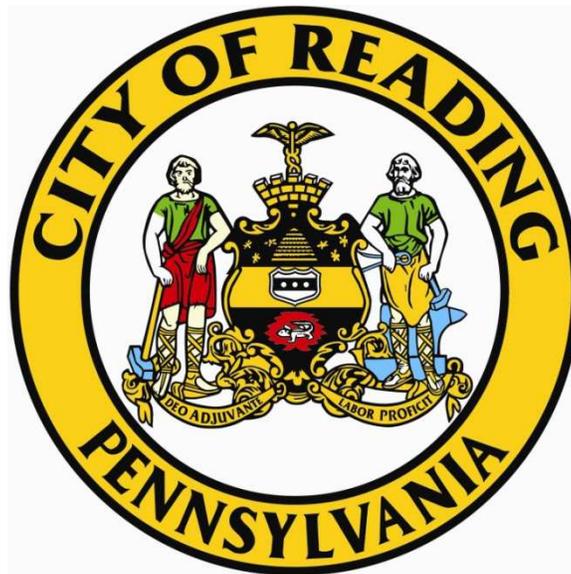


**REQUEST FOR PROPOSALS**

**RFP-2015-2**

**PROGRAM MANAGEMENT SERVICES FOR CONSENT DECREE PROGRAM**



**CITY OF READING, PA  
815 Washington Street  
Reading, PA 19601**

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## **I. INTRODUCTION**

Through this Request for Proposals (“RFP”), the City of Reading (“City”) is soliciting proposals (each, a “Proposal”) from professional firms (each, a “Proposer”) to assist the City with the management and coordination of the City’s efforts to comply with its obligations associated with upgrading its wastewater treatment plant and wastewater sewer system required by a Consent Decree, as amended, entered in the United States District Court for the Eastern District of Pennsylvania at Civil Action No. 04-05696, attached hereto as Attachment 1 (“Consent Decree”). As used herein, the term “Program” shall refer to the administration of the City’s remaining obligations set forth in the Consent Decree as further detailed in an Act 537 Special Study dated August 2012, available to proposers on the City’s SharePoint website.

The City intends to award a contract for the performance of the management and coordination services for the Program (“Services”), as set forth in Attachment 2 to this RFP (“Proposed Contract”), to the professional firm that has assembled a team of the most qualified and competent professionals to provide a creative and cost effective solution for the performance of Services. As used in this RFP, the term “Selected Program Manager” shall mean the firm that the City enters into a contract for the Services.

The City has established a secure SharePoint website to make a copy of documents associated with the Program available for review and consideration by the Proposers. In order to gain access to the City’s SharePoint website, the Proposer shall email the names and email addresses of all persons requiring access to review such documents to Derald Hay, the City’s Special Counsel, at [dhay@foxrothschild.com](mailto:dhay@foxrothschild.com). The Proposers shall treat all information disclosed by the City or its agents to the Proposers pursuant to this RFP as confidential information and shall not disclose such confidential information except to the extent required by applicable laws. However, the Proposer shall not be obligated to treat any information as confidential if it (a) is available to the public as of the date hereof; (b) becomes available to the Proposer on a non-confidential basis from a source other than the City or its agents; or (c) is developed independently by the Proposer.

The Proposer shall carefully review all documents included on the SharePoint website to fully understand the scope of Services and the role which the Selected Program Manager will have based on the Consent Decree and status of each particular project within the Program.

## **II. BACKGROUND INFORMATION ON THE PROJECTS**

The City has generally divided the Program into several discrete projects (each, a Specific Project). The City has already completed construction on several Specific Projects (consequently meaning that those Specific Projects should have a minimal impact on the Selected Program Manager’s Services). The brief summary of the each Specific Project below is provided to the Proposer for informational purposes only.

**A. COMPLETED SPECIFIC PROJECTS**

1. Flowmeter Project

The City installed a new 42-inch diameter flowmeter to measure influent volumes at the WWTP and installed approximately two thousand three hundred linear feet (2,300') of new 42-inch diameter ductile iron force main for eventual connection to a new force main between the Sixth and Canal Pump Station and the Fritz Island and Wastewater Treatment Plant ("WWTP").

2. Emergency Bypass Project

The City installed two line stops on its 42-inch force main and approximately one thousand six hundred linear feet (1,600') of a 42-inch ductile iron force main aboveground in anticipation of completion of the new force main project.

3. 42-Inch Force Main Replacement Project

The City had approximately seven thousand linear feet (7,000') of 42-inch ductile iron force main installed from the Sixth and Canal Pump Station to connect with the section of force main installed in connection with the Flowmeter Project. After the new force main was operational, the linestops from the original force main were removed and the bypassed section of the original force main was replaced.

**B. SPECIFIC PROJECTS IN PROGRESS**

1. Sewer System Evaluation Survey and Rehabilitation Plan

The City's consultant developed a hydraulic model and performed an I/I evaluation, closed circuit television inspection, and manhole inspection of the City's wastewater sewer system to gather the underlying data for completion of a sewer system evaluation survey ("SSES"). The SSES identified high priority areas of the sanitary sewer system that require repair for the development of a rehabilitation plan that was recently submitted to the regulators. The scope of Services contemplated by this RFP does not include the implementation of any of the recommendations identified in the rehabilitation plan.

2. Secondary Digester Rehabilitation Project

The scope of this Specific Project includes the conversion of Digester No. 5 into a primary anaerobic digester, including the replacement of digester covers various electrical systems. This Specific Project also included a structural evaluation and renovation of the Secondary Digester Control building that is situated between Digesters No. 4 and 5.

3. Fritz Island Wastewater Treatment Plant Liquids Facilities Upgrade Project

The recommended liquids treatment alternative involves the replacement of the trickling filters with a new activated sludge biological system that includes a new RAS/WAS pumping station.

This Specific Project also includes construction of new final clarifiers and improvements to the primary clarifiers and the chlorine disinfection system. The bidding documents for this Specific Project are available on the SharePoint website. Bids are scheduled for submission on March 31, 2015.

4. Fritz Island Wastewater Treatment Plant Solids Facilities Upgrade Project

The recommended solids treatment alternative is to co-thicken primary and secondary sludge followed by anaerobic digestion and centrifuge dewatering. The existing primary anaerobic digesters will be rehabilitated and the existing solids handling building is being renovated to accommodate the centrifuges as well as additional sludge thickening and dewatering equipment. Additionally, a new environmental operations center will be constructed to act as a center for the WWTP's accredited lab services, office, and administrative space. The City anticipates that the bidding documents for this Project will be made available to bidders in the next month.

5. Sixth and Canal Street Pump Station Short Term Upgrades Project

The short term improvements to the Sixth and Canal Pumping Station include the replacement of the influent screens, improvements to the grit system, addition of vortex breakers, HVAC improvements, and site improvements. The City anticipates that the bidding documents for this Project will be made available to bidders in the next month.

**C. SPECIFIC PROJECTS PENDING**

1. Sixth and Canal Street Pump Station Long Term Upgrades Project

The long term improvements required for the Sixth and Canal Pump Station primarily involve the replacement the existing pumping units with six new variable frequency drive pumps and associated appurtenances, including, without limitation, emergency power generation, piping, HVAC, and electrical system. The City recently executed a contract with the design professional for the design of this Specific Project.

2. 19<sup>th</sup> Ward Pump Station and Force Main Improvements Project

Improvements to the 19<sup>th</sup> Ward Pump Station generally include, without limitation, replacing the force main, pumping units, HVAC and electrical systems, expanding the capacity of the wetwell, rehabilitating or replacing the existing grinder pump, and providing a new SCADA connection. The City anticipates soliciting proposals for a design professional for this specific project in the next month.

**III. REQUIRED CONTENT AND FORM OF THE PROPOSAL**

The City requests that the Proposer submit a Proposal that provides a detailed description of the qualifications, experience, and proposed scope of tasks to be performed of each team member the Proposer will use to perform the Services. The Proposal shall be presented as two separate, but integrated documents: the Qualifications and Cost Proposal.

## **A. *QUALIFICATIONS***

As a component of the Proposal, each Proposer shall submit its “Qualifications” for the performance of the Services. In general, the Qualifications shall summarize the qualifications and prior relevant experience of each individual team member that will perform Services, identify the specific tasks each team member will perform, and provide a summary as to how the Proposer envisions the overall team’s role in performing Services. The Qualifications shall be organized in the order set forth below and contain the requested information to facilitate the City’s scoring of the Qualifications.

### **Cover Letter**

A cover letter shall be signed by a member of the Proposer having the authority to negotiate and execute contracts on behalf of the Proposer. The cover letter shall expressly state that the Proposer is making a firm offer to the City to perform the Services on behalf of the City in accordance with the terms and conditions of this RFP and the Proposal enclosed with such cover letter. The cover letter shall also acknowledge that the Proposer makes no exception, objection, qualification, or limiting assumption to this RFP or the Proposed Contract except as specifically detailed in Appendix A of the Qualifications.

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#### **Section 1: Proposer Profile**

The Proposer shall identify the Proposer’s:

1. Name, business address of headquarters, telephone number, and website address;
2. Primary contact person for the Proposer, including the contact person’s name, job title, physical address, telephone number, and email address;
3. Type of business organization (corporation, partnership, LLC, for profit or not for profit, etc.) and state of organization; and
4. Federal taxpayer identification number or federal employer identification number, and number of years in business.

#### **Section 2: The Program Management Team**

The Proposer shall provide an organizational chart which identifies the personnel being proposed to perform Services (the “Program Management Team”). The Proposer shall identify the member(s) of the proposed Program Management Team that will have a substantial role for the performance of the Services as “Key Personnel” in the Proposal. The Key Personnel must remain assigned to the Program until the completion of the Program as described in the Proposed Contract. It is the City’s desire to have the Key Personnel designated within the Program

Management Team to focus the size of the Program Management Team, minimize unnecessary redundancy in the performance of Services, and enable the City to build a level of trust with each Key Personnel.

The Proposer shall compile a table that identifies: the name, title, office location, highest education level, area of expertise, professional licenses, and years of experience of each proposed member of the Program Management Team.

The Proposer shall include a summary of the qualifications and experience of each member of the Program Management Team, with particular emphasis on the Key Personnel. The Proposer shall also provide at least one client reference for each person identified as Key Personnel, with a preference for clients where several of the Key Personnel worked together as a team. The client reference shall identify the name of the client, the name of the client's contact in charge of overseeing the Proposer's services, the phone number and email address for such client contact, a brief description of the scope and cost of the project involving the client, and the role and relative involvement of the applicable Key Personnel in the client's project.

### **Section 3: Project Understanding and Approach**

The Proposer shall specifically describe each task to be performed by each member of the Program Management Team and explain how such person will be adding value for the effective completion of the Program. The Proposal shall provide a detailed description of the tasks and duties required to implement the scope of work and the expected number of hours each discrete task will take to complete the Program.

### **Appendix A: Exceptions to the Proposed Contract**

The Proposer shall explain in detail any exceptions, objections, qualifications, or limiting assumptions taken to the Proposed Contract for the City to appropriately score the Qualifications. The provision or language the Proposer takes exception to shall be specifically identified (including a citation to the paragraph such provision or language is found) with the Proposer's requested modifications. It will be understood by the City that the Proposer agrees that it takes no exception to provisions of the Proposed Contract not specifically identified in Appendix A of the Qualifications. Exceptions, objections, qualifications, or limiting assumptions made without a corresponding proposed modification to the Proposed Contract shall be deemed only a statement to demonstrate the Proposer's understanding of the Project and shall not be a basis for subsequent requests to change terms of the Proposed Contract.

By submitting its Proposal, each Proposer agrees that exceptions, objections, qualifications, or limiting assumptions in any other portion of the Proposal shall not be a basis for modifying the Proposed Contract or be a basis to limit Proposer's responsibilities, obligations, or liability if a contract is awarded.

## **Appendix B: Supplementary Proposal Forms**

The Proposer shall execute a Non-Collusion Affidavit, Certification of Non-Indebtedness to the City, and Non-Discrimination Statement, as such documents are attached hereto as Attachment 3 and include the executed documents in Appendix B to the Qualifications.

## **Appendix C: Defaults**

For the five year period preceding the date of this RFP, the Proposal shall include a detailed description of any situation in which the Proposer (either under an independent contract, partnership, or joint venture) defaulted or was alleged to be in noncompliance of any contractual obligations. The Proposer shall explain the issues involved in the matter, the outcome, and the actions taken by Proposer to resolve the matter. The Proposal shall identify the name, title, and telephone number of the other party to the contract.

## **Appendix D: Disclosure of Litigation or Administrative Proceedings**

For the five year period preceding the date of this RFP, the Proposal shall include a detailed description of any judicial or administrative proceeding that is material to Proposer's business or financial capability or that could interfere with Proposer's performance of the Services, including, but not limited to, any civil, criminal or bankruptcy litigation; any debarment or suspension proceeding; any criminal conviction or indictment; and any order or agreement with or issued by a court or local, state or federal agency. For each such proceeding, the Proposal shall state the name of the case or proceeding, the parties involved, the nature of the claims involved, its current status and the final disposition, if any.

### ***B. COST PROPOSAL***

All Basic Services will be compensated on a time (hours worked multiplied by the applicable billing rate) and expense basis subject to a Not to Exceed Fee. The Proposal shall include a separately sealed "Cost Proposal" which identifies the Proposer's best and final Not to Exceed Fee for the performance of all Basic Services (as defined in the Proposed Contract). The Not to Exceed Fee for all Basic Services shall include, without limitation, all of Proposer's costs, overhead, and profit for the complete performance of such Services.

The Cost Proposal shall also include a not-to-exceed limit for reimbursable expenses as set forth in the Proposed Contract.

The Cost Proposal shall also include an allowance amount for the performance of value engineering in the event the City requests the Selected Program Manager to perform a value engineering analysis of the design documents of a Specific Project. The value engineering analysis would be performed as an Additional Service and billed on an hourly basis with the allowance amount being a ceiling of compensation unless amended.

