagrees in good faith with Buyer's determination that such Contract was not, as of or prior to the Closing, used in, held for use in, or acquired or developed for use in, the System, or otherwise related to, or arising out of, the operation or conduct of the System (in which case the Seller shall give

Buyer notice of such disagreement and the Parties shall work together in good faith to resolve such dispute) and Seller has not otherwise terminated such Contract on or after Closing, the Seller shall, promptly following Buyer's written request therefor, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such other instruments of conveyance and transfer and other documents, and perform or cause to be performed such further acts, as may be reasonably required to evidence or effectuate, or more fully evidence or effectuate the assignment of such Contract to Buyer for no additional consideration, and upon such assignment, such Contract shall be deemed an "Assigned Contract" for all purposes hereunder. From the time that Buyer delivers written notice to the Seller in accordance with this Section 2.06(d) requesting that the Seller assign or cause the assignment of such Contract to Buyer until such Contract is assigned to Buyer, the provisions of Section 2.06(a) and Section 2.06(b) shall apply to such Contract as a Nonassignable Asset.

(e) For the avoidance of doubt, nothing contained in this Section 2.06 shall be applicable to the Easements or other matters with respect to the Real Property as of and following the Closing (including the transfer thereof following the Closing), which shall be governed exclusively by the terms of Article VI.

Section 2.07. **Withdrawal Liability.**

(a) Following the date hereof, and except as otherwise provided in Section 2.07(g) below, the Seller shall, and Buyer shall reasonably cooperate with the Seller to, request from the trustees of the Multiemployer Plan (the "Trustees") consent and agreement of the Trustees to the payment of an amount at Closing in full and final satisfaction of the withdrawal liability that would be assessed against the Seller for withdrawal from the Multiemployer Plan as of the Closing (the "Withdrawal Liability"). In the event that the Seller obtains the written consent of the Trustees, on terms reasonably acceptable to Buyer, to the payment at the Closing of an aggregate amount in full and final satisfaction of the Withdrawal Liability and the Seller's obligations with respect to the Multiemployer Plan (the "Withdrawal Liability Payoff Amount"), (i) the Seller shall deliver written evidence of such consent to Buyer prior to the Closing Date, which written evidence include instructions for the payment by Buyer at the Closing on behalf of the Seller, and shall otherwise be in form and substance reasonably acceptable to Buyer, and, (ii) subject to the foregoing clause (i), Buyer shall pay the Withdrawal Liability Payoff Amount on behalf of the Seller out of the proceeds of the sale at the Closing pursuant to Section 3.01(c).

(b) In the event that the Seller is unable to obtain the consent of the Trustees to the payment at Closing of the amount required to fully pay, satisfy and discharge the entire amount of the Withdrawal Liability as described in Section 2.07(a), then (i) the Seller and Buyer shall, each acting reasonably and in good faith (and taking into account the most recent estimate obtained by the Trustees of the amount required to fully and finally satisfy the Withdrawal Liability and the Seller's obligations with respect to the Multiemployer Plan as of a date reasonably proximate to the Closing Date), agree in writing prior to the Closing Date, on an estimate of the amount required to fully pay, satisfy and discharge the entire amount of the Withdrawal Liability (such amount, the "Estimated Withdrawal Liability Amount"), and (ii) Buyer shall, at the Closing, deliver to the Escrow Agent an amount equal to one hundred and ten percent (110%) of the Estimated Withdrawal Liability Amount (the "Withdrawal Liability Escrow Amount") pursuant to Section 3.01(c).

(c) The Escrow Agent shall hold the Withdrawal Liability Escrow Amount in the Withdrawal Liability Escrow Account until the date on which Buyer and the Seller, after having obtained the written consent of the Trustees to the payment of an aggregate amount in full and final satisfaction of the Withdrawal Liability and the Seller's obligations with respect to the Multiemployer Plan, on terms reasonably acceptable to Buyer, jointly instruct the Escrow Agent in writing to disburse the Withdrawal Liability Escrow Amount as provided herein (such date, the "Withdrawal Liability Escrow Release Date").

(d) On the Withdrawal Liability Escrow Release Date, the Seller and Buyer shall jointly instruct the Escrow Agent in writing to make payment by wire transfer of immediately available funds from the Withdrawal Liability Escrow Account directly to the account or accounts specified in the written consent of the Trustees, in the amount (such amount, the "Post-Closing Withdrawal Liability Payoff Amount") equal to the amount set forth in the written consent of the Trustees as described in Section 2.07(c).

(e) If the Post-Closing Withdrawal Liability Payoff Amount is an amount that exceeds the aggregate amount of funds in the Withdrawal Liability Escrow Account on the Withdrawal Liability Escrow Release Date, the Seller shall, concurrently with the disbursement by the Escrow Agent of the entire balance of the Withdrawal Liability Escrow Account, pay (by wire transfer of immediately available funds) to the account or accounts specified in the written consent of the Trustees, the amount of such excess.

(f) If the Post-Closing Withdrawal Liability Payoff Amount is an amount that is less than the aggregate amount of funds in the Withdrawal Liability Escrow Account on the Withdrawal Liability Escrow Release Date, the Seller and Buyer shall jointly instruct the Escrow Agent in writing to make payment, by wire transfer of immediately available funds from the Withdrawal Liability Escrow Account to the Seller in an amount, if any, of the balance of any funds remaining in the Withdrawal Liability Escrow Account immediately following the payment of the Post-Closing Withdrawal Liability Payoff Amount.

(g) Notwithstanding the foregoing provisions of this Section 2.07, following the Effective Date, it is agreed that the Seller and Buyer shall enter into good faith discussions surrounding the possible application of the asset sale exception pursuant to Section 4204 of ERISA as an alternative to the payment of the Withdrawal Liability as provided in the foregoing provisions of this Section 2.07, *provided* that the Parties acknowledge and agree that unless and only in the event that the Seller and Buyer agree in writing prior to the Closing Date to mutually satisfactory terms regarding the implementation of the asset sale exception pursuant to Section 4204 of ERISA in connection with the transactions contemplated by this Agreement, the foregoing provisions of this Section 2.07 shall be applicable.

ARTICLE III.

PURCHASE PRICE

Section 3.01. **Purchase Price.** The purchase price for the sale, transfer, assignment, conveyance and delivery hereunder of the Acquired Assets to Buyer hereunder shall be One Hundred Ninety Five Million Dollars (\$195,000,000) (the "Base Amount"), which, subject to

any adjustment pursuant to Section 3.02 (the "Purchase Price") shall be paid as follows at Closing:

(a) Buyer shall (i) pay in full (in the case of Outstanding Indebtedness then subject to prepayment or redemption) or make provision for the payment in full so as to effect a legal defeasance of (in the case of Outstanding Indebtedness not then subject to prepayment or redemption), on behalf of the Seller, the total amount of Outstanding Indebtedness as of the Closing Effective Time (the "Closing Outstanding Indebtedness Amount"), *less* any amount of the Outstanding Indebtedness actually assumed by Buyer pursuant to clause (ii) of this Section 3.01(a), and (ii) subject to Section 7.11 and at Buyer's sole and absolute discretion, assume such portion of the Outstanding Indebtedness (if any) as Buyer, in its sole and absolute discretion, elects to assume and which may be lawfully assigned to and assumed by Buyer pursuant to applicable Law and the terms of the Contracts governing the Outstanding Indebtedness, subject to obtaining the written release of the Seller and the City from all obligations thereunder in such form and terms reasonably acceptable to the Seller.

(b) Buyer shall pay to the Escrow Agent an amount equal to Five Million Dollars (\$5,000,000) (the "Escrow Amount"), to be held by the Escrow Agent pursuant to the terms of the Escrow Agreement in a segregated account (the "Escrow Account") for a period of up to the Escrow Release Date, to be utilized to fund any payments required to be made in connection with any claim made pursuant to Article VIII;

(c) subject to Section 2.07, Buyer shall pay (i) to the account or accounts specified in the written consent of the Trustees as described in Section 2.07, on behalf of the Seller, the Withdrawal Liability Payoff Amount, or (ii) to the Escrow Agent, an amount equal to the Withdrawal Liability Escrow Amount, to be held by the Escrow Agent pursuant to the terms of the Escrow Agreement in a segregated account (the "Withdrawal Liability Escrow Account") for a period of up to the Withdrawal Liability Escrow Release Date, to be utilized as provided in Section 2.07; and

(d) Buyer shall pay to the Seller by wire transfer of immediately available funds an amount equal to the Base Amount (i) *plus* the Estimated Closing Cash Increase (if any) or *minus* the Estimated Closing Cash Reduction (if any), (ii) *minus* the Closing Outstanding Indebtedness Amount, (iii) *minus* the Escrow Amount, (iv) *minus* (x) the Withdrawal Liability Payoff Amount or (y) the Withdrawal Liability Escrow Amount, as the case may be, and (v) *minus* the Transaction Expense Amount, to one or more accounts that the Seller designates in writing and provides to Buyer at least three (3) Business Days prior to the Closing Date.

Section 3.02. **Purchase Price Adjustment.**

(a) Estimated Closing Cash. No less than three (3) Business Days prior to the Closing Date, the Seller shall prepare a statement (the "Estimated Closing Cash Statement") setting forth the estimated aggregate amount of the Closing Cash Balance, as determined in good faith by the Seller (the "Estimated Closing Cash Balance") and prepared and calculated accordance with the manner of determination and calculation (as applicable), using the same line items, accounting principles, practices, procedures, policies and methods (with consistent classifications, judgments, elections, inclusions, exclusions and valuation and estimation

methodologies) used and applied in preparing the Interim Financial Statements, and which Estimated Closing Cash Statement shall set forth the actual amount paid by the Seller prior to the Closing to cash-out the Accrued PTO in accordance with Section 7.04(c), and the portion thereof attributable to the cash-out of the Accrued Sick Bank. In the event that the Estimated Closing Cash Balance exceeds the Target Cash, then the Purchase Price will be increased by the amount of such difference and such increase shall be paid to the Seller at Closing in the manner provided in Section 3.01 above (the amount of any such increase, the "Estimated Closing Cash Increase"). In the event that the Target Cash exceeds the Estimated Closing Cash Balance, then the Purchase Price (and the amount payable by Buyer at Closing) will be reduced by the amount of such difference (the amount of any such reduction, the "Estimated Closing Cash Reduction"). The Purchase Price, as adjusted pursuant to this Section 3.02(a), shall be subject to further adjustment following the Closing as provided in Section 3.02(b).

(b) Post-Closing Adjustments.

(i) Within ninety (90) days after the Closing Date, Buyer shall prepare and deliver to the Seller a statement (the "Closing Cash Statement") setting forth Buyer's good faith calculation of the Closing Cash Balance, prepared and calculated accordance with the manner of determination and calculation (as applicable), using the same line items, accounting principles, practices, procedures, policies and methods (with consistent classifications, judgments, elections, inclusions, exclusions and valuation and estimation methodologies) used and applied in preparing the Interim Financial Statements.

(ii) The "Post-Closing Adjustment" shall be an amount equal to the Estimated Closing Cash Balance minus the Closing Cash Balance, as finally determined pursuant to Section 3.02(c). If the Post-Closing Adjustment is a positive number, Buyer shall pay to the Seller an amount equal to the Post-Closing Adjustment in accordance with Section 3.02(c)(vi) below. If the Post-Closing Adjustment is a negative number, the Seller shall pay to Buyer an amount equal to the Post-Closing Adjustment (expressed as a positive number) in accordance with Section 3.02(c)(vi) below.

(c) Examination and Review.

(i) After receipt of the Closing Cash Statement, the Seller shall have forty-five (45) days (the "Review Period") to review the Closing Cash Statement. During the Review Period, the Seller and the Seller's Representatives shall have reasonable access (during normal business hours upon reasonable advance notice) to, including by being furnished copies of, such financial information (to the extent in Buyer's or its Representatives' possession) and documents to the extent used in or directly relating to the preparation of the Closing Cash Statement as the Seller may reasonably request for the purpose of reviewing the Closing Cash Statement and to prepare a Statement of Objections.

(ii) The Seller may object to the Closing Cash Statement by delivering to Buyer, no later than the last day of the Review Period, a written statement setting forth the Seller's objections in reasonable detail, indicating each disputed item or amount and the basis for the Seller's disagreement therewith (the "Statement of Objections");

provided that the Seller's grounds for any such objections shall be limited to fixing manifest errors and omissions, including mathematical errors or omissions, in Buyer's calculations and claims that the items in dispute were not calculated and determined in accordance with the accounting principles and procedures set forth in this Agreement. If the Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Cash Statement (as prepared by Buyer) and the Post-Closing Adjustment reflected in the Closing Cash Statement shall be deemed to have been accepted by the Seller and shall be deemed final and binding on the Parties for all purposes hereunder. If the Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and the Seller shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the Statement of Objections (the "Resolution Period"), and, if each disputed item properly included in the Statement of Objections is resolved in writing within the Resolution Period, the Post-Closing Adjustment and the Closing Cash Statement, with such changes as are agreed in writing by Buyer and the Seller during the Resolution Period, shall be final and binding upon the Parties for all purposes hereunder.

(iii) If the Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("Disputed Amounts") shall be submitted for resolution to RSM US LLP or such other regionally recognized firm of independent certified public accountants mutually agreed upon by the Parties other than the accountants of Buyer or the Seller or their Affiliates (the "Accounting Referee") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Closing Cash Statement and the Post-Closing Adjustment to reflect the resolution of such Disputed Amounts. The Accounting Referee shall only decide the specific Disputed Amount, and the scope of the disputes to be resolved by such Accounting Referee shall be limited to fixing mathematical errors and determining whether the items in dispute were calculated and determined in accordance with the accounting principles and procedures set forth in this Agreement, and the Accounting Referee's decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Cash Statement and the Statement of Objections, respectively.

(iv) All fees and costs of the Accounting Referee will be borne pro rata by Buyer and the Seller in proportion to the difference between the Accounting Referee's determination of Post-Closing Adjustment and the Seller's and Buyer's determination of such Post-Closing Adjustment. For example, if the Seller's determination differs by \$20,000 from the Accounting Referee's determination, but Buyer's determination only differs by \$5,000, the Seller will bear 20/25 (or 80%) of such fees and costs and Buyer will bear 5/25 (or 20%) of such fees and costs.

(v) The Accounting Referee shall make a determination as soon as practicable within thirty (30) days (or such other time as the Parties shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Cash Statement and the Post-Closing Adjustment shall be conclusive and binding upon the Parties.

(vi) Payment of the Post-Closing Adjustment shall (A) be due (x) within five (5) Business Days following the expiration of the Review Period (if the Seller does not timely deliver a Statement of Objections) or (y) if the Seller timely delivers a Statement of Objections, then within five (5) Business Days following the earlier to occur of (1) written agreement of the Parties with respect to the resolution of all items in dispute, or (2) final resolution by the Accounting Referee; and (B) be paid by wire transfer of immediately available funds to such accounts as are directed in writing by Buyer or the Seller, as the case may be.

(d) Any payments made pursuant to this Section 3.02 shall be treated as an adjustment to the Purchase Price by the Parties for Tax purposes, unless otherwise required by applicable Law.

(e) Any payment or distribution to customers of the Variance Adjustment made pursuant to Section 7.07 shall be treated as an adjustment to the Purchase Price by the Parties for Tax purposes and any other purposes under applicable Law, unless otherwise required by applicable Law.

Section 3.03. **Allocation of the Purchase Price.** Buyer and the Seller agree that the Purchase Price (which for purposes of this Section 3.03 shall include any liabilities required to be treated as part of the Purchase Price for U.S. federal income Tax purposes), as may be adjusted pursuant to Section 3.02, shall be allocated among the Acquired Assets in accordance with the allocation reflected in a schedule prepared by Buyer in accordance with this Section 3.03 (the "Allocation Schedule") as required by the Code. Within sixty (60) days following the final determination of the Purchase Price pursuant to Section 3.02, Buyer shall deliver to the Seller a draft of the Allocation Schedule setting forth Buyer's proposed allocation for the Seller's review. The Seller shall have the right to review and reasonably comment upon Buyer's proposed Allocation Schedule, *provided*, that (a) such proposed Allocation Schedule shall be deemed approved by the Seller and shall be final and binding upon the Parties unless the Seller provides written notice of the Seller's comments to one or more items reflected in the proposed Allocation Schedule within twenty (20) Business Days after delivery of the proposed Allocation Schedule to the Seller, and (b) upon receipt of any such written comments from the Seller with respect to the proposed Allocation Schedule, Buyer may make such adjustments or revisions to the proposed Allocation Schedule based on the Seller's comments as Buyer determines in good faith to be necessary and appropriate, *provided further*, that Buyer shall have no obligation to make any such adjustments or revisions absent manifest error. The Parties shall adhere to the Allocation Schedule (as finally determined pursuant to this Section 3.03) for all purposes relevant to the calculation of federal or state Taxes, and will report the transactions contemplated herein in a manner consistent with such Allocation Schedule. Except as required by applicable Law, Buyer and the Seller shall not take any position on their respective Tax Returns that is inconsistent with the Allocation Schedule.

Section 3.04. **Transfer Taxes; Bulk Sales.**

(a) Any and all deed stamps or transfer Taxes which may be due the Commonwealth of Pennsylvania or any political subdivision in connection with the sale, transfer, assignment, conveyance and delivery hereunder of the Acquired Assets to Buyer (collectively, "Transfer

Taxes"), shall, except as otherwise provided below, be borne seventy five percent (75%) by Buyer and twenty five percent (25%) by the Seller, and in the event that Buyer pays the full amount of any such Transfer Taxes following the Closing, the Seller shall promptly, and in any event within five (5) Business Days, following Buyer's request therefor, pay to Buyer an amount equal to twenty five percent (25%) of any such Transfer Taxes so paid by Buyer, *provided, that*, the Seller's obligation to pay such Transfer Taxes hereunder is limited to an aggregate amount of \$100,562.28 and in no event shall the Seller be required to pay any Transfer Taxes in excess of such amount. Without limiting the foregoing, in the event that Buyer is required under applicable Law, or elects in its sole discretion, to pay any Transfer Taxes at the Closing, then Buyer shall give written notice to the Seller prior to the Closing Date of such payment, which notice shall include the aggregate amount of such Transfer Taxes being paid at Closing and the portion for which the Seller is responsible (which, for the avoidance of doubt, shall be the lesser of (x) twenty five percent (25%) of such Transfer Taxes being paid at the Closing or (y) \$100,562.28), and upon Buyer's delivery of such notice, the Seller's portion of such Transfer Taxes shall be included in the Transaction Expense Amount for purposes of Section 3.01(d). The terms hereof shall survive Closing.

(b) The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Acquired Assets to Buyer.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller makes only the representations and warranties which are set forth in this Article IV. Any matter, information or item disclosed on any particular Schedule delivered by the Seller which is numbered to correspond to the representations and warranties contained in this Article IV shall be deemed to have been disclosed in response to such other representations or warranties in this Article IV in respect of which such disclosure is reasonably apparent on its face notwithstanding the omission of an appropriate cross-reference.

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, the Seller represents and warrants to Buyer, as of the date hereof and as of the Closing Date, as follows:

Section 4.01. **Existence and Power.** The Seller is a municipal authority under the Municipality Authorities Act, as enacted by the Commonwealth of Pennsylvania, as amended, and in good standing under the Laws of the Commonwealth of Pennsylvania. The Seller has all requisite power and authority to own, lease and operate the Acquired Assets and the System, to sell and transfer in the manner described herein the Acquired Assets to Buyer and to enter into, execute and deliver this Agreement and the Related Agreements and perform its obligations hereunder and thereunder.

Section 4.02. **Authorization and Validity of Agreement.** The execution and delivery of this Agreement and the Related Agreements by the Seller and the consummation by the Seller of the transactions contemplated by this Agreement and the Related Agreements have been duly

and validly authorized by all necessary action on the part of the Seller, and no other proceedings on the part of the Seller are necessary to authorize the execution, delivery and performance of this Agreement or any applicable Related Agreement. This Agreement has been duly executed and delivered by the Seller and constitutes, and the Related Agreements, when executed and delivered, will constitute legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms and conditions, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other Laws affecting the enforcement of creditors' rights generally. A true, correct and complete copy of the authorizing resolutions duly adopted by the Authority Board is attached hereto as Exhibit D, which resolutions have not been, and as of the Closing will not have been, revoked, rescinded or amended.

Section 4.03. **No Conflict or Violation.** Except as set forth on Schedule 4.03, the execution, delivery and performance of this Agreement and the Related Agreements by the Seller do not and shall not: (a) violate or conflict with, or result in a breach or constitute a default under, any provision of the charter, bylaws or other similar organizational or governing documents of the Seller, (b) violate, conflict with, result in a breach or constitute a default under any provision of, or require any Governmental Approval or any notice, filing, consent, authorization or approval under, any Licenses and Permits held by the Seller or any applicable Law of any Governmental Authority having jurisdiction over the Seller, the System or any of the Acquired Assets, or the City, the Borough, or their respective assets or properties, (c) violate, conflict with, or result in a breach of or constitute (with due notice or lapse of time or both) a default under any provision of, or require any notice, filing, consent, authorization or approval under, or give rise to any rights of termination, amendment, modification, acceleration or cancellation of or loss of any benefit under, or result in the creation of any Lien on any of the Acquired Assets or any other material assets or properties of Seller (other than Permitted Liens) pursuant to, any Contract to which the Seller is a party, or by which any of the Acquired Assets or any other material assets and properties of the Seller are bound or subject, or (d) result in the imposition of any Liens or other restrictions on the System or any of the Acquired Assets, other than Permitted Liens, except, in the case of the foregoing clauses (b), (c) and (d), where such violation, conflict, breach, default, requirement, or resulting Lien or other restriction would not reasonably be expected to have a material and adverse effect on the System or any of the Acquired Assets (or Buyer's ownership or operation thereof following the Closing) or materially impair the Seller's ability to timely consummate the transactions contemplated hereby or perform its obligations hereunder.

Section 4.04. **Consents and Approvals.** Schedule 4.04 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration or notice to or filing or registration with any Governmental Authority required to be obtained, given or made by the Seller in connection with the execution and delivery of this Agreement and each Related Agreement by the Seller and the performance by the Seller of its obligations hereunder and thereunder.

Section 4.05. **Financial Statements.**

(a) Schedule 4.05 sets forth the following financial statements of the Seller (collectively, the "Financial Statements"): (i) the audited financial statements of the Seller for

the fiscal years ended March 31, 2015, March 31, 2014 and March 31, 2013, which consist of the statements of net position and statements of revenues, expenses and changes in net position for the fiscal years then ended (the "Audited Financial Statements"), and (ii) the unaudited balance sheet as of January 31, 2016 and the related unaudited income statement for the ten-month period then ended (the "Interim Financial Statements"). Except as set forth on Schedule 4.05, the Financial Statements have been prepared and presented in accordance with the applicable standards for financial reporting of the GASB, consistently applied, and fairly present, in all material respects, the financial condition and results of operations of the Seller as of the respective dates of, and for the periods referred to in, the Financial Statements, subject in the case of the Interim Financial Statements, to the absence of footnote disclosures and normal year-end adjustments which, if presented, would not be material in amount or differ materially from those presented in the Audited Financial Statements.

(b) The Seller has established and maintains, adheres to and enforces a system of internal accounting controls which are, in all material respects, effective in providing assurance regarding the reliability of financial reporting and the preparation of financial statements (including the Financial Statements) in accordance with GASB, including policies and procedures that (i) require the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Seller and the System, (ii) provide assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GASB, and that receipts and expenditures of the Seller and the System are being made only in accordance with appropriate authorizations of management and (iii) provide assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Seller and the System.

(c) There are no liabilities, obligations, indebtedness, debts, or commitments of any nature whatsoever, whether asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, of the Seller or the System, other than liabilities (i) adequately reflected in or reserved against in the Interim Financial Statements, (ii) incurred in the ordinary course of business since the date of the Interim Financial Statements consistent with past practice and which are not, individually or in the aggregate material (in amount or otherwise), (iii) incurred under Contracts to which the Seller is a party on the Effective Date with respect to the performance by the Seller of its obligations thereunder in the ordinary course of business (other than any liabilities or obligations that arise from the Seller's breach of, or default under, any such Contracts), (iv) related to undrawn amounts under Outstanding Indebtedness or (v) disclosed in Schedule 4.05(c).

Section 4.06. **Absence of Certain Changes or Events.** Except as reflected in the Financial Statements, or as set forth on Schedule 4.06, since March 31, 2015, (x) the Seller has operated the System in the ordinary course of business consistent with past practice, and (y) there has not been any:

(a) change, event or condition (whether or not covered by insurance) that has had, or would reasonably be expected to have, a Material Adverse Effect;

(b) (i) increase in the compensation payable or to become payable to any Personnel, except for normal periodic increases in the ordinary course of business consistent with past

practice or obligations of the Seller pursuant to the terms of the Collective Bargaining Agreement, (ii) bonus, incentive compensation, service award or other like benefit granted, made or accrued, contingently or otherwise, for or to the credit of any Personnel, (iii) employee welfare, pension, retirement, profit sharing, or similar payment or arrangement made or agreed to by the Seller for any Personnel, or (iv) entry by the Seller into any employment agreement or similar Contract with any Personnel;

(c) establishment of, addition or amendment to or modification of any employee benefit plan, arrangement, or practice described in Schedules 4.12(b), (c), or (d);

(d) sale, assignment or transfer of any assets or properties of the Seller used in, or necessary or important to, the operation of the System, except for the disposal of obsolete assets in the ordinary course of business;

(e) failure to repay or discharge any material obligation or liability of the Seller;

(f) failure to operate the System in the ordinary course or to preserve the System intact;

(g) material damage, destruction or loss involving or affecting the Acquired Assets or the System, or any material interruption in use of any Acquired Assets, in either case whether or not covered by insurance;

(h) action to incur, increase or modify any indebtedness, obligations or liabilities with respect to the System or the Acquired Assets (including any Assumed Liabilities) or that subject any Acquired Assets to any Liens, other than Permitted Liens;

(i) agreements, waivers, permits, fees, charges, or other burdens of any nature imposed on the System by the Seller, the City or the Borough for the benefit of the Seller, the City or the Borough;

(j) action taken, or failure to take any action, by or on the part of the Seller, the City or the Borough which, had such action been taken or such failure occurred after the date of this Agreement, would have violated the covenants in Section 9.01; or

(k) agreement by the Seller, the City or the Borough to do any of the foregoing.

Section 4.07. **Tax Matters.** Except as set forth in Schedule 4.07, (i) the Seller has timely paid all Taxes that may have been or may be due and payable by the Seller arising from the ownership or operation of the Acquired Assets or the System; (ii) all Tax Returns required to be filed by the Seller or with respect to the System have been timely (within any applicable extension periods) filed, and all such Tax Returns are true, complete and correct in all material respects; (iii) the Seller has established reserves or accruals on the Financial Statements that are adequate for the payment of Taxes, if any, for all periods through the Closing Date; (iv) no Taxing Authority has asserted any claim against the Seller for the assessment of any additional Tax liability or initiated any action or proceeding which could result in such an assertion; and (v) the Seller has made all withholding of Taxes required to be made under all applicable Laws and

regulations, including withholding with respect to compensation paid to employees, and the amounts withheld have been properly paid over to the appropriate Taxing Authorities.

Section 4.08. **Real Property.**

(a) Schedule 4.08 contains a description of (i) each Owned Real Property included in the Acquired Assets and (ii) each Leased Real Property included in the Acquired Assets. Such Owned Real Property and such Leased Real Property, together with the Held Easements are collectively referred to herein as the "Real Property". As of the Effective Date, there are no pending condemnation proceedings relating to any of the Owned Real Property included in the Acquired Assets or any of the Leased Real Property included in the Acquired Assets, nor written threats of any condemnation proceedings with respect to such Owned Real Property or Leased Real Property. As of the Closing, there are no pending condemnation proceedings relating to any of the Real Property nor written threats of any condemnation proceedings with respect to the Real Property. To the Knowledge of the Seller, (1) as of the Effective Date, the Seller is not in violation of any Law, the Seller has not received any written notice from any Governmental Authority that it is in violation of an applicable Law with respect to any of the Owned Real Property included in the Acquired Assets or any of the Leased Real Property included in the Acquired Assets, or its interests thereunder, except for such violation that has been cured in all material respects by the Seller and for which the Seller has received confirmation of cure from the Governmental Authority, and (2) as of the Closing, the Seller is not in violation of any Law, the Seller has not received any written notice from any Governmental Authority that it is in violation of an applicable Law with respect to the Real Property or its interests thereunder, except for such violation that has been cured in all material respects by the Seller and for which the Seller has received confirmation of cure from the Governmental Authority.

(b) The Seller has valid and subsisting leasehold estate in and to each Leased Real Property included in the Acquired Assets, free and clear of all liens, other than Permitted Liens. Schedule 4.08 contains a description of each real property lease or sublease or other similar Contract under which the Seller has a leasehold or subleasehold estate or otherwise uses or occupies or has the right to use or occupy the Leased Real Property included in the Acquired Assets (each such lease, sublease or other Contract including all amendments thereto, a "Real Property Lease"). True and correct copies of each Real Property Lease has been provided by the Seller to Buyer. Neither the Seller nor, to the Knowledge of Seller, the landlord under any Real Property Lease is in default or breach of any obligations under any Real Property Lease, nor is there any condition which, with the passage of time, the giving of notice, or both, would reasonably be expected to result in a default or breach by the Seller or, to the Knowledge of Seller, the landlord of any obligations thereunder.

(c) With respect to each Held Easement, as of the Closing: (i) each such Held Easement is in appropriate form, has been duly recorded, and is sufficient for the right of way and other interests necessary for the operation of the System, or access thereto, at the locations to which it relates, (ii) each such Held Easement is free and clear of any Liens, except for any Permitted Liens, and is assignable by Seller to Buyer without consent of the owner of the land to which the Easement relates or that any such consent has been obtained, (iii) the Seller is not in breach of or in default under such Easement, (iv) no party to such Easement has given the Seller written notice of or made a claim with respect to any breach or default thereunder, and (v) to the

Knowledge of Seller, no condition currently exists and there is no condition which, with the passage of time, the giving of notice, or both, could result in a default or breach by any party (including the Seller) under or with respect to such Easement. True and correct copies of each Held Easement will be provided by Seller to Buyer prior to the Closing.

Section 4.09. **Equipment and Machinery.**

(a) All Equipment and Machinery included in the Acquired Assets that is material to the operation of the System as currently and historically operated and conducted is set forth and otherwise described on Schedule 4.09(a). Except as set forth in Schedule 4.09(a), the Seller (i) has good and marketable title, free and clear of all Liens (other than the Permitted Liens and Liens which will be fully and unconditionally released at or prior to Closing) to the Equipment and Machinery owned by the Seller, and (ii) holds good and transferable leasehold interests in or a valid license to use, all Equipment and Machinery leased or licensed by it or otherwise used by it in the operation of the System, in each case under valid and enforceable leases or other Contracts. Except as set forth on Schedule 4.09(a), the Seller is not required to obtain the approval or consent of the lessor or any other Person in connection with the assignment to Buyer of the Equipment and Machinery leased or licensed by the Seller, and such assignment will not result in any change in terms of the applicable Contract or any increased costs or tax recapture. For the avoidance of doubt, this Section 4.09(a) does not apply to any Retained Equipment and Machinery.

(b) Except for Equipment and Machinery which is obsolete and except as otherwise set forth on Schedule 4.09(a), the Equipment and Machinery and all other tangible assets and properties that are included in the Acquired Assets are in good operating condition and repair (except for ordinary wear and tear) and are usable in the ordinary course of the business and are being operated in conformity in all material respects with all applicable Laws and the terms of any Contracts to which the Seller is a party or by which such Equipment and Machinery is subject or bound.

Section 4.10. **Supplies.** All Supplies included in the Acquired Assets consist of a quality and quantity usable in the ordinary course of business, consistent with past practice. As of the Closing, the levels of Supplies included in the Acquired Assets will be consistent with the levels of Supplies historically maintained by the Seller and will be sufficient for the continued conduct and operation of the System by Buyer immediately following the Closing in substantially the same manner as currently and historically conducted and operated by the Seller.

Section 4.11. **Intellectual Property Assets.** Schedule 4.11 sets a complete and accurate list of all Intellectual Property Assets (whether owned by the Seller or licensed to the Seller by any third party) that are material to the operation of the System as currently and historically operated and conducted. All Intellectual Property Assets are owned by or licensed to the Seller free and clear of all Liens, except for Permitted Liens and Liens which will be fully and unconditionally released at or prior to Closing, and are valid, issued and enforceable, have not been canceled, and, to the Knowledge of Seller, are not the subject of any legal challenge. To the Knowledge of Seller, no facts exist that would invalidate or render unenforceable any Intellectual Property Assets. Except as disclosed on Schedule 4.11, (a) there are no licenses now outstanding or other rights granted to third parties under any Intellectual Property Assets, and (b)

the Seller is not a party to any Contract or other agreement or understanding with respect to any Intellectual Property Assets. There are no unresolved claims made, and no Person or Governmental Authority has communicated to the Seller, the threat of any such claim, that any of the Intellectual Property Assets or activities of the Seller in connection with the Intellectual Property Assets constitutes unfair competition or is in violation or infringement of any patent, trademark, trade name, service mark, trade dress, right of publicity, copyright or registration therefor, of any other Person. To the Knowledge of Seller, (x) the Intellectual Property Assets do not infringe the patent, trademark, copyright, trade secret or other proprietary right of any third party and (y) no Intellectual Property Asset is being infringed or misappropriated by any third party. All filings or recordations necessary or appropriate to protect the interests of the Seller in any Intellectual Property Assets have been duly made and are in full force and effect.

Section 4.12. **Employee Benefit Plans.**

(a) As used in this Agreement, the following terms have the meanings set forth below:

"Seller's Benefit Obligations" means all material obligations, arrangements, or practices, whether or not legally enforceable, to provide benefits, other than salary or wages to present or former directors, employees or agents, (other than obligations, arrangements and practices that are Seller's Plans), that are owed, adopted or followed by the Seller. Seller's Benefit Obligations also include consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies and fringe benefits within the meaning of Code §132.

"Seller's Plans" means each voluntary employees' beneficiary association under Section 501(c)(9) of the Code whose members include any Personnel and any employee benefit plans or any other retirement, profit sharing, stock option, stock bonus, deferred compensation (including any "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code), severance, sick leave or other material plan or arrangement providing benefits to current or former Personnel, in each case, if either currently in effect or terminated within the last six (6) years, to which the Seller is a plan sponsor or to which the Seller otherwise contributes or has contributed within the last six (6) years, or in which the Seller otherwise participates or has participated within the last six (6) years.

(b) Schedule 4.12(b) contains a true and complete list of all Seller's Plans and the Seller's Benefit Obligations. All such Seller's Plans and Seller's Benefit Obligations are in full force and effect and are in material compliance both as to form and operation, with applicable provisions of the Code, ERISA and any other applicable Laws, and with any applicable collective bargaining agreement. To Seller's Knowledge, no event has occurred which has resulted or could reasonably be expected to result in the imposition of any liability on the Seller under the Code or other applicable Law with respect to any Seller's Plans or Seller's Benefit Obligations.

(c) Except as set forth in Schedule 4.12(c), the Seller does not sponsor, maintain, contribute to, nor is it required to contribute to, any "multiemployer plan" within the meaning of Section 414(f)(1) of the Code, and has no liability of any nature, whether known or unknown,

fixed or contingent, with respect to any such multiemployer plan (the multiemployer plan set forth in Schedule 4.12(c), the “Multiemployer Plan”). Schedule 4.12(c) sets forth an estimate obtained by the trustee of the Multiemployer Plan, based on the most recent valuation of the Multiemployer Plan, of the withdrawal liability that would be assessed against the Seller for withdrawal from the Multiemployer Plan.

(d) Except as set forth on Schedule 4.12(d), the Seller does not sponsor, maintain, contribute to, nor is it required to contribute to, any medical, health, life or other welfare plan or benefits for present or future terminated or retired Personnel or their spouses or dependents, other than as required by COBRA, or any comparable state Law, and has no liability of any nature, whether known or unknown, fixed or contingent, with respect to any such post-termination welfare benefits.

(e) The Seller is and has been in compliance in all material respect with the requirements of COBRA and is not subject to any excise Tax under Code Section 4980B for the current or any prior taxable year.

(f) Except as set forth in Schedule 4.12(f), the Seller has not entered into any severance or similar arrangement with respect to any present or former Personnel that will result in any obligation (absolute or contingent) of Buyer to make any payment to any present or former Personnel following termination of employment, including the termination of employment effected by the transactions contemplated by this Agreement. The consummation of the transactions contemplated by this Agreement will not trigger any severance or other obligation of the Seller for which Buyer shall have any liability.

Section 4.13. Personnel; Labor Relations.