The Cost Proposal shall also identify the hourly billing rates for each member of the Program Management Team as well for specialized personnel, by title, which may be subsequently used

by the Proposer to perform Services. The hourly billing rates shall remain the same for the entire duration of the Program.

#### **IV. THE REQUEST FOR PROPOSAL PROCESS**

By submitting the Proposal, each Proposer certifies that it has read the complete RFP and all attachments and supplementary documents made available by the City on the SharePoint website, fully understands the scope, nature, and quality of Services to be performed, and accepts and agrees to all provisions set forth herein.

##### ***A. COMMUNICATION WITH THE CITY REGARDING THE RFP***

To ensure fair consideration for all Proposers, the City prohibits communication to or with any City official, department director, division manager, or employee related to this RFP prior to the submission of the Proposal with the exception of those questions and requests for clarification of the RFP or Proposed Contract. All questions and requests for clarification shall be sent only to:

Tammi Reinhart, Purchasing Coordinator, City of Reading  
Phone: (610) 655-6207  
Email: [tammi.reinhart@readingpa.org](mailto:tammi.reinhart@readingpa.org)

The City is requesting that any questions and requests for clarification be submitted in writing via e-mail by **2 p.m. (local time), April 17, 2015.**

Interpretations of the meaning of the RFP or Proposed Contract made to any Proposer orally shall not be binding on the City or any other Proposer. Any modifications, clarifications, or interpretations to this RFP as a result of questions from Proposers will be set forth in an addendum posted on the SharePoint website and circulated to all Proposers that request access to the SharePoint.

After the Proposal has been submitted to the City, communications related to this RFP initiated by a Proposer to the City shall be prohibited until a contract for Services has been executed by the City. Any communication between a Proposer and the City shall be initiated by the appropriate City employee or agent in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Proposal.

Any prohibited communications initiated by a Proposer may be grounds for disqualifying the offending Proposer from consideration for award of the Proposal and/or any future proposal.

##### ***B. SUBMISSION OF QUALIFICATIONS AND COST PROPOSAL***

Each Proposer shall submit one original, six paper copies, and one electronic copy on a USB flash drive of its Qualifications in a sealed envelope. Such envelope shall be clearly labeled as "Qualifications for RFP-2015-2 Program Management Services for Consent Decree Program." Each Proposer shall also submit one original, six paper copies, and one electronic copy on a USB flash drive of its Cost Proposal to this RFP in a separately sealed envelope. Such envelope shall

be clearly labeled as “Cost Proposal for RFP-2015-2 Program Management Services for Consent Decree Program.”

The Proposal shall be received by the City Purchasing Coordinator, Room 2-45, City Hall, 815 Washington Street, Reading, PA, no later than **2:00 p.m. (local time), May 5, 2015** (the “Proposal Deadline”). Any Proposals received after the Proposed Deadline may not be considered by the City. Proposals will not be opened or read in public.

***C. CONFIDENTIALITY OF THE PROPOSAL***

Under Pennsylvania’s “Right to Know” law, public records are required to be open to the public for reasonable inspection. All Proposals, including detailed price and cost information, will be held in confidence while the City is evaluating the Proposals. After the City and the Selected Program Manager have executed a contract, all Proposals will become public records.

Trade secrets and other confidential proprietary data contained in the Proposal may be held confidential if the Proposer requests in writing that the City does so and the City agrees in writing to do so. Material considered trade secrets or confidential proprietary data by the Proposer must be clearly identified and the Proposer must include a brief statement that sets out the reasons for requesting the confidentiality of each such material. Blanket statements that entire Proposal or any component of the Cost Proposal is confidential shall be unacceptable.

When submitted to the City, the Proposal shall become the exclusive property of the City and will not be returned to the Proposer.

***D. WITHDRAWAL OF PROPOSALS***

Proposals may be withdrawn (and, if desired, modified and resubmitted prior to the Proposal Deadline) after submittal, provided the Proposer makes its request to withdraw in writing and the request is received and acknowledged by the City in writing prior to the Proposal Deadline. After the Proposal Deadline, the Proposal may not be withdrawn or modified.

Negligence by Proposer in preparing its Proposal confers no right of withdrawal or modification of its Proposal after such Proposal has been opened. No claims on account of mistakes or omissions in any Proposal will be considered. Proposals are deemed a firm offer and each Proposer agrees that its Proposal shall be a valid offer for not less than one hundred twenty (120) days from the Proposal Deadline.

***E. EVALUATION OF QUALIFICATIONS***

The City will evaluate the Proposals to identify Proposer that presents the most competitive approach to performing Services taking into consideration, without limitation, the evaluation factors set forth below:

1. Experience and qualifications of the proposed Program Management Team:
  - a. The degree to which the personnel on the Program Management Team have held responsible positions for similar projects;
  - b. The degree to which the Program Management Team brings experience in the full range of skills and expertise needed to accomplish the Services;
  - c. The specific commitments made in the Qualifications for staffing the Program Management Team, including the percentage of the time the individual members of the Program Management Team will be dedicated to the Program;
  - d. The approach the Proposer identifies to demonstrate how each member of the Program Management Team will add value to the Program; and
  - e. Any other experience and/or criteria the City deems relevant.
2. Conflicts of Scope:
  - a. The City views the peer review of design documents for a Specific Project as a role separate and apart from the performance of professional design services and that acting in both roles would result in a conflict within the scope of performance. Therefore, the City may deem the design professional of any of the Specific Project which the Proposed Contract contemplates having a peer review by the Selected Program Manager as not qualified to perform the Services.
  - b. The City anticipates engaging a separate professional firm to perform on-site construction management services for each Specific Project. The Selected Program Manager is eligible to be awarded a contract for construction management services associated with any Specific Project.

***F. PROCEDURE FOR REVIEW OF QUALIFICATIONS***

The City will conduct a preliminary evaluation of all Proposals based on the information provided. The City will first review the Qualifications for technical compliance with the requirements of the RFP. Failure to comply with any mandatory requirements may disqualify a Proposer.

Upon completing its preliminary evaluation, the City will evaluate and score the Qualifications submitted by each Proposer. The City will then open each of the Cost Proposals and complete a similar review, evaluation, and scoring.

The City will notify the Proposers that it selects to interview to further discuss the Proposer's understanding of the Program and proposed approach to perform the Services. Interviews are scheduled to occur on **May 14, 2015**. The Proposer shall ensure that all Key Personnel attend the interview and actively participate in the interview. The City reserves the right to privately interview individual members of the Program Management Team following the interview with the Proposer.

The City has the responsibility to negotiate the most favorable cost, terms, and conditions for the City. The negotiation process may involve one or more Proposers, and may continue until a contract for the Services is executed by the Selected Program Manager and the City. By submitting its Proposal, the Proposer agrees that any efforts by the City or its legal counsel to negotiate more favorable costs, terms, or conditions shall not constitute a rejection of the Proposal and that the Proposal will remain a firm offer at least one hundred twenty (120) days from the date of the Proposal Deadline.

## **V. AWARDING THE CONTRACT**

The City will notify the Proposer that the City's RFP selection committee selects to present to the Council for the City of Reading for approval to award the contract for the Services (the "Selected Proposer"). The Selected Proposer shall print three (3) color counterparts of the contract for execution, in a form substantially similar to the Proposed Contract with mutually agreed upon modifications, and execute and submit the same within seven (7) calendar days of the City's request. If awarding of a contract for the Services to the Selected Proposer is approved by the Council for the City of Reading, the City will present the approved contract to the City's administration for its consideration. The City shall not be bound to award a contract for the Services to the Selected Proposer unless and until the complete contract has been approved by the Council for the City of Reading and executed by the City's Mayor (or his designee) and the City's solicitor.

If the Selected Proposer does not submit the three (3) executed counterparts of the contract memorializing the parties' agreement within seven (7) days of the City's request, the City may, in its sole discretion, select another Proposer to award a contract for the Services or withdraw the RFP altogether.

As the submission of a Proposal shall be a firm offer by the Selected Proposer, in the event the Selected Proposer is unable or unwilling to submit the three (3) executed counterparts of the contract memorializing such firm offer within seven (7) days of the City's request, the City shall be entitled to recover all damages resulting therefrom, including, without limitation, the difference between the not-to-exceed fee identified in the Selected Proposer's Cost Proposal and the Selected Program Manager's Not to Exceed Fee.

The final, negotiated contract, when executed by both the City and Selected Program Manager, shall be deemed to be the entire, integrated agreement between the parties notwithstanding any exceptions, objections, limitations or qualifications to the Proposed Contract set forth in the Proposal. Neither this RFP nor the Proposal will be attached to or incorporated in the final contract for Services. The Selected Program Manager shall not base any claim, including, without limitation, a request for additional compensation, upon any representation in this RFP, its Proposal, or any prior representation or promise of the City.

## **VI. RESERVATION OF RIGHTS**

All Proposals, and any subsequent submissions required to supplement the Proposal, shall be prepared by the Proposer at the Proposer's sole cost and expense. If, for any reason whatsoever, the City rejects a Proposer's Proposal, the Proposer agrees that it will not seek to recover profits on Services not performed, to seek to recover the costs for preparing the Proposal, or assert a claim for unjust enrichment.

The City reserves and may, at its sole discretion, exercise the following rights with respect to this RFP and all Proposals submitted pursuant to this RFP:

- A. To reject all Proposals and re-issue the RFP at any time prior to execution of a final contract; to require, in any RFP for similar products and/or services that may be issued subsequent to this RFP, terms and conditions that are substantially different from the terms and conditions set forth in this RFP; or to cancel this RFP with or without issuing another RFP.
- B. To reject any Proposal if, in the City's sole discretion, the Proposal is incomplete, the Proposal is not responsive to the requirements of this RFP, the Proposer does not designate a sufficiently qualified Program Management Team, or it is otherwise in the best interest of the City to reject the Proposal.
- C. To supplement, amend, substitute, or otherwise modify this RFP at any time prior to the execution of a final contract.
- D. To accept or reject any or all of the items in any Proposal and award a contract for the whole or only a part of any Proposal if the City determines, in its sole discretion, that it is in the City's best interest to do so.
- E. To reject the Proposal of any Proposer that, in the City's sole judgment, has been delinquent or unfaithful in the performance of any contract with the City, is financially or technically incapable, or is otherwise not responsible.
- F. To waive any informality, defect, non-responsiveness, and/or deviation from this RFP that is not, in the City's sole judgment, material to the Proposal.

- G. To permit or reject, at the City's sole discretion, amendments (including information inadvertently omitted), modifications, alterations, and/or corrections to Proposals by one or more of the Proposers following Proposal submission.
- H. To request that any Proposer modify its Proposal, including, but not limited to, modifying the pricing or providing additional information.
- I. To request additional or clarifying information from any Proposer at any time, including information inadvertently omitted by a Proposer.
- J. To require that the Proposer appear for interviews and/or presentations of its Proposals at City offices.
- K. To inspect projects similar in type and scope to the work sought in this RFP.
- L. To conduct such investigations as the City considers appropriate with respect to the qualifications of any Proposer and with respect to the information contained in any Proposal.

Attachment 1: Consent Decree

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA )  
and COMMONWEALTH OF )  
PENNSYLVANIA )

Plaintiffs, )

v. )

CITY OF READING, )  
PENNSYLVANIA )

Defendant. )  

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Civil Action No.

**CONSENT DECREE**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA )  
and COMMONWEALTH OF )  
PENNSYLVANIA )

Plaintiffs, )

v. )

CITY OF READING, )  
PENNSYLVANIA )

Defendant. )

Civil Action No.

**CONSENT DECREE**

WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, naming as defendant the City of Reading, Pennsylvania (hereinafter referred to as "City of Reading" or "Defendant");

WHEREAS, Plaintiff, the Commonwealth of Pennsylvania Department of Environmental Protection ("Commonwealth" or "PADEP") has filed a motion for intervention and complaint as a co-Plaintiff in the above captioned case pursuant to Rule 24 of the Federal Rules of Civil Procedure, and seeks injunctive relief and civil penalties for Defendant's alleged violations of the federal Clean Water Act, 33 U.S.C. §§ 1251-1387 and the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.S. 1987 *as amended*, 35 P.S. §§ 691-1001 ("the Clean Streams Law");

WHEREAS, the Defendant operates a sanitary sewer collection system and wastewater treatment plant that serves the citizens of the City of Reading and surrounding municipalities;

WHEREAS, pursuant to Section 402 of the Act, 33 U.S.C. § 1342, EPA has authorized

the Commonwealth to administer the National Pollutant Discharge Elimination System (“NPDES”) in Pennsylvania;

WHEREAS, the Commonwealth has issued an NPDES permit to the City of Reading authorizing the discharge of certain pollutants from the Defendant’s wastewater treatment plant;

WHEREAS, the United States alleges that Defendant has violated and continues to violate Sections 301, 307 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1317 and 1342 by discharging pollutants exceeding various effluent limitations and conditions set forth in Defendant’s NPDES permit as well as violating the requirements of the federally approved pretreatment program;

WHEREAS, the Commonwealth alleges that Defendant has violated and continues to violate Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202 by discharging pollutants exceeding various effluent limitations and conditions set forth in Defendant’s NPDES permit;

WHEREAS, Defendant neither admits nor denies the allegations set forth in the complaints;

WHEREAS, the Parties have negotiated in good faith and without an admission of liability have reached a settlement of the issues raised in the complaints;

WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the complaints without further litigation or trial of any issues is fair, reasonable and in the public interest and that the entry of this Consent Decree is the most appropriate way of resolving the claims alleged in the complaints.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action and over the Parties to this action pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b),

and 28 U.S.C. § 1331. The complaints state claims upon which relief may be granted against the Defendant for injunctive relief and civil penalties under Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Sections 601 and 605 of the Clean Streams Law, 35 P.S. §§ 691.601 & 691.605.. Venue is proper in this District pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a). Defendant waives any and all objections or defenses that it might have to the Court's jurisdiction to enter and enforce this Consent Decree or to venue in this District.