(a) Schedule 4.13(a) sets forth all collective bargaining agreements and relationships to which the Seller is a party, including the identification of the parties thereto and the expiration dates. Other than the collective bargaining agreements and relationships set forth in Schedule 4.13(a), there are no commitments, Contracts, agreements, arrangements or understandings (whether written or oral, formal or informal) of the Seller with respect to the Union or the Union Personnel, and the collective bargaining agreements described on Schedule 4.13(a) constitute the entire agreement between the Seller and the other parties thereto, with respect to the subject matter thereof.

(b) With respect to all Personnel:

(i) except as set forth in Schedule 4.13(b)(i), there is no labor strike, lockout, dispute, slowdown or stoppage pending or, to the Knowledge of the Seller threatened against or involving the operation of the System, nor has any such event or labor difficulty occurred within the past five (5) years;

(ii) except as set forth in Schedule 4.13(b)(ii), the Seller is in compliance in all material respects with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages, hours of work, classification of Personnel and independent contractors, and occupational safety and health;

(iii) except as set forth in Schedule 4.13(b)(iii), there is no unfair labor practice charge or complaint against the Seller with respect to the System pending or, to the Knowledge of the Seller threatened before the Pennsylvania Labor Relations Board or any other Governmental Authority;

(iv) the Seller has no present intention to terminate the employment of any Personnel due to misconduct or unsatisfactory performance and, to the Knowledge of the Seller, no event has occurred or circumstance exists with respect to any Personnel, including any event or circumstance involving misconduct (whether or not involving any actual or potential violation of Law) or other wrongful or improper acts or omissions by any Personnel, which would in any case give the Seller grounds for terminating the employment of any such Personnel; and

(v) the Seller has not received notice of any assertion or allegation of any wrongful employment action or practice, including discrimination and harassment, by any present or former Personnel or any applicant for employment with respect to the System.

(c) Except as set forth on Schedule 4.13(c), the Seller has, and as of the Closing shall have timely paid, or cause to be timely paid, the Personnel as required under its policies and/or by applicable Law for accrued but unused and unpaid vacation, sick leave and other accrued benefits as of the Closing Date.

(d) The Seller has not, in the past five (5) years, effectuated:

(i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act ("WARN Act")) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the System; or

(ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the System; nor has the System been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local Law.

(e) None of the Personnel has suffered an "employment loss" (as defined in the WARN Act) during the previous six months.

Section 4.14. **Environmental Compliance.** Except as set forth in Schedule 4.14:

(a) The System as currently operated by the Seller and all operations and activities conducted by the Seller with respect to the System are in compliance in all material respects with all applicable Environmental Requirements.

(b) The Seller has generated, used, handled, treated, stored and disposed of all Hazardous Materials in (i) compliance in all material respects with all applicable Environmental Requirements and (ii) a manner that has not given, and could not reasonably be anticipated to give, rise to Environmental Liabilities.

(c) The Seller has not received notice of any Environmental Claims related to the System that have not been fully and finally resolved, and to the Knowledge of Seller no claims of Environmental Liabilities have been threatened allegedly arising from or relating to the System that have not been fully and finally resolved.

(d) Hazardous Materials are not present at or on the System or Acquired Assets, there has been no Release of Hazardous Materials at, on or from any part of the System or the Acquired Assets, and there has been no Release of Hazardous Materials for which the Seller is responsible at any Off-Site Location, in each case in a manner that violates any Environmental Requirements or has resulted in, or could reasonably be anticipated to give rise to, Environmental Liabilities.

(e) No Lien or activity use limitation or institutional control has been recorded affecting any Acquired Assets by any Governmental Authority due to either the presence of any Hazardous Material on or off the Acquired Assets or a violation of any Environmental Requirement.

(f) There are no underground storage tanks on or at any of the Acquired Assets. Any underground storage tanks previously located at the Acquired Assets have been removed or otherwise closed, plugged and abandoned in compliance with applicable Environmental Requirements in effect at the time of such closure.

(g) There is no PCB Equipment on or at any of the Acquired Assets. Any PCB Equipment that previously existed at the Acquired Assets has been flushed of polychlorinated biphenyls or has been removed and properly disposed of, in compliance with applicable Environmental Requirements, and any remaining PCB Equipment is labeled to the extent required under applicable Environmental Requirements and being managed in compliance with applicable Environmental Requirements.

(h) No Regulated Asbestos Containing Material exists in or on the Acquired Assets in an aggregate amount that would reasonably be expected to result in an Environmental Liability; and any Regulated Asbestos Containing Material is being managed in compliance with all applicable Environmental Requirements.

(i) The Seller has delivered to Buyer (1) all material environmental site assessments or reasonable and accurate summaries thereof pertaining to the System, (2) all material compliance audits or compliance assurance reviews prepared within the previous five (5) years or reasonable and accurate summaries thereof relating to compliance with Environmental Requirements by the System, and (3) reasonable and accurate summaries of, or all material documents pertaining to, any known and unresolved Environmental Liabilities incurred in relation to the System, to the extent possessed by or under the reasonable control of the Seller.

Section 4.15. **Consent Decree Matters.**

(a) The Seller is in compliance with all terms, conditions and requirements of the Consent Decree and no claims, actions, suits, proceedings, arbitral actions or investigations are pending, or to the Knowledge of the Seller, have been threatened against the Seller with respect to the Consent Decree. The Seller has not incurred or accrued any liabilities for payment of

stipulated penalties under the terms of the Consent Decree with respect to any conditions, events, circumstances, actions or inactions prior to the date hereof or prior to the Closing (whether or not EPA or PaDEP have asserted demands for such stipulated penalties).

(b) The Seller has completed all requirements or undertaken all actions required to be performed by the Seller prior to the date hereof and prior to the Closing Date pursuant to:

(i) the Consent Decree, including all control, operation, maintenance and mitigation requirements and the implementation of the CSO Control Measures and the Approved Revised CSO Control Measures Plan;

(ii) the Compliance Schedule; and

(iii) the Acquired Authorizations.

(c) The CSO Control Measures are being implemented in accordance with the Consent Decree. All work performed by or on behalf of the Seller pursuant to the Consent Decree, including work performed by architects, design professionals, and civil, mechanical or other engineers, whether by contract or pursuant to employment with the Seller or as an agent of the Seller is being performed and has been performed in accordance with the terms and conditions of the Consent Decree and on schedule in a manner sufficient to achieve the completion of the CSO Control Measures by the dates required under the Consent Decree.

(d) As of the Effective Date and as of the Closing, (i) the Seller is in compliance in all material respects with its obligations under the Long Term Control Plan and (ii) all planning, engineering, design, procurement, financing and construction activities on all Phase A and Phase B Projects within the Long Term Control Plan are on schedule with the milestones set forth the Compliance Schedule attached as Schedule 7.06 to this Agreement.

Section 4.16. **Licenses and Permits.** Schedule 4.16 sets forth a complete and accurate list of all Licenses and Permits held by the Seller, all of which are in full force and effect and no appeals or other proceedings are pending or threatened with respect to the issuance, terms or conditions of any such Licenses and Permits. The Seller has provided to Buyer true and complete copies of all Licenses and Permits set forth on Schedule 4.16. Except as set forth on Schedule 4.16, (i) the Seller holds all Licenses and Permits which are necessary or required under applicable Law for the ownership, operation and maintenance of the System and the Acquired Assets as currently or previously operated and maintained, (ii) the Seller is, and for the past five (5) years has been, in compliance in all material respects with all terms, conditions and requirements of all Licenses and Permits held by it (whether or not set forth on Schedule 4.16) and all applicable Laws relating thereto, and (iii) the Seller has not received any written notice or other written communication from any Governmental Authority or other Person regarding (1) any actual or alleged violation or failure to comply with any such Licenses and Permits, or (2) any revocation, withdrawal, non-renewal, suspension, cancellation or termination of any such Licenses and Permits. With respect to any Licenses and Permits held by the Seller that are scheduled to expire within six (6) months following the date of this Agreement, any applications for renewal of such Licenses and Permits have been or will be duly filed by the Seller with the applicable Governmental Authority within the time frame required under applicable Law.

Section 4.17. **Insurance; Bonds.**

(a) (i) Schedule 4.17(a) lists all of the Seller's policies of liability, fire, casualty, business interruption, workers' compensation and other forms of insurance and fidelity bonds insuring the properties, assets or operations of the System or the Acquired Assets (collectively, the "Policies" and individually, a "Policy"); (ii) the Seller has provided true and complete copies of the Policies to Buyer; (iii) the Policies, with respect to their amounts and types of coverage, are reasonably adequate to protect the insured properties against the insured risks, subject to reasonable deductibles, and the risks insured against are normal and customary for the industry. and (iv) all premiums with respect to each Policy are currently paid and such policies are in full force and effect. There are no material claims by the Seller pending under any of the Policies as to which coverage has been questioned, denied or disputed by the underwriters of such Policies or in respect of which such underwriters have reserved their rights, and no notice of cancellation, termination or non-renewal has been received with respect to any Policy.

(b) Except as set forth on Schedule 4.17(b), (i) the Seller has no outstanding surety bonds or other surety arrangements issued or entered into in connection with the Acquired Assets or the System; and (ii) no surety bond is required to satisfy any contractual, statutory, or regulatory requirement applicable to the Seller with respect to the System.

Section 4.18. **Contracts and Commitments.**

(a) Schedule 4.18 lists all of the following Contracts (x) by which any of the Acquired Assets are bound or affected or (y) to which the Seller is a party or by which it is bound in connection with the System or the Acquired Assets (collectively, the "Material Contracts"):

(i) Contracts with any Personnel, consultant or other Person providing services to the Seller or with respect to the System;

(ii) Contracts which are notes, mortgages, agreements, swaps or other derivatives or commitments for the repayment or borrowing of money by the Seller, including those related to the Outstanding Indebtedness, or for a line of credit including borrowings by the Seller in the form of a guarantee of, indemnification for, or agreement to acquire any obligation of others, and all security or pledge agreements related thereto;

(iii) Contracts, including management, operating, engineering, design, or service agreements (including professional services agreements), providing for payments in excess of Ten Thousand Dollars (\$10,000) by the Seller in any twelve (12) month period;

(iv) Contracts relating to any joint venture or partnership to which the Seller is a party or is bound;

(v) Contracts containing covenants purporting to limit the freedom of Seller or any Personnel to compete in any business or in any geographic area;

(vi) Contracts relating to ongoing construction, including related to CSO Control Measures, insurance Contracts, surety bonds, management agreement, architect agreement or consultant agreement;

(vii) Contracts for any capital expenditure or leasehold improvements;

(viii) Contracts involving any resolution or settlement of any actual or threatened litigation, arbitration, claim or other dispute involving Seller, the City, the Borough or the System, and any other Person; and

(ix) Contracts, including inter-municipal agreements, between the Seller and any Governmental Authority.

(b) The Seller has provided to Buyer true and complete copies of all the foregoing Material Contracts, together with all amendments, supplements or modifications thereto, and accurate descriptions of all material terms of all oral Contracts, set forth or required to be set forth on Schedule 4.18.

(c) All of the Material Contracts are in full force and effect. Each Material Contract is a legal, valid and binding obligation enforceable against the Seller and, to the Knowledge of Seller, the other party or parties thereto, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other Laws affecting the enforcement of creditors' rights generally. The Seller is not and, to the Knowledge of Seller, no other party to any Material Contract is, in any material respect, in breach or violation of, or default under, or has delivered a notice of termination of, any Material Contract, nor does any condition exist which, with notice or lapse of time, or both, would cause the Seller, or to the Knowledge of Seller, any other party, to be in default under any Material Contract. The Seller has not received any communication from any Person that is party to a Material Contract indicating that such Person intends to (i) terminate such Material Contract, (ii) allow such Material Contract to expire without renewal, or (iii) seek an amendment or modification to such Material Contract that would increase in any material respect any amounts required to be paid by the Seller thereunder.

Section 4.19. **Compliance with Law.** Except as set forth on Schedule 4.19:

(a) the Seller is, and for the last five (5) years has been, in compliance in all material respects with all Laws applicable to Seller, the System, the Personnel and any of the Acquired Assets, and to the Knowledge of the Seller there are no factual circumstances that are likely to result in any such failure to be in compliance in any material respect;

(b) within the last five (5) years, the Seller has not received any written or, to the Knowledge of the Seller, verbal notices and, to the Knowledge of the Seller, no claims have been filed against the Seller, alleging a violation of any such Laws;

(c) to the Knowledge of Seller, neither Seller nor any Personnel is, or within the last five (5) years was, under investigation with respect to, and has not been threatened to be charged with or given notice of any violation of, any Law applicable to Seller, the System, the Personnel and any of the Acquired Assets; and

(d) except for the Consent Decree, there is no judgment, decree, injunction, rule or order of any arbitrator or Governmental Authority outstanding against the Seller, the System, the Personnel or any of the Acquired Assets.

Section 4.20. **Litigation.** Except as set forth on Schedule 4.20, (a) there are no claims, actions, suits, proceedings, arbitral actions, inquiries or investigations (whether judicial, administrative or otherwise) before or by any Governmental Authority pending or, to the Knowledge of the Seller, threatened against the Seller or with respect to the System or any of the Acquired Assets or which in any manner challenge or seek to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement, and no event has occurred, and no claim has been asserted, that could reasonably be expected to result in any such claims, actions, suits, proceedings, arbitral actions, inquiries or investigations, and (b) there are no unsatisfied judgments of any kind against the Seller with respect to the System or the Acquired Assets. All pending or threatened claims, actions, suits, proceedings, arbitral actions, inquiries or investigations against the Seller or with respect to the System or the Acquired Assets are fully covered by insurance except to the extent described in Schedule 4.20.

Section 4.21. **Title to the Acquired Assets; Sufficiency.**

(a) Except as set forth on Schedule 4.21(a), the Seller has good and marketable title to, valid leasehold interest in or valid licenses to use, all of the Acquired Assets, free and clear of all Liens, other than Permitted Liens and Liens which will be fully and unconditionally released at or prior to Closing. The use of the Acquired Assets is not subject to any Liens, other than Permitted Liens, and such use does not encroach on the property or the rights of any Person.

(b) The Acquired Assets are sufficient for, and constitute all the assets, properties, business, goodwill and rights of every kind and description, and services required for, the continued conduct and operation of the System by Buyer in substantially the same manner as currently conducted and operated by the Seller. Except for the Excluded Assets, (i) the Acquired Assets, taken as a whole, comprise all the assets, properties, business, goodwill and rights of every kind and description used or held for use in, or useful or necessary to the operation of the System as currently operated by the Seller, and (ii) there are no assets, properties, business, goodwill, rights or services used in the conduct or operation of the System that are owned by any Person other than the Seller that will not be licensed or leased to Buyer under valid, current license arrangements or leases. None of the Excluded Assets are material to the System.

Section 4.22. **Broker's and Finder's Fees.** Except as set forth on Schedule 4.22, no broker, finder, or Person is, or will be, entitled to any commission or broker's or finder's fees from any of the Parties or from any of their Affiliates by reason of any agreement or action of Seller, the City or the Borough (or any Person acting on their behalf) or otherwise in connection with this Agreement or the transactions contemplated by this Agreement. The Seller is solely responsible for the fees and expenses of any Person set forth on Schedule 4.22 and any other financial or technical advisor engaged by or on behalf of Seller, the City or the Borough.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes only the representations and warranties which are set forth in this Article V. Any matter, information or item disclosed on any particular Schedule delivered by Buyer which is numbered to correspond to the representations and warranties contained in this Article V shall be deemed to have been disclosed in response to such other representations or warranties in this Article V in respect of which such disclosure is reasonably apparent on its face notwithstanding the omission of an appropriate cross-reference.

As a material inducement to the Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to the Seller, as of the date hereof and as of the Closing Date, as follows:

Section 5.01. **Existence and Power.** Buyer is a corporation duly organized and in good standing under the Laws of the Commonwealth of Pennsylvania. Buyer has all requisite power and authority to execute and deliver this Agreement and all Related Agreements and to perform its obligations hereunder and thereunder.

Section 5.02. **Authorization and Validity of Agreement.** The execution and delivery of this Agreement and the Related Agreements and the performance of the obligations of Buyer hereunder and the consummation by Buyer of the transactions contemplated by this Agreement and the Related Agreements have been duly and validly authorized by all necessary action of Buyer, including Buyer's board of directors and the board of directors of Buyer Parent, and no other proceeding on the part of Buyer is necessary to authorize the execution, delivery and performance of this Agreement or any Related Agreement to which Buyer is or will be a party. This Agreement has been duly executed and delivered by Buyer and constitutes, and the Related Agreements, when executed and delivered, will constitute legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms and conditions, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other Laws affecting the enforcement of creditors' rights generally. A true, correct and complete copy of the authorizing resolutions duly adopted by the board of directors of Buyer is attached hereto as Exhibit E, which resolutions of the board of directors of Buyer, and the resolutions of the board of directors of Buyer Parent with respect to this Agreement and the transactions contemplated hereby, in each case have not been, and at the Closing will not have been, revoked, rescinded or amended.

Section 5.03. **No Conflict or Violation.** Except as set forth on Schedule 5.03, the execution, delivery and performance of this Agreement and the Related Agreements by Buyer do not and shall not: (a) violate or conflict with, or result in a breach or constitute a default under, any provision of the charter, bylaws or other similar organizational or governing documents of Buyer, (b) violate, conflict with, result in a breach or constitute a default under any provision of, or require any Governmental Approval or any notice, filing, consent, authorization or approval under, any Licenses and Permits held by Buyer or any applicable Law of any Governmental Authority having jurisdiction over Buyer or its assets or properties, or (c) violate, conflict with, or result in a breach of or constitute (with due notice or lapse of time or both) a default under any

provision of, or require any notice, filing, consent, authorization or approval under, or give rise to any rights of termination, amendment, modification, acceleration or cancellation of or loss of any benefit under, or result in the creation of any Lien on any assets or properties of Buyer pursuant to, any Contract to which Buyer is a party, or by which any material assets and properties of Buyer are bound or subject, or (d) result in the imposition of any Liens or other restrictions on the material assets and properties of Buyer, except, in the case of the foregoing clauses (b), (c) and (d), where such violation, conflict, breach, default, requirement, or resulting Lien or other restriction would not reasonably be expected to have a material adverse effect on Buyer, Buyer Parent and their business, or materially impair Buyer's ability to timely consummate the transactions contemplated hereby or perform its obligations hereunder.

Section 5.04. **Consents and Approvals.** Schedule 5.04 sets forth a list of each consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration or notice to or filing or registration with any Governmental Authority required to be obtained, given or made by Buyer in connection with the execution and delivery of this Agreement and each Related Agreement by Buyer and the performance by Buyer of its obligations hereunder and thereunder, except for any such consent, waiver, authorization, approval, declaration, notice, filing or registration, which if not obtained, given or made, would not reasonably be expected, individually or in the aggregate, to materially impair Buyer's ability to perform its obligations hereunder or thereunder and to consummate the transactions contemplated hereby or thereby.

Section 5.05. **Broker's and Finder's Fees.** No broker, finder, or Person is, or will be, entitled to any commission or broker's or finder's fees from any of the Parties or from any of their Affiliates by reason of any agreement or action of Buyer or its Affiliates (or any Person acting on Buyer's or Buyer's Affiliates' behalf) or otherwise in connection with this Agreement or the transactions contemplated by this Agreement.

Section 5.06. **Financial Ability.** Immediately after giving effect to the transactions contemplated hereby, Buyer will have the financial ability and will have adequate capital to carry on its business and to operate the System as a certificated public utility system regulated by the PaPUC authorized, among things, to provide wastewater utility services to retail residential, commercial and industrial customers in the Service Area, in each case assuming (i) the accuracy of the Seller's representations and warranties set forth in this Agreement (without regard to any materiality, Material Adverse Effect or other similar qualifiers contained therein) and (ii) material compliance by the Seller with the covenants required to be performed prior to the Closing set forth herein in all material respects.

Section 5.07. **Sufficient Funds.** Buyer will have at the Closing (a) sufficient immediately available funds available and the financial ability to pay the Purchase Price in accordance with Section 3.01 and any fees and expenses incurred by Buyer in connection with the transactions contemplated by this Agreement and (b) the resources and capabilities (financial and otherwise) to perform its obligations hereunder.

Section 5.08. **Independent Decision.** Except as expressly set forth in this Agreement, or any of the Related Agreements, Buyer acknowledges that (a) neither the Seller nor any other Person has made any representation or warranty, express or implied, as to the accuracy or

completeness of any information provided to Buyer regarding the System, and (b) neither the Seller nor any other Person shall have or be subject to any liability to Buyer (except in the case of fraud) or any other Person resulting from the distribution to Buyer, or Buyer's use of, any information regarding the System or Acquired Assets that has been furnished or made available to Buyer and its Representatives. Buyer acknowledges that other than as expressly set forth in this Agreement or any Related Agreement, Buyer is acquiring the Acquired Assets without any other representation or warranty, whether express or implied, including any representation or warranty as to merchantability or fitness for any particular purpose, except as otherwise expressly represented or warranted in Article IV of this Agreement; *provided, however*, that nothing in this Section 5.08 is intended to limit or modify the representations and warranties contained in Article IV.

Section 5.09. **Independent Investigation.** Buyer acknowledges that it has conducted an independent investigation of the financial condition, assets, liabilities, properties and projected capital needs and operations of the System in making its determination as to the propriety of the transactions contemplated by this Agreement and, in entering into this Agreement and Related Agreements, has relied solely on the results of its investigation and on the representations and warranties of the Seller expressly contained in Article IV of this Agreement; *provided*, that nothing in this Section 5.09 will limit, in any way, any rights that Buyer may have to bring, pursue or prosecute a claim or action grounded in or based upon fraud.

Section 5.10. **Litigation.** There are no claims, actions, suits, proceedings, arbitral actions, inquiries or investigations (whether judicial, administrative or otherwise) pending or, to the Knowledge of Buyer, threatened, against Buyer, Buyer Parent or any of their Affiliates which in any manner challenge or seek to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

ARTICLE VI.

COVENANTS REGARDING REAL PROPERTY AND EASEMENTS

Section 6.01. **Title Examination; Missing Easements.**

(a) Prior to the Closing, the Seller will, at its sole cost and expense, cause David Durkovic, or another abstractor selected by the Seller and reasonably acceptable to Buyer and the Title Company (the "Abstractor"), to perform, at the Seller's sole cost and expense, a search of the public land records of Lackawanna County, based on the Seller's and Labella Associates', Seller's outside consulting engineering company, records and plans of the System (and such other sources of information as are reasonably related thereto), by means of searching the grantee index in the names of the City, the Scranton Redevelopment Authority, Seller and the Borough, and such other searches as the Abstractor may reasonably make, to (i) identify and provide Buyer with title information on any and all recorded Held Easements, such information to be provided in the form of the chart attached hereto as Exhibit F (the "Abstractor Search Result Chart"), and (ii) together with the Seller, identify all Missing Easements. During such process, as the Abstractor provides written search results to Seller (including updated versions of the Abstractor Search Result Chart), the Seller will promptly provide the same to Buyer for its review, and, without limiting the foregoing, the Seller shall, or shall cause the Abstractor to, provide Buyer

with periodic updates (which shall occur no less frequently than bi-weekly) on the status of the activities set forth in the previous sentence.

(b) In the event that during the process of Abstractor's review and investigation of the Lackawanna County land records, Seller determines, based on the Abstractor's investigation, that there is a Missing Easement, the Seller shall take any and all actions (including the use of its power of condemnation) to obtain any such Missing Easements so that the same may be sold, assigned, transferred and conveyed to Buyer at the Closing pursuant to the terms and conditions of this Agreement. All costs and expenses incurred in connection with obtaining each Missing Easement (including any consideration payable to the landowner in connection with condemnation, in lieu of condemnation or otherwise to obtain Missing Easements) shall be paid by the Seller. In the event Seller has not obtained all Missing Easements by the date that is sixty (60) days after the date that Abstractor has completed his review of the County land records and delivered the last results of the same to Seller (the "Abstract Completion Date"), then, no later than thirty (30) days after the Abstract Completion Date (but in any event no later than thirty (30) days prior to the Closing), the Seller shall commence and file in the Court of Common Pleas, Lackawanna County, a condemnation or eminent domain proceeding to obtain any and all such Missing Easements. For the purposes of clarity, upon obtaining each Missing Easement (including upon the final resolution of a condemnation proceeding), each Missing Easement that has been acquired or obtained by the Seller shall be considered a Held Easement.

(c) The Seller shall take any and all actions to ensure that, as of the Closing, (i) all Essential Easements are Eligible Easements and (ii) no more than ten (10) other Easements (whether Held Easements or Missing Easements) that are appurtenant to any Combined Sewer System Asset or necessary for access to any Combined Sewer System Asset or for the operation of any Combined Sewer System Asset (including Easements for utilities and power to any Combined Sewer System Asset) or otherwise are necessary for or used in connection with the operation of the System or to provide continuous and unimpeded rights of way for the Combined Sewer System Assets (including access thereto) are not Eligible Easements.

(d) With respect to any Easement that is described in clause (b) of the definition of Eligible Assets that is conveyed to Buyer at the Closing, the Seller shall complete the condemnation proceedings with respect to such Easement at its sole cost and expense following the Closing and pay the fair value to the landowner for the taking of such Easement.

Section 6.02. **Objections to Title; Conveyance by the City.**

(a) Notice of Title Objections. With respect to all Real Property including any title information provided by the Abstractor with respect to any Held Easements, Buyer shall have the right to obtain, at its sole cost and expense, one or more commitments for an owner's policy or policies of title insurance on ALTA's Owner's Form 2006 (each, a "Title Commitment"), issued by a title insurance company selected by Buyer and licensed by the Commonwealth of Pennsylvania (the "Title Company") covering any such Real Property. Within thirty (30) days of Buyer's receipt from the Title Company of any such Title Commitment, Buyer shall deliver to the Seller a complete copy of such Title Commitment and copies of any and all exception documents listed in the same, each as received from the Title Company, along with Buyer's written notice to the Seller of any of the exceptions to title set forth on Schedule B of the Title

Commitment to which Buyer objects (such written notice of Buyer being referred to as the "Objection Notice") provided such exceptions (i) are not Permitted Liens, (ii) are not Schedule B-I exceptions to be satisfied by Buyer prior to Closing, (iii) being matters of record and set forth in the Title Commitment, do not adversely restrict or prevent the use of the Real Property in the operation of the System as currently operated, and (iv) are not the Title Company's pre-printed standard "survey", "unrecorded easement" or "discrepancy in boundary line" exceptions do not adversely restrict or prevent the use of the Real Property in the operation of the System as currently operated (such exceptions objected to in the Objection Notice, provided the same are not any as described in clauses (i) through and including (iv) as aforesaid, being referred to as the "Title Objection Items"). Buyer acknowledges and agrees that for purposes of any Real Property Lease, the term Permitted Lien shall also include (v) any Lien which was created or suffered to exist by the lessor, or any predecessor in title to such lessor, encumbering the title to any real property which is subject to a Real Property Lease. In the event that Buyer provides the Seller with an Objection Notice, the Seller shall use commercially reasonable efforts to have all of the Title Objection Items cured, satisfied or released of record, or insured over, by the Title Company (individually, "Cure" and collectively, "Cured") prior to or as of the Closing. At or prior to the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing that Seller has Cured all such Title Objection Items. For avoidance of doubt, Buyer acknowledges that no item listed in clauses (i) through and including (v) aforesaid, may be objected to by Buyer as a Title Objection Item.

(b) Liens. Without limiting the Seller's obligations pursuant to Section 6.02(a) above, prior to or as of the Closing, the Seller shall be obligated, at its sole cost and expense, to Cure any Lien encumbering the Real Property which can be Cured by the payment of money (other than Permitted Liens).

(c) Title Endorsements/Survey. Any endorsements required by Buyer or any mortgagee of Buyer to Buyer's title insurance policy, except for available endorsements necessary to Cure any Title Objection Items, shall be paid for solely by Buyer. In the event any survey is required by Buyer or its mortgagee, either as a condition to any such endorsement or otherwise, the same shall be obtained solely at Buyer's cost and expense. In the event Buyer obtains a survey of any or all of the Real Property and desires the deed to contain the legal description based on such survey, if the same is not identical to the legal description contained in the Seller's deed of record, the Seller shall not be obligated to include the same in the deed to Buyer unless the survey is certified to the Seller and such description is included in the deed on a "quitclaim" basis only and without warranty of title, so long as such title is insurable by the Title Company.

(d) Conveyance by the City. With respect to the parcels of Real Property described on Schedule 4.08 as being owned by the City as of the Effective Date (such parcels of Real Property, the "City-Owned Real Property"), following the Effective Date the Seller shall take any and all action necessary to cause the conveyance by the City to the Seller of such City-Owned Real Property and to ensure that, as of the Closing, such City-Owned Real Property constitutes Owned Real Property of the Seller included in the Acquired Assets and with respect to which the Seller holds a valid fee simple estate capable of being conveyed to Buyer at Closing pursuant to Section 2.03(ii).

Section 6.03. **UCC Search; Releases.** Not later than sixty (60) days after the Effective Date, Buyer shall obtain, at its sole cost and expense, a Uniform Commercial Code search against the Seller covering any of the personal property or fixtures included among the Acquired Assets from the Office of the Secretary of the Commonwealth of Pennsylvania and the Recorder of Lackawanna County, Pennsylvania (the "UCC Search"). On or prior to the Closing Date, the Seller shall, at its sole cost and expense, obtain releases of any and all security interests in any of the Acquired Assets which are not Permitted Liens. The form of the releases of such security interests shall be provided by the Seller to Buyer on or prior to the Closing Date and the form and substance thereof shall be reasonably satisfactory to Buyer.

Section 6.04. **Consents.** The Seller shall, prior to the Closing, at the Seller's sole cost and expense, obtain any required consents or satisfy any preconditions necessary to assign or transfer a Real Property Lease or an Easement to Buyer at the Closing and, at or prior to the Closing, the Seller shall deliver written evidence to Buyer, in form and substance reasonably satisfactory to Buyer, evidencing that the Seller has obtained all such consents and satisfied all such preconditions. If, prior to the Closing, Buyer identifies any consents required to be obtained or preconditions necessary to assign or transfer a Real Property Lease or an Easement to Buyer at the Closing and Buyer delivers written notice to the Seller of such consent or precondition, the Seller shall use good faith efforts to obtain any such consent or satisfy any such precondition, as the case may be, and, so long as the Seller in good faith seeks to obtain any such consents or satisfy such preconditions as may be identified by Buyer and with respect to which Buyer delivers notice to the Seller prior to the Closing, the Parties acknowledge and agree that the Seller shall not be deemed to have intentionally or willfully breached this Section 6.04 as a result of the Seller's failure, prior to the Closing, to (x) obtain any such consent or satisfy any such condition so identified by Buyer, or (y) to seek to obtain any other required consent or satisfy any other necessary precondition with respect to which Buyer does not identify or deliver written notice to the Seller prior to the Closing. If after the Closing Date, Buyer determines that a third-party consent or precondition must be satisfied in order to assign or transfer a Real Property Lease or an Easement, the Seller shall obtain such third-party consent or satisfy such precondition and execute any documents necessary to effectuate such transfer pursuant to the Seller's obligations in Section 2.03.

ARTICLE VII.

OTHER AGREEMENTS

Section 7.01. **Taxes.** The Seller shall prepare and file or cause to be filed all Tax Returns arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing for all taxable periods ending on or before the Closing Date whether filed before or after the Closing Date. The Seller shall pay all Taxes arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing for all taxable periods ending on or before the Closing Date. Buyer shall prepare or cause to be prepared and file or cause to be filed any Tax Returns arising out of the ownership of the Acquired Assets and out of the operation of the System for periods which begin before the Closing Date and end after the Closing Date (a "Straddle Period"). In the case of Taxes arising in a Straddle Period, the allocation of such Taxes between the pre-Closing taxable period portion and the post-Closing taxable period portion of the Straddle Period shall be made on the basis of an interim closing of

the books as of the end of the Closing Date based on a schedule prepared by Buyer and provided to the Seller. The Seller shall pay to Buyer its allocable share of the Straddle Period Taxes as reasonably determined by Buyer within ten (10) days of the delivery of a notice requiring such payment.

Section 7.02. **Cooperation on Tax Matters.** The Seller shall furnish or cause to be furnished to Buyer, as promptly as practicable, whether before or after the Closing Date, such information and assistance relating to the System as is reasonably necessary for the preparation and filing by Buyer of any filings relating to any Tax matters.

Section 7.03. **Files and Records.**

(a) During the seven (7) year period following the Closing Date (or such longer period as may be required under applicable Law), the Seller shall preserve and keep any and all files, documents and records held by the Seller relating to the System (including any copies of any Files and Records in the possession of the Seller and not otherwise delivered or required to be delivered to Buyer at the Closing), and the Seller shall, upon reasonable notice and during normal business hours, make all such files, documents and records available to Buyer as may be reasonably requested or required by Buyer to enable Buyer or its Affiliates to prepare for, file, prove, answer, prosecute, or defend any return, filing, audit, protest, claim, suit, inquiry or other proceeding against or involving Buyer or any of its Affiliates (including any matter pertaining to Taxes), or any governmental investigation of or involving Buyer or any of its Affiliates, or in order to enable Buyer to comply with its obligations under this Agreement and any Related Agreement or other agreement, document or instrument contemplated hereby or thereby. In the event the Seller desires to destroy such records after such seven (7) year period, the Seller shall first give sixty (60) days prior written notice to Buyer and Buyer shall have the right, at its option and expense, upon prior written notice given to Seller within such sixty (60) day period, to take possession of the records within ninety (90) days after the date of such notice.

(b) Without limiting anything contained in Section 7.03(a), on the Closing Date, the Seller shall transfer to Buyer all Files and Records relating to operation of the System, including all documents, records, electronically stored data and other information referenced in Sections 77 and 78 of the Consent Decree ("Consent Decree Required Information"). To the extent that the Seller retains any such Consent Decree Required Information following the Closing (including any copies of any Files and Records in the possession of the Seller and not otherwise delivered or required to be delivered to Buyer at the Closing), at the conclusion of the record retention period specified in Section 79 of the Consent Decree, the Seller or its successor shall notify Buyer, EPA and PaDEP at least ninety (90) days prior to the destruction of any such Consent Decree Required Information, and upon the request of Buyer, EPA or PaDEP (or other applicable Governmental Authority), the Seller shall deliver such Consent Decree Required Information to Buyer, EPA or PaDEP, subject to the provisions set forth in Section 80 of the Consent Decree relating to privileged information.

(c) For the avoidance of doubt, nothing contained in this Section 7.03 shall be deemed to (i) limit the Seller's obligation to deliver all Files and Records to Buyer at the Closing as provided in Section 13.02 or (ii) permit the Seller, the City or the Borough to refuse to deliver

to Buyer, upon Buyer's reasonable request therefor, any Files and Records that are or remain in the possession of the Seller, the City or the Borough as of or following the Closing.

Section 7.04. **Personnel Matters.**

(a) Subject to the obligations of Seller under the Collective Bargaining Agreement and applicable Law and Buyer's obligations set forth in Section 7.04(h) with respect to Union Personnel, Buyer shall, or shall cause an Affiliate of Buyer to, offer employment effective on the Closing Date, to all active Union and Non-Union Personnel employed by the Seller as of the Closing Date, subject to Buyer's existing standard hiring policies and procedures applicable to new employees, which shall be limited to a criminal background check and drug screening of all Union and Non-Union Personnel, except with respect to benefits as otherwise provided in Section 7.04(c). The active Union and Non-Union Personnel who accept such offer of employment and commence employment with Buyer (or its Affiliate) on the Closing Date, shall be referred to in this Agreement as the "Transferred Personnel." For purposes of clarity, nothing contained in this Section 7.04 shall be deemed to limit, restrict or prohibit Buyer from interviewing the applicable Union and Non-Union Personnel for informational purposes only in connection with the transfer of employment of the Union and Non-Union Personnel to Buyer as provided in this Section 7.04.

(b) Subject to the obligations of Seller under the Collective Bargaining Agreement and applicable Law and Buyer's obligations set forth in Section 7.04(h) with respect to Union Personnel, Transferred Personnel who are Non-Union Personnel shall be employees-at-will of Buyer. Buyer shall provide each of the Transferred Personnel who are Non-Union Personnel compensation and benefits which are substantially comparable to (i) in the aggregate to Seller's compensation and benefits as of the Effective Date and (ii) the compensation and benefits then provided to similarly situated employees of Buyer. Nothing in this Agreement shall require Buyer to provide any particular form or type of employee benefit program, plan or policy to any Transferred Personnel who are Non-Union Personnel as a result of the transactions contemplated by this Agreement.

(c) The Seller shall make a payment to each Union Personnel equal to such Union Personnel's accrued but unused paid sick days and paid vacation days as of the Closing Date (collectively, the "Accrued PTO"). The Accrued PTO shall be paid to the applicable Union Personnel through the Seller's payroll system and shall be included in the last payroll period that ends prior to the Closing Date. Subject to the obligations of Seller under the Collective Bargaining Agreement and Law and Buyer's obligations set forth in Section 7.04(h) with respect to Union Personnel, with respect to any employee benefit plan maintained by Buyer or an Affiliate of Buyer for the benefit of any Transferred Personnel, effective as of the Closing, Buyer shall, or shall cause its Affiliate to, recognize all service of the Transferred Personnel with Seller, as if such service were with Buyer for eligibility and vesting under Buyer's employee benefit plans and programs.

(d) Subject to the obligations of Seller under the Collective Bargaining Agreement and applicable Law and Buyer's obligations set forth in Section 7.04(h) with respect to Union Personnel, effective as of the Closing, the Transferred Personnel who are Non-Union Personnel shall cease active participation in the Seller's Plans. The Seller shall remain liable for all eligible

claims for benefits under the Seller's Plans that are incurred by the Non-Union Personnel prior to the Closing Date. Subject to the obligations of Seller under the Collective Bargaining Agreement and applicable Law and Buyer's obligations set forth in Section 7.04(h) with respect to Union Personnel, the Seller shall remain liable to make any contributions to Seller's Plans related to, and/or to fund any retirement benefits accrued by, the Transferred Personnel prior to Closing. For purposes of this Agreement, the following claims shall be deemed to be incurred as follows: (i) life, accidental death and dismemberment, short-term disability, and workers' compensation insurance benefits, on the event giving rise to such benefits; (ii) medical, vision, dental, and prescription drug benefits, on the date the applicable services, materials or supplies were provided; and (iii) long-term disability benefits, on the eligibility date determined by the long-term disability insurance carrier for the plan in which the applicable Personnel participates.

(e) This Section 7.04 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement, and nothing in this Section 7.04, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 7.04. The Parties acknowledge and agree that the terms set forth in this Section 7.04 shall not create any right in any Transferred Personnel or any other Person to any continued employment with Buyer or any of its Affiliates or compensation or benefits of any nature or kind whatsoever, and shall not be deemed to restrict Buyer in the exercise of its independent business judgment in establishing or modifying any of the terms or conditions of the employment of the Transferred Personnel. Nothing contained in this Section 7.04 shall constitute an amendment of, or an undertaking to amend, any employee benefit plan, program or arrangement maintained by Buyer or its Affiliates or is intended to prevent Buyer or its Affiliates from amending or terminating any such employee benefit plan, program or arrangement in accordance with its terms.

(f) Subject to applicable Law and Buyer's obligations set forth in Section 7.04(h) with respect to Union Personnel, it is expressly understood that Buyer will not acquire any asset, or assume any liability or obligation in connection with the transactions contemplated by this Agreement relating to any of the Seller's Benefit Plans, Seller's Benefit Obligations or Contracts described in Section 4.18(a)(i) of this Agreement. Subject to Buyer's obligations set forth in Section 8.03(c), the Seller shall be solely responsible for any liability, funding obligation, claim or expense arising from the Seller's Plans, Seller's Benefit Obligations or Contracts described in Section 4.18(a)(i) of this Agreement, both prior to, and after, the Closing Date, except as provided in Section 7.04(c).

(g) No later than the Closing Date, the Seller shall transfer all records pertaining to the employment of the Transferred Personnel to Buyer including all personnel and human resources Files and Records.

(h) Prior to the Closing, Buyer shall bargain in good faith with the Union regarding amendments to the Collective Bargaining Agreement that are intended to allow Buyer and the Union to enter into an amended Collective Bargaining Agreement in a form that is consistent with Buyer's existing compensation and benefits strategy (the "Amended CBA"). Buyer shall offer to provide Union Personnel Substantially Comparable Compensation and Benefits. In the event that Buyer and the Union do not reach an agreement on the terms of an Amended CBA prior to the Closing Date, Buyer shall have the right to set the initial terms and conditions of

employment of the Union Personnel, and Buyer shall recognize and bargain with the Union in good faith to reach agreement on the terms of a successor agreement to the Collective Bargaining Agreement.

Section 7.05. **Restrictions on Sale or Lease of System; Right of First Refusal.**

(a) Buyer hereby acknowledges and agrees that for a period of twenty (20) years following the Closing Date (the "ROFR Period"), the Seller (or any Person to which the Seller assigns its rights under this Section 7.05) shall have a right of first refusal with respect to a Sale Transaction, as set forth in this Section 7.05.

(b) Buyer agrees that, during the ROFR Period, it shall not enter into any legally binding written agreement or consummate a Sale Transaction, except in compliance with the terms and conditions of this Section 7.05. Upon Buyer's or any Affiliate of Buyer's receipt of a bona fide Proposal from a Person that is not a direct or indirect Affiliate of Buyer (such Person, the "Independent Third Party") which Buyer desires to accept, Buyer shall, within five (5) Business Days of Buyer's determination of its desire to accept such Proposal, deliver to the Seller written notice of such Proposal (the "Proposal Notice"), which Proposal Notice shall include (i) a true and correct copy of the Proposal, including all schedules, exhibits and ancillary documents related thereto, if any, (ii) identify or describe any other assets of Buyer or its Affiliates, in addition to the System, to be included in such Sale Transaction, and (iii) the expected date of consummation of the Sale Transaction contemplated by such Proposal (such date, together with any other dates or deadlines reflected in the Proposal and the financial and other material terms and conditions of such Proposal, collectively the "Material Terms"). During the twenty (20) Business Day period following the Seller's receipt of the Proposal Notice (such twenty (20) Business Day period, the "Sale Proposal Review Period") (x) Buyer and Buyer's Affiliates shall, and shall direct their Representatives to, cease any and all discussions and communications with the Independent Third Party and its Representatives, and (y) the Seller shall have the exclusive right to determine whether to elect to pursue the Sale Transaction; *provided* that the Seller, in making such determination, shall act reasonably and in good faith and take into account the Seller's capability (financial or otherwise) to purchase the System and any other assets to be included in the Sale Transaction on terms substantially the same as (and in any event no less favorable to Buyer than) the Material Terms and within a time period reasonably proximate to the anticipated date of consummation set forth in the Proposal Notice; and *provided further*, that the Seller shall only be permitted to exercise its right of first refusal pursuant to this Section 7.05(b) with respect to all (and not less than all) of the assets of Buyer or its Affiliates identified or described in the Proposal Notice (including, for the avoidance of doubt, any assets of Buyer or its Affiliates in addition to the System identified or described in such Proposal Notice). During the Sale Proposal Review Period, Buyer shall, reasonably promptly following the Seller's reasonable written request and subject to the Seller's execution of a customary confidentiality agreement containing commercially reasonable terms, provide the Seller and its authorized Representatives access to, and, if requested, copies of, such documents and other written materials that were supplied by or on behalf of Buyer to the Independent Third Party and its Representatives, if any, prior to delivery of the Proposal Notice.

(c) If the Seller elects to exercise its right of first refusal hereunder pursuant to Section 7.05(b) with respect to the Proposal Notice and all assets described therein (including

any assets in addition to the System), the Seller shall deliver a written notice (the "Seller Proposal Notice") to Buyer of such election no later than 5:00 p.m. (Eastern time) on the last Business Day of the Sale Proposal Review Period. The Seller's failure to provide a Seller Proposal Notice prior to the expiration of the Sale Proposal Review Period shall be deemed to constitute a decision not to exercise its right of first refusal hereunder pursuant to Section 7.05(b) with respect to the Proposal Notice, and the Seller shall be deemed to have waived its rights with respect to the Sale Transaction contemplated by the Proposal, but not with respect to any future Proposal, subject to the other restrictions contained herein.

(d) If the Seller timely delivers a Seller Proposal Notice, then following such delivery and until expiration of the ROFR Sale Transaction Negotiation Period (as defined below), the Seller and Buyer shall, acting reasonably and in good faith, engage in exclusive discussions and negotiations regarding the term and conditions of a Sale Transaction between Buyer and the Seller (a "ROFR Sale Transaction") which terms and conditions (financial and otherwise) shall be substantially the same as (and in any event no less favorable to Buyer than) the Material Terms as set forth in the Proposal Notice, unless otherwise agreed by Buyer in its sole and absolute discretion and set forth in a definitive binding agreement duly executed by Buyer. The ROFR Sale Transaction shall be conditioned upon obtaining required approvals from the PaPUC. The "ROFR Sale Transaction Negotiation Period" means the period commencing on the date of delivery of the Seller Proposal Notice and ending on the date that is the earlier of (i) ninety (90) days following delivery of the Seller Proposal Notice, (ii) such date as the Seller notifies Buyer that the Seller is unwilling, unable or no longer interested in pursuing discussions and negotiations concerning a ROFR Sale Transaction, or (iii) such date as the Seller ceases to engage in good faith negotiations concerning a ROFR Sale Transaction, as determined by Buyer acting reasonably and in good faith.

(e) If Buyer and the Seller have not entered into a definitive agreement (containing terms and conditions (financial and otherwise) substantially the same as (and in any event no less favorable to Buyer than) the Material Terms as set forth in the Proposal Notice (unless otherwise agreed by Buyer in its sole and absolute discretion and set forth in a definitive binding agreement duly executed by Buyer) and such other terms as are reasonably acceptable to each of Buyer and the Seller in their respective reasonable, good faith discretion) with respect to the ROFR Sale Transaction prior to expiration of the ROFR Sale Transaction Negotiation Period, the Seller shall be deemed to have waived its rights with respect to the Sale Transaction contemplated by the Proposal, but not with respect to any future Proposal, subject to the other restrictions contained herein.

(f) For the avoidance of doubt, unless and until Buyer and the Seller duly execute and deliver a definitive agreement in respect of a ROFR Sale Transaction, Buyer shall (1) have the right, in its sole and absolute discretion, to terminate negotiations and discussions with the Seller concerning a ROFR Sale Transaction at any time and retain ownership of the System, and (2) not be obligated or required to enter into any definitive agreement with the Seller or consummate a ROFR Sale Transaction, *provided, that*, in the event that Buyer exercises its right to terminate negotiations and discussions with the Seller concerning a ROFR Sale Transaction by giving notice of such termination to the Seller prior to expiration of the ROFR Sale Transaction Negotiation Period, the Seller shall not be deemed to have waived its rights with respect to the Sale Transaction contemplated by the Proposal giving rise to such negotiations and discussions

concerning a ROFR Sale Transaction, nor with respect to any future Proposal, and subject to the other restrictions contained herein.

(g) With respect to each Proposal for which Buyer delivered a Proposal Notice and otherwise complied in all material respects with all of the applicable procedures and requirements of this Section 7.05 (the "Noticed Proposal"), in the event that (i) the Seller does not deliver a Seller Proposal Notice to Buyer prior to the expiration of the applicable Sale Proposal Review Period or (ii) Buyer and the Seller, acting reasonably and in good faith, have not executed and delivered a definitive agreement with respect to the ROFR Sale Transaction prior to the expiration of the ROFR Sale Transaction Negotiation Period, then, and only then, Buyer and Buyer's Affiliates, as applicable, shall be free, for a period of one hundred twenty (120) days following expiration of the Sale Proposal Review Period or the ROFR Sale Transaction Negotiation Period, as applicable (the "Noticed Proposal Period"), to enter into a definitive agreement with respect to the Sale Transaction contemplated by the Proposal Notice with respect to such Noticed Proposal with Independent Third Party on terms and conditions substantially similar to, and in any event not more favorable in any material respect to the Independent Third Party than, the terms and conditions described in the Proposal Notice; *provided, however*, that no such definitive agreement shall impose limitations or restrictions on the ability of Buyer or any of its Affiliates to comply with the terms of this Section 7.05 in the event of a Material Change with respect thereto.

(h) If, during a Sale Proposal Review Period or a Noticed Proposal Period, the Independent Third Party proposes in writing to any changes or amendments to the applicable Proposal or Noticed Proposal which (i) individually or in the aggregate are more favorable in any material respect to the Independent Third Party than the original Material Terms as set forth in the Proposal Notice, and (ii) Buyer desires to accept (such changes or amendments, collectively a "Material Change"), then such Proposal or Noticed Proposal, as changed or amended, shall constitute a new Proposal which shall be subject to the terms and conditions of this Section 7.05.

(i) Buyer acknowledges and agrees that irreparable damage would occur and Seller would not have an adequate remedy at law in the event that any of the provisions of this Section 7.05 were not performed by it in accordance with their specific terms or were otherwise breached, and that monetary damages would not be an adequate remedy therefor, and therefore fully intend for specific performance to be the principal remedy for breaches of this Section 7.05. It is accordingly agreed that the Seller shall be entitled to an injunction or injunctions to prevent breaches of this Section 7.05 and to enforce specifically the performance of terms and provisions of this Section 7.05 in any action instituted in any court having jurisdiction over the Parties and the matter, without proof of actual damages, in addition to any other remedy to which the Seller is entitled at law or in equity. Buyer further agrees not to assert that a remedy of specific performance is unenforceable, invalid, contrary to applicable Law or inequitable for any reason, nor to object to a remedy of specific performance on a basis that a remedy of monetary damages would provide an adequate remedy for any such breach.

(j) The Seller's rights and obligations under this Section 7.05 may be assigned (in whole, but not in part) by the Seller at any time prior to the earlier of the expiration of the ROFR Period or the consummation of a Sale Transaction with any Person other than the Seller (subject to Buyer's compliance with the terms of this Section 7.05); *provided* that the Seller shall deliver

to Buyer written notice of any such assignment prior to the effectiveness of such assignment. For the avoidance of doubt, each reference to “the Seller” in this Section 7.05 shall mean the Seller or any Person to which the Seller assigns its rights under this Section 7.05 in compliance with this Section 7.05(j).

Section 7.06. **Consent Decree.**

(a) **Consent Decree Obligations; Compliance Schedule.** Between the Effective Date and the Closing, (i) the Seller shall diligently perform and implement the CSO Controls, the Nine Minimum Control Plan, and the Long Term Control Plan in accordance with the requirements of the Consent Decree, and (ii) the Seller shall continue to implement activities relating to the Consent Decree and Long Term Control Plan projects in accordance with, and shall comply with, the schedule set forth in Schedule 7.06 (the “Compliance Schedule”), which Compliance Schedule sets out and requires the Seller to continue to perform certain activities during the period between the Effective Date and the Closing Date relating to the Seller's obligations under the Consent Decree and the Long Term Control Plan. The Seller shall confer with Buyer prior to proposing any revisions to the deadlines or projects contained in Appendix B of the Consent Decree proposed by the Seller, which require approval by parties to the Consent Decree; and the Seller shall not agree to the expansion or acceleration of any such project without the prior written approval of Buyer. Any change to the deadlines or projects contained in Appendix B of the Consent Decree following the Effective Date that has been agreed to by Buyer and has been separately approved by the parties to the Consent Decree before the Closing Date shall be included in the Amended Consent Decree.

(b) **Acknowledgment of Seller Notice to Buyer the Consent Decree.** Buyer acknowledges that it has received from the Seller a true, correct and complete copy of the Consent Decree and that Buyer understands and agrees to assume, as of the Closing Date, all obligations set forth in the Consent Decree, as amended in accordance with Section 7.06(d).

(c) **Notice to the United States, EPA and PaDEP.** Buyer and the Seller shall, on the Effective Date, cause notice of execution of this Agreement and Buyer’s agreement to assume the Seller’s obligations under the Consent Decree, which shall become effective as of the Closing Date, to be sent to the United States Department of Justice (“DOJ”), EPA and PaDEP as required under Section II and Section XVI of the Consent Decree.

(d) **Transition Plan and Amended Consent Decree.** Buyer, in consultation with the Seller, shall prepare a transition plan (“Transition Plan”) setting forth (i) Buyer’s financial and technical ability to assume the Seller’s obligations and liabilities under the Consent Decree, (ii) Buyer’s plans for implementation of the obligations under the Consent Decree after Closing (including plans for organization and management of the CSO Controls and implementation of the Long Term Control Plan). The Seller and Buyer shall jointly seek the agreement of the DOJ, EPA and PaDEP to an amendment to the Consent Decree that contains the following elements: (1) any necessary updates to the factual recitals of the Consent Decree; (2) substitution of Buyer for the Seller as the “Defendant” under the Consent Decree; (3) release of the Seller in accordance with Article II, Section 5 of the Consent Decree; (4) recognition that the System will continue to be governed by the provisions of the Consent Decree, implementing the EPA CSO Policy; (5) modification of the Nine Minimum Controls Plan to reflect the manner and methods

by which Buyer, as a public utility, would implement the Nine Minimum Controls Plan, including identification of those activities (such as street sweeping and enforcement of ordinances) that would continue to be performed by the City; (6) incorporation of the element previously agreed to pursuant to the Notice of Non-Material Modification of Consent Decree dated December 18, 2015; (7) updates to the notice provisions in Sections 83-84 of the Consent Decree; and (8) such other amendments as agreed to by the Parties to the Consent Decree (the "Amended Consent Decree"). Assuming the accuracy of the Seller's representations set forth in Section 4.15 and the Seller's compliance with and performance of its obligations under Section 7.06(a), the Seller and Buyer, in seeking approval to the Amended Consent Decree, do not anticipate requesting any material modification to the substantive obligations set forth in the Consent Decree, including the schedule for implementation of the Long Term Control Plan; *provided, however*, that in the event that Buyer, reasonably and in good faith, determines that the Seller has breached any of its representations and warranties set forth in Section 4.15 or that the Seller has failed to comply with and perform its obligations under Section 7.06(a), Buyer shall have the right to negotiate with the DOJ, EPA and PaDEP an adjustment to the schedules for the Long Term Control Plan and Nine Minimum Controls Plan so as to allow Buyer sufficient time to complete such work after the Closing Date without incurring fines or penalties. The Parties acknowledge and agree that the release of the Seller pursuant to the provisions of Article II, Section 5 of the Consent Decree shall require approval by the United States District Court for the Middle District of Pennsylvania of the substitution of Buyer as a Defendant and the Amended Consent Decree. For the avoidance of doubt, in no event shall any release of the Seller under or with respect to the Consent Decree constitute, or be deemed to constitute a release or waiver, or in any way affect the Seller's obligations under this Agreement with respect to the Consent Decree and the performance of the Seller's obligations with respect to the Consent Decree prior to the Closing.

(e) Cooperation. The Seller and Buyer shall cooperate and act in good faith in negotiating and securing agreements with the City, the Borough and municipalities served by intermunicipal agreements under which the City, the Borough, and such other municipalities commit to undertake and perform those actions required to implement obligations under the revised Nine Minimum Control Plan to be approved by EPA and PaDEP and the Industrial Pretreatment Program, including activities relating to street sweeping, and the adoption, maintenance and enforcement of ordinances relating to prohibited or regulated discharges to the System. The Seller and Buyer shall also cooperate and act in good faith in evaluating the feasibility of transferring and allowing the City and the Borough to utilize, in relation to operation of their MS4 System, nutrient and sediment reduction offsets or credits generated through operation of the existing wastewater treatment plant at loadings less than the sediment and nutrient cap loads established in the NPDES Permit in excess of those offsets or credits required by Buyer in relation to operation of the System ("Excess Offsets and Credits"), and if determined to be feasible, negotiating in good faith arrangements on reasonable terms for transferring to the City and the Borough such Excess Offsets and Credits to the extent required to meet the nutrient and sediment loading limitations applicable to the MS4 System.

Section 7.07. Current and Future Rates.

(a) The Parties acknowledge that following the Closing, (i) the initial customer charge and consumption charge applicable to wastewater customers in the Service Area shall be

the customer charge and consumption charge being paid by those customers for wastewater service being provided by the Seller immediately prior to the Closing Date and said charges shall continue in full force and effect until changed in accordance with this Agreement and applicable Law, (ii) Buyer may, subject to PaPUC approval and applicable Law, bill wastewater customers in the Service Area a monthly customer charge, provided that the aggregate amount of the customer charge does not change until changed in accordance with this Agreement and applicable Law, and (iii) the base rate and non-base rate increases (collectively, "Rate Increase(s)") for Service Area wastewater customers, subject to PaPUC approval and applicable Law, will likely vary each year or more frequently and, in some years, there may be no Rate Increase. The Parties further acknowledge that tariffed rates, as set by the PaPUC, are subject to applicable Law and binding upon the Parties. The Parties agree, subject to PaPUC approval and applicable Law, that wastewater customers in the Service Area will immediately following the Closing be subject to Buyer's prevailing wastewater tariff on file with and as approved by the PaPUC with respect to all rates other than the customer charge (known under Buyer's current tariff as "monthly service charge") and consumption charge, including but not limited to capacity reservation fees, tapping fees and the like, as well as non-rate related terms and conditions of service, including but not limited to billing frequency, termination procedures and the like.

(b) Notwithstanding anything to the contrary in Section 7.07(a), Buyer shall not implement a Rate Increase for the Service Area wastewater customers that would be effective prior to January 1, 2018. Buyer shall not propose or implement a distribution improvement system charge for the Service Area wastewater customers before January 1, 2019.

(c) In the first base rate case filed by Buyer after the Effective Date of this Agreement, subject to PaPUC approval and applicable Law, Buyer shall not propose or request any rate increase to the base rates or change in rate design to be applicable to wastewater customers in the Service Area. However, the Parties acknowledge that Buyer shall have the reasonable discretion to address and agree to base rate increases and changes in rate design for wastewater customers in the Service Area in the context of settlement of the base rate case, subject to PaPUC approval and applicable Law.

(d) Not later than ninety (90) days after the end of year ten (10) following the Closing Date, Buyer shall provide to Seller a written statement and calculation showing as accurately as possible the cumulative positive difference, if any, over that ten-year period between (i) the annual revenues associated with the provision of wastewater service to customers in the Service Area calculated at PaPUC rates in accordance with Schedule 7.07(d) and (ii) a 1.9% Compound Annual Growth Rate ("CAGR") rate increase in annual revenues associated with the provision of wastewater service to customers in the Service Area over that ten-year period relative to the starting amount of annual revenues calculated in accordance with Schedule 7.07(d) ("Variance Adjustment"). Seller shall review and advise Buyer within 30 days of Seller's receipt of such statement of any problems or suggested modifications to the calculation of the Variance Adjustment and written statement. The Parties shall timely and in good faith, resolve any problems or suggested modifications to the Variance Adjustment identified by Seller or Buyer. Any dispute regarding the calculation of the Variance Adjustment shall be timely submitted for resolution to the office of a mutually acceptable nationally recognized firm specializing in utility ratemaking, other than consultants of Buyer or Seller or their Affiliates who, acting as experts and not arbitrators, shall resolve the dispute. The dispute shall be resolved within thirty (30)

days and the costs of retaining the firm and resolving the dispute shall be shared equally by Buyer and Seller. Buyer shall make an adjustment, without interest or other penalty, to the Purchase Price in the amount of the Variance Adjustment, if any, in accordance with the procedures and timing set forth in Section 7.07(e).

(e) Within thirty (30) days of final resolution of the calculation of the Variance Adjustment, Seller shall notify Buyer whether the adjustment to the Purchase Price in the amount of the Variance Adjustment shall be paid directly to Seller or distributed to Buyer's then-current wastewater customers in the Service Area. If Seller elects direct payment to itself, Buyer shall make such payment within thirty (30) days without further obligation. If Seller elects distribution of the adjustment of the Purchase Price for the Variance Adjustment to Buyer's then-current wastewater customers in the Service Area, Buyer shall at its sole cost and expense, subject to PaPUC approval and applicable Law, timely implement procedures and protocols reasonably acceptable to Seller and then make a one-time equal, flat-rate distribution to all customers then being served by Buyer in the Service Area their proportionate share of the Variance Adjustment as mutually agreed-upon by Buyer and Seller. Buyer shall timely certify in writing to Seller when the distribution of the Variance Adjustment has commenced and been completed. In the event the PaPUC fails to allow Buyer to timely implement procedures and protocols and make distributions to customers in the Service Area as aforesaid, Buyer shall pay the Variance Adjustment as an adjustment to the Purchase Price directly to Seller within thirty (30) days of final resolution of the calculation of the Variance Adjustment. If Buyer fails to pay the Variance Adjustment as an adjustment to the Purchase Price within thirty (30) days of the final resolution of the calculation of the Variance Adjustment (whether where Seller initially requests direct payment or the PaPUC fails to allow distribution to customers), Buyer shall pay Seller an amount of \$2,500.00 per day for each day that all or any portion of the Variance Adjustment has been unpaid after 30 days following resolution of the calculation of the Variance Adjustment. The Parties intend that such damages constitute compensation, and not a penalty, and acknowledge and agree that the harm caused by the Buyer's breach of its obligations under this Section would be impossible or very difficult to accurately estimate, and that such damages are a reasonable estimate of the anticipated or actual harm that might arise from Buyer's breach of its obligations under this Section. In the event the PaPUC fails to allow distribution by Buyer to then-current Service area wastewater customers, Buyer shall also timely pay Seller the reasonable costs of (i) hiring a third party to administer and pay the Variance Adjustment to wastewater customers in the Service Area and (ii) establishing the processes and protocols to make such payment as described herein. Notwithstanding anything in this subparagraph to the contrary, Buyer shall have the right to reasonably approve the third party selected by Seller to administer and pay any Variance Adjustment to wastewater customers in the Service Area, but in no event shall such approval be unreasonably delayed, conditioned, withheld or denied.

(f) The Variance Adjustment shall be calculated in accordance with Schedule 7.07(d).

(g) If requested by the Seller (not more than once per year), no later than (60) days after such request, Buyer shall provide to the Seller a written statement showing (i) for the 12 month period ending on the most recently completed anniversary of the Closing Date, the projected Variance Adjustment calculated in accordance with Schedule 7.07(d) and (ii) the then-current Annual Variance (as defined in Schedule 7.07(d)). The written statement shall be

provided for informational purposes only and shall not trigger an affirmative duty of Buyer to take a specific action, or be deemed to be any agreement or acquiescence of Seller to any of the data and information contained therein. The written statement referenced herein shall be substantially in the form of the Hypothetical Example contained in Schedule 7.07(d), along with reasonable supporting workpapers.

(h) At the end of year ten (10) following the Closing Date, if the wastewater base rates for the Service Area are lower by customer class than the Average System Rates for wastewater service charged to Buyer's non-Service Area wastewater customers, Buyer may seek from the PaPUC base rate increases for Service Area wastewater customers that would be effective during years eleven (11) through thirteen (13) following the Closing that would equalize the base rates charged by Buyer to Service Area wastewater customers with Average System Rates effective for Buyer's non-Service Area wastewater customers throughout Pennsylvania. Buyer will attempt to implement the base rate increases over the three-year period in approximately one-third (1/3) increments each year, subject to PaPUC approval and applicable Law. However, the Parties acknowledge that Buyer shall have the reasonable discretion to address and agree to base rate increases for wastewater customers in the Service Area in the context of settlement of a base rate case, subject to PaPUC approval and applicable Law.

(i) If during years eleven (11) through thirteen (13) wastewater base rates in the Service Area are higher by customer class than the Average System Rates for wastewater service charged to Buyer's other wastewater customers, Buyer shall not seek a base rate increase for the Service Area wastewater customers during this period. However, the Parties acknowledge that Buyer shall have the reasonable discretion to address and agree to base rate increases for wastewater customers in the Service Area in the context of settlement of a base rate case, subject to PaPUC approval and applicable Law.

(j) If at the end of year ten (10) following the Closing Buyer's wastewater customers in the Service Area are not paying the same non-base rates (including the distribution system improvement charge) as Buyer's other customers being served under Average System Rates, Buyer will attempt to bring the non-base rates of customers in the Service Area into conformity with the non-base rates of the other customers being served under Average System Rates by the end of year thirteen (13) following the Closing, subject to PaPUC approval and applicable Law.

(k) After year thirteen (13) following the Closing, the Parties acknowledge that Buyer may, subject to PaPUC restrictions and applicable Law, propose rate adjustments reasonably necessary to make the total rates (inclusive of base rates and non-base rates such as the distribution system improvement charge) for wastewater customers of the Service Area consistent with the total rates (inclusive of base rates and non-base rates such as the distribution system improvement charge) of Buyer's customers who are subject to Average System Rates.

(l) Solely for the purposes of any calculation of the projected or actual Variance Adjustment and the provisions of written statements related thereto pursuant to this Section 7.07, the "Closing Date" shall be deemed to have occurred on the date that is the last day of the month in which the Closing actually occurs.

Section 7.08. **Operation and Maintenance of the MS4 System.**

(a) General operation and maintenance obligations. Subject to applicable Law, the Seller, the City and the Borough, as the case may be, shall at all times maintain ownership of the MS4 System, the Stormwater System Assets and the City's NPDES Permit.

(b) Community-based Public-Private Partnership Approach for Integration of the MS4 System and the System. Following the Closing, Buyer shall cooperate with the City and the Borough, and use commercially reasonable good faith efforts to evaluate the feasibility of and develop a mutually-acceptable plan for financing, management and operation of the MS4 System in a manner that is consistent with the community-based public-private partnership approach described in Section 6 of Buyer's response to the Request for Best and Final Offers for the Purchase of the Seller's Sewer System and Sewage Treatment Works dated as of October 5, 2015, and in compliance with applicable Law.

Section 7.09. **Additional Agreements.**

(a) From and after the Closing Date and for a period of no less than ten (10) years following the Closing (except, in the case of clause (xi) of this Section 7.09(a), for such shorter period set forth therein), Buyer shall comply with the following covenants and agreements, subject to applicable Law and subject in all cases to Section 7.09(b):

(i) Buyer will establish, in consultation with the Seller, within a reasonable period of time following the Closing, and maintain, a public outreach program, pursuant to which Buyer will, in good faith, use commercially reasonable efforts to explore and consider the formation of a citizens' advisory council comprising representatives from the communities served by the System and the adoption of other public outreach practices established in the Service Area;

(ii) Buyer shall, within a reasonable period of time following Closing, establish and maintain or caused to be maintained (either directly by Buyer, by Buyer's Affiliates or by a third party engaged by Buyer, in any case at Buyer's sole discretion) a local, publicly accessible facility that accepts bill payment from the System's customers;

(iii) Buyer shall, within a reasonable period of time following Closing, establish and maintain or caused to be maintained a 24-hour toll-free customer service telephone number for emergencies with respect to the System, and will use commercially reasonable efforts to dispatch service requests for the efficient provision of customer services;

(iv) Buyer shall, within a reasonable period of time following Closing, establish policies, procedures and systems designed to (1) ensure that billing, account and service questions with respect to the System will be answered by live customer service representatives between the hours of 7:00 am to 7:00 pm (ET) and (2) enable customers of the System to pay their bills by mail, direct debit, online or at a local payment station;

(v) Buyer shall, within a reasonable period of time following Closing, establish policies, procedures and systems designed to provide (1) that each customer of the System that receives both water and sewer services from Buyer will receive a single bill that incorporates such customer's charges for both water and sewer utilities and (2) a

single point of contact for customer service requests for both water and sewer utilities provided by Buyer within the Service Area;

(vi) Buyer will maintain a website or similar service for customers to access for information related to the System, provided that the content and scope of such information shall be determined by Buyer in its sole discretion;

(vii) Buyer and Buyer's Affiliates shall, after the Closing Date and no later than the end of the calendar year 2020, hire or offer to hire in the City or otherwise in connection with the System no less than one hundred (100) individuals (expressly excluding Transferred Personnel) for positions with Buyer or Buyer's Affiliates that do not exist on, and are created by Buyer and its Affiliates following, the Closing Date, and the compensation and benefits of such newly-created positions will be substantially comparable in the aggregate to the compensation and benefits of Buyer's water system employees in similar positions as of the date hereof, and Buyer and Buyer's Affiliates shall continue to offer to hire such individuals for such positions until the earlier of (x) such time as Buyer and Buyer's Affiliates hire one hundred (100) individuals for such positions or (y) the end of the calendar year 2020;

(viii) Buyer will ensure its Building Better Communities program, building trails, parks and playgrounds within the community, its H2O – Help to Others Program for low-income customers, fire fighter grant program and other charitable programs (or substantially similar equivalents) will be either continued within or expanded into, as applicable, the communities served by the System;

(ix) to the extent consistent with policies and initiatives of Buyer in effect as of the date hereof and otherwise permitted under applicable Law, Buyer will, within a reasonable period of time following the Closing, establish policies and procedures designed to provide minority business enterprises, women-owned business enterprises, veteran-owned business enterprises and locally-based businesses the opportunity to compete for work related to the System and contract with Buyer;

(x) in Buyer's first base rate proceeding with respect to the System following the Closing, Buyer shall include a request in such proceeding to combine partially, under Pennsylvania's System Improvement Charges Act 11 of 2012 ("Act 11"), Buyer's water and wastewater revenue requirements for ratemaking purposes to ensure the System's customers benefit from Act 11 in the same manner as its other customers throughout Pennsylvania and to the extent permitted by the PaPUC and applicable Law; *provided*, that Buyer shall nonetheless have the reasonable discretion to address and agree to base rate increases for wastewater customers in the Service Area in the context of settlement of a base rate case, and nothing contained in this clause (x) shall be deemed to restrict or limit Buyer in the context of any such settlement, subject to PaPUC approval and applicable Law; and

(xi) subject to applicable Law, during the one (1) year period following the Closing Date, Buyer's collection standards and practices with respect to customers of the System will be consistent in all material respects with the collection standards and

practices utilized by Buyer as of the date hereof with respect to customers of the Water System.

(b) Notwithstanding anything in this Section 7.09 to the contrary, neither Buyer nor any of Buyer's Affiliates shall be liable or responsible to the Seller or any other Person, nor be deemed to have defaulted under or breached this Section 7.09, for any failure or delay by Buyer or its Affiliates in fulfilling or performing any obligation under any provision of Section 7.09(a), when and to the extent such failure or delay is directly or reasonably proximately caused by, or a direct or reasonably proximate result of, any of the following events, states of facts, occurrences, non-occurrences, circumstances, developments or changes, in each case beyond the reasonable control of Buyer (but not including, for the avoidance of doubt, any such event, state of facts, occurrence, non-occurrence, circumstance, development or change which results from any intentional or willful act by Buyer or Buyer's Affiliates or their respective Representatives (in their capacities as such) designed or intended to result in Buyer being relieved of its obligations under Section 7.09(a)): (i) flood, earthquake, hurricane, tornado, fire, explosion, landslide, natural disaster or other "acts of God", (ii) war, invasion, hostilities (whether war is declared or not), sabotage, terrorist threats or acts, riot or other civil unrest, (iii) enactment of or changes in applicable Law or the interpretation or enforcement thereof, (iv) action by any Governmental Authority, (v) national or regional emergency, (vi) strikes, labor stoppages or slowdowns or other industrial disturbances, (vii) shortage of adequate power or transportation facilities, (viii) breakage or accidents to machinery, pipelines, dams or canals or partial or entire failure or contamination of water supply, and (ix) other similar events and circumstances beyond the reasonable control of Buyer. In the event of a failure or delay by Buyer in fulfilling or performing any term of this Section 7.09 due to any such event, state of facts, occurrence, non-occurrence, circumstance, development or change beyond Buyer's reasonable control, Buyer shall use commercially reasonable efforts to end the failure or delay and commence or resume the performance of its obligations as soon as reasonably practicable after the end of such event, state of facts, occurrence, non-occurrence, circumstance, development or change (including through the use of alternate sources, workaround plans or other commercially reasonable means to permit Buyer to perform such obligations), and Buyer and its Affiliates shall use commercially reasonable efforts and act in good faith in the performance of their obligations under this Section 7.09; *provided* that (1) Buyer's commercially reasonable efforts under this Section 7.09(b) shall in no event require Buyer to incur any extraordinary costs or expend resources which are not reasonably proportional to the costs that would be incurred or resources that would be expended in Buyer's performance of the applicable obligation Section 7.09(a), and (2) in the event that Buyer's performance of any obligation under this this Section 7.09 is prevented, delayed or otherwise adversely impacted by the enactment of or change in applicable Law or the interpretation or enforcement thereof or an action by any Governmental Authority, in no event shall this Section 7.09(b) be deemed to require Buyer to violate any such Law or take any action with respect to a Governmental Authority (including requesting any unique or extraordinary concession or other Governmental Approval) which Buyer, acting reasonably and in good faith and based on the advice of counsel, determines would reasonably be expected to adversely affect Buyer's or its Affiliates' standing or relationship with such Governmental Authority.

(c) Buyer acknowledges that, upon conveyance of the Acquired Assets to Buyer, Buyer will be subject to, among other Taxes, real estate Taxes, which shall be paid by Buyer. During the two (2) year period following the Closing Date, in the event of any real property Tax

assessment of the Real Property owned in fee by Buyer that would result in Buyer being required to pay an aggregate amount of real estate Taxes equal to or less than \$400,000 for such year, Buyer shall not appeal any such assessment during such two (2) year period.