## **II. BINDING EFFECT**

2. The provisions of this Consent Decree shall apply to and be binding on the United States and the Commonwealth of Pennsylvania and on the City of Reading and its agents, successors, and assigns.

3. Within thirty (30) days from the Date of Entry of this Consent Decree and until its termination, Defendant shall give written notice of and provide a copy of this Consent Decree to any person or entity to whom Defendant may transfer ownership or operation of any portion of its wastewater treatment facility ("Facility") and/or its wastewater collection system ("Collection System") in accordance with the Transfer of Permits provision of the Permit, currently set forth in Part B.III.B of the current Permit. In addition to any provisions for notification of transfer under the Permit, the Defendant shall notify EPA, PADEP and the United States Department of Justice in writing of any successor in interest at least twenty-one (21) days prior to any such transfer. No transfer of ownership or operation of the Facility and/or Collection System shall relieve Defendant of its obligations to ensure that the terms of this Consent Decree are implemented.

4. Defendant shall be solely responsible for ensuring that performance of the work contemplated under this Consent Decree is undertaken in accordance with the deadlines and requirements contained in this Consent Decree, and any exhibits hereto. Any action taken by any

contractor or consultant retained to implement Defendant's duties under this Consent Decree shall be considered an action of Defendant for purposes of determining compliance with this Consent Decree. In an action to enforce this Consent Decree, Defendant shall not assert as a defense against the United States, EPA or PADEP any act or failure to act by any of its officers, mayor, council members, managers, employees, agents, contractors, successors and assigns; however, this Consent Decree shall not limit Defendant's right to take all appropriate action against any person or entity that causes or contributes to Defendant's failure to perform.

### **III. PURPOSE**

5. The express purpose of the Parties entering into this Consent Decree is for Defendant to take all measures necessary to comply with the Clean Water Act and the regulations promulgated thereunder, and the water pollution control laws of the Commonwealth of Pennsylvania and the regulations promulgated under such laws, to ensure compliance with Defendant's NPDES permit limitations and requirements, to ensure proper operation and maintenance of the sewage treatment plant and the collection system, and effective implementation of the pretreatment program.

### **IV. DEFINITIONS**

6. Unless otherwise defined herein, the terms used in this Consent Decree will have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the regulations promulgated thereunder or, if not defined in the Clean Water Act or its regulations, then as defined in Clean Streams Law, 35 P.S. §§ 691.1-691.1001 and the regulations promulgated thereunder. Any other words shall be given their ordinary meaning.

The following terms used in this Consent Decree, its appendices, and studies and plans submitted by Defendant and approved by EPA and PADEP are defined as follows:

(a) "Collection System Components" shall mean those components of the Sanitary Sewer

Collection System described below specifically including all force mains, gravity lines, pump stations and their respective related appurtenances owned, operated or maintained by the City of Reading.

(b) "Construction Completion" of a construction project under Paragraph 23 or the accomplishment of a rehabilitation project under Paragraph 28 shall mean the point in time the new, modified, or rehabilitated facilities are functioning.

(c) "Date of Entry" or "Entry Date" shall mean the date on which the Consent Decree is approved and entered by the United States District Court for the Eastern District of Pennsylvania.

(d) "Date of Lodging" shall mean the date on which the Consent Decree is lodged with the United States District Court for the Eastern District of Pennsylvania.

(e) "Day" or "days" shall mean a calendar day or calendar days. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday or any Federal, Commonwealth of Pennsylvania or City of Reading legal holiday, Defendant shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

(f) "Force main" shall mean any pipe that receives and conveys wastewater from the discharge side of a pump. A force main is intended to convey wastewater under pressure.

(g) "Gravity sewer line" shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity. Gravity sewers are not intended to flow completely filled under normal operating conditions.

(h) "Parties" shall mean the United States of America, the Commonwealth of Pennsylvania and Defendant.

(i) "Permit" shall mean the currently effective City of Reading NPDES permit No. PA 0026549 authorizing discharge of certain pollutants and setting forth requirements regarding the operation and maintenance of the Facility and Collection System as well as effective implementation of the Pretreatment Program. As of the date of Entry of this Decree, the current

Permit was issued April 10, 2001. This definition includes any subsequent modification or reissuance of the Permit in accordance with 40 C.F.R. Part 123.

(j) "Plant" or "Facility" shall mean the publicly owned treatment works (POTW) located at Route 10, Morgantown Road in Reading, PA owned and operated by the City of Reading. This Facility provides wastewater treatment service for the City of Reading and portions of the following municipalities: Alsace Township, Bern Township, Cumru Township, Kenhorst Borough, Laureldale Borough, Mohnton Borough, Mt. Penn Borough, Muhlenberg Township, Robeson Township, Shillington Borough, Spring Township, and Wyomissing Borough. This definition may be modified in accordance with written agreement of the parties consistent with Paragraph 18 of this Decree identifying additional or new locations for the Plant operations.

(k) "Pretreatment Program" shall mean the currently approved and effective pretreatment program of the City of Reading developed in accordance with 40 C.F.R. Part 403.

(l) "Pump Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pump station.

(m) "Separate Sanitary Sewer Collection System" or "Collection System" shall mean the collection and transmission system (including all pipes, force mains, sanitary sewer lines, overflow structures, regulators, lift stations, pump stations, manholes, and appurtenances thereto) owned by Defendant and designed to convey only sewage, and not storm water, from residences, commercial buildings, industrial plants and institutions for treatment at Defendant's wastewater treatment plants, including portions of the system added after the Date of Entry of the Consent Decree.

(n) "Significant Industrial User" has the meaning as set forth at 40 C.F.R. § 403.4(t) and as used in Defendant's current approved pretreatment program. The regulatory definition at 403.4(t) is controlling in the case of any conflict.

(o) "United States" shall mean the United States of America, acting on behalf of EPA.

## V. REMEDIAL MEASURES

### A. General Duties

7. **Duty to Comply with Permit.** At all times Defendant shall comply with all terms, conditions and requirements of the currently effective NPDES permit including the effluent limitations. Discharges of pollutants from the Facility or Collection System are prohibited except as authorized by the currently effective NPDES permit and otherwise in compliance with the applicable technology-based and water quality based effluent limitations set forth in that permit in accordance with the requirements of Section 402 of the CWA.

8. **Operation and Maintenance of the Facility.** Defendant shall at all times maintain in good working order and properly operate and maintain the Facility, collection system, pump stations and laboratory (including appropriate lab controls and quality assurance procedures).

### B. Interim Measures

9. **Interim Compliance - Environmental Management System.**

(a) Submission. Within six months of the Entry Date, the Defendant shall submit an Environmental Management System as further described below to the EPA and PADEP for review and approval in accordance with Paragraph 43 of this Decree. This submission shall consist of (1) a computer program setting forth the Maintenance Management system described in subparagraph 9.b; (2) a certification of that Defendant has developed and has implemented an interim Supervisory control and data acquisition (SCADA) system as described in subparagraph 9.c; and (3) a Pretreatment data management system as described in subparagraph 9.d. below.

(b) Maintenance management system. Defendant shall develop and submit a plan for a maintenance management system (MMS) in the form of a computer program that will address among other issues the inspection, evaluation, repair, and/or replacement of existing electrical and mechanical equipment. This MMS computer program will provide for scheduling and tracking of preventive and predictive maintenance, as well as, scheduled and unscheduled

repairs of electrical and mechanical equipment. Upon approval by EPA and PADEP in accordance with Paragraph 43 or this Decree, Defendant shall immediately implement this system.

(c) Supervisory control and data acquisition (SCADA) system.

1. Interim SCADA System. Within six months of the Entry Date, Defendant shall develop and implement a supervisory control and data acquisition (SCADA) system consisting of an electronic monitoring system for the monitoring and control of the two largest pump stations, as well as the major pump stations throughout the treatment plant.. In addition, this system shall provide for monitoring of the flow metering from the remote pumping stations and the flow meters in the treatment plant. This system shall also include the solids handling processes of thickening and dewatering, as well as, the air pollution control devices that are currently permitted by PADEP. After the submission of the certification, and at the request of EPA and/or PADEP, Defendant shall demonstrate the system to EPA and/or PADEP. By that date, Defendant shall provide written certification to EPA and PADEP of the completion of this task in accordance with this Paragraph.

2. Upgrades to SCADA System. By no later than eighteen months after the approval by EPA and PADEP of the Treatment Alternatives Plan in accordance with Paragraph 18.b. Defendant shall update the Defendant's SCADA system to include any and all major necessary components of the existing system that are proposed to stay in their current configuration and use. By that date, Defendant shall submit a written summary of the updates for review and approval by EPA and PADEP in accordance with Paragraph 43 of this Decree. Upon approval by EPA and PADEP, Defendant shall immediately implement this system. As part of the capital improvements contemplated herein, during construction for new or modified treatment units considered to be major or key processes in the plant, the Defendant shall sequentially incorporate each unit into the Defendant's existing SCADA system for monitoring and control of the unit's operation.

(d) Pretreatment data management system. Defendant shall submit a computerized data management system addressing the approved pretreatment program. This system shall be developed in order to achieve and maintain full and complete compliance with the pretreatment requirements set forth in the CWA , the implementing regulations promulgated pursuant thereto; Defendant's approved pretreatment program including, but not limited to, the terms and conditions of Defendant's NPDES permit. By no later than three months from the date of approval by EPA and PADEP in accordance with Paragraph 43 of this Decree, Defendant shall implement this system.

10. **Interim Plant Influent Monitoring.** Within sixty (60) days from the Entry Date, Defendant shall commence and thereafter continue to monitor flow and obtain composite samples of the influents to the plant from the Sixth and Canal pump station and the headworks grit chamber. Defendant shall also take representative grab samples of these influents for pH. This data shall be used to calculate a flow-proportional raw influent for BOD<sub>5</sub>, TSS, and NH<sub>3</sub>-N. Additionally, Defendant shall continue to monitor the influent that includes the recycled flows from internal plant processes as long as the plant continues with its current configuration.

11. **Interim Trickling Filter Performance Measures.** For the purpose of improving and monitoring the trickling filter performance at the existing plant, upon Entry of the Decree, Defendant shall commence and thereafter continue to monitor trickling filter performance, improve flexibility to recirculate primary trickling filter effluent, meter said recirculated flow and make appropriate adjustments to recirculation of primary trickling filter effluent. Reading shall have the ability to increase and meter the recirculation rate to the trickling filters in accordance with the normal flow procedures and the current high flow procedures until and unless replaced by an approved Interim Wet Weather Operational Strategy in accordance with Paragraph 17 of this Decree.

(a) Performance Improvements. Defendant has made improvements to the trickling filter performance prior to the Entry Date, and shall continue to maintain those

improvements including: improvements to the flow distribution over the trickling filter media; replacement and/or repair of splash plates on the trickling filter distribution arms; and institution of a process of route inspection to ensure an equal flow distribution over the trickling filter media.

(b) Unit Efficiency Monitoring Recirculation Rate. Prior to the Entry Date, Defendant began monitoring trickling filter unit efficiency three times weekly via the use of a composited grab sample and analyzing these samples for BOD<sub>5</sub>, TSS, and NH<sub>3</sub>-N. Defendant shall continue to perform such efficiency monitoring of the trickling filter unit until Defendant commences daily monitoring under subsection d below.

(c) Recirculation Rate. Within sixty days of the Entry Date, Defendant shall experiment with increasing the recirculation rates to the primary trickling filters and monitoring the flow of the recirculation as compared to the total plant flow. Defendant shall have the ability to perform composite sampling from each individual trickling filter unit. Defendant shall monitor the effluent from the trickling filters for BOD<sub>5</sub>, TSS, NH<sub>3</sub>-N, alkalinity, and pH.

(d) Longer term Monitoring and Reporting. Within 60 days of the Entry Date, Defendant shall commence monitoring as described above in subsection c daily for a period of at least two months with reports submitted to EPA and PADEP by the 20<sup>th</sup> day of every month after the first complete month. If after two or more reporting periods the monitoring results indicate stable trickling filter performance, Defendant may submit a written request to EPA and PADEP for a reduced monitoring frequency. Upon written approval from EPA and PADEP under this paragraph, Defendant may reduce the monitoring frequency. However, in the event EPA and PADEP do not disapprove and/or do not respond in writing within sixty days of the submittal of the request, the Defendant may resume monitoring three times a week as described in subsection b above.

12. **Process Control Testing**. Within ninety days of the Entry date, Defendant shall submit to EPA and PADEP a plan and schedule to perform process control testing and unit

efficiency monitoring. Upon approval by EPA and PADEP in accordance with Paragraph 43 of this Decree, Defendants shall implement the plan.

13. **Dangerous Gas Detection.** Immediately upon the Entry Date, Defendant shall provide and utilize adequate portable explosive gas detection equipment that monitors for toxic or explosive gases, including carbon monoxide, hydrogen sulfide, sulfur dioxide, chlorine, and methane as required at any such location where such gas(es) are present. Within thirty (30) days of the Entry Date, the Defendant shall identify areas within the plant with the potential for the buildup of toxic or explosive gases, and identify the gases that potentially may collect in those areas. Based on that identification and within three months of the Entry Date, Defendant shall install fixed gas detection equipment that monitors for toxic or explosive gases including carbon monoxide, hydrogen sulfide, sulfur dioxide, chlorine, and methane appropriate for each specific location. Additionally, in areas where atmospheric oxygen levels may be reduced to harmful or fatal levels, Defendant shall also provide monitoring of the atmospheric oxygen level. This equipment shall also provide a local alarm system that notifies employees of danger from dangerous gas levels prior to entry into those areas, as well as inform facility operators when such explosive or toxic gases or low oxygen levels are present.