Section 7.10. **Exclusivity.** From and after the Effective Date and until the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, except for the transactions contemplated by this Agreement, (a) without the prior written consent of Buyer, the Seller, the City and the Borough and their respective Affiliates will not, and will cause their respective Representatives and other advisors not to, directly or indirectly, (i) solicit, initiate or encourage submission of any inquiry, proposal or offer from any Person relating to any transaction involving any sale or transfer of any of the Acquired Assets or the System, (ii) enter into or participate in any discussions or negotiations regarding, or furnish any information to or cooperate with any Person with respect to, any transaction involving any of the Acquired Assets or the System, or (iii) enter into any negotiation, discussion, Contract, agreement, instrument, arrangement or understanding with any Person relating in any manner to any transaction involving any sale, transfer or other disposition of any of the Acquired Assets or the System; and (b) in the event that the Seller, the City, the Borough, their respective Affiliates or any of their respective Representatives or other advisors receives any proposal with respect to any of the matters described in the foregoing clause (a), the Seller shall promptly (but in no event later than two (2) Business Days after receipt thereof) communicate to Buyer the existence of any such proposal.

Section 7.11. **Outstanding Indebtedness.**

(a) As provided in Section 3.01(a), Buyer has the option, upon reasonable advance written notice to the Seller, in lieu of paying (on behalf of the Seller) in full the total amount of Outstanding Indebtedness at the Closing, to assume any of the Seller's and the City's obligations under the Outstanding Indebtedness which may be lawfully assigned to and assumed by Buyer pursuant to applicable Law and the terms of the Contracts governing the Outstanding Indebtedness (such portion of the Outstanding Indebtedness, the "Assignable Outstanding Indebtedness").

(b) Not less than forty five (45) days prior to the Closing Date, Buyer shall notify the Seller in writing which items of the Outstanding Indebtedness Buyer desires to assume as Assignable Outstanding Indebtedness. Recognizing that it may be necessary for Buyer and the Seller to obtain consents and approvals from third parties and take other actions in order for Buyer to assume Assignable Outstanding Indebtedness, the Seller and Buyer shall cooperate with respect to the giving of all notices and the making of all requests and the furnishing of all information and documents as Buyer shall reasonably determine to be necessary or appropriate in order to qualify any portions of Outstanding Indebtedness as Assignable Outstanding Indebtedness. Notwithstanding anything herein contained to the contrary, in connection with any Assignable Outstanding Indebtedness which Buyer elects to assume, in no event may such Assignable Outstanding Indebtedness be assumed by Buyer unless in connection with such assignment and assumption, the Seller and the City are released from any and all obligations under such Assignable Outstanding Indebtedness.

(c) With respect to all Outstanding Indebtedness other than Assignable Outstanding Indebtedness (if any), the Seller shall take all such action as shall be required under the terms of such Outstanding Indebtedness (including any indentures and loan agreements relating thereto) to call such Outstanding Indebtedness for prepayment or redemption on the Closing Date (if such Outstanding Indebtedness is then subject to prepayment or redemption) and to terminate and cancel all commitments to lend as of the Closing Date (in the case of lines of credit under which the Seller is the borrower) or to arrange for the legal defeasance of such Outstanding Indebtedness (if such Outstanding Indebtedness is not then subject to prepayment or redemption) as of the Closing Date, which arrangements may be required to include the creation of a defeasance escrow, the subscription for investment securities for the defeasance escrow, the obtaining of an accountant's verification report and the delivery of legal opinions. All such action of the Seller shall be subject to the reasonable review and approval of Buyer.

Section 7.12. **PaPUC Approval** Commencing on the Effective Date, Buyer covenants and agrees to timely initiate and faithfully prosecute, along with Seller as co-applicant, the necessary proceedings to obtain from the PaPUC (i) the issuance of certificates of public convenience to Buyer to provide wastewater services in the Service Area and the acquisition of the System by Buyer, (ii) approval of this Agreement and any other contractual arrangements between Buyer and municipalities for the provision of wastewater services in the Service Area in accordance with Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, (iii) approval to allow Buyer to implement procedures and protocols and then distribute the Variance Adjustment to wastewater customers being served by Buyer in the Service Area as provided in and limited by Section 7.07(e), (iv) approval of Buyer's initial pro forma tariff applicable to Service Area customers, and (v) approval of a tariff supplement incorporating Buyer's Industrial Pretreatment Program applicable to the System into Buyer's tariff to be filed by Buyer during the course of the PaPUC proceeding. The Seller shall assist and cooperate with Buyer in connection with Buyer's performance of its obligations under this Section 7.12(a) in accordance with the Seller's obligations pursuant to Section 9.02 and Section 9.04.

(b) The Parties acknowledge and agree that Buyer shall be primarily responsible for prosecuting the PaPUC proceedings referenced in Section 7.12(a), that Buyer may establish reasonable processes and procedures for prosecuting the PaPUC proceedings to which Seller and its representatives shall be required to comply, and that Seller shall act with due diligence and dispatch in addressing all matters pertinent to the prosecution of the PaPUC proceedings so as to not prejudice the Parties' participation in that proceeding or the potential outcome thereof. Notwithstanding the foregoing, the Parties shall in good faith timely cooperate with each other in developing and implementing procedures and protocols for addressing all aspects of the PaPUC proceedings referenced in Section 7.12(a) including developing case strategy, pre-filing meetings with regulators and stakeholders, preparing all pleadings, responding to discovery, developing testimony, conducting evidentiary hearings, preparing briefs and other pleadings, etc. In the event of a good faith dispute between the Parties regarding strategy, tactics or other aspects of the PaPUC proceeding that cannot in the exercise of good faith and due diligence be resolved timely, Buyer shall have the right in such circumstances to take such action as it reasonably deems necessary consistent with this Agreement.

(c) Nothing contained herein shall preclude, consistent with Section 7.12(b), the filing for reconsideration of or appealing a PaPUC Final Order if the order contains terms or conditions that are not reasonably satisfactory.

(d) Notwithstanding anything to the contrary in this Agreement, in the event the PaPUC issues an order approving the transaction as contemplated by this Section 7.12 and if all other conditions precedent to Closing have been fully satisfied in accordance with the terms of this Agreement, the Parties may elect in their discretion and by mutual agreement to close on the transaction (i) notwithstanding a pending appeal or request for reconsideration with respect to such order or (ii) during the otherwise applicable appeal/reconsideration periods if no party has been aggrieved by the PaPUC order and the Parties reasonably believe there is little likelihood of a successful legal or other challenge to said PaPUC order.

Section 7.13. **Insurance.** To the extent that the Seller (with respect to the System or any Acquired Assets), the System or any Acquired Assets were insured under any occurrence-based insurance policies of the City or the Borough (or with respect to any Acquired Assets, any occurrence-based insurance policies of the Seller) prior to the Closing Date, following the Closing, at Buyer's written request, the Seller shall, and shall cause the City or the Borough, as applicable, to, make claims under such policies with respect to occurrences, events, conditions, or circumstances to the extent relating to the System or any Acquired Asset that occurred or existed prior to the Closing. The Seller does not represent, warrant or covenant that (i) such insurance policies will provide coverage for any claims reported after the Closing that Buyer may elect to make, (ii) issuers of such policies will not wrongfully refuse to honor any such claims, or (iii) it, the City or the Borough will maintain any such insurance policies following the Closing Date. The Seller, the City or the Borough, as the case may be, shall provide reasonable assistance to Buyer (at Buyer's sole cost and expense) in connection with the tendering of such claims to the applicable insurers under such insurance policies, including providing Buyer with a copy of the applicable policy following the request of Buyer. The Seller, the City or the Borough, as the case may be, shall remit any recoveries with respect to any claims asserted by Buyer under any such insurance policies in excess of reasonable costs of recovery of the Seller, the City or the Borough, as the case may be, including deductibles and the amount of any increased premiums retroactively applied as a result of the payment by the applicable insurers of such claims, or any increases in premiums for the year following the year in which any such claims were paid by the applicable insurers, in either case to the extent the Seller, the City or the Borough, as the case may be, can demonstrate to Buyer that the amount of any such increased premiums was attributable to such claims. In the event of any dispute regarding the date of any loss or occurrence, the terms of the applicable policies shall govern.

ARTICLE VIII.

INDEMNIFICATION

Section 8.01. **Survival.** All representations and warranties contained in this Agreement shall survive until the Escrow Release Date, except that (a) the representations and warranties of the Seller set forth in Section 4.01 (Existence and Power), Section 4.02 (Authorization and Validity of Agreement), Section 4.14 (Environmental Compliance), Section 4.15 (Consent Decree Matters), Section 4.21 (Title to the Acquired Assets; Sufficiency) and Section 4.22

(Brokers' and Finders' Fees) (collectively, the "Seller Fundamental Representations") shall survive the Closing indefinitely or until the latest date permitted by applicable Law, and (b) the representations and warranties of Buyer set forth in Section 5.01 (Existence and Power), Section 5.02 (Authorization and Validity of Agreement), and Section 5.05 (Brokers' and Finders' Fees) (collectively, the "Buyer Fundamental Representations") shall survive the Closing indefinitely or until the latest date permitted by applicable Law. The covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive indefinitely or until the latest date permitted by applicable Law. Notwithstanding the preceding sentences, (x) any breach of representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time, and (y) nothing contained in this Section 8.01 shall limit in any way any rights a Party may have to bring claims grounded in fraud, intentional misrepresentation or willful misconduct, which rights shall survive the Closing indefinitely.

Section 8.02. **Indemnification by the Seller.** Subject to the terms and conditions of this Article VIII, the Seller shall indemnify, defend and hold harmless, Buyer and its successors and Affiliates and their respective employees, officers, directors, trustees and agents (the "Buyer Indemnified Persons"), from and against any and all Damages arising from or relating to: (a) any misrepresentation as to, or any inaccuracy in, any of the representations and warranties of the Seller contained in this Agreement, in any of the Related Agreements or in any exhibit, schedule, certificate or other instrument or document furnished by or on behalf of the Seller pursuant to this Agreement (*provided*, that for purposes of determining the existence of any inaccuracy in or breach of any representation or warranty and calculating the amount of any Damages with respect thereto under this Article VIII, any materiality, Material Adverse Effect or similar qualifications shall be disregarded and deemed deleted therefrom for such purposes (except with respect to (i) the representations and warranties contained in Section 4.06(a) and (ii) where such provision requires disclosure of lists of items of a material nature or above a specified threshold)); (b) any breach or nonfulfillment of any of the covenants or agreements of the Seller contained in this Agreement, in any of the Related Agreements or in any exhibit, schedule, certificate or other instrument or document furnished by or on behalf of the Seller pursuant to this Agreement; or (c) any Excluded Liability (regardless of whether or not the Seller disclosed any such Excluded Liability in any Schedule or otherwise, including any Excluded Liability imposed on Buyer as a result of transferee, successor or similar liability (including bulk sales, bulk transfer or similar Laws) or otherwise, and including any Taxes arising out of the ownership of the Acquired Assets and out of the operation of the System before the Closing and the Seller's portion of any Straddle Period Taxes, and including the matters set forth on Schedule 4.14) or any Excluded Asset.

Section 8.03. **Indemnification by Buyer.** Subject to the terms and conditions of this Article VIII, Buyer shall defend, indemnify and hold harmless the Seller and its successors and Affiliates and each of their respective employees, officers, directors and agents (the "Seller Indemnified Persons") from and against any and all Damages arising from or relating to: (a) any misrepresentation as to, or any inaccuracy in, any of the representations and warranties of Buyer

contained in this Agreement, in any of the Related Agreements or in any exhibit, schedule, certificate or other instrument or document furnished by or on behalf of Buyer pursuant to this Agreement (*provided*, that for purposes of determining the existence of any inaccuracy in or breach of any representation or warranty and calculating the amount of any Damages with respect thereto under this Article VIII, any materiality, material adverse effect or similar qualifications shall be disregarded and deemed deleted therefrom for such purposes (except where such provision requires disclosure of lists of items of a material nature or above a specified threshold)); (b) any breach or nonfulfillment of any of the covenants or agreements of Buyer contained in this Agreement, any of the Related Agreements or in any exhibit, schedule certificate or other instrument or document furnished by or on behalf of Buyer pursuant to this Agreement; (c) any unfair labor practice charges or other claims that Seller violated Article 16, *Transfer of Authority*, of the Collective Bargaining Agreement, or failed to condition the sale of the Acquired Assets on Buyer's assumption of the Collective Bargaining Agreement, including any and all awards of lost contractual wages or benefits against the Seller which Union Personnel would have received had the Buyer adopted all complete terms and conditions of the Collective Bargaining Agreement; provided, however that no Seller Indemnified Person have the right to assert a claim seeking indemnification pursuant to this Section 8.03(c) (and Buyer shall have no obligation to indemnify any Seller Indemnified Person pursuant to this Section 8.03(c)) unless and only in the event that Buyer, in bargaining with the Union, fails to offer to provide Substantially Comparable Compensation and Benefits in breach of Buyer's obligation pursuant to Section 7.04(h); (d) any Assumed Liability as and when payment and performance is due, including any liability related to any CSO Control Measures to the extent arising after the Closing and any claims by any Governmental Authority for any events, circumstances or liabilities arising after the Closing; (e) Buyer's violation of Environmental Requirements with respect to the System after the Closing Date; (f) Buyer's management of Hazardous Materials in connection with the System after the Closing Date; (g) any Environmental Claims resulting from Buyer's operation of the System after the Closing Date; or (h) the ownership, operation or control of the Acquired Assets or the System after the Closing Date.

Section 8.04. **Indemnification Procedure.**

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement (or a successor to a Party to this Agreement) (a "**Third Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party may be obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Damage that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party (and subject to the other requirements contained herein) to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel (which counsel shall be reasonably acceptable to the Indemnified Party), so long as (i) the Indemnifying Party notifies the Indemnified Party, within ten (10) Business Days after the

Indemnified Party has given notice of the Third Party Claim to the Indemnifying Party (or by such earlier date as may be necessary under applicable procedural rules in order to file a timely appearance and response) that the Indemnifying Party is assuming the defense of such Third Party Claim, *provided*, that if the Indemnifying Party assumes control of such defense it must first agree and acknowledge in such notice that the Indemnifying Party is fully responsible (with no reservation of any rights other than the right to be subrogated to the rights of the Indemnified Party) for all Damages relating to such Third Party Claim, (ii) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently and at its own cost and expense, and (iii) the Third Party Claim (A) does not involve injunctive relief, specific performance or other similar equitable relief, any claim in respect of Taxes, any Governmental Authority, any criminal allegations or any potential damage to the goodwill or reputation of Buyer, (B) is not one in which the Indemnifying Party is also a party and joint representation would be inappropriate or there may be legal defenses available to the Indemnified Party which are different from or additional to those available to the Indemnifying Party, or (C) does not involve a claim which, upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend, and *provided further*, that notwithstanding anything to the contrary contained herein, if the Seller is the Indemnifying Party with respect to a Third Party Claim and (i) Buyer or any insurer under the R&W Insurance Policy is required to assume such defense pursuant to the terms thereof or (ii) the Seller's assumption of the defense could cause a Buyer Indemnified Person to lose coverage under the R&W Insurance Policy, the Seller shall not be permitted to assume the defense of such Third Party Claim. The Indemnified Party shall reasonably cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.04(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 8.04(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Damages based upon, arising from or relating to such Third Party Claim. The Seller and Buyer shall reasonably and in good faith cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into or agree to settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this Section 8.04(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim, and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying

Party shall give prompt written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within fifteen (15) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, provided that the Indemnifying Party continues to diligently contest or defend such Third Party Claim in good faith and otherwise complies with its obligations hereunder, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense of a Third Party Claim pursuant to Section 8.04(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any claim by an Indemnified Party with respect to any Damages which do not arise or result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits material rights or material defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail and shall indicate the estimated amount, if reasonably practicable, of the Damage that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. During such thirty (30) day period, the Indemnified Party shall reasonably cooperate and assist the Indemnifying Party and its Representatives with respect to Indemnifying Party's investigation of such Direct Claim including determining the validity and amount of such Direct Claim. If the Indemnifying Party does not so respond within such thirty (30) day period by delivery of written notice disputing the basis or amount of the Direct Claim, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement. If the Indemnifying Party has timely disputed its indemnity obligation for any Damages with respect to such Direct Claim, the Parties shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved by litigation in an appropriate court of jurisdiction determined pursuant to this Agreement.

Section 8.05. Limitations on Indemnification Obligations.

(a) Subject to the other limitations contained in this Section 8.05, neither Buyer nor any other Buyer Indemnified Persons shall be entitled to indemnification pursuant to Section 8.02(a) unless the aggregate amount of Damages incurred by Buyer and any other Buyer Indemnified Persons that would otherwise be subject to indemnification pursuant to Section 8.02(a) exceeds One Million Two Hundred Fifty Dollars (\$1,250,000) in the aggregate (the "Threshold Amount"), in which case the Seller shall then be liable for Damages in respect thereof in excess of the Threshold Amount; *provided, however*, that the foregoing limitations contained in this Section 8.05(a) shall not apply to any claims for indemnification based on (x) a breach of any of the Seller Fundamental Representations or (y) fraud, intentional misrepresentation or willful misconduct.

(b) Subject to the other limitations contained in this Section 8.05, neither Seller nor the Seller Indemnified Persons shall be entitled to indemnification pursuant to Section 8.03(a) unless the aggregate amount of Damages incurred by the Seller and any other Seller Indemnified Persons that would otherwise be subject to indemnification pursuant to Section 8.03(a) exceeds the Threshold Amount, in which case Buyer shall then be liable for Damages in excess of the Threshold Amount; *provided, however*, that the foregoing limitations contained in this Section 8.05(b) shall not apply to any claims for indemnification based on (x) a breach of any of the Buyer Fundamental Representations or (y) fraud, intentional misrepresentation or willful misconduct.

(c) Except in the case of fraud, intentional misrepresentation or willful misconduct (for which all applicable legal and equitable remedies will be available to Buyer), the Buyer Indemnified Persons shall only be entitled to assert (i) claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations, which shall not be limited by this Section 8.05(c)(i) but shall be limited by Section 8.05(c)(ii)) against the Escrow Funds up to the aggregate amount of the Escrow Amount (the "Liability Cap"), which shall represent the sole and exclusive remedy of Buyer and the other Buyer Indemnified Persons for any such claims under Section 8.02(a) (other than claims with respect to breaches of any of the Seller Fundamental Representations or in the case of fraud, intentional misrepresentation or willful misconduct which shall not be subject to the Liability Cap, and subject to recourse to the R&W Insurance Policy), and (ii) claims under Section 8.02(a) with respect to breaches of any of the Seller Fundamental Representations and claims under Sections 8.02(b) or 8.02(c) up to the aggregate amount equal to the Purchase Price (the "Maximum Liability Cap"), which shall represent the maximum aggregate liability of the Seller for all claims under Section 8.02 (other than claims in the case of fraud, intentional misrepresentation or willful misconduct, which shall not be subject to the Maximum Liability Cap). Following the release of the Escrow Funds, the R&W Insurance Policy shall be the sole recourse for any Damages to which a Buyer Indemnified Person is entitled pursuant to Section 8.02(a), other than claims with respect to breaches of any of the Seller Fundamental Representations or in the case of fraud, intentional misrepresentation or willful misconduct; *provided*, that Buyer shall first seek recovery from the R&W Insurance Policy, if coverage is available, with respect to any Damages in respect of breaches of the Seller Fundamental Representations, prior to seeking recovery from the Seller in respect of such Damages. In the case of Damages to which a Buyer Indemnified Person is entitled (x) pursuant to Section 8.02(a) with respect to breaches of any Seller Fundamental Representations (provided that Buyer has first sought recovery from the R&W Insurance Policy to the extent available in accordance with the proviso of the immediately preceding sentence, or to the extent of any Damages for which recovery is not available under the R&W Insurance Policy for any reason in respect of any such breaches of any Seller Fundamental Representations), (y) pursuant to any clause of Section 8.02(b) or Section 8.02(c), or (z) in the event of fraud, intentional misrepresentation or willful misconduct, Buyer may seek recourse for such Damages from the Escrow Funds or from the Seller directly pursuant to this Article VIII, at Buyer's sole and absolute discretion.

(d) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Damage shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds actually received and any indemnity, contribution or other similar payment actually received by the Indemnified Party in respect of

any such claim (other than the R&W Insurance Policy) (in any case, net of expenses incurred in collecting such amount, including any deductible amount paid by such Indemnified Party or increased cost of insurance in connection with such insurance recovery).

(e) Payments by an Indemnifying Party pursuant to Section 8.02 or Section 8.03 in respect of any Damages shall be reduced by an amount equal to any net Tax benefit actually realized by the Indemnified Party in the year such Damages were incurred to the extent attributable to such Damages.

(f) Except with respect to claims (i) relating to the adjustments to the Purchase Price pursuant to Section 3.02, (ii) for equitable relief or specific performance pursuant to Section 7.05 or Section 15.15, and (iii) grounded in fraud, intentional misrepresentation or willful misconduct, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement and the Related Agreements, shall be pursuant to the indemnification provisions set forth in this Article VIII. For the avoidance of doubt, nothing in this Section 8.05(f) shall limit any Person's right to seek and obtain any equitable relief or specific performance to which any Person shall be entitled pursuant to this Agreement.

(g) Each Indemnified Party shall use, and cause its Affiliates to use, commercially reasonable efforts to mitigate any Damages which form the basis of an indemnification claim hereunder.

(h) Notwithstanding anything to the contrary in this Agreement, including anything this Article VIII, with respect to any claims for indemnity by Buyer for or with respect to any Real Property, Buyer shall, to the extent available, first proceed to recover under the Title Policy of the Title Company for any Damages prior to seeking indemnification under this Article VIII. Buyer acknowledges and agrees that it shall not have a claim under the warranty of title of any deed, assignment or other instrument of transfer or conveyance, which is separate and apart from the provisions and limitations of this Article VIII.

Section 8.06. **Insurance Policy.** The Seller acknowledges that Buyer will, effective as of the Closing, enter into the R&W Insurance Policy and that, in connection therewith, a Buyer Indemnified Person may, subject to the provisions of this Article VIII, make claims for the same Damages or series of related Damages under both this Article VIII and the R&W Insurance Policy. The Seller further acknowledges and agrees that the denial of any claim by any Buyer Indemnified Person under the R&W Insurance Policy shall not be construed as, or used as evidence that, such Buyer Indemnified Person is not entitled to indemnification under this Article VIII.

ARTICLE IX.

PRE-CLOSING COVENANTS OF THE SELLER

Section 9.01. Operation of the System Prior to Closing.

(a) Except as otherwise expressly contemplated by this Agreement, as required by applicable Law or with the prior written consent of Buyer (which consent shall not be unreasonably withheld, delayed or conditioned), from the Effective Date until the Closing, the Seller shall (i) operate and manage the System only in the ordinary course of business in accordance with past practices and procedures, (ii) comply in all material respects with all applicable Laws and all Licenses and Permits, (iii) comply in all respects on a timely basis with the Seller's obligations under the Consent Decree and the Compliance Schedule, (iv) in the event of any loss, damage, impairment, confiscation or condemnation of any Acquired Assets, including any of the Real Property (and regardless of whether any such any loss, damage, impairment, confiscation or condemnation is of the type or magnitude contemplated by Section 15.04), apply the proceeds of any insurance policy, judgment or award with respect thereto to repair, replace or restore such Acquired Assets as soon as possible to their prior condition, and (v) use commercially reasonable efforts to maintain and preserve intact the business and assets of the System and to preserve the rights, franchises, goodwill and relationships of the Seller and the System and their customers, lenders, suppliers, regulators and others having business relationships with the Seller and the System.

(b) Without limiting anything contained in Section 9.01(a), except as expressly permitted by the terms of this Agreement or a Related Agreement, from the Effective Date and until the Closing, the Seller shall not, without the prior written consent of Buyer:

(i) amend its charter, bylaws or other similar organizational documents;

(ii) sell, rent, lease or otherwise dispose of any of the Acquired Assets, other than in the ordinary course of business consistent with past practice with respect to assets which are not, individually or in the aggregate, material to the business or operations of the Seller;

(iii) incur, create or assume any Lien with respect to the System or any Acquired Asset, other than Permitted Liens, or give or agree to give or become a party to or bound by any guarantee, surety or indemnity in respect of indebtedness or other obligations or liabilities of any other Person;

(iv) hire any new employees (including as a result of the retirement, resignation, or other termination of any Personnel employed by the Seller prior to or as of the Effective Date), or increase the number of System employees or the base compensation of any employee of the System or grant any bonuses, benefits or other forms of direct or indirect compensation to any employee, officer, director or consultant of the System, except (x) as required by the Collective Bargaining Agreement, (y) as required under the terms of any Seller's Plan in existence as of the date hereof, or (z) as required by applicable Law; *provided* that in the event of a vacancy following the date

hereof in a non-administrative position of employment with the Seller which is critical to the operation and maintenance of the System, the Seller shall be permitted to hire individuals on a temporary basis to perform such critical functions;

(v) enter into, amend or modify any employment or severance agreement, plan or arrangement or increase, terminate, amend or otherwise modify in any material respect any plan or arrangement for the benefit of employees of the System, except as required by the Collective Bargaining Agreement;

(vi) amend, waive, terminate, otherwise modify the Collective Bargaining Agreement or any term or condition thereof, or enter into any agreement, arrangement or understanding, whether oral or in writing, formal or informal, or otherwise, with the Union or any other Person with respect to the foregoing, except as to settle any forthcoming grievances in accordance with the Seller's obligations under the Collective Bargaining Agreement;

(vii) incur any or increase any of the Assumed Liabilities, or the other liabilities or obligations of the System other than (1) as expressly required to comply with the Compliance Schedule, (2) obligations or liabilities in respect of capital expenditures expressly contemplated by the capital expenditure budget provided to Buyer prior to the date hereof and attached to Schedule 9.01(b)(vii) or (3) undrawn amounts under Outstanding Indebtedness;

(viii) make any changes to its method of accounting, except as required by GASB or applicable Law;

(ix) pay, settle or offer to settle or dismiss any litigation or other claim involving or against the Seller or the System, except such claims related to grievances and arbitrations under the Collective Bargaining Agreement and any such claims (or series of related claims) seeking solely monetary damages; *provided*, that in no event shall the Seller, the City, the Borough or any of their respective Affiliates make any agreement in connection with the foregoing which would, or would reasonably be expected to, limit the conduct of Buyer's or its Affiliates' business on or after the Closing Date;

(x) amend, modify or waive performance in any material respect or terminate any Material Contract (other than the expiration of such Material Contract in accordance with its terms) or enter into any Contract that, had such Contract been entered into prior to the date hereof, would have been a Material Contract;

(xi) make any material change in the manner of billing of any customers of the System;

(xii) cancel or fail to renew any insurance policy or fail to give all notices and present all claims (if any) under all such policies in a timely fashion;

(xiii) cause or permit any material change in cash management practices of the System and the Seller's and the System's policies, practices and procedures with respect

to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits (including any such changes intended to or having the effect of, accelerating the collection of accounts receivable or postponing payments of accounts payable);

(xiv) enter into any commitment or transaction that would constitute a breach of the representations, warranties or agreements contained in this Agreement, or take any action or fail to take any action or, to the extent within the Seller's control, permit to occur any event that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect; or

(xv) agree, resolve or commit to do any of the foregoing.

Section 9.02. **Cooperation.** The Seller shall reasonably cooperate with Buyer and its employees, attorneys, accountants and other agents and, generally, act in reasonably good faith to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated by this Agreement.

Section 9.03. **Updates to Seller's Schedules.** Following the date hereof and prior to the Closing, the Seller shall promptly deliver written notice (any such notice, a "Seller Schedule Supplement") to Buyer (i) if any of the representations and warranties contained in Article IV of this Agreement was inaccurate or untrue when made, or (ii) of any event, condition or circumstance first occurring after the date of this Agreement that would cause or constitute a breach of any of the representations and warranties of the Seller contained in Article IV if any such representation or warranty had been made at the time of such event, condition or circumstance (any such event, condition or circumstance referenced in this clause (ii), a "Seller Post-Signing Event"). Without limiting the foregoing, at least three (3) Business Days prior to the Closing Date, the Seller shall advise Buyer of any facts which would constitute a breach of a representation or warranty as of the date made or a default under any covenant contained herein. Any disclosure in any Seller Schedule Supplement shall be for informational purposes only and shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of the indemnification or termination rights contained in this Agreement or for purposes of determining whether or not the conditions set forth in Article XII have been satisfied; *provided, however*, that in the event that the Seller delivers a Seller Schedule Supplement with respect to a Seller Post-Signing Event and such Seller Post-Signing Event would give Buyer the right to terminate this Agreement pursuant to Section 14.01(b), and Buyer does not deliver notice of termination of this Agreement pursuant to Section 14.01(b) (i) within five (5) Business Days of the later of (x) Buyer's receipt of such Seller Schedule Supplement and (y) the expiration of any applicable cure period a provided in Section 14.01(b) or (ii) prior to Closing if such Seller Schedule Supplement is delivered less than five (5) Business Days prior to the Closing Date, then Buyer shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to such Seller Post-Signing Event and, further, Buyer shall have irrevocably waived its right to indemnification under Section 8.02(a) with respect to such Seller Post-Signing Event.

Section 9.04. **Governmental Approvals.** Promptly after the execution of this Agreement, upon the terms and subject to the conditions set forth in this Agreement, the Seller shall file all applications and reports that are required to be filed by the Seller with any Governmental Authority, and shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable Law to consummate the transactions contemplated hereby and by the Related Agreement, including (a) preparing and filing as promptly as practicable with any Governmental Authority all documentation to effect all necessary, proper or advisable filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (b) obtaining and maintaining as promptly as practicable all consents, approvals, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other Person that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement or the other Related Agreements. In furtherance and not in limitation of the foregoing, the Seller shall (x) provide or cause to be provided to any Governmental Authority information and documents requested by any such Governmental Authority or necessary, proper or advisable to permit consummation of the transactions contemplated by this Agreement or the other Related Agreement as promptly as possible after the execution of this Agreement, including by supplying as promptly as practicable any additional information and documentary material that may be requested by the DOJ, the EPA, the PaDEP or any other Governmental Authorities, and (y) assist, consult with and cooperate with Buyer in doing all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including by (1) furnishing to Buyer all information required or reasonably necessary for any filing to be made with any Governmental Authority (including Buyer's filing with PaPUC), (2) promptly informing Buyer of any communication with any such Governmental Authority regarding any such filings, (3) cooperating with Buyer in the filing and prosecution of any applications required for any Governmental Approvals, and (4) at the request of Buyer, executing such application forms and other documents as necessary to apply for the transfer and/or reissuance of any necessary Governmental Approvals.

ARTICLE X.

PRE-CLOSING COVENANTS OF BUYER

Section 10.01. **R&W Insurance Policy.** Buyer shall use commercially reasonable efforts to procure and cause to be bound as promptly as practicable following the date hereof, a representations and warranties insurance policy containing customary terms consistent with transactions of the size and type contemplated by this Agreement, with a base liability limit of no more than \$12,500,000 and an initial retention equal to the Escrow Amount (subject to reduction to a retention amount equal to the Threshold Amount at the Escrow Release Date, and containing such other customary terms, conditions and exclusions as are reasonably acceptable to Buyer (the "**R&W Insurance Policy**"). The R&W Insurance Policy shall provide that the insurer shall waive and not pursue any subrogation rights against the Seller. The Seller and its Representatives shall reasonably cooperate with Buyer in connection with Buyer's procurement of the R&W Insurance Policy and, subject to the provision of such cooperation, Buyer shall in good faith seek to minimize the number and scope of any exclusions from coverage under the R&W Insurance Policy. Buyer shall not intentionally take any actions to cause the R&W Insurance Policy to not

be effective as of the Closing. The aggregate cost of the premium for the R&W Insurance Policy (including, for the avoidance of doubt, any underwriting fees and any portion of the premium cost for the R&W Insurance Policy paid by Buyer prior to the Closing, to the extent such fees or payments are credited against the aggregate premium cost pursuant to the terms of the R&W Insurance Policy) (the "R&W Premium") shall be borne by the Seller, and the R&W Premium shall be included in the Transaction Expense Amount (with the effect that the net payment to the Seller at Closing shall be reduced by the R&W Premium (and any other amounts included in the Transaction Expense Amount), as provided in Section 3.01(d)). Notwithstanding the foregoing, the R&W Premium required to be paid by Seller hereunder shall not exceed \$550,000.

Section 10.02. **Governmental Approvals.** Promptly after the execution of this Agreement, upon the terms and subject to the conditions set forth in this Agreement (including the PaPUC approvals in Article VII), Buyer shall file all applications and reports that are required to be filed by Buyer with any Governmental Authority, and shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable Law to consummate the transactions contemplated hereby and by the Related Agreement, including (a) preparing and filing as promptly as practicable with any Governmental Authority all documentation to effect all necessary, proper or advisable filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (b) obtaining and maintaining as promptly as practicable all consents, approvals, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other Person that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement or the other Related Agreements. In furtherance and not in limitation of the foregoing, Buyer shall (x) provide or cause to be provided to any Governmental Authority information and documents requested by any such Governmental Authority or necessary, proper or advisable to permit consummation of the transactions contemplated by this Agreement or the other Related Agreement as promptly as possible after the execution of this Agreement, including by supplying as promptly as practicable any additional information and documentary material that may be requested by the DOJ, the EPA, the PaDEP or any other Governmental Authorities, and (y) assist, consult with and cooperate with the Seller in doing all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including by (1) furnishing to the Seller all information required or reasonably necessary for any filing to be made with any Governmental Authority (including the filing with PaPUC), (2) promptly informing the Seller of any communication with any such Governmental Authority regarding any such filings, (3) cooperating with the Seller in the filing and prosecution of any applications required for any Governmental Approvals, and (4) at the reasonable request of the Seller and subject to Buyer's reasonable approval thereof, executing such application forms and other documents as necessary to apply for the transfer or reissuance of any Governmental Approvals to Buyer which are necessary for Buyer's ownership or operation of the System from and after the Closing.

Section 10.03. **Cooperation.** Buyer shall reasonably cooperate with the Seller and its employees, attorneys, accountants and other agents and, generally, do such other acts and things in good faith as may be reasonable to timely effectuate the purposes of this Agreement and the consummation of the transactions contemplated in accordance with the provisions of this Agreement.

Section 10.04. **Updates to Buyer's Schedules.** Following the date hereof and prior to the Closing, Buyer shall promptly deliver written notice (any such notice, a "**Buyer Schedule Supplement**") to the Seller (i) if any of the representations and warranties contained in Article V of this Agreement was inaccurate or untrue when made, or (ii) of any event, condition or circumstance first occurring after the date of this Agreement that would cause or constitute a breach of any of the representations and warranties of the Seller contained in Article V if any such representation or warranty had been made at the time of such event, condition or circumstance (any such event, condition or circumstance referenced in this clause (ii), a "**Buyer Post-Signing Event**"). Without limiting the foregoing, at least three (3) Business Days prior to the Closing Date, Buyer shall advise the Seller of any facts which would constitute a breach of a representation or warranty as of the date made or a default under any covenant contained herein. Any disclosure in any Buyer Schedule Supplement shall be for informational purposes only and shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of the indemnification or termination rights contained in this Agreement or for purposes of determining whether or not the conditions set forth in Article XI have been satisfied; *provided, however*, that in the event that Buyer delivers a Buyer Schedule Supplement with respect to a Buyer Post-Signing Event and such Buyer Post-Signing Event would give the Seller the right to terminate this Agreement pursuant to Section 14.01(a), and the Seller does not deliver notice of termination of this Agreement pursuant to Section 14.01(a) (i) within five (5) Business Days of the later of (x) the Seller's receipt of such Buyer Schedule Supplement and (y) the expiration of any applicable cure period as provided in Section 14.01(a) or (ii) prior to Closing if such Buyer Schedule Supplement is delivered less than five (5) Business Days prior to the Closing Date, then the Seller shall be deemed to have irrevocably waived any right to terminate this Agreement with respect to such Buyer Post-Signing Event and, further, the Seller shall have irrevocably waived its right to indemnification under Section 8.03(a) with respect to such Buyer Post-Signing Event.

ARTICLE XI.

CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER

The obligation of the Seller to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any one or more of which may be waived in writing by the Seller in its sole discretion:

Section 11.01. **Consents and Approvals.**

(a) The PaPUC shall have issued a Final Order approving the transactions contemplated hereby without a material modification to the rate-related provisions of Section 7.07.

(b) The DOJ, EPA and PaDEP shall have agreed to the lodging of the Amended Consent Decree, and the United States District Court for the Middle District of Pennsylvania shall have issued a Final Order approving the Amended Consent Decree, to be effective as of the Closing; *provided* that subject to the issuance of each such Final Order, this condition shall be satisfied so long as the Amended Consent Decree contains the complete release of the Seller and

sole substitution of Buyer in Seller's place as described in clause (3) of the definition of Amended Consent Decree set forth in Section 7.06(d).

Section 11.02. **Representations and Warranties of Buyer.** The representations and warranties made by Buyer in Article V which are (a) not qualified by materiality shall be true and correct in all material respects on and as of the Closing Date (except for representations or warranties that speak of a specific date or time other than the Closing Date which shall be true and correct in all material respects as of such specified date) and (b) qualified by materiality shall be true and correct in all respects on and as of the Closing Date (except for representations or warranties that speak of a specific date or time other than the Closing Date which shall be true and correct in all respects as of such specified date), and the Seller shall have received a certificate to the effect of the foregoing from a duly authorized officer of Buyer dated as of the Closing Date.