14. **Certified Plant Operators.** Prior to the Lodging of the Decree, Defendant has advertised internally and externally their intention to hire qualified, certified treatment plant operators who shall be supervisors in charge and responsible for the operation of the facility during their shift in order to ultimately staff the facility 24 hours per day, seven days per week, with certified personnel. Within twelve (12) months from the Entry Date, the Defendant shall hire a sufficient number of supervisors with appropriate qualifications to staff the Facility 24 hours per day, seven days per week. In the event the selected individual does not currently possess the appropriate Pennsylvania State certification to operate Defendant's waste water treatment Plant, that individual shall be required to obtain certification within 12 months of the date of hire.

15. **Operations and Maintenance Plan.** Within six months of the Date of Entry, Defendant shall develop and submit to EPA and PADEP a copy of a written treatment system operations and maintenance plan for achieving and/or maintaining compliance with all applicable permits, laws, and regulations. This plan shall include an identification of existing key processes and assessment of the vulnerability of each such process from man made (both internal and external) threats and from natural threats. A process shall be considered key if its failure or malfunction may endanger human or aquatic health. This plan shall detail a method for monitoring each process, such as by inspection and/or SCADA monitoring to inform personnel of a malfunction or failure within each such process. Preventive and emergency maintenance procedures shall be detailed for all identified key processes including the spare parts inventory required and vendor information for obtaining critical parts. As part of the identification of each key process, Defendant shall assess the vulnerability of said processes. Defendant shall also assess the need for provision of commonly required spare parts, and the lead time generally needed to obtain such parts. Additionally, within six months of the Entry Date, Defendant shall create and maintain an adequate spare parts inventory as determined for key processes and/or have contracts in place for timely repairs by reputable contractors.

16. **Staffing Plan.** Immediately upon the Entry Date, Defendant shall submit a staffing plan to Plaintiffs that will provide for supervision to be continuously present at the Treatment Facility. Said plan shall further describe the communication processes between shift supervisors, as well as within the management structure of the facility to assure efficient and effective management of the facilities operations and maintenance.

17. **Interim Wet Weather Operational Strategy.** Within twelve months of the Entry Date, Defendant shall develop and implement an interim wet weather operational strategy that includes both the treatment plant and the collection system. Defendant shall submit this strategy to EPA and PADEP for review and comment. Any comments provided to Defendant on this strategy shall be adequately addressed in the submission of the Wet Weather Operational

Plan described in Paragraph 29 of this Decree. This strategy shall provide for maximizing the flow to the treatment plant and through the treatment plant while minimizing the washout of solids throughout the treatment process. This strategy shall include process monitoring during periods of wet weather flow. The data compiled during this operation shall be used for an annual evaluation and modification of the wet weather strategy, if required, as well as in the preparation of the Wet Weather Operation Plan required under Paragraph 29 of this Decree..

**C. Long Term Evaluation and Construction Schedule**

18. **Treatment Plant and Alternatives Submission.** By no later than one year from the Entry Date, Defendant shall develop and submit to Plaintiffs for review and approval in accordance with Paragraph 43 of this Decree the following two reports: "Existing Plant Process Evaluation Report" and "Evaluation of Treatment Alternatives Report." These two submissions are intended to provide an evaluation of: (1) the current treatment plant; and (2) technically sound and economically feasible treatment alternatives to meet projected capacity based on influent wastewater characteristics, waste load projections, current permit limits, and future regulatory requirements. These reports may be combined with any required update to the Defendant's Act 537 Plan. The purpose of the Existing Plant Process Evaluation is to establish the basis for any future design alternatives and to identify any operational modifications that may enhance the overall plant performance without major capital expenditures. Evaluations shall discuss in detail the need for capital expenditures, and further provide preliminary estimates of such capital expenditures.

(a) Existing Plant Process Evaluation Report. By no later than one year from the Entry Date, the Defendant shall submit to EPA and the PADEP a report entitled "Existing Plant Process Evaluation" that will assess the treatment capacity of the existing facility and identify the enhancements required to the existing facility in order to meet current and anticipated regulatory requirements. This evaluation shall include:

1. Characterization of the existing influent wastewater,

2. Waste load projections taking into account the impacts of the industrial pretreatment program and satellite communities and treatment capacity;
3. Process modeling of the existing liquid process treatment train; and
4. Evaluation of the existing process capabilities to meet existing and future load and nutrient limits.

(b) Evaluation of Treatment Alternatives Report. By no later than one year from the Entry Date, Defendant shall also perform an evaluation of treatment alternatives including the construction of new facilities and/or the modification of the existing facility, and submit a report describing that evaluation and Defendant's proposed solution. That report shall include an evaluation of the financial impacts of modifying the existing treatment facility rather than constructing new facilities. The "Evaluation of Treatment Alternatives Report" shall include the following elements:

1. Sizing Evaluation of Existing Treatment Facilities - Defendant shall evaluate the sizing of the existing liquid process and solids handling facilities. If Defendant finds these adequately sized, Defendant shall then optimize the facilities as described in subparagraph 2 below. If Defendant does not find the units adequately sized, Defendant shall perform further evaluation as described in sub-paragraph 3 below.

2. Optimize Existing Treatment Facilities

- a) Liquid Process Facilities - The Defendant shall evaluate the existing liquid process facilities, describe how to optimize current facilities and develop cost estimates addressing the rehabilitation of existing liquid treatment process units required to meet regulatory requirements. As part of that evaluation, Defendant shall perform a hydraulic evaluation to determine the hydraulic limitations of the existing facility.

- b) Solids Handling Facilities - The Defendant shall evaluate the existing solids handling facilities to determine the treatment efficiency and capacity of the solids handling equipment. This report will include evaluation of capacity limitations and cost

estimates to increase capacity to meet future needs based on current waste load projections. This report will also review and evaluate Defendant's solids handling operational procedures and include recommendations for optimizing the operations of the existing equipment.

3. Evaluation of New Treatment Facilities -The Defendant will complete a review, including preliminary cost estimates, of alternative treatment systems that will effectively meet the needs of the Defendant based on current loading and regulatory requirements, future loading projections, and anticipated regulatory requirements. Defendant shall identify in this evaluation its preference(s) among the alternatives discussed.

4. Canal Street Pump Station & Headworks Oxidizer Evaluation - The Defendant shall also include in this report an evaluation of the need for the addition of a strong oxidizer at the Canal Street pumping station and/or the headworks facility of the wastewater treatment plant.

19. **Capital Improvements Plan.** By no later than October 15, 2005, the Defendant shall develop and submit a capital improvements plan, as provided below in subparagraphs (a) to (c), to Plaintiffs for review and approval in accordance with Paragraph 43 of this Decree. This plan shall include the capital cost and budgetary impact for implementation of the recommended alternative submitted by Defendant and approved by Plaintiffs as described in Paragraph 18 (b) above. The scope of the Capital Improvements Plan will be dependent upon the approved conclusions of the "Evaluation of Treatment Alternatives Report" described in Paragraph 18 (b) above.

(a) If upgrade of the existing facility is the approved alternative, a full facility audit of the plant infrastructure will be completed including plant inventory of structural, electrical and mechanical components, and their life expectancy. This facility audit will be submitted within six (6) months of the written approval of the treatment alternative.

(b) If utilization of a combination of new and existing equipment is the approved alternative, an audit of the equipment and facilities to be reused will be performed. This partial

facility audit will be submitted within six (6) months of the written approval of the treatment alternative.

(c) If a new facility is the approved alternative, a report will be prepared summarizing cost effective upgrades that may be required to improve performance of the existing facility until start-up of the new plant. The report will be submitted within three (3) months of the written approval of this treatment alternative.

20. **Request for Proposals.** By no later than nine (9) months from the Plaintiffs' approval of the Evaluation of Treatment Alternatives Report submitted pursuant to Paragraph 18 of this Decree, the Defendant shall seek proposals through its request for proposal (RFP) process pursuant to the Charter and City Ordinances. Upon the completion of all required policies and procedures set forth therein, the Defendant shall designate a design engineer to commence with the design phase of the project.

21. **Permit Applications and Design.** By no later than October 15, 2006 the Defendant shall complete and submit to PADEP the NPDES (Part I) and the Water Quality Management (Part II) Permit applications, as necessary, to implement the approved treatment alternative described in Paragraph 18 of this Decree above. The applications shall include among other items all the design, architectural and engineering plans and information necessary to secure permits, receive bids and construct the Treatment Alternative submitted by Defendant and approved by Plaintiffs as described in Paragraph 18 (b) above. Defendant shall also obtain other approvals and/or permits as necessary including but not limited to: NPDES permits; permits for Construction and/or Earthmoving permits pursuant to 25 PA Code Chapter 102; and, if necessary, a permit for water obstruction/wetlands pursuant to 25 PA Code Chapter 105 and/or a permit issued under Section 404 of the Clean Water Act.

22. **Permitting.** PADEP shall use best efforts to provide a timely review of the submitted permit applications required for the permit issuance with the intention that both Phase I and Phase II permits may be issued by February 28, 2007.

**23. Construction Completion**

(a) For new construction of one or more treatment plants at a different location the Defendant shall complete construction by no later than January 15, 2010.

(b) For upgrade and/or expansion at the existing location, Defendant shall complete construction by no later than September 15, 2012.

**24. Start-Up & Operation.** The Defendant shall complete start-up and operation of the plant improvements within six months of construction completion.

**D. Collection System**

**25. GIS Sewer Mapping System.**

(a) Purpose of GIS System. The development and implementation of a Geographic Information System (GIS) mapping of the sanitary and storm water sewer collection systems shall enable Defendant to better track, respond to and investigate problems arising in the collection systems and affecting the operation of the Plant. The GIS will assist the Defendant in prioritizing sanitary sewer repairs; prioritizing sanitary sewer maintenance; identifying the sanitary sewer overflow locations; identifying locations of elevated pollutant concentrations in the collection system; and, identifying the causes and sources of industrial site discharges causing a problem in the collection system. This system shall enable Defendant to respond in a more timely fashion to any wet weather problems and/or sanitary sewer system overflow events, and to facilitate the investigation of the cause(s) including but not limited to the inflow and infiltration of storm water into the sanitary collection system. Mapping of the storm water collection system will enable Defendant to more quickly investigate and determine the cause(s) of illegal discharges into storm water catch basins and collection lines and discharges of such pollutants from storm water outfalls. By having both the storm water and sanitary sewer collection system on the same GIS information management system, Defendant will be better able to prioritize collection system repairs based on impact to critical collection system components and the potential to cause a water quality impact (e.g., a discharge of untreated

sewage).

(b) GIS mapping of the Sanitary Sewer Collection System. By no later than two years from the Entry Date, the Defendant shall develop and implement a functional Geographic Information System (GIS) to map the sanitary sewer collection system. By that date, Defendant shall provide written certification of the completion of this task in accordance with this Paragraph to EPA and PADEP. The GIS shall be able to display all collection system components, link attribute data and schematic diagrams for collection system components, indicate areas within the collection system that have been inspected and rehabilitated, and display locations for flow meters, points of connection and industrial users. While Defendant has discretion on how to complete this task within the specified time frame, this GIS system shall map the complete sanitary sewer collection system. Defendant shall identify all force mains, noting their location and flow from the City-owned pump stations until those mains enter a gravity portion of the system. For the mapping of the sanitary sewer collection system, Defendant shall use Global Positioning System (GPS) units to verify field locations of appurtenances of the sanitary sewer collection system including but not limited to manholes, pump stations, and air release valves. Defendant shall use the combination of the GIS system with field verification by GPS units to develop an inventory of the sanitary collection system components. From the date of completion of the GIS mapping of the Reading sanitary collections system, Defendant shall update this inventory on an annual calendar basis to include information regarding new installations, repairs, inspection sites, and rehabilitation sites. Defendant shall also include a separate database or data layer in or linked to the GIS system to track and monitor complaints regarding overflows, ongoing and repeated problem areas in the sanitary sewer collection system including but not limited to areas with grease blockages and root intrusions in the system.

(c) GIS mapping of the Storm Water Collection System. By no later than three years from the Entry Date, the Defendant shall complete GIS mapping of Defendant's storm

water collection system using and further expanding the GIS system developed under Subparagraph 25 (b) of this Decree. By that date, Defendant shall provide written certification of the completion of this task in accordance with this Paragraph to EPA and PADEP. For the mapping of the storm water sewer collection system, Defendant shall use GPS units to field verify the locations of catch basins, junction boxes and outfalls. By no later than three years from the Entry Date, Defendant shall use the combination of the GIS system with field verification by GPS units to develop an inventory of the storm water collection system components. From the date of completion of the GIS mapping of the Reading storm sewer collections Defendant shall update this inventory on an annual calendar basis to include information regarding new installations, repairs, inspection sites, and rehabilitation sites. Defendant shall also include a separate database or data layer in or linked to the GIS system to track and monitor complaints regarding overflows, ongoing and repeated problem areas in the storm water collection system including but not limited to root intrusions and or other blockages in the system.

26. **Sanitary Sewer System Evaluation Program.** By no later than January 15, 2008 and based on the tasks as further described below in this Paragraph, Defendant shall develop a program of continuing infiltration/inflow (I/I) analysis and sewer system evaluation of its collection system to identify the priority areas of the sanitary sewer system that require repair, replacement and/or other remediation. By that date and as part of the submission required under Paragraph 27 of this Decree, Defendant shall submit a report to EPA and PADEP describing the ongoing program including the identification of priority areas.