Section 11.03. **No Injunctions.** Neither the Seller nor Buyer shall be subject to any injunction, writ, temporary or preliminary restraining order or other similar decree of a court of competent jurisdiction restraining or prohibiting the consummation of the transactions contemplated by this Agreement, and no action or proceeding (or any investigation or other inquiry that would reasonably be expected to result in such action or proceeding) shall have been instituted or shall be pending which seeks to restrain or prohibit, the transactions contemplated by this Agreement.

Section 11.04. **Performance of the Obligations of Buyer.** Buyer shall have complied with and performed in all material respects all covenants and obligations required under this Agreement to be complied with and performed by Buyer on or before the Closing Date, and the Seller shall have received a certificate from Buyer dated as of the Closing Date certifying that the conditions set forth in this Section 11.04 have been satisfied.

Section 11.05. **Deliveries by Buyer.** Buyer shall have made delivery to the Seller of the documents and items specified in Section 13.03 herein.

ARTICLE XII.

CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

The obligation of Buyer to consummate the transactions provided for in this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any one or more of which may be waived in writing by Buyer in its sole discretion:

Section 12.01. **Consents and Approvals.**

(a) Buyer shall have received all of the third party consents and other approvals set forth in Schedule 12.01(a), each of which shall (i) be in form and substance and contain terms and conditions reasonably satisfactory to Buyer, (ii) not be subject to the satisfaction of any condition that has not been satisfied or waived, and (iii) be in full force and effect.

(b) The PaPUC shall have issued a Final Order approving the transactions contemplated hereby on terms and conditions reasonably satisfactory to Buyer.

(c) The PaPUC shall have issued a Final Order approving a tariff supplement incorporating Buyer's Industrial Pretreatment Program applicable to the System into Buyer's tariff, and Buyer's Industrial Pretreatment Program shall have been approved, to the extent required, by PaDEP and EPA.

(d) The DOJ, EPA and PaDEP shall have agreed to the lodging of the Amended Consent Decree and the United States District Court for the Middle District of Pennsylvania shall have issued a Final Order approving the Amended Consent Decree, to be effective as of the Closing, on terms and conditions reasonably satisfactory to Buyer.

(e) All Governmental Approvals and other actions of, filings with and notices to any Governmental Authority (other than the Governmental Approvals set forth in Section 12.01(b), Section 12.01(c) and Section 12.01(d)) necessary to permit Buyer and the Seller to perform their respective obligations under this Agreement and the Related Agreements and to consummate the transactions contemplated hereby and thereby (including with respect to the transfer of any Licenses and Permits by the Seller to Buyer) (i) shall have been duly obtained, made or given, (ii) shall be in substance reasonably satisfactory to Buyer, (iii) shall not be subject to the satisfaction of any condition that has not been satisfied or waived, (iv) shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Authority necessary for the consummation of the transactions shall have occurred, and (v) to the extent permitted by applicable Laws and Environmental Laws, all Licenses and Permits, including Environmental Requirements, shall have been transferred or issued to Buyer, as applicable, effective from and after the Closing Date, in form and substance and containing terms and conditions reasonably satisfactory to Buyer.

(f) The Authority Board shall have approved: (i)(A) defeasance and redemption of any outstanding bonds issued by the Seller on the System included in the Outstanding Indebtedness and (B) discharge of any other outstanding debt issued to the Seller and payable to any current lender and (ii) the transfer to Buyer or for its benefit of related funds held in any construction fund or account under any indenture(s) being held by the Seller or any lender to the Seller on any outstanding debt (it being understood that any debt service funds or debt service reserve funds will be applied to the defeasance, redemption and discharge of outstanding debt).

Section 12.02. **Representations and Warranties of Seller.** The representations and warranties made by Seller in Article IV which are (a) not qualified by materiality shall be true and correct in all material respects on and as of the Closing Date (except for representations or warranties that speak of a specific date or time other than the Closing Date which shall be true and correct in all material respects as of such specified date) and (b) qualified by materiality shall be true and correct in all respects on and as of the Closing Date (except for representations or warranties that speak of a specific date or time other than the Closing Date which shall be true and correct in all respects as of such specified date), and Buyer shall have received a certificate to the effect of the foregoing from a duly authorized officer of the Seller dated as of the Closing Date.

Section 12.03. **No Injunctions.** Neither the Seller nor Buyer shall be subject to any injunction, writ, temporary or preliminary restraining order or other similar decree of a court of competent jurisdiction restraining or prohibiting the consummation of the transactions

contemplated by this Agreement, and no action or proceeding (or any investigation or other inquiry that would reasonably be expected to result in such action or proceeding) shall have been instituted or shall be pending which seeks to restrain or prohibit, the transactions contemplated by this Agreement.

Section 12.04. **No Material Adverse Effect.** There shall not have occurred any event, development or condition which has had, or would reasonably be expected to have, a Material Adverse Effect, the effect of which has not been cured by the Seller.

Section 12.05. **Deliveries by Seller.** The Seller shall have made delivery to Buyer of the documents and items specified in Section 13.02 herein.

Section 12.06. **Performance of the Obligations of Seller.** The Seller shall have complied with and performed in all material respects all covenants and obligations required under this Agreement to be complied with and performed by the Seller on or before the Closing Date, other than the covenants and obligations contained in Article VI and Section 9.01(a)(iii), with respect to which the Seller shall have complied with and performed in all respects on or prior to the Closing Date, and Buyer shall have received a certificate from the Seller dated as of the Closing Date certifying that the conditions set forth in this Section 12.06 have been satisfied.

Section 12.07. **R&W Insurance Policy.** The R&W Insurance Policy shall be in full force and effect; *provided*, that this condition shall be deemed satisfied if Buyer shall have breached its obligations in Section 10.01 and such breach shall have proximately caused the R&W Insurance Policy to not have been bound prior to, and issued effective as of, the Closing.

Section 12.08. **Assignment of Easements.** As to Easements: (i) All Essential Easements shall be Eligible Easements and (ii) there are to be no more than ten (10) other Easements (whether Held Easements or Missing Easements) that are appurtenant to any Combined Sewer System Asset or necessary for access to any Combined Sewer System Asset or for the operation of any Combined Sewer System Asset (including Easements for utilities and power to any Combined Sewer System Asset) or otherwise which are necessary for or used in connection with the operation of the System or to provide continuous and unimpeded rights of way for the Combined Sewer System Assets (including access thereto) which are not Eligible Easements.

ARTICLE XIII.

CLOSING

Section 13.01. **Closing Date.** The Closing shall take place at the offices of Reed Smith LLP, 1717 Arch Street, Suite 3100, Philadelphia, PA 19103, at 10:00 a.m. Eastern time on the earliest agreed upon date or within five (5) Business Days after the date upon which all the conditions precedent to Closing described in this Agreement have been fulfilled or waived, or at such other place and time, by such other method, or on such other date, as may be mutually agreed to by the Parties (the "Closing Date"). The Closing shall be effective at 12:01 a.m., Eastern time, on the Closing Date (the "Closing Effective Time").

Section 13.02. **Deliveries by the Seller.** At or prior to the Closing, the Seller shall have delivered or cause to be delivered to Buyer executed copies of the following:

(a) a duly executed Bill of Sale transferring all of the Acquired Assets comprising tangible personal property, in substantially the form attached hereto as Exhibit A;

(b) a duly executed counterpart to an Assignment and Assumption Agreement with respect to the Assumed Liabilities and the Acquired Assets (other the Acquired Assets comprising tangible personal property to be conveyed pursuant to the Bill of Sale) (the "Assignment and Assumption Agreement"), in substantially the form attached hereto as Exhibit B;

(c) a duly executed counterpart to the Escrow Agreement;

(d) the consents to transfer all of the Assigned Contracts, Intellectual Property Assets and all Licenses and Permits held by the Seller (including environmental Licenses and Permits) which are set forth on Schedule 12.01(a), each of which shall (i) be in form and substance and contain terms and conditions reasonably satisfactory to Buyer, (ii) not be subject to the satisfaction of any condition that has not been satisfied or waived, and (iii) be in full force and effect;

(e) title certificates to any motor vehicles included in the Acquired Assets, duly executed by the Seller (together with any transfer forms necessary to transfer title to such vehicles);

(f) all such special warranty deeds, bills of sale, realty transfer tax statements of value, assignments and other instruments of transfer or conveyance in order to sell, transfer, assign, convey and deliver title to the Real Property and the other Acquired Assets duly executed by Seller pursuant to the terms and provisions of Section 2.03;

(g) to the extent requested by Buyer prior to the Closing to be delivered by the Seller to Buyer at or prior to the Closing, copies or originals of all Files and Records, materials, documents and records in possession of the Seller relating to the System, the Acquired Assets or the Assumed Liabilities, including the Real Property and the Assigned Contracts;

(h) any documents duly executed by the Seller required by the Title Company to issue final owner's title policies in accordance with the procedures set forth in Article VI;

(i) such documents, instruments and information, in each case in form and substance reasonably acceptable to Buyer, evidencing the Seller's compliance with its obligations pursuant to Section 7.11(c) and the Seller's performance of its other obligations under this Agreement with respect to the prepayment, redemption, cancellation, termination or legal defeasance, as applicable, of all Outstanding Indebtedness at the Closing (other than any such Outstanding Indebtedness being lawfully assumed by Buyer as provided in this Agreement), including any and all such documents, instruments or information (i) necessary to enable Buyer to effect the payment in full (in the case of Outstanding Indebtedness then subject to prepayment or redemption) or make provision for the payment in full so as to effect a legal defeasance (in the case of Outstanding Indebtedness not then subject to prepayment or redemption), on behalf of the Seller, of such Outstanding Indebtedness at the Closing, pursuant to Section 3.01(a), (ii) evidencing the full and unconditional release, satisfaction and discharge of any Liens in

connection therewith, or (iii) that are otherwise reasonably requested by Buyer in connection with any of the foregoing; and

(j) all such other instruments of conveyance or other documents as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer to Buyer the Acquired Assets in accordance with this Agreement or to carry out the terms of this Agreement, duly executed and acknowledged by the Seller, if necessary, and in a recordable form.

Section 13.03. **Deliveries by Buyer.** At the Closing, Buyer shall have delivered or caused to be delivered to the Seller the following:

(a) payment in full of the Purchase Price pursuant to Section 3.01 (including delivery to the Escrow Agent and the other payees thereof);

(b) a duly executed counterpart to the Assignment and Assumption Agreement;

(c) the Escrow Agreement, duly executed by each of Buyer and the Escrow Agent;
and

(d) such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement.

ARTICLE XIV.

TERMINATION

Section 14.01. **Events of Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) subject to Section 10.04, by the Seller (if the Seller is not then in material breach of any of its representations, warranties, covenants or agreements under this Agreement so as to cause any of the conditions set forth in Article XII not to be satisfied), upon written notice to Buyer, if there has been a material violation, breach or inaccuracy of any representation, warranty, covenant or agreement of Buyer contained in this Agreement, which violation, breach or inaccuracy would cause any of the conditions set forth in Article XI not to be satisfied, and such violation, breach or inaccuracy has not been waived by the Seller or cured by Buyer, as applicable, within thirty (30) days after receipt by Buyer of written notice thereof from the Seller or is not reasonably capable of being cured prior to the Outside Date;

(b) subject to Section 9.03, by Buyer (if Buyer is not then in material breach of any of its representations, warranties, covenants or agreements under this Agreement so as to cause any of the conditions set forth in Article XI not to be satisfied), upon written notice to the Seller, if there has been a material violation, breach or inaccuracy of any representation, warranty, covenant or agreement of the Seller contained in this Agreement, which violation, breach or inaccuracy would cause any of the conditions set forth in Article XII not to be satisfied, and such violation, breach or inaccuracy has not been waived by Buyer or cured by the Seller, as

applicable, within thirty (30) days after receipt by the Seller of written notice thereof from Buyer or is not reasonably capable of being cured prior to the Outside Date;

(c) by Buyer if, in the reasonable judgment of Buyer, a Material Adverse Effect has occurred since the Effective Date, and (x) such Material Adverse Effect is not reasonably capable of being cured prior to the Outside Date or (y) the effect of such Material Adverse Effect, if capable of being cured, has not been cured by the Seller within thirty (30) days after receipt by the Seller of notice specifying with particularity such Material Adverse Effect;

(d) by Buyer, as provided in Section 15.04(a) or Section 15.04(b), as applicable;

(e) by Buyer, as provided in Article VI;

(f) by the Seller or Buyer at any time after the Outside Date, if the Closing has not occurred and the Party seeking to terminate this Agreement is not in breach or default of any provisions of this Agreement; *provided* that the right to terminate this Agreement pursuant to this Section 14.01(f) shall not be available to any Party whose breach of any provision of this Agreement results in the failure of the Closing to be consummated by such time; and *provided further*, that if (i) on October 15, 2016, any of the conditions set forth in Article XI or Article XII have not been satisfied or waived (other than those conditions which, by their terms, are to be satisfied or waived at the Closing), then either Party shall have the right (which right pursuant to this clause (i) may only be exercised on one (1) occasion by Buyer and on one (1) occasion by the Seller) to extend the Outside Date to a date that is not later than December 31, 2016, and which right shall be exercised by written notice to the other Party on or before October 15, 2016 (and which written notice shall specify the new Outside Date as extended pursuant to this Section 14.01(f)(i)), and (ii) the Outside Date has been extended by either Party pursuant to Section 14.01(f)(i), and on such new Outside Date, any of the conditions set forth in Section 11.01(a), Section 11.01(b), Section 12.01(b), Section 12.01(c) or Section 12.01(d) have not been satisfied, and all of the other conditions to Closing set forth in Article XI or Article XII (other than those conditions which, by their terms, are to be satisfied or waived at the Closing), then either Party shall have the right (which right pursuant to this clause (ii) may only be exercised on one (1) occasion by Buyer and on one (1) occasion by the Seller) to extend the Outside Date to a date that is not later than March 31, 2017, and which right shall be exercised by written notice to the other Party on or before the then-current Outside Date (and which written notice shall specify the new Outside Date as extended pursuant to this Section 14.01(f)(ii));

(g) by the Seller or Buyer if (i) any Governmental Authority, the consent from or approval by which is a condition to the obligations of the Parties to consummate the transactions contemplated hereby shall have determined not to grant its consent or approval (or conditioned its consent or approval in such manner that is not reasonably acceptable to the Parties or constitutes a material deviation from the consent or approval contemplated hereunder) as applicable and all appeals of or other legal challenges to such determination have been taken and have been unsuccessful; or (ii) any court of competent jurisdiction shall have issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and such order, judgment or decree shall have become final and non-appealable; or

(h) by mutual agreement of the Seller and Buyer.

For the avoidance of doubt, this Agreement may not be terminated after completion of the Closing.

Section 14.02. **Effect of Termination.** In the event of termination of this Agreement as expressly permitted under Section 14.01, this Agreement shall forthwith become void and of no further force and effect and there shall be no liability on the part of any Party hereto (or any of its Affiliates) except that:

(a) the provisions of this Article XIV and Section 15.01 (Confidentiality), Section 15.02 (Public Announcements), Section 15.03 (Expenses; Brokers) Section 15.13 (Successors and Assigns), Section 15.14 (Governing Law), Section 15.15 (Specific Performance) and Section 15.16 (Limitations of Liability) shall continue in full force and effect; and

(b) notwithstanding anything to the contrary herein, no Party shall be relieved from liability for (i) fraud or (ii) any intentional or willful breach of any of its representations, warranties covenants or agreement set forth in this Agreement prior to such termination, all of which claims will survive and remain actionable, and such Party shall be fully liable for any and all Damages incurred or suffered by the other Party as a result of such fraud or intentional or willful breach.

ARTICLE XV.

MISCELLANEOUS

Section 15.01. **Confidentiality.** Except as and to the extent required by applicable Law (including the Pennsylvania Right-To-Know Act at 65 Pa § 67.101) or pursuant to an order of a court of competent jurisdiction and as required hereunder to obtain any and all required Governmental Approvals, neither Party hereto shall, directly or indirectly, disclose or use (and no party shall permit its Representatives to disclose or use) any Confidential Information (as defined below) with respect to the other Party furnished by such other Party hereto or its shareholders, directors, officers, agents, or other Representatives to the other Party hereto or its employees, directors, officers, agents or other Representatives in connection herewith at any time or in any manner other than in connection with the completion of the transactions contemplated by this Agreement and the Related Agreements. For purposes of this paragraph, the term "**Confidential Information**" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to Buyer or its Affiliates or their respective business, products, services or research or development, or to the Seller or the System; *provided, however,* that Confidential Information of a Party does not include information which the receiving Party can demonstrate (a) is generally available to or known by the public other than as a result of improper disclosure by the receiving Party, (b) is obtained by the receiving Party from a source other than the disclosing Party, provided that such source was not bound by a duty of confidentiality to the disclosing Party with respect to such information, or (c) is legally in the public domain. After the execution of this Agreement, the Parties shall timely and in good faith execute a common interest agreement applicable to the

transactions contemplated by this Agreement, in form and substance and containing terms and conditions reasonably acceptable to each Party in its reasonable and good faith discretion.

Section 15.02. **Public Announcements.** Subject to applicable Law or listing rules of an exchange on which Buyer Parent's stock is listed, the initial public announcement relating to the transactions contemplated herein shall be mutually agreed upon and jointly made by the Parties; *provided*, that for the avoidance of doubt, the foregoing shall not be deemed to restrict or prohibit Buyer or its Affiliates from issuing or causing publication of any press release or public announcement regarding this Agreement to the extent that Buyer or its Affiliates reasonably determine that such disclosure is required by applicable Law (including securities Laws) or listing rules of an exchange on which Buyer Parent's stock is listed, in which case Buyer will, if practicable in the circumstances, use commercially reasonable efforts to allow the Seller reasonable time to comment on such release or announcement in advance of its issuance. The Seller shall cause the City and the Borough to provide to Buyer and the Seller contact information for a designated individual who will receive prior notice of any subsequent public announcement relating to the transactions contemplated herein. Subject to applicable Law or listing rules of an exchange on which Buyer Parent's stock is listed, following the initial public announcement relating to the transactions contemplated hereby as provided in the first sentence of this Section 15.02, and until the Closing, neither Buyer nor the Seller, nor any of their respective Affiliates or Representatives (or any Representative of the City or the Borough), shall make or issue any press release regarding this Agreement, the contents hereof, or the transactions contemplated hereby, without the prior written consent of Buyer (in the case of announcements by the Seller, the City, the Borough or their respective Affiliates or Representatives) or the Seller (in the case of announcements by Buyer or its Affiliates or their respective Representatives), which consent shall not be unreasonably withheld, conditioned or delayed.

Section 15.03. **Expenses; Brokers.**

(a) Except as otherwise provided in this Section 15.03, Buyer and the Seller shall be responsible for and bear all of their respective costs and expenses incurred in connection with this Agreement, including any legal, accounting or other representative or advisor costs and expenses.

(b) Each Party will be responsible for and shall defend and indemnify the other Party against any claims relating to, any fees or expenses of any financial advisor, broker or finder retained by such Party payable upon consummation of the transactions contemplated by this Agreement.

(c) Except as otherwise expressly provided herein, the Parties agree that the prevailing party in any action brought with respect to or to enforce any right or remedy under this Agreement shall be entitled to recover from the other Party all reasonable costs and expenses of any nature whatsoever incurred by the prevailing party in connection with such action, including attorneys' fees and expert fees.

Section 15.04. Casualty and Condemnation.

(a) Condemnation. If, prior to the Closing Date, there occurs any condemnation with respect to any material portion of the Real Property, or any Real Property that is material to the operation of the System, the Seller shall give Buyer prompt written notice thereof, and Buyer shall have the right, exercisable by delivering written notice to Seller within ten (10) Business Days after the later of the final determination of the scope of such taking or Buyer's receipt of written notice from the Seller of such condemnation, to either (i) terminate this Agreement in accordance with Section 14.01(d), in which case neither Party shall have any further rights or obligations hereunder except as otherwise provided in Section 14.02, or (ii) accept that portion of the Real Property which has not been taken by, or is not subject to taking by, a condemnation action in their then-existing condition and proceed with the Closing, subject to the final sentence of this Section 15.04(a). Buyer's failure to deliver such notice within the ten (10) Business Day period specified above shall be deemed to constitute a waiver of Buyer's right to terminate this Agreement as provided in this Section 15.04(a) with respect to such condemnation (but not any subsequent condemnation). In the event that Buyer elects to proceed with the Closing as provided in clause (ii) of the foregoing sentence, or in the event of any condemnation of any of the Real Property not covered by the first sentence of this Section 15.04(a), the Seller shall assign to Buyer any and all rights of the Seller to any condemnation award received as a result of such event, and to the extent the Seller receives such condemnation award (x) prior to the Closing, then the amount of such condemnation award, less the aggregate amount thereof expended by the Seller prior to the Closing in compliance with its obligations under Section 9.01(a)(iv), shall not be included as part of the calculation of the Closing Cash Balance, or (y) following the Closing, the Seller shall (but in no event later than ten (10) days after receipt thereof) deliver such amount to Buyer.

(b) Casualty. If, prior to the Closing Date, there occurs any destruction of, or damage or loss to any of the Acquired Assets from any cause whatsoever and the cost to repair or replace such destruction, damage or loss exceeds by at least One Million Dollars (\$1,000,000.00) the insurance coverage covering such destruction, damage or loss, then, except as hereinafter provided, Buyer shall have the right, exercisable by delivering written notice to the Seller within ten (10) Business Days after the final determination of the scope of such casualty event and completion of an appraisal and insurance coverage determination of such casualty event by the Seller's insurance provider and delivery of written copies of such final appraisal and insurance coverage determination to Buyer, to terminate this Agreement in accordance with Section 14.01(d), in which case neither Party shall have any further rights or obligations hereunder except as otherwise provided in Section 14.02; *provided, however*, that Buyer shall have the option, but not the obligation, to consummate the Closing of the transactions contemplated in this Agreement and acquire the Acquired Assets in their then-existing condition, with an equitable adjustment of the Purchase Price to compensate Buyer for such destruction, damage or loss, as agreed to by the Parties acting reasonably and in good faith, and in which case the Seller shall assign to Buyer any and all rights of the Seller to any insurance proceeds received as a result of such casualty event, and to the extent the Seller receives such insurance proceeds (x) prior to the Closing, then the amount of such insurance proceeds, less the aggregate amount thereof expended by the Seller prior to the Closing in compliance with its obligations under Section 9.01(a)(iv), shall not be included as part of the calculation of the Closing Cash Balance, or (y) following the Closing, the Seller shall (but in no event later than ten (10) days after receipt

thereof) deliver such amount to Buyer. Buyer's failure to deliver such notice within such ten (10) Business Day period following Buyer's receipt of written copies of such final appraisal and insurance coverage determination with respect to such casualty event shall be deemed to constitute a waiver of Buyer's right to terminate this Agreement as provided in this Section 15.04(b) with respect to such casualty event (but not any subsequent casualty event).

Section 15.05. **Reasonable Efforts; Cooperation.** Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to consummate the transactions contemplated by this Agreement and the Related Agreements. The Parties each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement and the Related Agreements, and from time to time, upon the request of the other Parties to this Agreement and without further consideration, to execute, acknowledge and deliver in proper form any further instruments, and take such other action as the other Parties may reasonably require, in order to effectively carry out the intent of this Agreement and the Related Agreements.

Section 15.06. **Notices.** All notices, requests, demands and other communications that are required or may be given pursuant to the terms of this Agreement or any of the Related Agreements shall be in writing, and delivery shall be deemed effective in all respects and to have been duly given as follows: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section):

If to Buyer, to:

Pennsylvania-American Water Company
800 West Hershey Park Drive
Hershey, PA 17033
Attention: General Counsel
facsimile: 717-531-3399

With a copy to:

American Water Works Company, Inc.
1025 Laurel Oak Road
Voorhees, NJ 08043
Attention: Senior Vice President, Strategy and Business Development
Facsimile: 856-346-5827

and

Reed Smith LLP
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Attention: Brian C. Miner
Facsimile: (215) 851-1420

If to the Seller, to:

The Sewer Authority of the City of Scranton
312 Adams Ave
Scranton, PA 18503
Attn: Executive Director
Facsimile No.: (570) 348-5317

With a copy to:

Jeff Belardi, Esq.
Co-Solicitor
The Sewer Authority of the City of Scranton
The Jones Building
410 Spruce Street, 4th Floor
Scranton, PA 18503
Facsimile No.: (570) 961-3985

Paul J. Walker, Esq.
Co-Solicitor
The Sewer Authority of the City of Scranton
205-207 N. Washington Avenue, Suite C
Scranton, PA 18503
Facsimile No.: (570) 344-1061

Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555
Attn: Steven W. Smith, Esquire
Facsimile No.: (215) 665-8760

Any Party may change its address and preferred recipient or other contact information for notice by giving notice to each other Party in accordance with the terms of this Section 15.06. In no event will delivery to a copied Person alone constitute delivery to the Party represented by such copied Person.

Section 15.07. **Headings.** The article, section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Section 15.08. **Construction.**

(a) The Parties have participated jointly in the negotiation and drafting of this Agreement, and, in the event of an ambiguity or a question of intent or a need for interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

(b) Words of any gender used in this Agreement shall be held and construed to include any other gender; words in the singular shall be held to include the plural; and words in the plural shall be held to include the singular; unless and only to the extent the context indicates otherwise.

(c) Reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision.

(d) Wherever the word “include,” “includes,” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation”.

(e) References in this Agreement to documents, instruments or agreements shall be deemed to refer as well to all addenda, appendices, exhibits, schedules or amendments thereto.

(f) The words “hereof,” “herein,” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(g) References in this Agreement to a specific Section, Subsection, recital, Schedule or Exhibit shall refer, respectively, to Sections, Subsections, recitals, Schedules or Exhibits of this Agreement.

(h) As used in this Agreement, the term “or” has the inclusive meaning represented by the phrase “and/or”.

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day.

Section 15.09. **Severability.** If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or the PaPUC to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 15.10. **Entire Agreement.** This Agreement and the Related Agreements represent the entire agreement among the Parties with respect to the subject matter hereof thereof

and supersede all prior or contemporaneous written or oral agreements or understandings of any kind among the Parties hereto and thereto with respect to the subject matter hereof and thereof, including the MOU, the RFP, the BAFO and the Clarifying Correspondence. All Exhibits and Schedules hereto are expressly made a part of this Agreement as fully as though completely set forth herein.

Section 15.11. **Amendments; Waivers.** Except as hereinafter provided or allowed by statute, this Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Parties hereto, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 15.12. **Parties in Interest; Third Party Beneficiary.** Except as hereinafter provided, this Agreement is not intended to and shall not be construed to create upon any Person other than the Parties any rights or remedies hereunder. Notwithstanding the prior sentence, the City and the Borough are intended third party beneficiaries, with rights, among others, to enforce the covenants and agreements of Buyer contained in Article VII of this Agreement and to provide any notices on behalf of Seller, subject to Section 15.13(c).

Section 15.13. **Successors and Assigns.**

(a) Except as otherwise set forth herein and subject to Sections 15.13(b) and (c), neither Party hereto shall assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the other Parties hereto, and any attempted assignment or delegation without prior written consent shall be void and of no force or effect. Subject to Section 15.13(b), this Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the Parties hereto.

(b) With respect to any assignment or delegation permitted pursuant to Section 15.13(a) or in connection with any proposed sale, lease, liquidation or transfer of all or substantially all of the System or the Acquired Assets by Buyer, Buyer shall cause such assignee or successor to acknowledge and agree in writing for the benefit of Buyer and the Seller, to fully perform and be liable for all of Buyer's obligations set forth in Article VII, which obligations shall continue to be subject to the Seller's rights and remedies hereunder. In the event of any assignment or delegation by Buyer of its rights and obligations under this Agreement to any Person, Buyer shall be fully liable to the Seller to the extent that such Person fails to pay or assist Seller in distributing to customers the Variance Adjustment as provided under this Agreement, and such assignment or delegation by Buyer to such Person shall in no event relieve Buyer of its obligations pursuant to this Section 15.13(b) in the event of any failure by such Person to pay or assist Seller in distributing to customers the Variance Adjustment in breach of this Agreement.

(c) The Parties hereto acknowledge and agree that the limitation on assignment or delegation contained in Section 15.13(a) in no way limits the rights or obligations of the City and the Borough, as the municipalities creating the Seller, under the Municipality Authorities Act. In

the event of the termination of the Seller in accordance with the Municipality Authorities Act and other applicable Law following the Closing:

(i) the City and the Borough shall (x) obtain all property of the Seller and succeed to all of the Seller's rights under this Agreement, and (y) assume and be jointly and severally liable for all of the Seller's obligations under this Agreement (including with respect to the System), in each case as if the City and the Borough were originally direct parties hereto;

(ii) the City, or such other Person as may be designated by mutual written agreement of the City and the Borough (the City or such other Person, the "Seller Successor"), is hereby appointed to act as agent for and on behalf of the City and the Borough in connection with, and to facilitate, any and all transactions arising from, in connection with and incident to this Agreement;

(iii) a decision, act, consent or instruction of the Seller Successor shall constitute a decision of the Seller and shall be final, binding and conclusive upon each of the City and the Borough, and Buyer and the Escrow Agent may rely upon any decision, act, consent or instruction of the Seller Successor as being the decision, act, consent or instruction of the Seller, the City and the Borough;

(iv) Buyer and the Escrow Agent are hereby irrevocably relieved from any liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction of the Seller Successor; and

(v) the Seller or the Seller Successor, as the case may be, shall constitute the sole point of contact for purposes of any notices to be given, consents to be obtained or other communications, by Buyer or Buyer's Affiliates pursuant to or in connection with this Agreement or any matters arising out of or relating hereto, and in no event shall Buyer be required or obligated in any way to give notice to, obtain the consent of or otherwise communicate with any Person other than the Seller or the Seller Successor.

Section 15.14. **Governing Law; Jurisdiction.** This Agreement shall be construed and enforced in accordance with, and governed by, the Laws of the Commonwealth of Pennsylvania (without giving effect to the principles of conflicts of laws thereof). The Parties hereto irrevocably agree and consent to the jurisdiction of the United States District Court for the Middle District of Pennsylvania, the Court of Common Pleas of Lackawanna County, Pennsylvania, and the PaPUC for the adjudication of any matters arising under or in connection with this Agreement. Any action initiated shall be filed and litigated (including all discovery proceedings) exclusively in the United States District Court for the Middle District of Pennsylvania, the Court of Common Pleas of Lackawanna County, Pennsylvania and the PaPUC, and each Party irrevocably submits to the jurisdiction of such courts and the PaPUC in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE

COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. Notwithstanding the foregoing, this Section 15.14 shall not apply to the dispute resolution procedures set forth in (i) Section 3.02, which shall be the exclusive manner to resolve any dispute surrounding the determination of the Post-Closing Adjustment, *provided*, that, any dispute arising out of a breach of any of the provisions of Section 3.02 or a Party's failure to pay an amount determined to be due under Section 3.02 (and not out of a disagreement relating to the determination of such amounts) shall be resolved pursuant to this Section 15.14 or (ii) Section 7.07(d), which shall be the exclusive manner to resolve any dispute regarding the calculation of the Variance Adjustment as set forth in Section 7.07(d), *provided*, that, any dispute arising out of a breach of any of the provisions of Section 7.07(d) (other than a disagreement relating to the calculation of the Variance Adjustment) shall be resolved pursuant to this Section 15.14.

Section 15.15. **Specific Performance**. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof or were otherwise breached and that each Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions hereof and to specific performance of the terms hereof, in addition to any other remedy at law or in equity.

Section 15.16. **Limitations of Liability**.

(a) No present or future officer, director, manager, employee, advisor, agent or attorney of or in the Seller or Buyer shall have any personal liability, directly or indirectly, under or in connection with this Agreement or the Related Agreements, or any amendments thereto, and the Parties and their successors and assigns and all other Persons shall look solely to the Parties for the payment of any claim or for any performance, and the Parties hereby waive any and all such personal liability.

(b) No officer, director, employee, agent or other Representative of the Seller or Buyer shall have any personal liability or obligation whatsoever with respect to any of the matters set forth in this Agreement, the Related Agreements and any other documents, agreements, or instruments related thereto or any of the representations made by the Seller or Buyer being or becoming untrue, inaccurate or incomplete in any respect.

(c) The limitations on liability contained in this Section 15.16 are in addition to, and not in limitation of, any limitation on liability applicable to Seller or Buyer provided in any other provisions of this Agreement or by Law or by any other contract.

Section 15.17. **Attorney-Client Privilege.** Buyer understands and agrees that the Seller will be entitled to retain the services of Buchanan Ingersoll & Rooney PC as its attorney even in the event of any dispute of Buyer with the Seller concerning this Agreement or any of the Related Agreements or any of the transactions contemplated hereby and thereby notwithstanding any result of prior representation of Seller. Notwithstanding the sale of the Acquired Assets to Buyer, Buyer agrees that Buyer shall not have the right to assert the attorney/client privilege as to pre-Closing and post-Closing communications between Seller, on one hand, and its counsel, Buchanan Ingersoll & Rooney PC, on the other hand, to the extent that the privileged communications relate to this Agreement or any of the Related Agreements or to the transactions contemplated hereby and thereby. The Parties agree that only the Seller shall be entitled to assert such attorney/client privilege in connection with such communications following the Closing. The files generated and maintained by Buchanan Ingersoll & Rooney PC as a result of their representation of the Seller in connection with this Agreement or any of the Related Agreements or any of the transactions contemplated hereby are and will remain the exclusive property of the Seller.

Section 15.18. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK;

SIGNATURES NEXT PAGE]

[Signature Page- Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the Effective Date.

"SELLER"

"BUYER"

THE SEWER AUTHORITY OF THE
CITY OF SCRANTON

PENNSYLVANIA-AMERICAN WATER
COMPANY

By: Michael F. McHale

By: _____

Printed: Michael F. McHale

Printed: _____

Its: Chairman

Its: _____

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized representatives, this Agreement as of the Effective Date.

"SELLER"

THE SEWER AUTHORITY OF THE
CITY OF SCRANTON

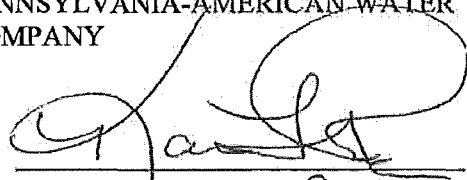
By: _____

Printed: _____

Its: _____

"BUYER"

PENNSYLVANIA-AMERICAN WATER
COMPANY

By:  _____

Printed: Kathy L. Pope

Its: President

EXHIBIT B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Plaintiff-Intervenor,

v.

SCRANTON SEWER AUTHORITY,

Defendant.

CIVIL ACTION NO. 3:CV-09-1873

(Judge Jones)

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (the “EPA”), filed a Complaint in this matter against Defendant Scranton Sewer Authority, (the “Defendant” or the “SSA”) seeking injunctive relief and civil penalties, and alleging, *inter alia*, that the SSA violated the Clean Water Act (the “CWA”), 33 U.S.C. §§ 1251-1387, and certain terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit issued to the SSA pursuant to the CWA relating to the municipal wastewater treatment plant and collection system owned and operated by the SSA;

WHEREAS, Plaintiff-Intervenor, the Commonwealth of Pennsylvania Department of Environmental Protection (“PADEP”) filed a Complaint in Intervention against the SSA seeking injunctive relief and civil penalties, and alleging, *inter alia*, that the SSA violated the Clean Water Act, 33 U.S.C. §§ 1251-1387, Sections 201, 202 and 401 of the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.201, 691.202 and 695.401, and certain terms and conditions of the NPDES Permit issued to the SSA pursuant to the CWA relating to the municipal wastewater treatment plant and collection system owned and operated by the SSA;

WHEREAS, the SSA is a municipal authority organized under the Municipal Authorities Act, as amended, 53 Pa. Cons. Stat. Ann. §§ 5601-5623, that owns, operates, and maintains a publicly owned treatment works (“POTW”), which includes a wastewater treatment plant known as the Scranton Sewer Authority Wastewater Treatment Plant (“WWTP”) and a collection system (“Collection System”) which collects stormwater and wastewater from residential, commercial and industrial sources for the purpose of transporting that wastewater to the WWTP. Certain portions of the Collection System are a Combined Sewer System and other portions are a Sanitary Sewer System. The WWTP and Collection System are authorized to discharge

pollutants in accordance with the SSA's NPDES permit into the Lackawanna River, Roaring Brook, Stafford Meadow Brook, Little Roaring Brook, Keyser Creek, Leggetts Creek, and Meadow Brook; all of which are located within the jurisdiction of the U.S. District Court for the Middle District of Pennsylvania;

WHEREAS, the United States and the PADEP allege the SSA has violated and continues to violate Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, Sections 3, 201, 202 and 401 of the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.3, 691.201, 691.202 and 691.401, by impermissibly discharging untreated sewage from the Collection System to the Lackawanna River and several smaller water tributaries to the Lackawanna;

WHEREAS, the United States brings its claims pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. In its complaint, the United States seeks the imposition of civil penalties and injunctive relief against the SSA for alleged violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and terms and conditions of the NPDES permit last issued by the PADEP as NPDES Permit No. PA-0026492, effective on October 1, 2009 and amended on May 13, 2011;

WHEREAS, the SSA has demonstrated through disclosure of its financial records to Plaintiffs that it has, and will likely continue to have for the foreseeable future, limited ability to pay civil or stipulated penalties and simultaneously meet the compliance requirements of this Consent Decree;

WHEREAS, nothing in this Consent Decree will be construed as an admission by the SSA of violations of any provisions of the CWA, or of the SSA's current or past NPDES permits, or of the Clean Streams Law; and

WHEREAS, the United States, the PADEP, and the SSA ("Parties") recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in

good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue) below, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a). For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint and the Complaint in Intervention state claims upon which relief may be granted pursuant to Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and Sections 3, 201, 202, 401, 601, and 605 of the Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.3, 691.201, 691.202, 691.401, 691.601, and 691.605.

II. APPLICABILITY AND BINDING EFFECT

3. This Consent Decree will apply to and be binding upon the United States, on behalf of the EPA, the PADEP, and upon Defendant and its successors, assigns, and all other entities and persons provided for in Fed. R. Civ. P. 65(d).

4. Defendant shall notify the following of the existence of this Consent Decree and make a copy available to them: all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree.

5. Effective from the Date of Lodging of this Consent Decree until its termination, in the event that the SSA transfers any ownership or operation of its WWTP, the Collection System, or any portion of the WWTP or Collection System, and includes in such transfer, the transfer of any obligations under this Consent Decree, the SSA will give written notice and a copy of this Consent Decree to any successors in interest at least 30 Days prior to such transfer. The SSA will condition any transfer, in whole or in part, of ownership, operation, or other interest in its WWTP, the Collection System, or any other portion of the SSA WWTP and/or Collection System upon the successful execution of the terms and conditions of this Consent Decree. Simultaneously with notice to any successor in interest, the SSA will provide written notice of such transfer to the United States and the PADEP as provided in Section XVI (Notices and Submissions). In the event of any such transfer of ownership or other interest, the SSA will not be released from the obligations or liabilities of this Consent Decree unless: (i) the transferee has the financial and technical ability to assume these obligations and liabilities; (ii) the United States and the PADEP have agreed to release the SSA from the obligations and liabilities; (iii) the United States, the PADEP, and the transferee have jointly moved to substitute the transferee as Defendant to this Consent Decree; and (iv) the Court has approved the substitution.

6. In any action to enforce this Consent Decree, Defendant will not raise as a defense the failure of its officers, directors, agents, contractors, employees, successors, assigns or any other persons or entities provided for in Fed. R. Civ. P. 65(d) to take any actions necessary to

comply with the provisions hereof. Nothing in this Paragraph prevents the Defendant from invoking Section XI of this Decree (Force Majeure), provided that the event meets the definition of a Force Majeure provided in Paragraph 53.

III. OBJECTIVES

7. The objectives of this Consent Decree are for the Defendant to take the steps necessary to achieve full compliance with the CWA, the regulations promulgated thereunder, including, but not limited to, 33 U.S.C. § 1342(q) and the regulations promulgated thereunder, and the Clean Streams Law and the regulations promulgated thereunder. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to come into and remain in full compliance with the terms and conditions of Defendant's NPDES Permit, the Clean Water Act, and the Clean Streams Law, as these terms are defined in Section IV (Definitions).

IV. DEFINITIONS

8. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. § 1251-1387 the regulations promulgated thereunder, or, if not defined in the Clean Water Act or its regulations, then as defined in the Pennsylvania Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.1-691.1001 and the regulations promulgated thereunder. The following definitions shall apply to the terms used in the Consent Decree:

a. "BNR Project" shall mean the wastewater treatment plant upgrades that the SSA is constructing pursuant to requirements in the NPDES Permit, which, as of the Effective Date, are described in Part C § SEVEN.

b. “Building/Private Property Backup” shall mean a wastewater release or backup into a building or private property that is caused by blockages, flow conditions, or other malfunctions of the Collection System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral is not a Building/Private Property Backup.

c. “Clean Water Act” or “CWA” shall mean the Federal Water Pollution Control Act found at 33 U.S.C. §§ 1251-1387, and the regulations promulgated thereunder.

d. “Collection System” shall mean the current and future municipal wastewater collection and transmission system owned or operated by the SSA, including all pipes, interceptors, force mains, gravity sewer lines, lift stations, pumping stations, manholes and appurtenances thereto designed to collect and convey municipal sewage and wastewaters (domestic, commercial, and industrial) to the SSA’s WWTP or to a CSO Outfall. “Collection System” includes both the “Combined Sewer System” and the “Sanitary Sewer System.”

e. “Combined Sewer Overflow Control Policy” or “CSO Policy” shall mean the policy issued by the EPA regarding combined sewer overflows, entitled “Combined Sewer Overflow (CSO) Control Policy,” 59 Fed. Reg. 18688 (April 19, 1994) and as identified in Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q).

f. “Combined Sewer Overflow” or “CSO” shall mean any discharge from the SSA’s Combined Sewer System at a CSO Outfall designated in the currently applicable NPDES Permit.

g. “Combined Sewer System” shall mean the portion of the SSA’s Collection System designed to convey municipal sewage and wastewaters (domestic,

commercial, and industrial) and stormwater in the same system of pipes to the WWTP or to a CSO Outfall.

h. “Consent Decree” shall mean this Consent Decree, all Appendices hereto, and all plans, schedules, reports, memoranda, or other submittals approved by the Plaintiffs pursuant to the requirements of this Consent Decree or any Appendix hereto. In the event of any conflict between the Consent Decree and any Appendix, this Consent Decree shall control.

i. “CSO Outfall” shall mean an outfall in the Combined Sewer System from which combined sewage and stormwater are discharged and so designated in the currently applicable NPDES Permit.

j. “Date of Lodging” shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Middle District of Pennsylvania.

k. “Day” shall mean a calendar day unless expressly stated to be a working day. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday, federal holiday, or legal holiday for the SSA, the SSA shall have until the next calendar day that is not one of the aforementioned days for submission of such report or other deliverable.

l. “Dry Weather Overflow” shall mean a discharge that occurs at a permitted CSO Outfall that is not caused by precipitation-related Inflow or Infiltration.

m. “Effective Date” shall mean the date set forth in Section XVII (Effective Date) of this Consent Decree.

n. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

o. “Green Infrastructure Measures” shall mean the range of stormwater control measures that use plant systems, soil systems, permeable pavement, or stormwater management, harvest and reuse, to store, infiltrate, evapotranspire, or reuse stormwater and reduce flows to the Combined Sewer System. Green Infrastructure Measures may include, but shall not be limited to, extended detention wetland areas, green roofs, and cisterns.

p. “Infiltration” shall mean water entering the Collection System and service connections from the ground through means that include, but are not limited to, defective pipes and sewer walls, pipe and sewer joints, connections, and manhole walls.

q. “Inflow” shall mean water introduced into the Collection System, including service connections, from sources including, but not limited to, roof leaders, cellars, basement sump pumps, area drains in yards and driveways, foundation drains, cooling water discharges, drains from springs and other wet areas, cracked or broken manhole covers, cross connections from separate storm sewers, catch basins, stormwater, surface run-off, street wash waters, and drainage.

r. “Long Term Control Plan” or “LTCP” shall mean the currently applicable plan that the SSA develops pursuant to Section V.B.

s. “MGD” shall mean million gallons per day.

t. “Nine Minimum Controls” or “NMCs” shall mean those controls identified in Section II.B. of the EPA’s April 19, 1994, Combined Sewer Overflow (CSO) Control Policy.

u. “Nine Minimum Controls Plan” or “NMC Plan” shall mean the plan attached hereto as Appendix A, as the same may be revised and updated in accordance with

Section V.A. (Nine Minimum Controls) of this Consent Decree and in accordance with the CSO Policy.

v. “NPDES Permit” shall mean the currently effective NPDES Permit No. PA-0026492, effective on October 1, 2009 and amended on May 13, 2011, issued to the SSA by the PADEP. This definition includes any subsequent modification or reissuance of the Permit in accordance with 40 C.F.R Part 123.

w. “Operating Protocols” shall mean the procedures described, as of the Effective Date, in Part C, § TWELVE of the NPDES Permit.

x. “PADEP” shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the Commonwealth of Pennsylvania.

y. “Paragraph” shall mean a provision of this Consent Decree identified by an Arabic number.

z. “Parties” shall mean the United States, the PADEP, and the SSA.

aa. “Plaintiffs” shall mean the United States and the PADEP.

bb. “Private Lateral” shall mean that portion of the Collection System not owned by the SSA and used to convey wastewater from a building(s) to a portion of the Collection System owned by the SSA.

cc. “Sanitary Sewer System” shall mean the current and future portion of the Collection System Sewer designed to convey municipal sewage and wastewaters (domestic, commercial, and industrial) to the WWTP in one system and stormwater in a separate system.

dd. “Sanitary Sewer Overflow” or “SSO” shall mean an overflow, spill, diversion, or release of wastewater from or caused by the Sanitary Sewer System. This term shall include: (i) discharges to waters of the Commonwealth of Pennsylvania or United States from the

Sanitary Sewer System and (ii) any release of wastewater from the Sanitary Sewer System to public or private property that does not reach waters of the United States or the Commonwealth of Pennsylvania, including Building/Private Property Backups.

ee. “Section” shall mean a portion of this Consent Decree identified by an uppercase Roman Number.

ff. “Semi-annual Progress Report” shall mean the reports due on a semi-annual basis under Section VII (Reporting).

gg. “Six-month Period” shall mean a six month period ending on June 30 and December 31.

hh. “SSA” shall mean Defendant Scranton Sewer Authority, a municipal corporation located in Scranton, Pennsylvania.

ii. “Subparagraph” shall mean a provision of this Consent Decree identified by one or two lowercase letters followed immediately by a period. All Subparagraphs are incorporated into and a part of the Paragraph immediately preceding the Subparagraph.

jj. “Unpermitted Discharge” shall mean a Dry Weather Overflow or any discharge to waters of the United States or the Commonwealth of Pennsylvania from the Collection System at a location other than an Outfall designated in the NPDES Permit.

kk. “Waste Water Treatment Plant” or “WWTP” shall mean the waste water treatment plant owned and operated by the SSA located in Scranton, Pennsylvania.

V. COMPLIANCE MEASURES

A. NINE MINIMUM CONTROLS

9. The SSA shall implement the NMC Plan attached hereto as Appendix A in accordance with the provisions and schedules set forth therein.

10. Ongoing Review of the Nine Minimum Control Plan. The SSA shall, on at least an annual basis, evaluate the efficacy of the measures implemented under its Nine Minimum Controls Plan, as well as other measures undertaken by the SSA pursuant to this Consent Decree, in reducing the impacts of Combined Sewer Overflows on receiving waters. Based on such evaluation, the SSA shall submit to Plaintiffs for review and approval additional proposed changes to its NMC Plan, to the extent any are necessary, which the SSA shall implement, upon approval by Plaintiffs, in accordance with the provisions and schedules set forth therein.

B. LONG-TERM CONTROL PLAN

11. The SSA shall complete and submit a Long Term Control Plan (“LTCP”) to both the EPA and the PADEP by December 1, 2012 for review and approval. This LTCP must:

- a. Meet the requirements of the EPA’s CSO Policy, including but not limited to those requirements set forth in Section II.C. of the CSO Policy;
- b. Select a remedy for CSOs that will result in no more than 4 overflows in a typical year to non-channelized tributaries of the Lackawanna River and no more than 9 overflows in a typical year to the Lackawanna River and its channelized tributaries;
- c. Include a schedule for implementation with appropriate interim milestones that concludes no later than December 1, 2037;
- d. Include a deadline for substantial completion (plant fully operational) of the BNR Project that concludes no later than August 1, 2014;
- e. Include a schedule for constructing CSO controls such as box culverts and storage tanks that is consistent with Appendix B; and
- f. Include a post construction monitoring plan (“PCMP”), which must also meet the requirements of the CSO Policy, including the Policy’s requirements that it be “adequate to verify compliance with water quality standards and protection of designated uses as

well as to ascertain the effectiveness of the CSO controls” and that it “details the monitoring protocols to be followed, including the necessary effluent and ambient monitoring and, where appropriate, other monitoring protocols such as biological assessments, whole effluent toxicity testing, and sediment sampling.”

12. The SSA shall complete implementation of the LTCP as soon as practicable, but no later than December 1, 2037.

13. The SSA shall undertake a study (the “GI Study”) to evaluate the feasibility of implementing Green Infrastructure Measures as part of its long term controls for reducing CSOs from the Collection System. The evaluation in the GI Study must address at least the following criteria: GI site selection, identification and resolution of institutional issues and obstacles, public outreach, design and construction, and monitoring and evaluation. No later than December 1, 2017, the SSA shall submit the completed GI Study to the EPA and to the PADEP.

14. Following completion of the GI Study, Defendant may submit to the EPA and the PADEP for review and approval pursuant to Section VI (Review and Approval of Submittals) a modification of the LTCP that alters the CSO controls in the LTCP by incorporating Green Infrastructure Measures. Defendant shall include the following information with any such submission: (1) a description of the specific technology to be applied; (2) the locations where the technology will be used; (3) the design limits of the proposed use of the technology; and (4) the costs of installation and maintenance and who will bear those costs. If the proposed modification seeks to alter the size of any CSO control in the LTCP, the proposed modification must also include reliable computer modeling and other evidence sufficient to demonstrate that (1) the proposed Green Infrastructure Measures will result in a reduction of wet weather flows into the Combined Sewer System; (2) during future wet weather events the SSA will continue to achieve

such flow reductions; and (3) as a result of the flow reductions achieved as a result of the proposed Green Infrastructure Measures, the proposed modification of the LTCP will achieve the same or better performance, in terms of gallons controlled and the number of CSO activations in a typical year, as the unmodified LTCP.

C. GENERAL COMPLIANCE

15. Effluent Limits.

a. Commencing on the Day that Defendant signs this Consent Decree, the SSA shall comply with all final effluent limits set forth in the NPDES Permit.

b. If, on October 1, 2014, the SSA is not in compliance with its annual effluent limitation for the compliance period ending on September 30, 2014, it shall, on or before November 28, 2014, purchase nutrient credits to the extent required in the NPDES Permit in a quantity costing up to the amount of \$100,000. The SSA shall use reasonable diligence in obtaining the best value for any money it spends purchasing credits.

16. Dry Weather Overflows.

a. All Dry Weather Overflows from the Collection System are prohibited.

b. The SSA must report all Dry Weather Overflows to the PADEP by telephone at 570-826-2511 within twenty-four hours of when the SSA becomes aware of the Dry Weather Overflow and must provide written notification to the PADEP and the EPA within five Days of when the SSA becomes aware of the Dry Weather Overflow.

c. Should the SSA detect a Dry Weather Overflow, the SSA shall begin corrective action immediately. The SSA shall inspect the outfall(s) from which the Dry Weather Overflow occurred each subsequent Day until the overflow has been eliminated.

d. The SSA shall summarize all such Dry Weather Overflows in the Semi-Annual Progress Report required under Section VII (Reporting). Nothing in this Section shall eliminate or minimize any additional notification or reporting required by the NPDES Permit.

17. Compliance with Operating Protocols.

a. Commencing on the Day Defendant signs this Consent Decree, the SSA shall comply with the Operating Protocols regarding flows to the WWTP, which, as of the Effective Date, are described in Part C, § TWELVE of the NPDES Permit.

b. Should the SSA fail to comply with the Operating Protocols described in Subparagraph a. above for more than ten minutes in any 24-hour period, it shall report such failure within 10 Days in writing in accordance with Section XVI (Notices and Submissions).

c. The SSA shall, within 14 Days of a request by the EPA or the PADEP, provide a report in comma-delimited format of the measurements of influent to the WWTP and discharges from Outfall 003 recorded by its supervisory control and data acquisition (SCADA) system in increments of no more than five minutes. To the extent practicable, the data shall be provided in a single table with each measurement being taken simultaneously. The SSA may not limit its production of SCADA data to the data available from one server or storage location, unless that server or storage location contains all of data available to the SSA for the time period covered by the request.

d. Nothing in this Paragraph shall limit the United States' or the PADEP's authority to request other information or information in other formats.

18. Identification of Outfalls.

a. Prior to the Date of Lodging, the SSA identified the following outfalls that are not currently included in its NPDES Permit:

- (i) McNichols (#083);
- (ii) 600 Elm East (#084);
- (iii) 600 Elm West (#085);
- (iv) Cedar/Maple (#086);
- (v) Leggetts/Kelly (#087); and
- (vi) Prospect/Locust (#088).

b. The SSA plugged the Prospect/Locust outfall (#088) and submitted an application to the PADEP on November 28, 2011 requesting an amendment to the NPDES Permit to authorize discharges from the remaining outfalls and to permanently remove the following outfalls from the NPDES Permit: #010, #039, #041, #042, #046, #054, and #064.

c. The SSA hereby affirms that it has conducted a thorough study of its collection system and has identified to the United States and the PADEP, to the best of its knowledge, all of the outfalls from which pollutants may enter waters of the United States or the Commonwealth of Pennsylvania.

d. The SSA shall not discharge pollutants into waters of the United States or the Commonwealth of Pennsylvania from any outfall not identified in its NPDES Permit or in Subparagraph 18.a. above.

e. Should the SSA discover an outfall that is not identified in Subparagraph 18.a or in its NPDES Permit, it shall notify the United States and the PADEP in writing in accordance with Section XVI (Notices and Submissions) within five Days of the discovery of the outfall. The notice shall include a description of the outfall, its location, the portion of the collection system that drains to the outfall, the description of any pathway by which discharges from the outfall might reach waters of the United States or the Commonwealth of Pennsylvania,

any information as to whether stormwater is included in the discharges from the outfall, and any information that might indicate whether pollutants have been discharged from the outfall. Within 60 Days of the discovery of the outfall, Defendant shall submit to the EPA and the PADEP for review and approval pursuant to Section VI (Review and Approval of Submittals) a plan that addresses how the newly discovered outfall(s) will be addressed consistent with SSA's applicable NPDES Permit.

19. Elimination of Sanitary Sewer Overflows. SSOs are prohibited.

20. Reporting Planned Changes and Non-Compliance.

a. The SSA shall comply with the provisions of the NPDES Permit requiring the reporting of anticipated and unanticipated non-compliance with the NPDES Permit, which, as of the Effective Date, are described in Part A, § III.C of the NPDES Permit.

b. Whenever written notice of non-compliance is required to be given to the PADEP pursuant to the NPDES Permit, the SSA shall simultaneously notify the EPA in accordance with Section XVI (Notices and Submissions).

VI. REVIEW AND APPROVAL OF SUBMITTALS

21. For each plan, report, schedule or other document submitted by the SSA for EPA and PADEP approval (other than a request to modify this Consent Decree submitted pursuant to Section XIX (Modification)) the EPA, after consultation with the PADEP, may (a) approve the submittal, in whole or in part; (b) disapprove the submittal, in whole or in part; (c) approve the submittal upon specified conditions, directing the SSA to modify its submission; or (d) any combination of the above. If the EPA approves the submittal, the EPA shall notify the SSA in writing. If the submittal is disapproved in whole or in part, or approved with conditions, the EPA shall describe the deficiencies or conditions in writing so that the SSA can make the required modifications and provide the EPA with a modified submittal. The SSA may request a meeting

and/or conference call with the EPA to discuss the deficiencies, but no such request or meeting shall extend any deadlines set forth in this Section.

22. Within 60 Days following receipt of any notice from the EPA disapproving a submittal or directing modification of a submittal pursuant to the preceding Paragraph (or within such longer time set forth in the notice or agreed to by the parties), the SSA shall submit a modified submittal to the EPA and the PADEP for approval, subject only to the SSA's right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution). The modified submittal shall correct any deficiencies identified by the EPA, and conform to any directions set forth in the notice provided pursuant to the preceding Paragraph. If the SSA fails to submit a modified document to the EPA within the 60-Day period, the EPA retains the right to modify or develop any disapproved or conditionally approved portion of the submittal. The SSA shall implement any such plan, report, schedule or other submittal as modified or developed by the EPA, subject only to the SSA's right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution).

23. In the event that a resubmitted plan, report, schedule or other document or portion thereof is disapproved in whole or in part or approved with conditions by the EPA, the EPA shall provide the SSA with a written notice describing the remaining deficiencies or conditions for approval. The EPA may require the SSA to correct the deficiencies or satisfy the conditions for approval of the submittal within a specified time frame, or the EPA may modify or develop any disapproved or conditionally approved portion of the submittal. The SSA may request a meeting and/or conference call with the EPA to discuss the deficiencies, but no such request or meeting shall extend any deadlines set forth in this Section. Following receipt of a notice requiring the SSA to correct deficiencies or satisfy conditions for approval, the SSA shall submit a modified

document in accordance with the EPA's directions, subject only to the SSA's right to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution).

24. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 21 or 23, above, the SSA shall proceed, if directed by the EPA, to take any action required by any non-deficient portion of the SSA's submission, if such action can be undertaken independent of the deficient portion of the SSA's submission. Implementation of any non-deficient portion of a submission shall not relieve the SSA of any liability for stipulated penalties under Section X (Stipulated Penalties) for the deficient portion(s).

25. Other than a modification of the LTCP, all plans and studies submitted pursuant to this Consent Decree shall be incorporated herein as part of this Consent Decree upon approval by the EPA. A modification of the LTCP shall be incorporated into this Consent Decree only if the Parties enter into a written agreement pursuant to Paragraph 88.

26. The SSA shall take all lawful and appropriate actions to facilitate the implementation of this Consent Decree, including prompt review and approval of any appropriate and responsive bids, contracts, or other documents, and, if applicable, prompt review and approval of any appropriate schedule of work necessary to maintain compliance with this Consent Decree.

27. If the EPA fails to take action under Paragraph 21 with respect to a submittal or modified submittal, other than the LTCP or a proposal to modify this Consent Decree, within 90 Days of receiving the submittal or modified submittal, the EPA shall extend any subsequent deadlines dependent upon approval of the submittal by the number of Days in excess of 90 that elapsed between: (i) the date that the EPA and the PADEP received the submittal or modified submittal; and (ii) the date that the EPA took action under Paragraph 21. Such extension will not

be effective unless the EPA grants it in writing. Defendant may invoke dispute resolution under Section XII (Dispute Resolution) with respect to any disputes under this Paragraph.

VII. REPORTING

A. REPORTS

28. The SSA will provide to the EPA copies of all written notifications and reports that the SSA is required to submit to the PADEP relevant to this Consent Decree.

29. On January 31 and July 31 of every year commencing with the first full Six-month Period after Entry of this Consent Decree and continuing until termination of this Consent Decree, the SSA will submit to the EPA and the PADEP a progress report (“Semi-annual Progress Report”) regarding the implementation of the requirements of this Consent Decree in the previous Six-month Period. The Semi-Annual Progress Report will include at a minimum:

a. A statement setting forth the deadlines and other terms that the SSA was required by this Consent Decree to meet since the date of the last Semi-annual Progress Report, whether and to what extent the SSA has met these requirements, and the reasons for any noncompliance;

b. A general description of the work completed within the prior Six-month Period, and a projection of work to be performed pursuant to this Consent Decree during the next or succeeding Six-month Period;

c. A summary of all contacts with the EPA and the PADEP during the reporting period relating to CSOs, SSOs, or implementation of the BNR Project;

d. A statement of any exceedances of NPDES Permit limitations; and,

e. A summary of all CSOs, SSOs and Unpermitted Discharges occurring within the Six-month Period including the actual or estimated frequency, duration, and volume of each CSO, SSO, and Unpermitted Discharge.

B. CERTIFICATION AND ADMISSIBILITY

30. Any report or plan relating to monitoring data or any representation made by the SSA as to its compliance with this Consent Decree that the SSA is required by this Consent Decree to submit, including reports or plans, shall be signed by an official or authorized agent of the SSA and shall include the following certification:

I certify under penalty of law that the document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

31. The SSA shall not object to the authenticity of any report, plan, or other submission prepared in accordance with Paragraph 30 or the information contained in said report, plan or submission in any proceeding to enforce this Consent Decree.

VIII. FUNDING

32. Compliance with the terms of this Consent Decree by the SSA is not conditioned on the receipt of federal or state grant or loan funds or upon the SSA's financial capabilities. In addition, the SSA's failure to comply is not excused by the lack of federal or state grant or loan funds, or by the processing of any applications for the same, or by the SSA's financial capabilities.

IX. CIVIL PENALTY

33. The SSA shall pay the sum of \$170,000 plus an additional sum for interest as explained below, to the United States as a civil penalty. Payment shall be made in two installments. The first installment of \$70,000 shall be made within 30 Days after the Effective Date. The second installment of \$100,000 plus interest shall be made within six months of the

Effective Date. Interest shall accrue from the Date of Lodging at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

34. Defendant shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instruction to be provided to the SSA, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the Middle District of Pennsylvania, 235 N. Washington Ave., Suite 311, Scranton, PA 18503, Phone: 570-348-2800. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Scranton Sewer Authority*, and shall reference the civil action number 3:09-cv-1873 and DOJ case number 90-5-1-1-08778, to the United States in accordance with Section XVI (Notices and Submissions) and to:

EPA Region III Docket Clerk
Office of Enforcement and Compliance Assistance (3EC00)
1650 Arch Street
Philadelphia, PA 19103.

35. The SSA shall pay the sum of \$170,000, plus an additional sum for interest as explained below, to the PADEP as a civil penalty. Payment shall be made in two installments. The first installment of \$70,000 shall be made within 30 Days after the Effective Date. The second installment of \$100,000 plus interest shall be made within six months of the Effective Date. Interest shall accrue from the Date of Lodging at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. The payment shall be made by corporate check or the like made payable to “Commonwealth of Pennsylvania, Clean Water Fund” and sent to Program Manager, Clean Water Program, Department of Environmental Protection, Northeast Regional Office, 2 Public Square, Wilkes-Barre, Pennsylvania 18701-1915.

X. STIPULATED PENALTIES

36. The SSA shall be liable for stipulated penalties to the United States and the PADEP for violations of this Consent Decree specified below. A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Consent Decree, according to all applicable requirements of this Consent Decree, and within the specified time schedules established by or approved under this Consent Decree.

37. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IX of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late.

38. Reporting Requirements. For each failure to submit a timely and adequate plan, report, schedule, written notice, or other submission required by this Decree, the SSA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$500
Days 31-60	\$750
Days 61-90	\$1,000
Days 91 and over	\$1,500

39. Compliance Milestones.

a. For each failure to comply with any deadline for completion of construction or for achievement of full operation set forth in the implementation schedule developed and approved pursuant to Paragraph(s) 11 and 12, the SSA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$500
Days 31-60	\$750
Days 61-90	\$1,000
Days 91 and over	\$2,000

b. For each failure to comply with a requirement of, or meet a deadline in, the Nine Minimum Controls Plan pursuant to Paragraph 9 of Section V.A (Nine Minimum Controls), the SSA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$500
Days 31-60	\$750
Days 61-90	\$1,000
Days 91 and over	\$2,000

40. General Compliance.

a. For each discharge in violation of Subparagraph 16.a or for each discharge in violation of Paragraph 19 that reaches waters of the United States or the Commonwealth of Pennsylvania, the SSA shall pay the following stipulated penalties based on the volume of the discharge:

<u>Volume:</u>	<u>The penalty shall be:</u>
Less than 100 gallons	\$100
100 to 2,499 gallons	\$750
2,500 to 9,999 gallons	\$1,250
10,000 to 99,999 gallons	\$3,000
100,000 to 999,999 gallons	\$5,000
1 million gallons or greater	\$10,000

b. For each discharge in violation of Subparagraph 17.a, the SSA shall pay the following stipulated penalties based on the difference between the volume of combined sewage that the SSA would have taken into the WWTP while it was discharging from Outfall 003 if it had complied with Paragraph 17.a., and the volume of combined sewage that it actually took into the WWTP while it was discharging from Outfall 003:

<u>Difference in Volume:</u>	<u>The penalty shall be:</u>
Up to two million gallons	\$2,500
More than two million gallons, but not more than four million gallons	\$5,000
More than four million gallons, but not more than six million gallons	\$7,500
More than six million gallons	\$10,000

c. For each failure to comply with Subparagraph 18.d., the SSA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$500
Days 31-60	\$1,000
Days 61-90	\$2,000
Days 91 and over	\$3,000

d. For failure to comply with Subparagraph 15.b, the SSA shall pay to the Plaintiffs a stipulated penalty equal to the difference between \$100,000 and the amount paid for nutrient credits. The unavailability of credits is not a defense to liability for penalties under this Subparagraph. Thus, if the SSA were to need 10,000 pounds of credits and were to purchase that amount for \$50,000 in accordance with Subparagraph 15.b, then this Subparagraph would have no effect. However, if the SSA were to need 10,000 pounds of credits and were to purchase only 5,000 pounds at a cost of \$25,000, it would have to pay a stipulated penalty equal to \$100,000 minus the \$25,000 it actually spent, or \$75,000.

e. For each failure to comply with Paragraph 15, other than a failure to comply with an annual effluent limit, the SSA shall pay the following stipulated penalties to Plaintiffs:

<u>Type of Permit Limit:</u>	<u>Penalty per violation:</u>
Daily or Instantaneous	\$500
Weekly	\$1,500
Monthly	\$3,000

f. For each failure to provide telephonic notification in compliance with Paragraph 16.b, the SSA shall pay a stipulated penalty of \$1,000 per occurrence.

g. For each failure to comply with Subparagraphs 16.c or 17.c, the SSA shall pay the following stipulated penalties to Plaintiffs per violation per Day:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
Days 1-30	\$500
Days 31-60	\$750
Days 61-90	\$1,000
Days 91 and over	\$2,000

41. If any person discovers an outfall that existed as of the Effective Date, but that is not included in the SSA’s NPDES Permit or identified in Subparagraph 18. a, the SSA shall pay a stipulated penalty of \$2,500.

42. Access Requirements. For each failure to allow access to the WWTP in accordance with Section XV (Information Collection and Retention), below, the SSA shall pay stipulated penalties of \$1,000 to Plaintiffs per Day.

43. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

44. For stipulated penalties incurred more than one year after the Effective Date, the amount of penalties for which Defendant is liable shall be multiplied by the quotient of: (i) the maximum penalty under 33 U.S.C. § 1319(d) as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890, as amended; and (ii) \$37,500

45. Defendant shall pay stipulated penalties to the United States and the PADEP within 30 Days of a written demand by either Plaintiff. Defendant shall pay 50% of the total stipulated penalty amount due to the United States and 50% percent to the PADEP. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

46. Each Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

47. Stipulated penalties shall continue to accrue as provided in Paragraph 43, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of the EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

48. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable to the date the SSA signed this Decree, with regard to any and all violations that have occurred after the SSA signed, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

49. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 34, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

50. Defendant shall pay stipulated penalties owing to the PADEP by corporate check or the like made payable to “Commonwealth of Pennsylvania, Clean Water Fund” and sent to Program Manager, Clean Water Program, Department of Environmental Protection, Northeast Regional Office, 2 Public Square, Wilkes-Barre, Pennsylvania 18701-1915. The check shall be accompanied by a transmittal letter which shall state that the payment is for stipulated penalties and for which violation(s) the penalties are being paid.

51. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the PADEP from seeking any remedy otherwise provided by law for Defendant’s failure to pay any stipulated penalties.

52. Subject to the provisions of Section XIII (Effect of Settlement), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the PADEP for Defendant’s violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, 33 U.S.C. §§ 1251-1387, or the Pennsylvania Clean Streams Law, 35 Pa. Stat. Ann. §§ 691.1-691.1001, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XI. FORCE MAJEURE

53. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant; its agents, consultants, or contractors; or any entity controlled by Defendant; that delays or prevents the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best

efforts to anticipate any potential Force Majeure and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

54. Any delays in implementation of this Consent Decree shall not be excused merely because the SSA notified the EPA and/or the PADEP of the anticipated delay, regardless of whether such notification is contained in a report required under Section VII (Reporting) or any other communication.

55. When the SSA knows, or should have known by the exercise of reasonable diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure, the SSA will notify the EPA and the PADEP, in writing, within 14 Days after the SSA first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice will indicate whether the SSA claims that the delay should be excused due to a Force Majeure. The notice shall describe in detail the basis for the SSA's contention that it experienced a Force Majeure delay, the anticipated duration of the delay, the cause or causes of the delay, all actions taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to timely notify the EPA and the PADEP may, at the EPA's option, in consultation with the PADEP, preclude SSA from asserting Force Majeure for the period beyond 14 Days it took SSA to provide the required notice.

56. If, after consultation with the PADEP, the EPA finds that a delay in performance is, or was, caused by a Force Majeure, it will extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties will not be

due to the United States or the PADEP for such period. If the EPA does not grant such an extension within 30 days of receiving the SSA's written notice of the Force Majeure, the SSA may consider the request for an extended time for performance to have been denied, and the SSA may invoke dispute resolution.

57. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XII (Dispute Resolution) will apply, and the SSA will have the burden of proving that the delay is, or was, caused by a Force Majeure and that the amount of additional time requested is necessary to compensate for that event.

58. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event will not extend any other compliance date. The SSA will make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. The SSA may petition for the extension of more than one compliance date in a single request.

XII. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

60. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States and the PADEP a written "Notice of Dispute." Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal

negotiations, then the position advanced by the United States, in consultation with the PADEP, shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

61. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the PADEP a written “Statement of Position” regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant’s position and any supporting documentation relied upon by Defendant.

62. The United States, in consultation with the PADEP, shall serve its Statement of Position within 30 Days of receipt of Defendant’s Statement of Position. The United States’ Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States’ Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

63. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and the PADEP, in accordance with Section XVI (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States’ Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant’s position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

64. The United States, in consultation with the PADEP, shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

65. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 63 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by the EPA and/or the PADEP under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States and/or the PADEP is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 63, Defendant shall bear the burden of demonstrating by a preponderance of the evidence that its position complies with this Consent Decree and that Defendant is entitled to relief under applicable law.

66. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 47. If

Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. EFFECT OF SETTLEMENT

67. SSA hereby knowingly waives its right to appeal or challenge the validity of Part C.I.SEVEN.I.B.(5) (Compliance with effluent limitations) of the NPDES Permit, including rights that may be available under Section 4 of the Pennsylvania Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. Section 7514; the Pennsylvania Administrative Agency Law, 2 Pa. C.S. Section 103(a) and Chapters 5A and 7A; or any other provision of law. This Paragraph, and the SSA's waiver hereunder, shall expire at midnight on September 30, 2014.

68. This Consent Decree resolves the civil claims of the United States for the violations alleged in the United States' Complaint through the Date of Lodging of this Consent Decree and the civil claims of the PADEP for the violations alleged in the PADEP's Complaint in Intervention through the Date of Lodging of this Consent Decree.

69. The United States and the PADEP reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 68. This Consent Decree shall not be construed to limit the rights of the United States or the PADEP to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 68. The United States and the PADEP further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the POTW, whether related to the violations addressed in this Consent Decree or otherwise.

70. In any subsequent administrative or judicial proceeding initiated by the United States or the PADEP for injunctive relief, civil penalties, or other appropriate relief relating to

the Facility, Defendant shall not assert, and may not maintain, any defense or claim against Plaintiffs based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the PADEP in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 67 of this Section.

71. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the PADEP against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

72. This Consent Decree does not create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIV. NOT A PERMIT

73. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced by the United States or the PADEP pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the PADEP do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251-1387, or with any other provisions of federal, state, or local laws, regulations, or permits.

74. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system.

XV. INFORMATION COLLECTION AND RETENTION

75. The United States and the PADEP, and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon the SSA's WWTP and Sewer System, at all reasonable times, upon proper presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the PADEP in accordance the terms of to this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by the SSA or its representatives, contractors or consultants;
- d. obtain documentary evidence, including photographs and similar data;
- e. inspect and evaluate any portion or portions of the POTW;
- f. inspect and review any records required to be kept under the terms and conditions of the Consent Decree, the SSA's NPDES Permit, any future modifications or renewals thereof, and the CWA; and
- g. assess the SSA's compliance with this Consent Decree.

76. Upon request, Defendant shall provide the EPA and the PADEP or their authorized representatives splits of any samples taken by Defendant. Upon request, the EPA and the PADEP shall provide Defendant splits of any sample taken by the EPA or the PADEP.