(a) I/I Analysis by Subsystem. Defendant shall perform the I/I analysis in accordance with the requirements in the Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, October 1991 (unless that EPA Handbook is replaced or superceded by other Agency guidance or regulations, in which case the replacement or superceding guidance or regulations shall govern.) This analysis shall include the use of the

document's excessive/non-excessive I/I determination criteria and/or other relevant industry and engineering practice to determine whether further field investigations to locate specific sources of I/I within a subsystem are required. This Analysis shall identify among other things, which subsystems require a sewer system evaluation survey as described in Paragraph 26.b. below,

1. Commencing no later than twelve (12) months from the Entry Date, and as a part of the I/I analysis, the Defendant shall conduct rainfall and flow monitoring to determine baseline I/I rates in each subsystem in accordance with the EPA Handbook.
2. Commencing no later than twenty-four (24) months from the Entry date, and using the rainfall and flow monitoring results from subparagraph 26 (a)1 above, the Defendant shall conduct hydraulic modeling of all sewers 18" diameter and larger and identify areas of limited sewer capacity.

(b) Sewer System Evaluation Survey. Commencing no later than thirty (30) months from the Entry Date, Defendant shall conduct a Sewer System Evaluation Survey ("SSES") in accordance with Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, October 1991 (unless that EPA Handbook is replaced or superceded by other Agency guidance or regulations, in which case the replacement or superceding guidance or regulations shall govern.) This SSES shall address, among other items, those subsystems identified in Paragraph 26 (a) of this Decree. Where appropriate, the Defendant shall use additional means to identify sources of I/I including flow isolation, testing, manhole inspections, and closed circuit television inspections as necessary in accordance with sound industry or engineering practice. The results of the SSES shall identify priority areas of the sanitary sewer system that require repair, replacement, upgrade and/or other remediation.

27. **Rehabilitation Plan.** By no later than January 15, 2008 and consistent with the report required for submission by Defendant in Paragraph 26 of this Decree, the Defendant shall

develop and submit to Plaintiffs a "Rehabilitation Plan" to adequately address those specific priority areas of the sanitary sewer system that require repair, replacement, upgrade and/or other remediation. Defendant shall submit the "Rehabilitation Plan" to EPA and the PADEP for review and approval in accordance with Paragraph 43 of this Decree. Upon approval, this Plan shall serve as the basis for Defendant's implementation of the sanitary sewer system collection system rehabilitation required by Paragraph 28 of this Decree.

28. **Rehabilitation of Priority Areas of Collection System.** By no later than January 15, 2012 and in accordance with the approved "Rehabilitation Plan" described in Paragraph 27 of this Decree, the Defendant shall complete the recommendations set forth in that Plan for repair, replacement, upgrade and/or other remediation of the priority areas.

29. **Wet Weather Operation Plan.** By no later than eighteen (18) months from the Entry Date, the Defendant shall develop and submit a "Wet Weather Operation Plan" (WWOP) and a schedule for implementation to EPA and PADEP for review and approval in accordance with Paragraph 43 of this Decree. The WWOP shall set forth how to operate the treatment plant and the collection system during wet weather events to maximize treatment and prevent sanitary sewer overflows (SSOs) or bypasses. This Plan shall build on and update the development of the Interim Wet Weather Operational Strategy described above at Paragraph 17 of this Decree. The WWOP shall adequately address any comments from EPA and PADEP on that wet weather operational strategy. The WWOP shall also provide for and include a log of any SSO events which identify the nature of the storm events, the locations of the SSO discharges, and the duration and estimated volume of the SSO discharges. Upon approval from EPA & PADEP, the Defendant shall implement the WWOP.

#### **E. Pretreatment Program**

30. Defendant shall not accept non-domestic wastewater from industrial users that causes pass through or interference at the Facility and that does not comply with local limits.

31. The Defendant shall implement its pretreatment enforcement program for all

permitted significant industrial users (SIUs) in accordance with the current EPA approved Enforcement Response Plan.

32. For any SIU that was in significant noncompliance (SNC) as defined in the approved Pretreatment Program at the end of 2003 and which has not returned to compliance prior to the end of the 3<sup>rd</sup> quarter 2004, the Defendant shall escalate penalties for each violation by that SIU leading to repeat SNC. For any SIU that continues in repeat SNC through the end of the 4<sup>th</sup> quarter 2004, the Defendant shall place the SIU on an expeditious enforceable compliance schedule, assess and collect penalties consistent with the approved Enforcement Response Plan (ERP), and submit a copy of this schedule and action to EPA on a quarterly basis as provided in Paragraph 39 below.

33. Defendant shall implement its currently effective ERP to address IU noncompliance. After the Defendant assesses any penalties and/or a compliance schedule, if such SIU remains in SNC, or the SIU does not agree to a reasonable compliance schedule and/or penalty consistent with the ERP, then the Defendant shall escalate its response in accordance with the current ERP, including the issuance of an administrative order by the Defendant, the revocation of the local permit and/or referring the SIU to EPA for additional federal enforcement.

34. The Defendant shall require that all contributing member municipalities adopt local limits by ordinance within one (1) year of EPA acceptance of revised or new local limits. If any such municipality has not adopted all current local limits within one (1) year from the Date of Entry, then the Defendant shall take further actions to compel the contributing municipality to formally adopt the local limits by ordinance. These further actions may include equitable enforcement of the intermunicipal agreement requesting injunctive relief, damages, penalties, attorneys' fees, and other costs that may be incurred by the Defendant in compelling compliance and/or any other penalties allowable under state or federal law.

35. The Defendant shall evaluate and report to EPA and PADEP within two years of the Entry Date, those nonresidential connections as reported by contributing municipalities. The

Defendant shall investigate and reevaluate those municipalities that have not as of the Entry Date identified any IUs, and require such municipality to certify that it has conducted an investigation and determined that it does not have any IUs contributing any non-domestic discharge into the Defendant's sanitary sewer system that would require such municipality to adopt the local limits. At a minimum the Defendant shall require certifications to be signed by the township or borough manager, mayor, chairman, engineer, or solicitor (or equivalent) of each such municipality to certify its status as a residential-only township or borough.

36. For any SIU that is a frequent violator of pretreatment standards as defined in 40 C.F.R. Part 403 (including approved local limits), the Defendant shall require more frequent monitoring in accordance with the IU permit, pretreatment regulations and Defendant's approved pretreatment program. If necessary, the Defendant shall amend or reissue an existing IU permit to increase the frequency of self-monitoring for the pollutants of concern. Such sampling shall commence within thirty (30) days of the Date of Entry. For any SIU that violates the local limit for mercury, the Defendant shall require resampling and, if mercury is detected, require more frequent monitoring of mercury for that SIU.

37. **Pretreatment Computerized Management System.** To improve tracking of document submission violations, required resampling, and compliance milestones and aid in assessment of SNC, the Defendant shall implement a computerized data management system for the pretreatment program. This system shall be on-line and fully functional for these purposes within three (3) months of the implementation of the approved pretreatment management system as described in Paragraph 9 (c) of this Decree

38. By no later than six months from the Entry Date, the Defendant shall complete its reevaluation of local limits as specified in the current NPDES permit and submit that reevaluation to EPA for review.

39. The Defendant shall submit quarterly reports to EPA indicating which SIUs are in SNC. This report shall also include enforcement actions taken, penalties issued, payment

status of prior penalties, proposed enforcement actions, and copies of all enforcement actions beyond a notice of violation and associated penalty taken during the quarter.

**F. Funding**

40. **Funding.** Defendant acknowledges that in the calendar year 2002 as part of its budgetary process pursuant to the Home Rule Charter for Reading, the City of Reading had adopted a budget for the calendar year 2003 that included a transfer from the sewer revenue fund to the general fund in the sum of \$6,790,505.00. Whereas Defendant, as a show of good faith during settlement discussions of this matter in calendar year 2003, during its budget preparation for the calendar year 2004, voluntarily reduced the transfer by the sum of \$790,505 to \$6,000,000 for budget year 2004. The City of Reading shall continue to reduce said transfers from the sewer revenue fund by the sum of not less than \$750,000.00 for each budget it adopts for each year after the Entry Date of this Decree until such time as the amount transferred reaches the sum of \$3,000,000.00, which amount shall constitute the maximum amount that the City of Reading may transfer from the sewer revenue account to the general fund. Defendant agrees that it will adopt budgets in each calendar year that are consistent with this provision. The City of Reading further agrees that among sources of funding for the City sewer revenue fund the City may use, the source of that funding shall include at a minimum: (1) the current user fees (and any necessary surcharges) charged to and collected by the City from its users, including residential, commercial, and industrial users and municipal users pursuant to the existing intermunicipal agreements; and (2) any increases in rates which may go into effect during the term of this Decree. Other than the transfers from the sewer revenue fund set forth above, the City of Reading agrees that the sewer revenue fund including all revenues generated and paid by the users of its sewage and collection system will be dedicated to the operation and maintenance of that sewage treatment and collection system, and will not be diverted to fund other portions of the City's municipal budget obligations, services or government. This provision shall not prohibit the reimbursement of all appropriate amounts incurred by the general City fund for

expenses attributable in part to the operation and maintenance of the sewer system.

#### **VI. REPORTING REQUIREMENTS**

41. Beginning with the first full calendar quarter after the Date of Entry of the Consent Decree, Defendant shall submit to EPA and PADEP within thirty (30) days after the end of each calendar quarter until termination of this Consent Decree a Calendar Quarterly Progress Report ("Calendar Quarterly Report") covering the applicable subject(s). This Calendar Quarterly Report shall contain, the following:

(a) Progress reports on the implementation of the requirements of Section V (Remedial Measures) as described in Paragraphs 7 through 40.

(b) A description of any problems anticipated with respect to meeting the requirements of Section V (Remedial Measures) of this Consent Decree; and

(c) Any such additional matters as Defendant believes should be brought to the attention of EPA and PADEP.

(d) The Calendar Quarterly Report shall be certified, consistent with the requirements of 40 C.F.R. 122.22(a)(3), by the person responsible for compliance or by a person responsible for overseeing implementation of this Consent Decree, which shall state:

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

#### **VII. RIGHT OF ENTRY**

42. (a) EPA and PADEP, and their authorized representatives and contractors, shall

each have authority at all reasonable times, upon the presentation of credentials, to enter the property of Defendant to:

1. Monitor the progress of activities required by this Consent Decree;
2. Verify any data or information submitted to the United States and/or Pennsylvania;
3. Obtain samples;
4. Observe performance tests;
5. Inspect and evaluate any portion of the Collection System; and
6. Review and copy any record required to be kept under the terms and conditions of this Consent Decree.

(b) Upon request, Defendant shall provide EPA or PADEP or their authorized representatives splits of any samples collected by Defendant or its consultants and contractors. Upon request, EPA or PADEP shall provide Defendant splits of any samples collected by EPA or PADEP.

(c) These inspection rights are in addition to, and in no way limit or otherwise affect, EPA's and PADEP's statutory authorities to conduct inspections, to require monitoring and to obtain information from Defendant as authorized by law.

#### **VIII. REVIEW AND APPROVAL PROCEDURES**

43. (a) After receipt and review of any plan, program or other document which is required to be submitted for approval pursuant to this Consent Decree, EPA and PADEP may (1) approve, in whole or in part, the submission; (2) approve the complete submission or portions of the submission upon specified conditions; (3) disapprove the submission, in whole or in part, and direct that Defendant modify the submission as described further in Paragraph 44 below; or (4) any combination of the above.

(b) In the event of approval of the complete submission, Defendant shall proceed

to take any actions required by the plan, program or other approved document, as approved by EPA and PADEP and as further described below in Paragraph 46.

(c) In the event of approval of portions of the submission or approval upon specified conditions, Defendant shall proceed to take the actions identified in the non-deficient portion of the plan, program, other document, or portion thereof, in accordance with any applicable conditions specified by EPA and PADEP, subject only to Defendant's right to invoke the Dispute Resolution procedures set forth in Section XIII with respect to the conditions imposed. Implementation of any non-deficient portion of the submission shall not eliminate the potential of Defendant to incur stipulated penalties pursuant to Section XI.

44. Upon receipt of a notice of disapproval of all or part of a submission from EPA and PADEP, Defendant shall, within thirty (30) days (or such greater time frame as specified by EPA and PADEP in writing), correct the deficiencies as directed by EPA's and PADEP's written comments and resubmit the plan, program or other document for approval. Any stipulated penalties applicable to the submission, as provided in Section XI, shall accrue during the 30-day period (or any such more extended time as is provided herein), but shall not be payable unless the resubmission is disapproved due to a material defect as provided in Paragraph 45.

45. In the event that a resubmitted plan, program or other document, or portion thereof, is disapproved by EPA and PADEP, EPA and PADEP may again require the Defendant to correct the deficiencies in accord with Paragraph 44, or EPA and PADEP may modify the submission. Unless Defendant invokes the Dispute Resolution Procedures set forth in Section XIII, and the disapproval by EPA and PADEP of the Defendant's resubmission is overturned pursuant to that Section, Defendant shall be deemed to have failed to submit such program, plan or other document timely and adequately and stipulated penalties shall accrue for such violation from the date on which the initial submission was originally due.

46. All programs, plans or other documents required to be submitted pursuant to this Consent Decree shall become incorporated into and enforceable under this Consent Decree, upon

EPA and PADEP approval. In the event EPA and PADEP approve a portion of any program, plan or other document pursuant to this Section, then the approved portion shall become incorporated into and enforceable under this Consent Decree.

#### **IX. CIVIL PENALTY**

47. Defendant shall pay a total civil penalty in the amount of \$239,000 to the United States and the Commonwealth of Pennsylvania for violations as alleged by the United States and the Commonwealth of Pennsylvania in the Complaint. Defendant shall pay \$59,750 (or twenty-five percent of the civil penalty) to the United States within thirty (30) days of the Date of Entry of this Consent Decree and an additional \$59,750 (or 25%) within 365 days of the Entry Date in accordance with the procedures described in Paragraph 49, below. Defendant shall pay \$59,750 (25% of the civil penalty) to the Commonwealth of Pennsylvania Clean Water Fund within thirty (30) days of the Date of Entry and an additional \$59,750 (or 25%) within 365 days of the Entry Date in accordance with the procedures described in Paragraph 50, below.

48. The United States and the Commonwealth of Pennsylvania shall be deemed judgment creditors for purposes of collection of this penalty.

49. Payment of the civil penalty to the United States shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice ("DOJ") lockbox bank, referencing USAO NO 2003V00437. Payment shall be made in accordance with instructions provided by the United States to Defendant following execution of this Consent Decree. Any EFT received at the DOJ lockbox bank after 11:00 A.M. Eastern Time will be credited on the next business day. Notice of the EFT shall simultaneously be mailed to the following:

Docket Clerk (3RC00)  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Christopher A. Day (3RC20)  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029; and

Margaret L. Hutchinson  
Assistant United States Attorney  
Civil Division Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
Re: USAO No. 2003V00437

The transmittal letter forwarding such notice shall include the caption, civil action number and judicial district of this action.

50. Payments to the Commonwealth of Pennsylvania shall be made by tendering to the Pennsylvania Department of Environmental Protection checks made payable to: "Commonwealth of Pennsylvania Clean Water Fund." and sent to Pennsylvania Department of Environmental Protection, 909 Elmerton Ave., Harrisburg, PA 17110-8200, Attn: Lee Yohn, Compliance Specialist.

51. If Defendant fails to tender all or any portion of the civil penalty payment owed to the United States within thirty (30) days of the Date of Entry of this Consent Decree interest on the unpaid amount shall accrue in accordance with the provisions of 28 U.S.C. § 1961 and be paid from the date said payment is due until all amounts owed are paid.

**X. SUPPLEMENTAL ENVIRONMENTAL PROJECTS: Angelica Stream Restoration**

52. Defendant shall implement Supplemental Environmental Projects ("SEP") in accordance with all provisions set forth in this Consent Decree. The SEPs will consist of the projects as further described in Subparagraphs 52 (a) through 52 (i) below to restore Angelica Creek from Angelica Park to the Schuylkill River, to remove excess sediment, and to create several riparian buffers, functional wetlands and flood plain meadows as well as provide for maintenance. The SEP restoration projects shall be completed within two years of the Entry Date with an additional five years for monitoring and maintenance.

(a) **Background:** Prior to 2001, Angelica Creek meandered through Angelica Park located in the City of Reading, and emptied into Angelica Lake where it was contained by a dam at Route 10. The Lake and Creek were used frequently by the community for recreational purposes for fishing and boating. Both the Lake and Creek are designated as trout stocking waters and supported a diverse aquatic community including trout. In 2001 the Dam was breached and the lake was emptied leaving behind a great deal of sediment and impaired aquatic life conditions. Since that time, the stream has begun forming a natural meandering channel through the lake bed sediments and continues on beneath the newly built bridge at Route 10. The stream through that is heavily degraded and down cutting the lake bed sediment layer due to a lack of vegetation and bank stabilization. A large amount of sediment is being deposited into the stream and contributing to high sediment loads entering the Schuylkill River. The City of Reading has decided not to rebuild the dam.

(b) **Goals of SEPs:** The goals of these SEPs are to restore the recreational and aquatic life uses of Angelica Creek from Angelica Park to the Schuylkill River by removing excess lake bed sediment, restoring the Creek, creating two wetlands and a flowering meadow flood plain. These SEPs are intended to restore the recreational and aquatic life uses of Angelica Creek, they will also substantially reduce the sediment load to the Schuylkill River. These SEPs are consistent with and will further achieving the goals of the Clean Water Act. In addition to the SEPs described below, the City of Reading is also planning to make a number of enhancements to the park including a pedestrian bridge, park benches, and signage to provide information about the Creek, the SEPs and the surrounding ecosystems.

(c) **Removal of excess sediment and soil stabilization SEP:** Within fifteen (15) months of the Entry Date, the Defendant shall remove excess sediments from the Areas marked on the Map attached to this Decree as Exhibit A and stabilize existing soils as necessary to complete the other projects described below. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items information on the depth

of sediment and area for this project sufficient to calculate the cubic yards of sediment to be removed from the Area. Defendant estimates expenditure for this SEP at \$300,000.

**(d) Angelica Creek Restoration SEP:** Within two years of the Entry Date, Defendant shall complete approximately 1600 linear feet (LF) of stream restoration from the pedestrian bridge in Angelica Park to the Route 10 bridge underpass as indicated on the Exhibit A to the Decree. Defendant shall also restore an additional 400 LF of degraded stream restoration below the Route 10 Bridge to the Schuylkill River. The Stream banks will be graded, stabilized with rock protection and multiple bio-engineering techniques such as erosion control matting and appropriate stream bank plantings. In order to control the flow of stream, multiple structures including constructed riffles, rock deflectors and root wads will be placed along the length of the stream. These structures will contribute to the stabilization of the stream channel reducing the possibility of sediment erosion as well as increase aquatic habitat. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items the specific plant species to be used, the density of plantings and where the plants will be used. Defendant shall not spend less than \$93,000 for this SEP.

**(e) Angelica Creek Riparian Buffer SEP:** Within two years of the Entry Date, Defendant shall complete a minimum one hundred foot (100') riparian buffer strip for Angelica Creek (with at least fifty feet of riparian buffer on each side of the Creek) from the pedestrian bridge in Angelica Park to the Route 10 underpass. This SEP will filter runoff, slowing flow of storm water, reducing erosion and will provide shade coverage for the stream channel. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items the specific plant species to be used, the density of plantings and where the plants will be used. Defendant shall not spend less than \$54,000 on this SEP.

**(f) Wetland Creation SEP:** Within two years from the Entry Date, Defendant shall complete construction and planting for two wetlands adjacent to Angelica Creek in the approximate locations as indicated on Exhibit A to this Decree. Each wetland shall be

approximately 1 acre in size. These two wetlands will provide relief for the stream during storm events, reduce erosion and contribute to treatment of water quality. To enhance the contribution of this SEP to aquatic and wildlife uses, each wetland will provide several types of wetland habitat and will include wildlife structures such as brush piles and deadfall snags. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items details of the elevations and area of the proposed wetland, the specific plant species to be used, the density of plantings and where the plants will be used. Defendant shall not spend less than \$69,000 on this SEP.

**(g) Flood plain Meadow SEP:** Within two years of the Entry Date, Defendant shall create approximately three (3) acres of flood plain meadow in the general areas adjacent to the wetlands and Angelica Creek as indicated on Exhibit A to the this Decree. Design and construction of these meadows shall be incorporated into the design and creation of the wetlands described above in Subparagraph (f). These meadows will contribute to relief for the stream during storm events, reduce erosion as well as increase the diversity of wildlife habitat and contribute to park aesthetics. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items the specific plant species to be used, the density of plantings and where the plants will be used. Defendant shall not spend less than \$10,000 on this SEP.

**(h) Annual Maintenance and Access to SEPs:** Defendant shall provide adequate maintenance including replacement of necessary plantings for the SEPs discussed above in Subparagraphs 52 (d) through 52 (g) for no less than five years after EPA approves the completion of each SEP. In order to provide adequate maintenance for the SEPs described above, reduce the threat of invasive species and to facilitate public access to the Angelica Creek, Defendant shall also construct a crushed stone walking trail and adequate landscaping to reduce erosion from that trail and public access. Defendant is encouraged to connect this trail with existing Park trails. Defendant shall spend not less than \$32,000 in construction costs for the

trail and associated landscaping. As part of the SEP final plan submission described in Subsection 52 (i) below, Defendant shall identify among other items the specific plant species to be used, the density of plantings and where the plants will be used, and how the associated landscaping and maintenance will prevent the introduction and spread of invasive species. Defendant shall spend no less than \$5,000 per year for each year of maintenance of the SEPs identified above in Subparagraphs 52 (d) through 52 (g).

**(i) Design Costs and Final Plan**

Defendant shall provide adequate design and obtain necessary permits and approval for each of the SEPs described above. Defendant estimates that design costs will be no less than \$150,000. Within seven (7) months of the Entry Date, Defendant shall submit a final plan to EPA and PADEP for review. This final plan shall include the details of design and completion for each SEP as discussed above in Subparagraphs 52 (c) through 52 (g). Upon approval by EPA in accordance with Paragraph 43 of this Decree, Defendant shall then proceed to implement each SEP according to the schedule contained in each Subparagraph of this Decree.

**(j) Defendant Certification:** With regard to the SEPs, Defendant certifies the truth and accuracy of each of the following:

1. That all cost information provided to EPA and PADEP in connection with EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;
2. That, as of the date of lodging of this Decree, Defendant is not required to perform or develop the SEP by any federal, Commonwealth, or local law or regulation, or as injunctive relief awarded in any other action in any forum;
3. That Defendant has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action; and
4. That Defendant will not receive any reimbursement for any portion of the SEP from any other person.

**(k) SEP Completion Report**

1. Within 90 days after the date set for completion of each SEP described above in subparagraphs 52 (c) through 52 (g), Defendant shall submit a SEP Completion Report to EPA and PADEP. If appropriate, the Report may combine information on the completion of more than one SEP. The SEP Completion Report shall contain the following information:

- a) A detailed description of the SEP as implemented;
- b) A description of any problems encountered in completing the SEP and the solutions thereto;
- c) An itemized list of all eligible SEP costs;
- d) Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- e) A description of the environmental and public benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

2. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of SEP completion or eligibility of SEP costs.

3. After receiving the SEP Completion Report, EPA shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all schedules, or if the amount expended on performance of each SEP is less than the 90% of amount set forth above, stipulated penalties may be assessed in accordance with Paragraph 55 of this Consent Decree.

4. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XIII of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

5. Each submission required under this Section shall be signed by an

official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 41.d. above.

(l) Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Decree shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action, United States & PADEP v. Defendant City of Reading taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act and by the Commonwealth of Pennsylvania under the Clean Streams Law."

**XI. STIPULATED PENALTIES**

53. Upon written demand by EPA, Defendant shall pay stipulated penalties for each failure to comply with the terms of this Consent Decree, including the terms of any plans or schedules developed pursuant to and incorporated into this Consent Decree. The stipulated penalties shall be assessed as follows and paid as set forth in Paragraphs 49 through 51 and 59 through 60 of this Decree.

54. Stipulated Penalties for Remedial Measures

(a) Following written demand by EPA, Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to meet any of the project milestone dates set forth in Section V. Remedial Measures, Paragraphs 9 through 21 and 24 through 39 of this Consent Decree. Stipulated penalties for failure to meet the construction completion milestone set forth in Paragraph 24 is governed by Subsection B below:

<u>Period of Non-Compliance</u>	<u>Penalty per Milestone Date per day of Violation</u>
1 <sup>st</sup> to 15 <sup>th</sup> Day	\$500
16 <sup>th</sup> to 30 <sup>th</sup> Day	\$1,000
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$2,000
After 60 Days	\$4,000

(b) Following written demand by EPA, Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to meet the construction completion milestone set forth in Paragraph 23 above.

<u>Period of Non-Compliance</u>	<u>Penalty per Milestone Date per day of Violation</u>
1 <sup>st</sup> to 30 <sup>th</sup> Day	\$1000
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$3,000
After 60 Days	\$6,000

(c) Following written demand by EPA, Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to submit deliverables (including proposed plans, programs or evaluation reports) required under Section V. Remedial Measures, Paragraphs 9 through 21 and 24 through 39 of this Consent Decree, or to timely correct deficiencies in deliverables identified by EPA and/or PADEP, in accordance with the schedules set forth in this Consent Decree or approved by EPA and PADEP and incorporated into this Consent Decree:

<u>Period of Non-Compliance</u>	<u>Penalty per Milestone Date per day of Violation</u>
1 <sup>st</sup> to 15 <sup>th</sup> Day	\$500
16 <sup>th</sup> to 30 <sup>th</sup> Day	\$1,000
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$2,000
After 60 Days	\$4,000

(d) Following written demand by EPA, Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to implement any proposed plans or programs developed pursuant to Section V. Remedial Measures, Paragraphs 9 through 21 and 24 through 39 of this Consent Decree, or to complete any other actions, other than submission of deliverables, required under those paragraphs of this Consent Decree, in accordance with the schedules set forth in this Consent Decree or approved by EPA and PADEP and incorporated into this Consent Decree:

<u>Period of Non-Compliance</u>	<u>Penalty per Element per Day of Violation</u>
1 <sup>st</sup> to 15	\$500
16 <sup>th</sup> to 30 <sup>th</sup> Day	\$1,000
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$2,000
After 60 Days	\$4,000

(e) Compliance Reporting. Following written demand by EPA Defendant shall pay stipulated penalties in the amount set forth below for each day it fails to submit any progress report or information required to be included within a progress report required to be submitted pursuant to this Consent Decree.

<u>Period of Non-Compliance</u>	<u>Penalty per Element per Day of Violation</u>
1 <sup>st</sup> to 15	\$500
16 <sup>th</sup> to 30 <sup>th</sup> Day	\$1,000
31 <sup>st</sup> to 60 <sup>th</sup> Day	\$2,000
After 60 Days	\$3,000

55. Stipulated Penalties for Supplemental Environmental Project

If Defendant fails to comply with the requirements of Section X, Paragraph 52 and following written demand by EPA, Defendant shall pay stipulated penalties as follows:

(a) **General Provisions:** If Defendant does not complete any SEP, but EPA determines that Defendant has made a good faith effort to complete the SEP and Defendant certifies that at least 90 percent of the minimum required amount of money was expended on the SEP, Defendant shall not be liable for any stipulated penalty related to the SEP. If Defendant completes a SEP to EPA's satisfaction and certifies expenditure of at least 90 percent of the minimum required amount of money for the SEP, Defendant shall not be liable for any further stipulated penalty for that SEP. If Defendant completes a SEP to EPA's satisfaction but does not expend at least 90 percent of the minimum required amount of money for the SEP, Defendant shall pay the difference between the amount expended and 90 percent of the minimum amount

required for each SEP as a stipulated penalty.