77. Defendant shall retain the following documents and electronically stored data for at least five years from the date they are created:

- a. All complaints received by Defendant or its contractors or agents from any person or entity pertaining to the matters addressed by this Consent Decree;
- b. All documents required to be created, submitted, or maintained pursuant to Appendix A (Nine Minimum Controls Plan);
- c. Documentation of all measures undertaken by Defendant to comply with the terms of this Consent Decree; and
- d. SCADA data or other data regarding compliance with Paragraph 17 (Compliance with Operating Protocols).

78. Defendant shall retain the following documents and electronically stored data for at least five years after termination of this Consent Decree:

- a. All reports, plans, permits, and documents submitted to the EPA or the PADEP pursuant to this Consent Decree, including all underlying research and data;
- b. All data developed by, or on behalf of, Defendant pursuant to any post-construction monitoring activities; and
- c. All reports and data regarding water quality;

79. The information-retention requirements in this Section establish minimum retention periods that shall apply regardless of any contrary corporate or institutional policies or procedures but do not excuse Defendant from any legal requirement to retain documents or data for longer periods of time. At any time during this information-retention period, upon request by the United States or the PADEP, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

80. At the conclusion of the information-retention period provided in Paragraph 79, Defendant shall notify the United States and the PADEP at least 90 Days prior to the destruction

of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the PADEP, Defendant shall deliver any such documents, records, or other information to the EPA or the PADEP. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no final documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

81. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

82. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the PADEP pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVI. NOTICES AND SUBMISSIONS

83. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08778

As to the EPA:

Chief
NPDES Enforcement Branch (3WP42)
Water Protection Division
U.S. Environmental Protection Agency, Region 3
1650 Arch St.
Philadelphia, PA 19103-2029

And

Christopher A. Day
Office of Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region 3
1650 Arch St.
Philadelphia, PA 19103-2029

As to the PADEP:

Program Manager – Clean Water Program
Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915

As to the SSA:

Executive Director
Scranton Sewer Authority
312-314 North Adams Avenue
Scranton, PA 18503-1501

Jeffrey Belardi
Belardi Law Offices
410 Spruce Street, 4th Floor
Scranton, PA 18503

84. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

85. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVII. EFFECTIVE DATE

86. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court; provided, however, that Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall be void.

XVIII. RETENTION OF JURISDICTION

87. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

88. Except as otherwise expressly set forth in this Consent Decree, the terms of this Consent Decree, including the attached appendices and the LTCP approved pursuant to this Consent Decree, may be modified only by a subsequent written agreement signed by all of the Parties or their successors in interest. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

89. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 65, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

90. After Defendant has: (i) completed implementation of the requirements of Section V (Compliance Measures); (ii) certified that all construction required by the Long-Term Control Plan is complete and that the Long-Term Control Plan has been fully implemented; (iii) completed post construction monitoring as required by the Long-Term Control Plan; (iv) submitted a PCMP report to the EPA and the PADEP; (v) demonstrated in the PCMP report that any remaining CSOs will not cause the SSA to violate the CSO Policy or its NPDES Permit; (vi) satisfactorily complied, as determined by the EPA, with its NPDES Permit for a period of 12 months; and (vii) paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree; Defendant may serve upon the United States and the PADEP a “Request for Termination” stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

91. Following receipt by the United States and the PADEP of Defendant’s Request for Termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States after consultation with the PADEP agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court’s approval, a joint stipulation terminating the Consent Decree.

92. If the United States after consultation with the PADEP does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section XII (Dispute Resolution). However, Defendant shall not seek formal dispute resolution under Paragraph 61 of any dispute regarding termination until at least 90 Days after service of its Request for Termination.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

93. This Consent Decree will be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

XXII. SIGNATORIES/SERVICE

94. Each undersigned representative of Defendant and the PADEP and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

95. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. COSTS OF SUIT

96. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the PADEP shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XXIV. INTEGRATION

97. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXV. APPENDICES

98. The following Appendices are attached to, and a part of, this Consent Decree:
"Appendix A" is the Nine Minimum Controls Plan; and
"Appendix B" is the SSA's schedule for constructing CSO controls.

XXVI. FINAL JUDGMENT

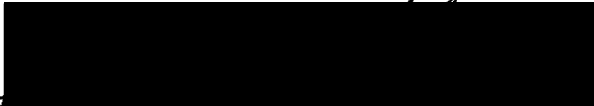
99. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the PADEP and Defendant. The Court finds that there is no just reason for delay and, therefore, enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2012

HON. JOHN E. JONES
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Sewer Authority of the City of Scranton*.

FOR THE UNITED STATES OF AMERICA:


IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

12/13/2012

Dated

/s/ Daniel S. Smith

DANIEL S. SMITH
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
601 D Street NW
Washington, D.C. 20004
(202) 305-0371 (voice)
(202) 616-6583 (fax)
dan.smith2@usdoj.gov

Of Counsel:

PETER J. SMITH
U.S. Attorney
Middle District of Pennsylvania

STEPHEN R. CERUTTI II
Assistant United States Attorney
PA Bar # 90744
Stephen.Cerutti@usdoj.gov
228 Walnut Street, Suite 220
P.O. Box 11754
Harrisburg, PA 17108-1754
Phone: (717) 221-4482
Fax: (717) 221-2246

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Sewer Authority of the City of Scranton*.



PAMELA J. MAZAKAS
Deputy Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency



MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

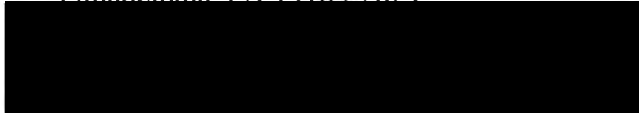


SUSHILA NANDA
Senior Attorney Advisor
Office of Civil Enforcement
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Sewer Authority of the City of Scranton*.



SHAWN M. GARVIN
Regional Administrator
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029



MARCIA E. MULKEY
Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029



CHRISTOPHER DAY
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Sewer Authority of the City of Scranton*.

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:



MICHAEL J. BRUNAMONTI, P.E.
Program Manager
Clean Water Program
Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915

Dated 11/21/12



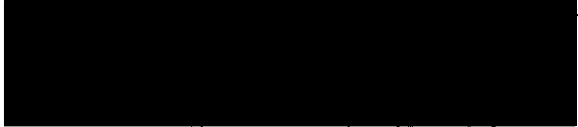
JOSEPH S. CIGAN III
Assistant Counsel
Office of Chief Counsel
Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915
(570) 826-2519 (voice)
(570) 820-4838 (fax)
jcigan@state.pa.us
PA 74927

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Sewer Authority of the City of Scranton*.


FOR THE SEWER AUTHORITY OF THE CITY OF SCRANTON.

11.15/2012

Date



EUGENE P. BARRETT
Executive Director
Scranton Sewer Authority
312-314 North Adams Avenue
Scranton, PA 18503-1501



JEFFREY BELARDI, ESQ.
Belardi Law Offices
410 Spruce Street, 4th Floor
Scranton, PA 18503

APPENDIX A

Scranton Sewer Authority – CSO Nine Minimum Controls Plan – September 2012

Background

The City of Scranton owns the wastewater collection, conveyance and treatment system serving the City of Scranton and the Borough of Dunmore. The Scranton Sewer Authority (SSA or the Authority) was appointed by the City of Scranton to act as the City's agent to maintain the wastewater system.

The wastewater system consists of over 275 miles of collection sewers and large interceptors, 80 combined sewer overflows (CSOs), 7 pumping stations and a wastewater treatment plant (WWTP). Approximately 63% (172 miles) of the collection sewers are combined sewers, which convey the combined storm water and sanitary sewage flow to regulator chambers prior to connection with an interceptor sewer. Under high wet-weather flow conditions that exceed the capacities of downstream facilities, the regulators direct combined sanitary sewage and storm water to the receiving streams. The SSA's NPDES Permit, No 0026492, lists permitted discharge points including: Treatment Plant Outfall – 001, Treatment Plant Headworks Bypass – 003 and CSOs – 004 through 082, totaling 80 CSO regulators. An additional five outfalls (numbers 83-87) have been requested to be added to the permit. Accordingly, there are 85 total designated CSO outfalls in the sewer system. SSA is currently working to permanently seal a number of these outfalls and will provide an update in the next annual report.

This document summarizes SSA's program to implement the Nine Minimum Controls pursuant to our discharge permit and the National CSO Policy.

1.0 Proper Operation and Regular Maintenance Program – NMC No. 1

1.1 Introduction

The first minimum control, proper operation and regular maintenance of the Combined Sewer System (CSS) and CSO outfalls consists of a program that establishes operation, maintenance and inspection procedures to ensure that a CSS and treatment facility will function in a way to maximize treatment of combined sewage and still comply with NPDES Permit Limitations. Implementation of this control is intended to ensure that the collection and treatment systems perform effectively. The essential elements of a proper operation and maintenance (O&M) program include maintenance of suitable records and identification of O&M as a high management priority.

The steps involved in implementing this minimum control are:

1. Assess how well the O&M program is implemented.
2. Determine if the O&M program needs to be improved to satisfy the intent of the CSO control policy.
3. Develop and implement the improvements to address CSOs.

Scranton Sewer Authority – CSO Nine Minimum Controls Plan – September 2012

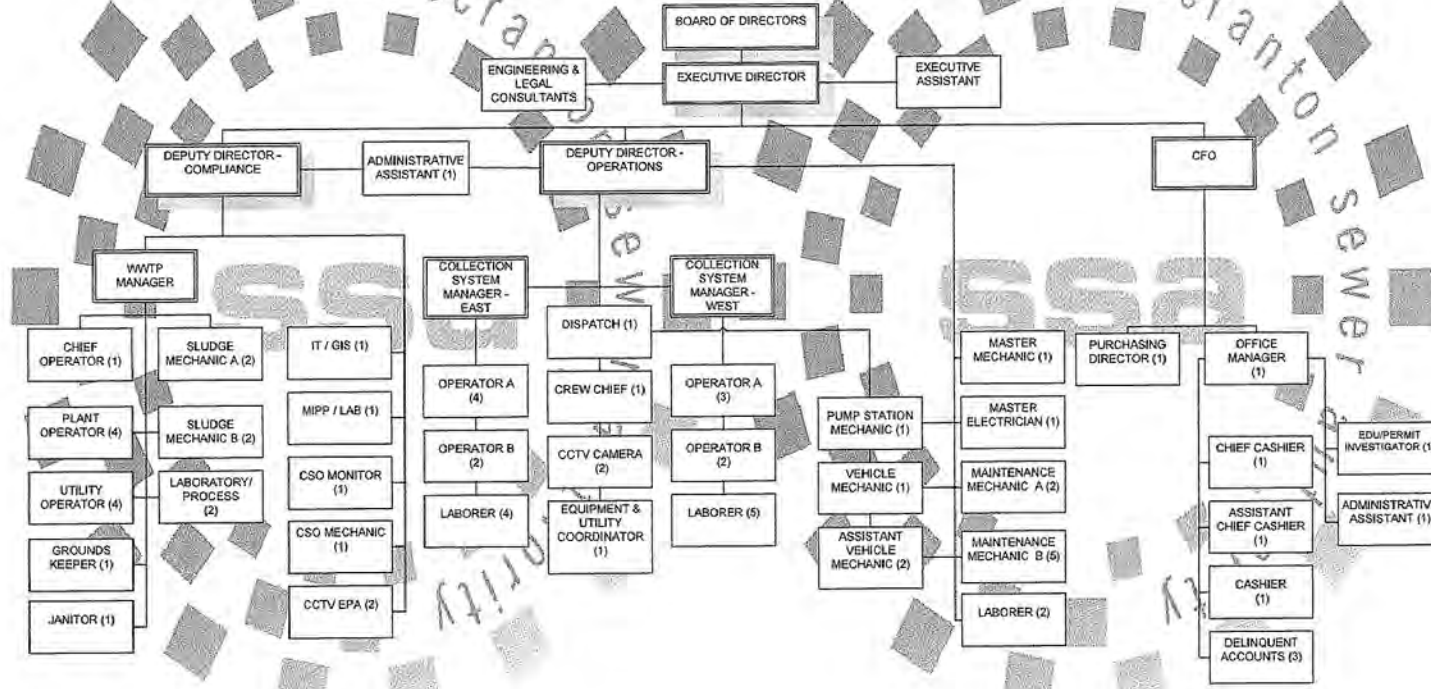
4. Document any actions and report them to the PADEP.

1.2 Organizational Structure

The combined sewer system of the City of Scranton is owned and operated by the SSA. The SSA is a municipal Authority established by the City of Scranton and the Borough of Dunmore. Its Board consists of four members from the City of Scranton which are appointed by the Mayor and confirmed by City Council, and a fifth member who is appointed by the Borough Council of Dunmore. The Authority sewer system serves the City of Scranton and the Borough of Dunmore. The Authority has also entered into agreements with other adjoining municipalities and their sewer authorities for the treatment of additional municipal wastewaters. The Authority provides conveyance and treatment of wastewater from portions of the Boroughs of Taylor, Dickson City, and Moosic. The Authority holds an NPDES permit to discharge treated effluent and CSOs into the Lackawanna River and its tributaries. The organizational structure of the Authority is shown in Figure 1.

THE SEWER AUTHORITY OF THE CITY OF SCRANTON

TABLE OF ORGANIZATION



Scranton Sewer Authority – CSO Nine Minimum Controls Plan – September 2012

Scranton is a Class 2A City with a Home Rule/Mayor-Council form of municipal government. The elected mayor has the power and responsibility to administer government operations. The elected SSA Board of Directors has the power and responsibility to enact legislation, approve agreements, and adopt an annual budget. Typically the budget is prepared by the SSA staff and submitted to SSA Board of Directors for approval. The City director of public works, appointed by the mayor and confirmed by council, is responsible for the O&M of the public streets and the public storm water drainage system in the City. The Manager of the Borough of Dunmore is responsible for the O&M of the public streets and the public storm water drainage system in the Borough. The SSA maintains the responsibility to set user rates that are sufficient to meet the obligations of the Authority, operating and capital wise.

SSA is the permittee for the Combined Sewer System and is responsible for routine O&M. Figure 1 shows the current SSA organization chart.

1.3 Budget

Normal O&M expenses for the facilities are the responsibility of SSA. Non-routine and extraordinary maintenance expenses, as well as capital improvements are also the responsibility of the SSA.

SSA prepares an annual operating budget of revenues and expenses. The budget for the fiscal year beginning each April 1 will include the funds budgeted for resources and staff for the O&M program. The Authority sets rates for customers in the City of Scranton and the Borough of Dunmore and outside municipalities for bulk treatment of sewage. These various revenues support operation of facilities and the debt service. The Authority has the power, to float tax-exempt bonds or otherwise obtain funds for the design and construction of facilities.

The City is responsible for highway operations including streets maintenance. Highway operations are supported through the City general and the liquid fuels fund. The general fund obtains revenue through property taxes, other taxes, state grants, and various fees. The liquid fuels fund obtains revenue from proceeds of the state motor vehicle liquid fuels tax.

The Authority as owner and operator of the sewer system provides long-term planning and day-to-day operation of the facilities. The Authority operates, maintains, and repairs facilities, conducts measurements and testing, and provides reports to comply with environmental requirements. The Authority retains a consulting engineer and legal counsel.

1.4 Critical Facilities

The critical elements of the combined sewer system are listed in general order of priority below. These facilities and their roles in the operation of the combined sewer system were previously characterized in the 1970 “Design Report” and the October 1994 “Combined Sewer Overflow Minimization Final Plan of Action” reports.

Scranton Sewer Authority – CSO Nine Minimum Controls Plan – September 2012

PRIORITY	CRITICAL ELEMENTS OF THE COMBINED SEWER SYSTEM
1	Wastewater Treatment Plant
2	NPDES Outfall 003
3	Pump Stations
4	Diversion Chambers and CSO Outfalls
5	Sanitary Sewer Collection System
6	Combined Sewer Collection System

The operation, maintenance, inspection, and reporting requirements for the above-identified facilities (except the Treatment Plant) are outlined in the Collection System Operation and Maintenance Manual. This manual is to receive annual review to determine if revisions are needed. Requirements for the Treatment plant are listed in Wet Weather Operating Plan.

A list of the CSO regulators and their locations is included in the Collection System Operation and Maintenance Manual.

Trained SSA personnel will use the National Association of Sewer Service Companies (NASCO) ratings (numeric grades from 1-5, where 5 is the most significant defect) to rank its major trunk sewers, interceptors and each pump station by December 31, 2013.

1.5 Procedures for Routine Maintenance

The procedures for routine O&M are included in the Collection System Operation and Maintenance Manual. Typical O&M procedures that are part of the SSA manual include inspection with a CCTV camera, flow measurement, cleaning and removal of foreign materials, chemical treatment of roots, repair/rehabilitation of defects, and maintaining adequate records of inspections and findings.

SSA will use its JOBPLUS/CATS electronic work order management systems to identify and track all collection system routine maintenance. The JOBPLUS database contains all of SSA's Standard Operating Procedures for performing system maintenance. SSA inputs work orders from O & M manuals for new equipment in the JOBPLUS system, making modification as necessary to best fit SSA's process and applications. The JOBPLUS database generates work orders every Monday for each department, which complete tasks as they are able, depending upon the demands of the tasks, task priorities and available staffing. Consequently, tasks are not always completed within a given week, although SSA makes best efforts to perform assigned tasks within a weeks' time. All completed collection system inspection and cleaning is recorded in the CATS system. SSA managers use a map at the plant to direct crews' proactive maintenance through different areas of the collection system, generally working from north to south, and east to west, since the CATS system cannot generate work orders. CATS data is annually provided to SSA's regulators as part of its CSO Report. Although SSA currently cleans its system from north to south, SSA will evaluate cleaning from south to north, starting at the plant and working upstream.

Scranton Sewer Authority – CSO Nine Minimum Controls Plan – September 2012

In 2011, SSA rededicated itself to maximizing the utility and use of the JOBPLUS database to memorialize SOPs and to schedule/track maintenance required and performed. SSA presently schedules and prioritizes maintenance in JOBPLUS. When SSA acquires new equipment for the plant, the manufacturer's recommendations contained in the accompanying O& M manuals are entered into the JOBPLUS database and adjusted to meet SSA's application of the equipment. Every Monday, managers print out preventive maintenance work orders from JOBPLUS and distribute the work orders to each department, as appropriate. Work crews proceed with work based on these work orders. In addition, as needed, corrective action work orders are delivered to managers and distributed to work crews.

1.6 Non-Routine Maintenance and Emergency Situations

A call out list of private contractors is maintained for both the plant and the collection system to insure that repairs can be arranged outside of normal working hours to the extent outside assistance is necessary.

The Authority recognizes that the operation of the sewer utility may require the expenditure of funds that have not been budgeted. The Authority has secured a \$2 million revolving line of credit for extraordinary problems and expenditures for emergencies that can be accessed upon authorization by the Executive Director.

Management of emergencies in the collection system is also critical. Pipe failures can result in dry weather overflows. Upon notification by outside parties or upon discovery, the Authority takes immediate and appropriate steps to respond to the collection system problem, repair the problem and maintain or restore service to the customers. SSA's target response time for complaints and emergencies relating to collection system releases is as soon as possible. Typical response times are within an hour or two, depending upon the circumstances. Procedures are in place for arranging for bypass pumping between manholes if required to perform the work and SSA maintains a variety of pumps on hand, in addition to its call out list of private contractors, and is well equipped to respond to pump stations as necessary.

1.7 Inspections

Manual onsite inspections of all CSO discharge points will occur at least monthly; however, most outfalls are inspected several times each month in response to significant rain events and SSA will continue its practice of reviewing rainfall data and its correlation to activations at certain "problem" regulators. The result is that most outfalls are visited frequently each month whether due to (1) routinely scheduled inspections, (2) inspection following rain events, (3) in connection with outfall flow meter inspections, or (4) in connection with other visits/inspections. SSA will also regularly deploy a Vactor truck dedicated to CSOs, which it acquired and put into service in 2011.

Inspections include the following: (1) recording time of arrival and departure, (2) noting the inspection type (biweekly or rain event), (3) noting the condition of the outfall, (4) noting infiltration from the river, (5) noting if the gate was moving freely, (6) noting the weather

Scranton Sewer Authority – CSO Nine Minimum Controls Plan – September 2012

conditions, (7) noting whether the wooden block was in or out, (8) noting whether discharge is present, and if so, (9) estimating rainfall, (10) noting the receiving waters, (11) estimating flow, (12) determining the cause of the discharge, (13) noting whether the discharge is wet weather or dry weather related, (14) estimating the duration of the discharge, (15) noting any erosion, (16) dispatching necessary equipment, (17) noting if solids and floatables being discharged, (18) noting whether a plume is present, and (19) performing sampling, noting any other maintenance needs for the regulator. Inspection forms will be completed for each CSO inspection. SSA will continue to employ a wooden block system to assist in verifying CSO activations.

These frequent physical inspections are supported by 1 permanent Sigma 950 flow meter, 4 permanent Sigma 940 flow meters, and 17 portable Sigma 910 flow meters thus providing monitoring at approximately one-third of the regulators in the system. Normal O&M of the wastewater facility occurs with records of operation maintained daily. A Computerized Managed Maintenance Program (CMMP) for preventative maintenance was initiated in January 2003. SSA is utilizing JOBPLUS. This program generates work orders and maintains inventory records. The program also tracks orders for parts and equipment. Historical records are stored in the CMMP database.

Pump stations will be inspected five days per week with logbooks and log sheets maintaining the O&M activities. This includes observations of blocks of wood placed in the emergency overflows and recording of storm pump operation.

Beginning in 2011, SSA undertook a grit cleaning program (televise, clean, re-televise). On a three-year, rolling basis, SSA will clean and inspect 150,000 feet of sewer lines per year, which effectively puts SSA on a 10-year cleaning schedule. SSA will conduct more frequent inspections for areas which warrant them. As appropriate, inspections will be digitally recorded and log sheets and digital recordings of the work will be maintained at the Treatment Plant and the SSA Board of Directors will be updated monthly on the progress of the program.

SSA inspects and cleans catch basins, manhole structures, and sewer lines each year. In our annual reports we will identify the following:

- Catch basins inspected – three-year rolling average of at least 2,000 per year. Catch basins will be inspected: (1) for the presence of a hood or trap (to retain floatables); (2) to determine the rate of solids accumulation (to facilitate a targeted cleanup schedule); and (3) to determine the physical condition of the basin (e.g., cracked, broken outlet pipe, adjacent street collapse) and to assign it a rating based on a consistent rating system.
- Catch basins cleaned – three-year rolling average of at least 2,000 per year.
- Catch basins repaired – as necessary consistent with the rating assigned to each catch basin, as follows: 1 – Excellent; Minor defects; 2 – Good; Defects that have not begun to deteriorate; 3 – Fair; Moderate defects that will continue to deteriorate; 4 – Poor; Severe defects that will become Grade 5 defects within the foreseeable future; or 5 – Attention required; Defects requiring a high priority for repair or attention to be made consistent with NASSCO standards, to return the catch basin to Good (2) or Excellent (1) condition, including the installation/replacement of hoods or traps.

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- Manhole structures inspected – SSA’s manholes are not labeled; however, SSA will assign identifiers to its manholes by January 1, 2013, and will update this section by March 1, 2013. In the meantime, SSA will inspect and clean all manhole structures at the same time it inspects and cleans the corresponding sewer segments.
- Manhole structures cleaned – see above.
- Manhole structures repaired/replaced – as necessary, consistent with the NASSCO rating assigned to each manhole; repairs to be consistent with NASSCO standards to return the manhole to Good (2) or Excellent (1) condition
- New manholes installed – as necessary.
- Sewer lines inspected – three-year rolling average of at least 150,000 feet per year.
- Sewer lines televised – three-year rolling average of at least 150,000 feet per year.
- Sewer line cleaned/jetted – three-year rolling average of at least 150,000 feet per year.
- Sewer lines replaced/repared – as necessary, consistent with the NASSCO rating assigned to each sewer segment; repairs to be consistent with NASSCO standards to return the sewer line to Good (2) or Excellent (1) condition.

SSA maintains a network of rain gauges, which are inspected at least monthly, with many being inspected twice a month. The SSA rain gauges are supplemented by other area rain gauges, such as the Wilkes-Barre-Scranton Airport. These other rain gauges are maintained by the gauge owners (such as the Airport Authority).

1.8 Training

The Authority provides and promotes training of operators and maintenance personnel. The Authority supports operator certification for all personnel. At present the SSA has 6 certified “A” Wastewater Operators. The Authority provides direct training in various aspects of sewer operations on an as needed basis. The State operator certification Act as well as other training requirements such as those needed for PENNVEST loan compliance will be accomplished.

1.9 Periodic Review of O&M Plans

The operations manual and other operational instructions will be reviewed annually, during the 4th quarter of each calendar year. SSA is scanning all key O&M Manuals into a central electronic database, searchable by title, and anticipates completion of this effort in FY 2012. During the annual review of O&M manuals, a summary report will be developed which will identify any modifications to the previous O&M plans and document the benefits realized from the specific revisions. SSA will also make best efforts to obtain electronic versions of O&M manuals and will incorporate them into the database.

In particular, SSA now requires that all O&M activities be logged in the JOBPLUS database. This will facilitate our recording and reporting of the extensive collection system O&M that is performed annually.

SSA has developed a wet weather operations plan for the WWTP (April 2011), and will develop plans that identify pre-event, during-event-, and post-event/recovery actions for the

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collection system components during the first quarter of 2012. The collection system component plans will present the necessary activities in two ways: (i) organized by event stage (pre-, during-, and post-event), and (ii) organized by collection system component. Upon completion of their development, those plans are incorporated herein by reference.

2.0 Maximum Use of the Collection System for Storage – NMC No. 2**2.1 Introduction**

The second of the nine minimum controls is to maximize the use of the collection system for storage of wet weather flows. The goal of this control is to enable the sewer system to store wet weather flows, as much as possible, until downstream sewers and treatment facilities can handle them. Control measures to obtain the goal include: inspection and removal of obstructions; tide and control gate maintenance and repair; regulator adjustment (including float mechanisms); reduction or retardation of inflows and infiltration; upgrade and adjustment of pumps; raising existing weirs and installation of new weirs. Any attempt to implement the typical measures to maximize the use of the collection system for storage must be tempered with the prevention of upstream basement and street flooding.

SSA has developed a hydraulic model and has worked extensively with Gannett Fleming and EPA/PADEP to evaluate and take full advantage of available collection system storage. This has included a number of weir height adjustments and modeling runs looking to fine-tune collection system performance. These evaluations will continue with the ongoing development of the LTCP.

By way of additional background, following the completion of the hydraulic model calibration in 2010, an evaluation of the CSO regulator settings, including pump station settings, was completed by Gannett Fleming using the calibrated model. The evaluation identified a number of CSO regulators that could be adjusted to reduce the number of CSO activations and improve capture of wet weather flows. The CSO regulators that were identified include the following:

- #004 Wells Street – The regulator sluice gate was removed in 2010. The intercepting capacity was increased from 1.0 MGD to 3.25 MGD.
- #006 Gardner Street – Recommendations include removal of the sluice gate and increasing the opening in the side of the regulator chamber. The intercepting capacity would increase from 2.28 MGD to 4.40 MGD.
- #016 Pettibone Street - Recommendations include removal of the sluice gate and increase the opening in the side of the regulator chamber. The intercepting capacity would increase from 1.94 MGD to 5.02 MGD.
- #034 East Parker Street – The regulator weir height was increased from 3.5 inches to 7 inches in 2010. The intercepting capacity was increased from 0.25 MGD to 0.89 MGD

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Gannett Fleming has used the hydraulic model to evaluate other locations where SSA can increase weir heights without causing in-system problems and these adjustments have been made. SSA will continue to work with Gannett Fleming to identify opportunities to safely and appropriately raise weirs throughout the system.

The weir at the Outfall 003 bypass has been analyzed by Gannett Fleming extensively. The existing weir elevation at Outfall 003 results in significant surcharging along the main interceptor and interceptor backflow at a number of other CSOs during heavy precipitation events. This weir is raised to the greatest extent possible.

2.2 Procedures in Place

2.2.1 O&M Manual

The SSA has existing procedures to maximize the available storage in the collection system. A Collection System O&M Manual is in place to provide procedures for the O&M of the regulator chambers and pumping stations by SSA employees.

SSA is scanning all O&M manuals for both the treatment plant and collection system into a central database so all manuals will be available to all staff. SSA will finish scanning the manuals and saving them to a dedicated location on SSA's server by April 1, 2013, where they will be accessible on SSA's network.

The JOBPLUS database (includes all permitted CSOs, but not pump stations, which will be added April 1, 2013) provides the appropriate instructions for each required collection system O&M task.

2.2.2 Pumping Stations

Pumping stations will be inspected by a dedicated inspection team five days each week. In order to monitor overflows, each pumping station has a block of wood or other suitable indicator device placed in the overflow pipe. During the inspection, the operators will record if the block is present or absent. Rainfall data from rain gauges will also be recorded. Correlation between precipitation and the presence/absence of the wood blocks, or other suitable indicator device, will be reported monthly as part of the Discharge Monitoring Reports (DMRs) and annually in the SSA Chapter 94 Wasteload Management Report. Anomalous information will be investigated and appropriate follow-up measures are implemented. Two pumping stations (Middle Street and Shawnee) are equipped with storm overflow pumps. Runtime meters are installed on the storm water pumps to monitor the quantity of flow pumped into the Lackawanna River. The Myrtle Street pumping station has two main pumps plus a larger capacity storm pump that conveys flow to the force main, maintaining flow in the system.

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2.2.3 Main Interceptor

The current configuration of the influent structure maximizes storage in the main interceptor. The flow that is allowed forward into the WWTP is 25-million-gallons-per-day (MGD) and a peak hourly flow of 39 MGD. The Bypass 003 elevation is set at approximately the crown of the 6.5-foot-diameter interceptor. The invert elevation of the interceptor is 644.86 feet and the invert elevation of the bypass is 650.68 feet. Therefore, the main interceptor must be flowing at nearly full capacity into the plant headworks before any discharge backs up to the point of overflow.

SSA is presently cleaning several major sections of the main interceptor and will report on removed volumes in the FY 2012 annual report. Reports of future scheduled cleaning activities will be integrated into annual budgetary forecasts of extraordinary maintenance & repairs. In the Annual CSO Report a Sediment and Debris Report will be included and submitted to the agencies.

Modeling of the main interceptor for hydraulic capacity and storage capability has been conducted as a part of the LTCP and is an ongoing effort toward optimizing wet weather storage in the interceptor. Weir height adjustments and other system refinements will be made in accordance with the modeling results and associated engineering evaluations.

2.2.4 Sewer Condition Assessment

A television inspection program is necessary to determine lines that are damaged, have root intrusion or silt build-up and may be limiting the upstream storage in the line. A television inspection program, which consists of a goal of inspecting sewers at a rate of 150,000 feet each year, has been established. SSA owns two television camera trucks. The cameras have been typically used to support maintenance activities. The length of lines to be televised will be a combination of those televised in support of normal maintenance activities and those of exploratory nature. Exploratory work will focus on priority areas tributary and those where CSOs have been identified for possible elimination.

2.2.5 Inlets and Catch Basins

Routine maintenance activities including inlet and catch basin cleaning and sewer flushing are performed by SSA. SSA has Vactor and clam trucks available for cleaning. All inlets and catch basins in the system will be cleaned on a maximum 3-year cycle. In priority areas cleaning will be scheduled as needed at a greater frequency interval with priority areas being cleaned twice annually. SSA will identify priority areas and inform EPA and PaDEP of the same by January 15, 2013. Additional cleaning will occur when problems are reported. As defects are observed, they will be reported to the City, Borough or State (PennDOT) for corrective action. Copies of daily work reports and monthly Board reports are maintained.

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SSA will televise and utilize the equipment for routine scheduled inspections. Where it is documented that sediment or other obstructions in non-major sewer lines are present, SSA will flush and/or schedule repair of the sewer. The removal of obstructions increases the storage capacity of the system and can reduce the volume of overflows. Where televising documents excessive clear water flow during dry weather, investigations will be performed to discover/identify the source of the inflow and/or infiltration, since the removal of extraneous flow increases the capacity of the system. Depending on the magnitude and severity, the SSA will schedule the repair/rehabilitation as a part of major capital or extraordinary repair under its annual budgetary program. In the case of storm sewer separation, projects may be referred to the appropriate party (City or Borough) for action. SSA enjoys acceptable levels of cooperation from the City and the Borough, and all known locations of clear water addition have been cooperatively addressed.

SSA personnel generally inspect flap tide gates monthly from topside and specific gates will be inspected as required from the interior. Certain gates, based on experience, are also inspected at least twice a year from the riverside to clean debris. Inspection of the downstream side of the tide gates will be completed monthly. The Collection System Operation and Maintenance Manual contains more specifics on regulator/gate inspection protocol. The function of tide gates is to minimize the receiving stream from flowing back into the sewer system during high river water levels. Proper maintenance is required to ensure that leaks and cracks are not present and that the gate is operating as designed. Leaks and cracks permit water to pass into the overflow and reduce the available downstream storage capacity of the system.

Per discussions with USEPA and PADEP, SSA is evaluating five outfalls where the hydraulic model suggests the possibility of inflows to the combined system. If any material inflow is confirmed to be occurring, SSA will evaluate the need and appropriateness of the installation of a gate or duckbill to prevent river water intrusion. SSA will report on its findings in the next annual report.

SSA continues to work with Red Valve, Inc. to identify a solution to the duckbill regulator for outfall 003. This regulator has allowed some river water intrusion into the treatment plant. Red Valve has already replaced the initial valve twice at SSA's request. As of the date of this plan, a third valve had been installed and appeared to be working properly.

Regulator settings will be adjusted and overflow weirs will be raised as practicable. Regulators are an important component of the CSO system as they regulate the amount of flow permitted into the downstream sewer and provide an outlet for excessive flows. Adjusting the regulator settings and increasing the overflow weirs may permit an additional amount of flow into the downstream sewer and will control the amount of flow discharged into the overflow line. Evaluation of the settings of the regulators was completed as part of the hydraulic modeling of the Lackawanna Watershed 2000 program. Further evaluation is ongoing as part of the CSO LTCP efforts and in response to evaluation requests from PADEP and USEPA.

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Catch basins in the City of Scranton and Borough of Dunmore will be evaluated. The design standards including the hood structure, sump and capacity of storm water discharge to the collection system will be investigated. The use of the hood and sump accomplish isolation of sewer odors, prevention of solids and floatables from entering the sewers, enable an effective means of capture of solids, and provide a reservoir for extracting the solids using non-labor-intensive equipment. The City of Scranton and Borough of Dunmore bear the responsibility to ensure that adequate storm water management is provided under their respective NPDES permits for the EPA Storm Water Phase II program, through a prescribed implementation of Best Management Practice (BMPs) and regulatory reporting. The SSA attempts to limit the amount of storm water discharging into the combined sewer system through a storm water policy. For new connections, the SSA adopted a “Policy on the Connection of Stormwater Discharges into the Combined Sewer System” on November 25, 2003, which includes requirements for effective inlet and catch basin design. This policy sets limits on peak storm water flow into the combined system by requiring storm water management at new developments, as well as requiring developers to look for storm water separation if existing storm conveyance systems or streams are nearby. The policy was provided to the City of Scranton, Borough of Dunmore and adjoining municipalities for incorporation into their storm water management policies and for enforcement. This activity is dependent upon the cooperative adoption of design standards by the municipalities. SSA estimates there are between 10,000 and 14,000 catch basins in its system, of which approximately 75% to 80% contain solids and floatables controls.

Wet wells at all pump stations will be cleaned once per year or more frequently if identified to be necessary by SSA staff through the every weekday pump station inspections. SSA has a pump station SCADA system in place which assists in evaluating dry and wet weather flows to each station. In-line flow meters will document flow, real-time recording rain gauges will document rainfall information (which can be used to correlate pump station flow), wet well levels will be continuously recorded (providing for monitoring of overflows) and storm pump operation will be documented.

Comprehensive CSO regulator and tide gate inspections are performed each year. Detailed assessment of all regulators and appropriate remedial measures are recorded and will be summarized in our annual reports.

Based on the urban setting and the lack of unused facilities, it is not feasible to provide additional in-system storage without significant capital additions to the system, which will be further evaluated in the LTCP.

SSA is working cooperatively with PADEP and USEPA to identify distributed storage solutions along the main interceptor and in other strategic locations as part of the LTCP effort.

2.4 Additional Measures

The LTCP will include evaluation of additional measures for maximum use of the collection system for storage.

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The pumping stations will be evaluated based on the monitoring being performed. Improvements required at the pumping stations will be determined.

3.0 Review and Modification of Pretreatment Requirements – NMC No. 3

3.1 Introduction

The third minimum control is the review and assessment of non-domestic source discharges on CSO impacts. The objective of this control is to minimize the impacts of discharges into combined sewer systems from non-domestic sources during wet weather events.

SSA has relatively few industrial users which collectively contribute an insignificant amount of flow to the collection system.

3.2 Pretreatment Requirements

SSA has worked closely with USEPA to maintain an updated pretreatment program. In 2011, SSA has issued new discharge permits to each of our significant industrial users. These permits reflect updated headworks analysis associated with our newly reissued NPDES discharge permit.

SSA's pretreatment program includes the identification and location of all possible industries, which may be subject to the program.

All permits will be enforced and industries that are in significant noncompliance with the pretreatment requirements will be published in the local paper as required by federal regulations.

The largest non-domestic user is the local landfill, which has already cooperatively agreed to hold waste within their lagoons during periods of wet weather. This will avoid potential non-domestic discharge through a permitted CSO. The SSA on-site inspections will support determination of compliance of industrial users.

Appropriate enforcement action will be taken to bring industrial users into compliance and the Enforcement Response Guide shall be fully implemented. The SSA will prepare quarterly reports and an annual report in accordance with NPDES permitting requirements. In addition, an educational letter concerning the impacts of wet weather discharges will be developed and sent to industries in the service area. The educational letter is being developed in an attempt to encourage industries to voluntarily act to reduce flows during wet weather periods.

During inspections of sewers, if oil and grease build-up is observed SSA will attempt to determine where it is originating and contact the source for resolution. All inspections and follow-up investigations will be documented. SSA does not have any chronic Food, Oils and Grease (FOG) areas that have not been addressed.

4.0 Maximization of Flow to the WWTP for Treatment – NMC No. 4

4.1 Introduction

The fourth minimum control is to maximize the volume of combined wastewater that is processed at the municipal WWTP. The objective of this control is to minimize the amount of combined wastewater that is discharged untreated into receiving waters. The discussion below pertains to the WWTP as it is currently constructed and will have to be amended before completion of the expansion of the WWTP.

4.2 Measures to Increase Treated Flow Volumes

4.2.1 Collection and Conveyance Facilities

SSA has developed an O&M Program and has implemented the program. SSA will implement simple modifications to the collection and conveyance facilities based upon the results of the flow monitoring and modeling tasks being undertaken. CSOs in the system will be inspected on at least a monthly basis. The main interceptor will be probed at manholes to determine the depth of sediment, which will be documented. The main interceptor was cleaned in 2011.

SSA is maximizing flow to the WWTP. The current configuration of the influent structure maximizes storage in the main interceptor. The flow that is allowed forward into the WWTP is approximately 25 mgd with short-term peak flows of 39 mgd in accordance with the Wet Weather Operating Plan. The Bypass 003 elevation is set at approximately the crown of the 6.5-foot-diameter interceptor. The invert elevation of the interceptor is 644.86 feet and the invert elevation of the bypass is 650.68 feet. Therefore, the main interceptor must be flowing at nearly full capacity into the plant headworks before any discharge backs up to the point of overflow.

Based on staff comments, O&M experience and engineering observations, the existing system has no inoperative or unused facilities in the service area. Retaining flow, during wet weather events by utilizing unused facilities, is not applicable and the construction of additional facilities to retain flow is not feasible in this system, unless otherwise determined through the development of the LTCP. Hydraulic modeling of the collection and conveyance system to determine the hydraulic capacities is ongoing and will be included in the LTCP.

4.2.2 Pumping Stations

SSA will conduct and document draw down tests at each pumping station annually in conjunction with the PADEP Chapter 94 Report. The tests will be used to determine if adequate capacity is available at each of the stations. The results of the draw down tests will be utilized to further calibrate and adjust the sewer system model. Simple modifications (*i.e.*, wet well pump operation level adjustments) will be performed and more complex modifications will be evaluated. Pumping stations with storm water pumps are equipped with run hour meters. During inspection of these pumping stations, storm water pumps frequency and quantity of flow is recorded.

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The LTCP will include modeling of wet weather events to determine required capacity and complex modifications that are required to pumping stations based on achieving and maintaining the necessary capacity.

4.2.3 WWTP

A peak flow hydraulic capacity study of the WWTP has been performed to determine the capacity and capabilities of the WWTP under high-flow conditions. The analysis identified that the WWTP should be capable of properly treating a peak hourly flow of 34 to 39 mgd. After the peak hourly flow, the WWTP should be able to properly treat a flow between 25 to 30 mgd for the next 23 hours. The flows should then be sustained between 20 to 30 mgd with a maximum monthly WWTP flow of 20 mgd. SSA will not divert flow, unless an emergency situation occurs, less than what can be properly treated as documented by the Peak Flow Hydraulic Capacity Study. If flow is diverted before the WWTP peak and sustained capacities are reached, the reason why the flow could not be treated and the quantity of flow bypassed will be documented.

SSA has a Wet Weather Operating Plan, which consists of an operating protocol for the use of the Outfalls 001 (main plant outfall), and 003 (upstream of headworks). The WWTP hydraulic capacity goals and guidelines through the secondary treatment system were established as follows:

Permit Flow Parameter	Goal (mgd)	Guidelines for Acceptable Performance (mgd)
Annual Average Flow/ Average Monthly Flow	20	Up to 20
Maximum Average 24 hr Flow	25	23 to 30
Peak Hourly Flow	39	34 to 42

The WWTP Wet Weather SOP, including proposed protocols for accepting peak flows, remains under development. The plans will reflect SSA's experience, which has strongly indicated the need for flexibility in implementing the peak flow goals. These goals must be viewed in the context of tradeoffs between overall plant maintenance parameters and total amounts of wastewater required to be bypassed. When the flows entering the treatment plant exceed 25 mgd, the headworks are negatively impacted by heavy loadings of grit. SSA continues to address influent flow measurement and is working with its consultants, as well as its state and federal regulators, to address this issue.

The plant headworks has been a continuing limitation on our ability to process peak wet weather flows. After years of grit-related problems, we upgraded the grit removal systems using a Eutek/Hydro International system of grit snails. This new grit system has been unsuccessful in handling the grit which we are experiencing. This has led to major operational problems and the need to use Outfall 003 while the grit systems have been chronically down for cleaning. As a result, SSA is currently in litigation with Eutek/Hydro International, as well as the design engineering firm. In the meantime, SSA is evaluating other grit removal options in conjunction

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with the LTCP effort. Notwithstanding the ongoing litigation, in 2011, SSA cleaned the main interceptor and the branch interceptors.

We have worked daily to try to find a solution to the inability of the new grit system to handle incoming grit. Based upon performance testing, it was established that the grit snails could not handle the specified capacity of grit. SSA is in settlement negotiations with the grit snail manufacturer over this performance deficiency. In the interim, SSA has implemented a grit box system that is working well and will continue to be used in the indefinite future. PADEP has been notified of this situation.

In some instances, such as successive peak flow events, the operator has an obligation to exercise engineering judgment to reduce wet weather flows in order to protect the mechanical integrity of the system and to prevent the need for even more extensive bypasses. Such engineering judgment cannot be replaced by an inflexible peak flow requirement of 39 mgd. Thus, it may be necessary from time to time to discharge to outfall 003 during peak flows of less than 39 mgd, in order to protect the biological or mechanical integrity or general operating capability of the plant. Such decision must rest in the sole discretion of the plant operator and will be meticulously documented. In the event of such discharges, the reporting requirements of the NPDES permit will be followed, and where an SSA operator exercises professional judgment in managing flows inconsistent with flow thresholds in the NPDES permit, SSA will provide appropriate notifications to PaDEP per applicable permit requirements.

The SSA will implement the following operating and monitoring protocols:

- Operating mechanisms will be set to convey a peak flow of 39 mgd to the treatment plant for one hour and 25 mgd thereafter;
- Outfall 003 may discharge if the combined sewage flows to the WWTP exceed 39 mgd for more than one hour in a twenty-four hour period and the SSA is in compliance with the EPA Notice of Compliance Order and all permit conditions. The discharge from Outfall 003 may continue for as long as the combined sewage flows to the WWTP equal or exceed 25 mgd.
- If flow is discharged from Outfall 003 when combined flows have not exceeded 39 mgd for more than one hour in a twenty-four hour period, or have not sustained 25 mgd thereafter, SSA will notify DEP and EPA within 24 hours of the discharge.
- SSA will collect data from Outfall 003 using the flow chart meter.
- SSA will collect data on the flow through the WWTP measured in Mgal on an hourly basis.
- SSA will submit monitoring information on a monthly basis to DEP for each instance in which there is a discharge through Outfall 003.

The grit system has been a major source of frustration for SSA. Despite the daily challenges to keep this system operating, SSA has redoubled its efforts and dedicates plant personnel to directly monitor the system during wet weather events. SSA is evaluating options for a long-term solution as part of the LTCP.

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5.0 Elimination of CSOs During Dry Weather – NMC No. 5

5.1 Introduction

The fifth minimum control is to minimize CSOs during dry weather periods when the sewer system is not conveying significant quantities of storm water. The collection, conveyance and treatment facilities must have sufficient capacity to be able to handle peak dry weather flow. In addition, the facilities are operated and maintained to minimize the potential for overflows during dry weather (i.e. blockages, pump malfunctions, etc.).

5.2 Measures Necessary

SSA will inspect all CSOs at least on a monthly basis. See Section 1.7, above. These inspections coupled with SSA's extensive metering program allow the detection – usually at an early stage – of any dry weather overflows.

SSA will document all overflow inspections conducted and maintenance performed. SSA will document all overflows on the CSO Discharge Monitoring Reports and submit the reports to the Pennsylvania Department of Environmental Protection.

Dry weather overflows are identified by SSA's practice of chalking or placing a block of wood in the overflow pipe at the pumping stations and CSO Regulators. Generally, historic dry weather overflows have been due to blockages. Any lines that experience chronic blockages will be televised, cleaned and repaired or replaced as necessary to attempt to eliminate the occurrence of future blockages in these lines. Evaluation of other potential modifications to eliminate DWOs will be performed on a case-by-case basis as potential future chronic locations are identified.

Comprehensive CSO regulator and tide gate inspections were performed during September/October 2004, October/November 2009 and re-inspections are ongoing as part of SSA's daily inspection program and CSO LTCP effort.

The permanent signage located at each CSO was revised to the following language, "NOTICE Scranton Sewer Authority Combined Sewer Outfall Untreated Sewage CSO # _____. This site is at or downstream of a Combined Sewer Overflow. Avoid water-related activities during discharges or heavy rains. To report a discharge call 570-348-5337." The signage will enable the general public to report malfunctions.

CSO signs will be maintained and replaced promptly in the event a sign is missing or damaged.

6.0 Control of Solids and Floatable Material – NMC No. 6

6.1 Introduction

The sixth minimum control is intended to reduce visible floatables and solids from CSO discharges and receiving waters. Controls such as baffles, screens or racks can be included in the combined system to remove solids and floatables before reaching the receiving water. Floatables can be removed from larger receiving water with the use of booms and skimmer vessels. In addition, pollution prevention measures can be utilized to reduce the amount of extraneous floatables and solids entering the combined system.

6.2 Study

SSA performed a study of available controls for solids and floatables and determined that baffles in certain outfalls, coupled with pipe hoods in system catch basins would be the most effective approach for SSA to control solids and floatables. Baffles in CSOs continue to be evaluated and implemented.

6.3 Combined Sewage Control Methods

6.3.1 Collection System Control

The catch basin design will be evaluated to ensure adequate storm water control while attempting to reduce the amount of storm water and debris entering the combined system. Catch basins can be modified to prevent floatables from entering the combined system. Inlet grates can be installed at the top of the catch basins to reduce the street debris that can enter. Trash buckets can be installed in the basin below the grate to retain floatables while letting the stormwater pass to the combined system. Hoods are vertical cast iron baffles that are installed in basins. Hoods are effective for retaining debris within catch basins. A basin can be modified with a vortex valve, which is a throttling device to reduce the frequency and volume of a CSO event and control floatables.

Due to the fact that there are thousands of catch basins in the contributing municipalities, the plan of action to modify the basins will be limited to hoods. It would be cost prohibitive to the contributing municipalities to enact a more elaborate retrofit program. On November 25, 2003, the SSA adopted an updated policy for storm water discharges into the combined sewer system, which included requirements for effective inlet and catch basin design. This policy sets limits on peak storm water flow into the combined system by requiring storm water management at new developments, as well as requiring developers to look for storm water separation if existing storm conveyance systems or streams are nearby. The policy will be provided to the City of Scranton, Borough of Dunmore and adjoining municipalities for incorporation into their storm water management policies and for enforcement. This activity is dependent upon the cooperative adoption of design standards by the municipalities.

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The effectiveness of a catch basin in controlling floatables is dependent on regular maintenance and cleaning. All inlets and catch basins in the system will be cleaned on a maximum six-year cycle. In priority areas, cleaning will be scheduled generally twice annually. Additional cleaning will occur when problems are reported. SSA will document cleaning and input information onto a map and into a database. Through marking/updating inlet and catch basin locations, the map data will be retained for later incorporation into electronic mapping of the sewer system. As defects are observed, they will be reported to the City, Borough or State for corrective action.

SSA has an extensive catch basin hood program. The hoods (bent pipe elbows) are reported to be quite effective at catching solids and floatables. Based upon the experience of SSA's collection system crews in direct response to queries from SSA's Deputy Director for Compliance, SSA believes that 75-80% of all SSA catch basins have some form of hood in place. SSA is currently installing PVC hoods in all remaining catch basins as it performs maintenance on catch basins.

6.3.2 CSO Control

Screens and trash racks are a series of vertical and horizontal bars or wires designed to remove coarse and floating debris from CSOs. The efficiency of this control is based on the design size and typically ranges from 25-90 percent of the total solids. Fine screens are more effective at removing smaller particles but they are also more susceptible to clogging and require additional maintenance. The effectiveness of screening units is reduced significantly by the presence of oil and grease. In order for trash racks or screens to be utilized, the outfall pipe must be an adequate length or land space available for a small structure and outfall must be high enough above the receiving water to permit regular maintenance. Trash racks and screens require regular inspection and maintenance. Application of any of these devices is capital intensive and would be further considered in the floatable control study and the LTCP.

Baffles are floatable control devices that can be installed in a discharge chamber in front of the overflow weir. Baffles are simpler than many of the other control methods and they have lower operating and maintenance costs. The design of the diversion chamber flow regulator and overflow weir determines the effectiveness of the baffles. The discharge chamber and overflow weir must be designed to provide reasonably uniform flow at a low velocity to ensure that floatables are not entrained.

Baffles have been installed at five diversion chambers on a pilot basis. The basic design of the baffle is the same for all of the regulators in the pilot project, but each baffle was customized to fit to the specific regulator such that they are not interchangeable among regulators. The baffles will continue to be monitored during and after storm events. SSA is evaluating the installation of baffles at approximately 10 more sites for FY 2012 and will report on those installations during the next annual report. These sites will be drawn from sites identified by EPA and will include outfalls where SSA staff can perform the installation (which means it will definitely occur in FY 2012) along with other installations that will require an engineering analysis and outside resources to implement (which means a longer schedule may be necessary than FY 2012).

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Regulator and diversion chambers will be inspected monthly and cleaned as required. The inspection and cleaning will be documented in a form similar to the one located in the Collection System O&M Manual.

6.3.3 End-of-Pipe Controls

End-of-Pipe Controls are not currently in place in the SSA system. We have not found these controls to be effective for the SSA system.

6.4 Receiving Water Removal Methods

Receiving water removal methods are not currently utilized in the SSA receiving waters.

6.5 Source Control Methods

Street sweeping can be effective method to control the amount of street debris entering the combined system. SSA has obtained documentation from the City and Borough regarding the schedules for street sweeping. SSA has purchased its own street sweeper to facilitate effective street sweeping.

SSA will enforce the industrial pretreatment program to reduce the amount of extraneous material entering the combined system.

SSA has developed a website to inform the public about the combined sewer system. The website will include educational information addressing street litter. SSA will endeavor to support the City and Borough relative to disseminating educational messages that will advise residents of the importance of proper trash disposal related to the sewer system.

Labeling of specific catch basins is being implemented to identify that the combined sewer system interconnects directly to the receiving streams and that no dumping is allowed. Note that labeling within our GIS has been implemented and documented, but the physical labeling of each basin is still ongoing and is subject to availability of resources.

SSA has also approved a proposal from the Lackawanna River Corridor Association (LRCA) to develop a Public Education and Outreach Program. Among the tasks of the proposed program, SSA is working with LRCA to develop educational materials, identify target audiences and stakeholders, and utilize communication channels to reach and involve target audiences. SSA will conduct educational events for schools and community groups, develop volunteer opportunities for public involvement, and conduct public education meetings. A Household Hazardous Waste program will also be evaluated under the LRCA proposal.

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Pollution Prevention Programs – NMC No. 7

7.1 Introduction

The seventh minimum control is the implementation of pollution prevention programs to reduce contaminants in CSOs. The objective of this control is to reduce to the greatest extent possible, the amount of contaminants that enter the combined sewer system.

7.2 Measures Necessary

SSA will provide information regarding pollution prevention on the website. In addition, pollution prevention information is included in sewer bill mailings.

SSA is evaluating continuation of a marking program to further raise public awareness of the connection between urban impervious area runoff and local water quality.

SSA has developed a website that will be used to provide educational information regarding recycling, proper disposal of waste, proper fertilizer and lawn care products application, and spent oil drop-off programs. The stakeholders involved with the LTCP development will be involved in determining the educational material to be placed on the website and any additional programs to inform residents.

SSA contacted the Lackawanna County Solid Waste Management Authority and determined that there is no collection of household hazardous waste in the area.

SSA is utilizing a clam truck for cleaning. All inlets and catch basins in the system will be cleaned within six years. Additional cleaning will occur when problems are reported.

Street sweeping can be effective method to control the amount of street debris entering the combined system. In concert with NMC No. 6, SSA will obtain documentation from the City and Borough when streets were swept. SSA has purchased its own street sweeper to facilitate street sweeping.

A Household Hazardous Waste program will also be evaluated under the LRCA Public Education and Outreach Program. SSA would like to have such a program, but it must be prioritized in light of all other regulatory commitments.

8.0 Public Notification – NMC No. 8

8.1 Introduction

The eighth minimum control is public notification to inform the public of the location of CSO outfalls, the actual occurrences of CSOs, and the potential health and environmental effects of CSOs.

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8.2 Communications Strategy

SSA currently provides educational materials in sewer bill mailings. SSA will continue to provide educational material to residents.

The permanent signage located at each CSO was revised to the following language, “NOTICE Scranton Sewer Authority Combined Sewer Outfall Untreated Sewage CSO # _____. This site is at or downstream of a Combined Sewer Overflow. Avoid water-related activities during discharges or heavy rains. To report a discharge call 570-348-5337.” The signage will enable the general public to report malfunctions.

SSA has developed a website to inform residents about the about the sewer system and proper operation of the system. Also, the site includes appropriate precautions, risks, potential health hazards, locations of the CSO discharges and incidents of DWOs.

SSA is also working with the Lackawanna River Corridor Association (LRCA) to develop and implement a Public Education and Outreach Program. Among the tasks of the proposed program, SSA will coordinate with LRCA to develop educational materials, identify target audiences and stakeholders, and utilize communication channels to reach and involve target audiences. SSA will conduct educational events for schools and community groups, develop volunteer opportunities for public involvement, and conduct public education meetings. A Household Hazardous Waste program will also be evaluated under the LRCA proposal.

SSA has also implemented additional controls at selected outfalls to prevent public access to CSO facilities (such as large diameter outfalls) and to ensure public safety. Recent fencing at Outfall 023 is a good example of these activities.

9.0 Monitoring to Characterize CSO Impacts – NMC No. 9

9.1 Introduction

The ninth minimum control is monitoring through visual inspections and other simple methods to determine the occurrence and apparent impacts of CSOs.

9.2 Characterization Measures

9.2.1 Mapping

The SSA has a comprehensive set of sewer system index drawings. Additionally, the details of most sewers are contained in original "spur books" obtained from the City Engineer's office for sewers constructed generally prior to 1960, "ward book" sewer mapping for expanded information on all sewers, and engineer's design or record drawings for construction since 1970. GIS mapping was performed as part of the Lackawanna Watershed 2000 program and has been updated by SSA during 2010 and 2011. The SSA has purchased a GPS grade survey unit to continually update this GIS system, as was done through 2010 into 2011.

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9.2.2 Water Quality and Uses

SSA has compiled existing water quality data for the following receiving waters: Lackawanna River, Leggetts Creek, Roaring Brook, Stafford Meadow Brook and Keyser Creek.

As discussed below, using Hawk Mountain Labs, SSA has obtained ambient water quality data at key locations in our CSO receiving waters during the past several years.

The designated uses of some of the local waters in the Scranton area that receive CSO discharges include (as well as the universal designated uses of: Public Water Supply, Boating, Fishing, Water Contact Sports and Esthetics):

- Lackawanna River Warm Water Fishes
- Meadow Brook Cold Water Fishes
- Leggetts Creek Trout Stocking
- Roaring Brook Cold Water Fishes
- Keyser Creek Cold Water Fishes

However, actual uses of these water bodies may be different, which will be inventoried as part of the LTCP.

SSA has developed a comprehensive 3-year water quality monitoring program built upon previously performed water quality studies conducted by SSA as presented in the December 2006 Draft LTCP Report. The Water Quality Monitoring Program began in 2009 and is intended to establish baseline conditions and includes both dry weather and wet weather characterization:

- Dry weather river and stream characterization is intended to provide a baseline water quality description of the existing conditions of the SSA receiving waters to characterize water quality without inputs from CSO or stormwater discharges from the SSA service area. Dry weather monitoring occurs at 14 locations along the Lackawanna River and its six (6) tributaries (Leggetts Creek, Meadow Brook, Roaring Brook, Little Roaring Brook, Stafford Meadow Brook, and Keyser Creek), as well as the SSA WWTP Effluent Outfall No. 001.
- Wet weather river and stream characterization is intended to provide information, that when analyzed in conjunction with the other characterizations, will define the CSO contribution to, and stormwater impact on, water quality of the SSA receiving waters. Wet weather monitoring is conducted at the 14 dry weather monitoring locations, as well as five (5) CSOs (CSO Outfall Nos. 003, 004, 016, 023, and 029), and two (2) stormwater outfalls. Wet weather samples are taken on an hourly basis to depict changes in water quality during and following a wet weather event.

Laboratory analysis of the river and stream samples includes biochemical oxygen demand (BOD), total suspended solids (TSS), total dissolved solids (TDS), oil and grease,

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dissolved oxygen (DO), pH, temperature, microbiological parameters (fecal coliform and *E. coli*), metals (total chromium, total copper, total lead, total mercury, total nickel, and total zinc), and nutrients (ammonia nitrogen, total nitrogen, and total phosphorus). The initial 3 year program includes approximately 20 dry weather sampling events and 2 wet weather sampling events. A benthic macro-invertebrate characterization was also conducted in 2011 to supplement the water quality data in assessing the effects of CSO discharges on receiving water quality in the SSA service area, and to serve as a benchmark for measuring improvements through long-term monitoring. The biota characterization analysis includes EPT Index (%), Hilsenhoff Biotic Index (HBI), Taxa Evenness, and Taxa Richness determinations. The results of this study will be used to assess and quantify the general aquatic health of the ecosystems and compared with previous and future studies to identify trends in the biotic community.

The planning incorporated into the initial 3-year Water Quality Monitoring Program has established the groundwork for on-going water quality monitoring throughout the SSA service area. At the completion of the initial monitoring program in summer 2012, a comprehensive report will be developed detailing the findings of the program and outlining recommendations for future water quality monitoring activities. This information will be included in the LTCP.

9.2.3 System Monitoring

SSA employs flow meters and its updated and calibrated hydraulic model to monitor CSO activations and volumes. SSA has rotated the meters and believes the model is adequately calibrated. SSA will continue to evaluate appropriate locations for in-system meters

SSA visually inspects CSO discharges and documents apparent impacts. This activity will continue in the future. Observations of debris discharged from the CSOs is recorded on inspection forms and inputted into the Authority's electronic database. Also in 2010 the SSA has put their CSO and flowmeter teams on a wireless system allowing direct communication with the Authority's JOBPLUS database. This approach allows more a more efficient and productive CSO inspection program.

SSA is evaluating several outfalls for the potential installation of baffles in an effort to minimize post-activation accumulation of debris.

SSA characterizes the frequency, duration and volume of CSO discharges on a monthly basis in the DMRs. Meters and wooden blocks are used to determine whether regulators have been active. Inspections document the dates the regulators were checked and presence/absence of previous overflows. This information is provided with the monthly DMR.

SSA will monitor flow with permanent and portable flow metering equipment at 15 CSO regulators. SSA installed flow-monitoring devices at the pumping stations as part of the improvements under Phase III of the Capital Improvements Program. Continuous flow monitoring at these select sites will provide information and documented data on frequency, duration and volumes of wet weather overflows. Rain gauges have been installed throughout the sewer system.

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Dry weather overflows will be recorded when observed or when determined from public calls to the SSA office. SSA will document and track public complaints after receiving them.

9.2.4 Impact Data and Trends

SSA will compile trends on an annual basis of:

- frequency of measured overflow volumes where monitored
- rainfall data
- observations of debris discharged
- incidents of DWOs
- reports of water quality problems attributed to CSO discharges
- public complaints
- weir adjustments – dates, previous elevation, new adjusted elevation

These data are being evaluated as part of the development of the LTCP.

APPENDIX B

SCRANTON SEWER AUTHORITY
CSO LONG TERM CONTROL PLAN
CSO CONTROL IMPROVEMENT SCHEDULE

PHASE	YEAR	OUTFALL #	LOCATION	DISTANCE FROM OFBH (RIVER MILES)	CSO CONTROL TYPE	RECEIVING STREAM	STORAGE VOLUME, ESTIMATED (MG)	TOTAL CAPITAL COST, ESTIMATE	EXISTING OVERFLOW VOLUME (mg)	SCORING	
										Total Score	Ranking
A	1	#066	Burke Street	10.045	Offline Box Culvert	Roaring Brook-Natural	0.134	\$1,740,000	1.841	16	2
A	1	#080	Keyser Valley PS	7.192	Inline Box Culvert	Keyser Creek	0.025	\$790,000	0.801	16	3
A	1	#067	Keyser Creek	7.102	Combined With Other	Keyser Creek	N/A	\$1,100,000	0.325	0	
A	2	#087	Leggetts-Kelly	12.881	Inline Box Culvert	Leggetts Creek	0.047	\$880,000	0.684	17	1
A	2	#072	Leggetts Street	12.805	Offline Box Culvert	Leggetts Creek	0.300	\$2,340,000	4.711	15	5
A	2	#065	Drinker Street	11.705	Inline Box Culvert	Little Roaring Brook	0.023	\$780,000	0.171	14	8
A	3	#035	Sanderson Avenue	10.788	Sewer Separation	Lackawanna River-Upper	N/A	\$190,000	1.475	15.5	4
A	3	#037	Brown Avenue	10.599	Offline Box Culvert	Lackawanna River-Upper	0.017	\$1,120,000	0.879	14.5	7
A	3	#011	Von Storch Avenue	9.160	Offline Box Culvert	Lackawanna River-Upper	0.372	\$2,760,000	8.283	13.5	9
A	3	#017	Vine Street	8.201	Offline Box Culvert	Lackawanna River-Lower	0.042	\$1,490,000	1.282	13.5	10
A	4	#020	E Lackawanna Avenue	7.802	Offline Box Culvert	Lackawanna River-Lower	0.302	\$2,870,000	8.812	13.5	11
A	4	#052	Wyoming Avenue	6.394	Inline Box Culvert	Lackawanna River-Lower	0.023	\$790,000	0.477	13.5	12
A	4	#081	Pittston - Brook	6.710	Inline Box Culvert	Stafford Meadow Brook	0.081	\$1,020,000	0.934	15	6
A	4	#084	639 E Elm St	6.974	Offline Box Culvert	Stafford Meadow Brook	0.288	\$2,370,000	0.693	13	13
A	4	#083	Irving-Elm	7.166	Replace Regulator	Stafford Meadow Brook	N/A	\$90,000	0.684	0	
A	4	#085	644 E Elm St	6.971	Replace Regulator	Stafford Meadow Brook	N/A	\$80,000	1.393	0	
B	5	#079	Myrtle Street PS	9.516	Offline Box Culvert	Roaring Brook-Natural	0.182	\$1,860,000	2.663	13	14
B	5	#033	W Parker Street	11.424	Inline Box Culvert	Lackawanna River-Upper	0.013	\$740,000	0.324	12.5	15
B	5	#038	Wurtz Avenue	10.486	Offline Box Culvert	Lackawanna River-Upper	0.117	\$1,590,000	4.012	12.5	16
B	5	#078	Shawnee Avenue PS	11.046	Inline Box Culvert	Lackawanna River-Upper	0.009	\$720,000	0.46	12.5	17
B	5	#040	W Market Street	10.087	Inline Box Culvert	Lackawanna River-Upper	0.017	\$870,000	0.81	11.5	19
B	5	#012	Grove Street	9.102	Offline Box Culvert	Lackawanna River-Upper	0.087	\$1,640,000	2.234	11.5	20
B	6	#018	Love Road	8.087	Offline Box Culvert	Lackawanna River-Lower	0.160	\$1,850,000	4.536	11.5	21
B	6	#019	Linden Street	7.986	Offline Box Culvert	Lackawanna River-Lower	0.897	\$5,430,000	19.26	11.5	22
B	7	#021	W Scranton Street	7.621	Offline Box Culvert	Lackawanna River-Lower	0.750	\$4,960,000	1.757	11.5	23
B	7	#022	Washburn Street	7.468	Combined With Other	Lackawanna River-Lower	N/A	\$120,000	18.944	0	
B	8	#030	Prescott Avenue	8.095	Offline Box Culvert	Roaring Brook-Natural	1.357	\$6,700,000	23.747	12	18
B	8	#024	Hickory Street	7.021	Offline Box Culvert	Lackawanna River-Lower	0.245	\$2,430,000	4.157	11.5	24
B	9	#025	Willow Street	7.031	Offline Box Culvert	Roaring Brook-Channel	0.360	\$2,740,000	6.049	11.5	25
B	9	#049	River Street	7.285	Inline Box Culvert	Roaring Brook-Channel	0.014	\$770,000	0.291	11.5	28
B	9	#073	Front Street	7.835	Replace Regulator	Roaring Brook-Channel	N/A	\$80,000	0.128	0	
C	10	#027	Washington-Locust	6.394	Offline Box Culvert	Lackawanna River-Lower	0.211	\$2,090,000	5.294	11.5	26
C	10	#047	Broadway Street	7.063	Inline Box Culvert	Lackawanna River-Lower	0.013	\$830,000	0.345	11.5	27
C	10	#068	S Sixth Avenue	6.156	Offline Box Culvert	Lackawanna River-Lower	0.020	\$1,140,000	1.523	11.5	29
C	10	#053	Cedar Avenue	6.580	Replace Regulator	Stafford Meadow Brook	N/A	\$80,000	0.145	0	
C	10	#082	Locust - Cedar	6.606	Inline Box Culvert	Stafford Meadow Brook	0.045	\$1,120,000	0.564	11	30
C	11	#086	414 Maple St	6.610	Replace Regulator	Stafford Meadow Brook	N/A	\$80,000	0.278	0	
C	11	#004	Wells Street	11.590	Offline Box Culvert	Lackawanna River-Upper	0.482	\$3,690,000	7.467	10.5	31
C	11	#031	Leggetts Creek	11.690	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	1.112	0	
C	12	#006	Gardner Avenue	9.479	Offline Box Culvert	Lackawanna River-Upper	0.296	\$2,390,000	3.905	10.5	32
C	13	#013	Poplar Street 24-inch	8.969	Offline Box Culvert	Lackawanna River-Upper	1.559	\$7,520,000	3.49	10.5	33
C	13	#014	Poplar Street 90-inch	8.967	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	23.985	0	
C	14	#015	Gordon Avenue (Pinebrook)	8.279	Precast, Post-Tensioned Tank	Lackawanna River-Lower	1.360	\$10,967,000	36.524	10.5	34
D	15	#023	Luzerne Street	6.775	Offline Box Culvert	Lackawanna River-Lower	0.466	\$3,620,000	19.385	10.5	35
D	16	#029	Genet Street	5.978	Offline Box Culvert	Lackawanna River-Lower	0.867	\$5,030,000	19.074	10.5	39
D	17	#003A	WWTP Overflow	5.374	Precast, Post-Tensioned Tank	Lackawanna River-Lower	2.850	\$17,753,000	93.295	10.5	40
E	19	#045	Emmett Street	7.131	Inline Box Culvert	Lackawanna River-Lower	0.008	\$1,130,000	0.33	10.5	36
E	19	#048	Washington-Alder	6.940	Inline Box Culvert	Lackawanna River-Lower	0.014	\$740,000	0.374	10.5	37
E	20	#051	Birch Street	6.915	Inline Box Culvert	Lackawanna River-Lower	0.017	\$860,000	0.34	10.5	38
E	20	#005	Love Place	9.935	Offline Box Culvert	Lackawanna River-Upper	0.086	\$1,850,000	2.483	9.5	41
E	21	#043	Olive Street	8.319	Offline Box Culvert	Lackawanna River-Upper	0.059	\$1,390,000	1.315	9.5	42
E	21	#028	Fig Street	6.191	Offline Box Culvert	Lackawanna River-Lower	0.075	\$1,800,000	2.611	9.5	43
E	22	#016	Pettibone Street	8.138	Offline Box Culvert	Lackawanna River-Lower	0.921	\$4,700,000	17.86	9.5	44
E	23	#007	Philo Street	9.441	Offline Box Culvert	Lackawanna River-Upper	0.685	\$3,770,000	4.341	8.5	45
E	23	#008	Hawk Street	9.379	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	14.291	0	
E	23	#026	W Elm Street	6.549	Offline Box Culvert	Lackawanna River-Lower	0.263	\$2,740,000	1.826	8.5	46
E	24	#055	Drinker Place	10.804	Offline Box Culvert	Lackawanna River-Upper	0.761	\$7,670,000	5.989	7.5	47
E	24	#056	Boulevard Avenue	10.801	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	2.562	0	
E	24	#057	Richmont Street	10.807	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	0.019	0	
E	24	#058	Grandview Street	10.850	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	0.129	0	
E	24	#059	Woodlawn Street	10.924	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	1.287	0	
E	24	#060	Park Avenue	10.999	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	0.496	0	
E	24	#061	Morel Street	0.000	None	Lackawanna River-Upper	N/A	\$0	0	0	
E	24	#062	Fisk Street	0.000	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	0.268	0	
E	24	#063	Olyphant South 24-inch	11.153	Combined With Other	Lackawanna River-Upper	N/A	\$120,000	1.936	0	
E	24	#064	Olyphant North 12-inch	11.148	None	Lackawanna River-Upper	N/A	\$0	0	0	
E	25	#075	Capouse Avenue	9.730	Offline Box Culvert	Meadow Brook-Channel	0.158	\$2,030,000	2.7	6.5	48
E	25	#032	Watkins Street	11.634	Replace Regulator	Lackawanna River-Upper	N/A	\$80,000	0.06	0	
E	25	#034	E Parker Street	11.288	Replace Regulator	Lackawanna River-Upper	N/A	\$80,000	0.175	0	
E	25	#036	Tioga Street	10.658	Replace Regulator	Lackawanna River-Upper	N/A	\$80,000	0.535	0	
E	25	#069	Crane Street	4.346	Replace Regulator	Lackawanna River-Lower	N/A	\$80,000	0.485	0	
E	25	#074	Marion Street	9.597	Replace Regulator	Meadow Brook-Channel	N/A	\$80,000	0.076	0	
E	25	#076	Sanderson-Marion	9.525	Replace Regulator	Meadow Brook-Channel	N/A	\$100,000	0.093	0	
Total							17.078	\$139,600,000	401.784		

Appendix B
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*Note: the Scoring and Ranking columns and the color coding indicate how the projects were evaluated and grouped by the SSA in developing the LTCP.

IMPLEMENTATION OF APPENDIX B PROJECTS

The projects in Appendix B shall be implemented in accordance with the following schedule:

All of the projects in Phase A shall be complete by December 1, 2016.

All of the projects in Phase B shall be complete by December 1, 2021. Moreover, as interim milestones:

- at least 5 of the projects in this phase will be complete by December 1, 2017;
- at least 7 of the projects in this phase will be complete by December 1, 2018;
- at least 9 of the projects in this phase will be complete by December 1, 2019; and
- at least 12 of the projects in this phase will be complete by December 1, 2020.

All of the projects in Phase C shall be complete by December 1, 2026. Moreover, as interim milestones:

- at least 4 of the projects in this phase will be complete by December 1, 2022;
- at least 7 of the projects in this phase will be complete by December 1, 2023;
- at least 9 of the projects in this phase will be complete by December 1, 2024; and
- at least 11 of the projects in this phase will be complete by December 1, 2025.

All of the projects in Phase D shall be complete by December 1, 2029. Moreover, as interim milestones:

- at least 1 of the projects in this phase will be complete by December 1, 2027; and
- at least 2 of the projects in this phase will be complete by December 1, 2028.

All of the projects in Phase E shall be complete by December 1, 2037. Moreover, as an interim milestone, at least 13 of the projects in this phase will be complete by December 1, 2033.