(b) Except as otherwise provided in Subparagraph (a) above, if Defendant does not complete a SEP, or if EPA determines that the SEP has not been completed satisfactorily, Defendant shall pay up to the maximum stipulated penalty as follows:

Decree Paragraph	SEP	Stipulated Penalty
54.B.	<b>Removal of excess sediment and soil stabilization SEP</b>	\$ 300,000
54.C	<b>Angelica Creek Restoration SEP</b>	\$ 95,000
54.D.	<b>Angelica Creek Riparian Buffer SEP</b>	\$ 55,000
54.E	<b>Wetland Creation SEP</b>	\$ 75,000
54.F	<b>Annual Maintenance SEPs</b>	\$ 5,000 per year
54.F	<b>Access SEP</b>	\$ 32,000
54.G	<b>SEP Design, Final Plan and Administrative Costs</b>	\$150,000

56. NPDES Effluent Limits Stipulated Penalties

(a) Following written demand by EPA, Defendant shall pay stipulated penalties as described herein for all exceedances of the currently effective NPDES permit effluent limits:

1. Monthly Average Violations
  - \$3000 per parameter for the first calendar month of violation
  - \$6,000 per parameter for the 2<sup>nd</sup> and subsequent consecutive calendar month of violation
2. Average Weekly Violations
  - \$1,000 per parameter for the first calendar week of violation
  - \$2,000 per parameter for the second and any subsequent consecutive calendar week of violation.
3. DO or pH daily average
  - \$500 per parameter per day of violation

(b) Following written demand by EPA, Defendant shall pay up to the stipulated penalties for each SSO event and/or bypass of the Treatment Plant as described herein to EPA and PADEP for each event consistent with this Paragraph:

Less than 100 gallons	\$ 250
100 to 2,499 gallons	\$ 750
2,500 to 9,999 gallons	\$ 2,000
10,000 to 99,999 gallons	\$ 5,000
100,000 to 999,999 gallons	\$ 20,000
1 million gallons or more	\$ 50,000

57. Stipulated Penalties for Pretreatment Program

(a) Beginning with the first calendar quarter within three months after the date of Entry, and following written demand by EPA Defendant shall pay up to \$3,000 in stipulated penalties for failure to prevent the percent of SIUs in SNC from exceeding 15% up to 25% of the total number of SIUs for that quarter and each subsequent quarter that have not been addressed consistent with the currently effective Enforcement Response Plan.

(b) Beginning with the first calendar quarter within three months after the date of Entry, and following written demand by EPA Defendant shall pay up to \$8,000 in stipulated penalties for failure to prevent the percent of SIUs in SNC from exceeding 25% of the total number of SIUs for that quarter and each subsequent quarter that have not been addressed consistent with the currently effective Enforcement Response Plan.

(c) Following written demand by EPA, Defendant shall pay up to \$3,000 in stipulated penalties for each failure to meet other requirements of the pretreatment program specified by this Decree.

58. Stipulated civil penalties shall automatically begin to accrue on the first day Defendant fails to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue until the violation or deficiency is corrected.

59. Following written demand by EPA, stipulated penalties incurred by Defendant under this Consent Decree, except those stipulated penalties incurred by Defendant under

Paragraph 57 above, shall be paid fifty percent (50%) to the United States and fifty percent (50%) to the Commonwealth of Pennsylvania. Stipulated penalties under Paragraph 57 will be paid exclusively to the United States. All stipulated penalties payable to the United States shall be paid in accordance with the procedures set forth in Paragraph 49, and all stipulated penalties payable to the Commonwealth of Pennsylvania shall be paid in accordance with the procedures set forth in Paragraph 50.

60. Stipulated penalties incurred under this Consent Decree shall be tendered within thirty (30) days of Defendant's receipt of a demand for payment of such penalties by EPA unless Defendant contests the demand in accordance with the dispute resolution provisions of this Consent Decree. If Defendant invokes the dispute resolution provisions in Section XIII of this Consent Decree, it shall deposit any disputed penalty in an interest-bearing escrow account within ten (10) days of invoking dispute resolution. The stipulated penalties that are the subject of the dispute, as well as interest earned thereon, shall be released in a manner consistent with the terms of the resolution of the dispute within sixty (60) days after the dispute is resolved. Stipulated penalties for any continuing violation shall accrue during the resolution of any dispute.

61. The stipulated civil penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States and the Commonwealth of Pennsylvania or their agencies by reason of Defendant's failure to comply with the requirements of this Consent Decree, and all applicable federal, Commonwealth or local laws, regulations, or permits.

62. In the event that a stipulated civil penalty is not paid when due, the stipulated civil penalty owed to the United States and or PADEP shall be payable with interest from the original due date to the date of payment at the statutory judgment rate set forth at 28 U.S.C. § 1961(a).

63. The United States may, in the unreviewable exercise of discretion, reduce or waive stipulated penalties otherwise due to the United States under this Consent Decree.

## **XII. FORCE MAJEURE**

64. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Defendant or the control of any entity controlled by Defendant, including its agents, consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered "force majeure" events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of Defendant to approve contracts, shall not, in any event, be considered "force majeure" events. Defendant shall adopt all reasonable measures to avoid or minimize such delay.

65. When Defendant knows or if Defendant should have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a "force majeure" event, Defendant shall notify EPA and PADEP, in writing, within twenty (20) business days after Defendant first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall provide a description of the event and an explanation of the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or mitigate the delay or the effect of the delay, the timetable by which those measures will be implemented, whether Defendant claims that the delay should be excused as a "force majeure" event, and its rationale for attributing such delay to a "force majeure" event if it intends to assert such a claim. Defendant shall include all available documentation supporting its claim that the delay was attributable to a "force majeure" event. Further, where a contractor or subcontractor has not completed a construction project on time, Defendant shall state what steps it is taking to ensure performance by the contractor or subcontractor in question, and shall supply any documentation

available to show the steps it has taken.

66. Failure to provide the required written notice to EPA and PADEP shall render this Section void and of no effect as to the event in question, and shall be a waiver of Defendant's right to obtain an extension of time for its obligations based on such event. Defendant shall be deemed to have notice of any circumstance of which its contractors, or subcontractors had or should have had notice.

67. If EPA and PADEP find that a delay in performance is, or was, caused by a "force majeure" event, the time for performance of the specific obligation(s) under this Consent Decree that are caused by the "force majeure" event shall be extended for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such period. EPA and PADEP will notify Defendant in writing of the length of the extension for performance of the obligation(s) caused by the "force majeure" event. An extension of time for performance of the obligation(s) caused by the "force majeure" event shall not, of itself, extend the time for performance of any other obligation. Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

68. In the event of a dispute regarding application of these provisions to a delay in performance, the dispute resolution provisions of Section XIII (Dispute Resolution) shall apply, and Defendant shall have the burden of proving that the delay is, or was, caused by a "force majeure" event, and that the amount of additional time requested is necessary to compensate for that event. Defendant shall not be liable for stipulated penalties for any period of delay which was excused by the Court or EPA and PADEP pursuant to this "Force Majeure" Section. However, pending resolution of a "force majeure" dispute, stipulated penalties will continue to accrue, and shall be due and payable if the Court determines that the event in question was not a "force majeure" event, that the Defendant did not undertake reasonable measures to limit the effect of the event, or that the "force majeure" event occurred for a shorter period of time than

that alleged by Defendant.

### **XIII. DISPUTE RESOLUTION**

69. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between Defendant and EPA/PADEP arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States and the Commonwealth of Pennsylvania to enforce obligations of Defendant that have not been disputed in accordance with this Section.

70. Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between Defendant, EPA and PADEP. The period for informal negotiations shall not exceed twenty (20) days from the time Defendant sends EPA and PADEP a written Notice of Dispute, unless that period is modified by written agreement of Defendant, EPA and PADEP. The Notice of Dispute shall clearly describe the matter in dispute. In the event the parties cannot resolve their dispute within the informal negotiation period, then the position advanced by EPA and PADEP shall be considered binding unless, within 30 days of the conclusion of the informal negotiation period, Defendant invokes the formal dispute resolution procedures as set forth below.

71. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by filing with the Court and serving on EPA and PADEP a motion requesting judicial resolution of the dispute. 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.

72. The United States and Pennsylvania shall respond to Defendant's motion within

the time period provided in the Local Rules of this Court, unless the Parties stipulate otherwise. Defendant may file a reply memorandum, to the extent permitted by the Local Rules or the Parties' stipulation, as applicable.

73. In any dispute under this Paragraph, Defendant shall bear the burden of demonstrating that Defendant's position best complies with the terms and conditions of, and furthers the objectives of, this Consent Decree, the Clean Water Act, and the Pennsylvania water pollution control laws. The position of the United States and Pennsylvania is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

74. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree unless the Parties agree to such extension in writing or the Court grants an order extending such deadline. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph XI. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties) and consistent with the Court's ruling.

#### **XIV. EFFECT OF SETTLEMENT**

75. Compliance with this Consent Decree, including the payment of all civil and stipulated penalties and interest accrued thereon, and the completion of all injunctive relief, shall resolve the United States' and the Commonwealth of Pennsylvania's civil claims for violations of the Clean Water Act and the Clean Streams Law as alleged in the Complaint filed in this matter, through the Date of Lodging of this Consent Decree.

**XV. NON-WAIVER PROVISIONS**

76. The Parties agree that Defendant is responsible for achieving and maintaining complete compliance with all applicable federal and Commonwealth laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as otherwise expressly specified in the Consent Decree.

77. The United States and Commonwealth of Pennsylvania, do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* or with Pennsylvania's water pollution control laws. Notwithstanding EPA's and PADEP's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Defendant shall remain solely responsible for any non-compliance with the terms of this Consent Decree, the Clean Water Act and regulations promulgated under that Act, and Pennsylvania's Environment Article and implementing regulations.

78. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

79. This Consent Decree shall not limit any authority of EPA and PADEP under the Clean Water Act or any applicable statute, including the authority to seek information from Defendant or to seek access to the property of Defendant.

80. Performance of the terms of this Consent Decree by Defendant is not conditioned on the receipt of any federal, Commonwealth or local funds. Application for construction grants, Commonwealth revolving loan funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications on the part of Defendant shall not be cause for extension of any required compliance date in this Consent Decree.

81. It is the intent of the Parties hereto that the clauses hereof are severable, and

should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, the remaining clauses shall remain in full force and effect.

82. The United States and the Commonwealth of Pennsylvania reserve all remedies available to them for violations of the Clean Water Act and the Pennsylvania water pollution control laws by Defendant which are not alleged in the Complaint or which occur after the Date of Lodging of this Consent Decree.

83. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act.

84. Nothing in this Consent Decree shall be construed to limit the authority of the United States or the Commonwealth of Pennsylvania to undertake any action against any person, including Defendant, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

#### **XVI. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS**

85. This Consent Decree is not and shall not be construed as a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, nor as a modification of any existing permit so issued, nor shall it in any way relieve Defendant of its obligations to comply with permits, if any, otherwise required for any portion of its Collection System or related sanitary sewage treatment facilities, and with any other applicable federal or Commonwealth law or regulation. Defendant must comply with any new permit, or modification of existing permits, in accordance with applicable federal and Commonwealth laws and regulations.

86. Nothing herein shall be construed as relieving Defendant of the duty to comply with the Clean Water Act and the Pennsylvania water pollution control laws, the regulations promulgated under those acts, and all applicable permits issued under those acts and regulations.

**XVII. COSTS OF SUIT**

87. Each party shall bear its own costs and attorney's fees with respect to matters resolved by this Consent Decree.

**XVIII. RECORD KEEPING**

88. (a) Defendant shall maintain copies of any reports, plans, permits and documents, submitted to EPA and PADEP pursuant to this Consent Decree, including any underlying research and data, for a period of five (5) years from date of submission. Defendant shall require any independent contractor operating any portion of the Defendant Collection System or implementing any portion of this Consent Decree to also retain such materials for a period of five (5) years from date of submission. Defendant shall submit such supporting documents to EPA and PADEP upon request.

(b) In addition to the reports and documentation required to be provided by Defendant under the terms of this Consent Decree, Defendant shall also provide, upon demand, any analytical data or any other documents requested by the United States to review work done, or to be done, by Defendant or to determine Defendant's compliance with the terms of this Consent Decree.

89. Defendant shall notify EPA and PADEP thirty (30) days prior to the disposal or destruction of such records at the end of this five year period and shall, upon EPA's and PADEP's request, make such records available to EPA and PADEP prior to such disposal or destruction.

**XIX. FORM OF NOTICE**

90. Unless otherwise specified, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective Parties at the following addresses:

**As to the United States:**

Margaret L. Hutchinson  
Assistant United States Attorney  
Civil Division Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106-4476  
Re: USAO No. 2003V00437

**As to EPA:**

Christopher A. Day (3RC20)  
Senior Assistant Regional Counsel  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Anthony Meadows (3WP31)  
Water Protection Division  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

**As to Commonwealth of Pennsylvania:**

Regional Water Management Program Manager  
Pennsylvania Department of Environmental Protection,  
909 Elmerton Ave.  
Harrisburg, PA 17110-8200

**As to Defendant:**

Charles M. Jones, P.E.  
Director of Public Works  
815 Washington Street  
Reading, PA 19601-3690

Notifications to or communications with EPA, PADEP and the United States Department of Justice ("DOJ") shall be deemed submitted on the date they are received.

**XX. MODIFICATION**

91. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior written agreement, representation or understanding. The Consent Decree

may be modified by written consent of all of the Parties or, if the Parties cannot agree, by written Order of this Court. All modifications, with the exception of modifications deemed non-material by mutual agreement of EPA, PADEP, and Defendant, shall be in writing and must be filed with the Court before such modification will be deemed effective.

#### **XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

92. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment, pursuant to the requirements of 28 C.F.R. § 50.7. The United States and the Commonwealth reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Consent Decree without further notice.

93. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XXII. RETENTION OF JURISDICTION**

94. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court. Such jurisdiction shall not terminate until all requirements of this Consent Decree have been fulfilled and all disputes arising under this Consent Decree have been resolved.

**XXIII. TERMINATION**

95. The Consent Decree shall terminate when all of the following events have occurred:

(a) Defendant certifies that it has completed all obligations under Section V (Remedial Measures) of this Consent Decree, and that it has maintained compliance with all other requirements of the Consent Decree for a period of one year following completion of its obligations under Section V.

(b) Defendant has paid all civil penalties, costs, damages, stipulated penalties, and other sums due under this Consent Decree; and

(c) the Parties file a Joint Motion to Terminate the Consent Decree with the Court and the Court grants the Motion.

96. The Consent Decree shall not terminate if, following certification by Defendant of compliance pursuant to Paragraph 95 (a) above, the United States or the Commonwealth of Pennsylvania assert in writing that full compliance has not been achieved. If the United States or the Commonwealth of Pennsylvania dispute Defendant's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with the Dispute Resolution provisions of this Consent Decree.

**XXIV. SIGNATORIES/SERVICE**

97. The United States Attorney on behalf of the United States and the undersigned representatives of Defendant and the Commonwealth of Pennsylvania certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

98. 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 Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this

Court including, but not limited to, service of a summons.

**XXV. INTEGRATION/APPENDICES**

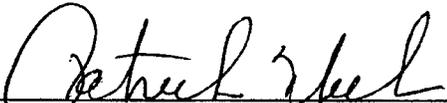
99. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercede all prior agreements and understandings, whether oral or written. Other than the Appendices, which are attached to and incorporated into this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_ 200 .

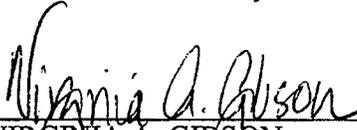
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Judge

FOR THE UNITED STATES OF AMERICA:

  
\_\_\_\_\_  
PATRICK L. MEEHAN  
United States Attorney

12/7/04  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
VIRGINIA A. GIBSON  
Assistant United States Attorney  
Chief, Civil Division

12/7/04  
\_\_\_\_\_  
DATE

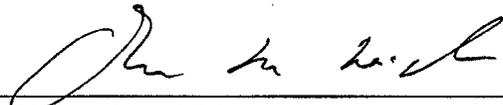
  
\_\_\_\_\_  
MARGARET L. HUTCHINSON  
Assistant United States Attorney  
U.S. Attorney's Office  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
(215) 861-8282

12/7/04  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Deputy Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20530  
(202) 514-2750

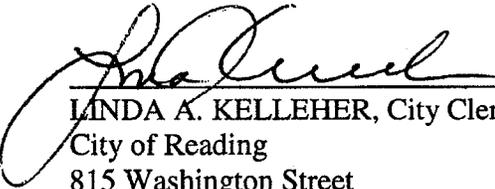
11/29/04  
\_\_\_\_\_  
DATE

FOR THE CITY OF READING:

  
\_\_\_\_\_  
THOMAS M. McMAHON, Mayor  
City of Reading  
815 Washington Street  
Reading, PA 19601

11/10/04  
DATE

Attest:

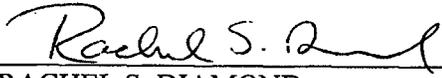
  
\_\_\_\_\_  
LINDA A. KELLEHER, City Clerk  
City of Reading  
815 Washington Street  
Reading, PA 19601

11-10-04  
DATE

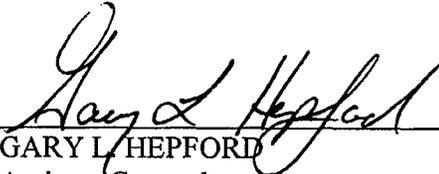
  
\_\_\_\_\_  
DAVID A. BINDER, ESQUIRE  
226 North 6<sup>th</sup> Street  
Reading, PA 19601  
Counsel for the City of Reading

11/10/04  
DATE

FOR THE COMMONWEALTH OF PENNSYLVANIA:

  
\_\_\_\_\_  
RACHEL S. DIAMOND  
Regional Director  
Pennsylvania Department of Environmental Protection  
Southcentral Regional Office  
909 Elmerton Ave.  
Harrisburg, PA 17110-8200

11-9-04  
DATE

  
\_\_\_\_\_  
GARY L. HEPFORD  
Assistant Counsel  
Pennsylvania Department of Environmental Protection  
Southcentral Regional Office  
909 Elmerton Ave.  
Harrisburg, PA 17110-8200

11/9/04  
DATE

US DEPARTMENT OF JUSTICE  
US ATTORNEY E.D. OF PA  
2004 NOV 10 11:42

FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY:

*Donald S. Welsh*

DONALD S. WELSH  
Regional Administrator  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

NOV 24 2004

DATE

*William C. Early*

WILLIAM C. EARLY  
Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

*11/24/04*

DATE

*Christopher A. Day*

CHRISTOPHER A. DAY  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

*November 18, 2004*

DATE

U.S. DEPARTMENT OF JUSTICE  
U.S. ATTORNEY E.D. OF PA

2004 DEC -2 P 2:43

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
And COMMONWEALTH OF	)	
PENNSYLVANIA	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 04-05696
v.	)	
	)	
City of Reading, Pennsylvania.	)	
	)	
Defendant.	)	

NOTICE OF MODIFICATION OF CONSENT DECREE

Whereas: The United States of America (“United States”) acting at the request and on behalf of the United States Environmental Protection Agency (“EPA”), the Commonwealth of Pennsylvania (“Commonwealth”) (collectively, “Plaintiffs”), and the City of Reading (“Reading”), constituting all of the parties (the “Parties”) to the Consent Decree in the above-captioned matter entered by the Court on November 7, 2005 (the “Decree” or “CD”), hereby provide notice to the Court pursuant to paragraph 91 of the Decree in this matter regarding a modification of certain provisions of the Decree. Attached hereto as Exhibit A are the extensions and modifications to the Decree subject to this Notice of Modification of Consent Decree (the “Modification”). All other ongoing commitments and requirements of the Decree remain in full force and effect.

Whereas: The United States filed a complaint against Reading on December 9, 2004, seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act (“CWA”), 33 U.S.C. § 1319 for Reading’s alleged violations of the CWA, 33 U.S.C. § 1251 - 1387.

Whereas: The Commonwealth filed as co-plaintiff a motion for intervention and

complaint against Reading on December 16, 2004, pursuant to Rule 24 of the Federal Rules of Civil Procedure, seeking injunctive relief and civil penalties for Reading's alleged violations of the federal CWA, 33 U.S.C. §§ 1251 - 1387 and the Pennsylvania Clean Streams Law, Act of June 22, 1937, P.S. 1987 *as amended*, 35 P.S. §§ 691-1001 ("the Clean Streams Law").

Whereas: On November 7, 2005, this Court entered the Decree resolving the above-captioned enforcement action brought by the Plaintiffs against Reading.

Whereas: Reading operates a sanitary sewer collection system and wastewater treatment plant that serves the residents of Reading and surrounding municipalities. Those municipalities (not parties to this Decree but hereinafter "Contributing Municipalities") contributing sewage to the Reading sewer collection system and wastewater treatment plant are: Alsace Township, Bern Township, Cumru Township, Kenhorst Borough, Laureldale Borough, Mohnton Borough, Mt. Penn Borough, Muhlenberg Township, Robeson Township, Shillington Borough, Spring Township, and Wyomissing Borough.

Whereas: The Decree contains Reading's commitments to perform certain tasks and the dates by which these tasks are to be accomplished, including but not limited to:

Construction completion of a substantial rehabilitation of Reading's wastewater treatment plant ("Plant") by October 2012 (CD ¶23);

Rehabilitation of Reading's wastewater collection system by January 2012 (CD ¶28);

Responsible management of the City finances and sewer revenue fund to provide adequate financial resources for the operation, maintenance and capital improvements for the tasks set forth in the Decree (CD ¶ 40).

Whereas: Reading did not meet certain terms and dates contained in the Decree.

Whereas: Reading has successfully accomplished many tasks required by the Decree including improvements in the staffing, operation, management, and maintenance of the Plant.

Whereas: The Parties acknowledge Reading's declining fiscal health for the past

several years leading to the 2009 declaration by Pennsylvania's Secretary of the Department of Community and Economic Development that Reading is a "Distressed Municipality" pursuant to Pennsylvania's Municipalities Financial Recovery Act, 53 P. S. §§ 11701.101 - 11701.501.

Now therefore, in consideration of the agreement amongst all parties that the Decree be modified, it will be modified as follows:

**1. Treatment Plant Alternatives Submission.** Paragraph 18 of the Decree requires that Reading submit to Plaintiffs for review and approval a technically sound and economically feasible treatment alternative to meet projected capacity based on influent wastewater characteristics, waste load projections, current permit limits, and future regulatory requirements. Reading submitted Chapters 5 and 6 of its Act 537 Special Study on August 24, 2012 ("Special Study"). The Plaintiffs have accepted the August 24, 2012 submission as satisfaction of Reading's obligation under Paragraph 18 of the Decree, subject to completion of all wastewater treatment plant improvements identified therein by February 28, 2018.

**2. Capital Improvements Plan.** Paragraph 19 of the Decree requires the submission of a capital improvements plan and the same has been submitted for review and approval. On June 28, 2013, Reading submitted a capital improvements plan associated with the wastewater treatment plant improvements identified in the Special Study. Plaintiffs have accepted the June 28, 2013 capital improvements plan as satisfaction of Reading's obligation under Paragraph 19 of the Decree.

**3. Contract Awards.** On April 22, 2013, Reading's City Council approved the award of a \$5.35 million contract to RK&K Engineering to design the improvements to the wastewater treatment plant identified in the Special Study, as contemplated in paragraph 20 of the Decree.

**4. Permit Applications and Design.** The date specified in Paragraph 21 of the Decree requiring that Reading complete and submit to the Commonwealth the NPDES (Part I) and the Water Quality Management (Part II) Permit applications, as necessary, to implement the approved treatment alternative, is hereby modified to April 30, 2013, for the Part I Permit submission (which Reading has completed and submitted); and September 1, 2014, for the Part II Permit submission. As specified in Paragraph 21 of the Decree, Reading shall also obtain other approvals and/or permits as necessary including but not limited to: NPDES permits; permits for Construction and/or Earthmoving permits pursuant to 25 PA Code Chapter 102; and, if necessary, a permit for water obstruction/wetlands pursuant to 25 PA Code Chapter 105 and/or a permit issued under Section 404 of the CWA.

**5. Permitting.** The Commonwealth shall use best efforts to provide a timely review of the submitted permit applications required for the permit issuance with the intention that both Phase I and Phase II permits may be issued within 90 days after submission of administratively and technically complete applications.

**6. Construction Completion of the wastewater treatment plant.** The date specified in Paragraph 23.b. of the Decree requiring that Reading complete construction of the upgrade and/or expansion of the Plant at the existing location is hereby modified to **February 28, 2018.**

**a. Construction Completion Interim Milestone - Construction Completion of the Secondary Digesters Rehabilitation.** By no later than July 31, 2015, Reading shall complete the rehabilitation of Secondary Digester Number Four.

**7. GIS Mapping of the Sanitary Sewer Collection System.** The date specified in Paragraph 25.b. of the Decree for Reading's submission of its certification of the development

and implementation of a functional Geographic Information System (“GIS”) mapping of Reading’s sanitary sewer collection system as described therein is hereby modified to **June 30, 2013**. By electronic mail on June 28, 2013, Reading submitted such certification to the Plaintiffs.

**8. GIS Mapping of the Storm Water Collection System.** The date specified in Paragraph 25.c. of the Decree requiring Reading’s submission of its certification of the completion of the GIS for Reading’s storm water collection system as described therein is hereby modified to **June 30, 2013**. By electronic mail on June 28, 2013, Reading submitted such certification to the Plaintiffs.

**9. Sanitary Sewer System Evaluation Program.** The date specified in Paragraph 26 of the Decree requiring Reading to develop a program of continuing infiltration/inflow (I/I) analysis and sewer system evaluation of its collection system to identify the priority areas of the sanitary sewer system that require repair, replacement and/or other remediation, and as otherwise described therein, is hereby modified to the following schedule:

**a.** By no later than November 30, 2013, complete hydraulic modeling of the sanitary sewer collection system. On November 15, 2013, Reading proposed a model of its sanitary sewer collection system developed on historic flow monitoring data in satisfaction of its obligation under Paragraph 26(a)(2) of the Decree.

**b.** By no later than March 31, 2014, complete the I/I evaluation of the sanitary sewer collection system.

**c.** By no later than June 30, 2014, complete closed circuit television inspections of the sanitary sewer collection system.

**d.** By no later than December 31, 2014, complete the Sanitary Sewer

Evaluation Survey that identifies priority areas of the sanitary sewer system that require repair, replacement, upgrade, and/or other remediation.

**10. Rehabilitation Plan.** The date specified in Paragraph 27 of the Decree requiring Reading to develop and submit to Plaintiffs for review and approval a “Rehabilitation Plan” to adequately address those specific priority areas of the sanitary sewer system that require repair, replacement, upgrade and/or other remediation, and as otherwise described therein, is hereby modified to **February 28, 2015**. The Rehabilitation Plan shall contain an implementation schedule. The Commonwealth and Reading may enter into a separate agreement to memorialize the implementation schedule of the Rehabilitation Plan to provide for adequate accountability and oversight. For purposes of this Decree, EPA’s written concurrence on that agreement (including the schedule) shall document Reading’s completion of obligations set forth in Paragraph 27 of this Decree, with the exceptions of those tasks identified in Paragraph 11 below.

**11. Rehabilitation of Priority Areas of Collection System.** Reading has identified the highest priority areas of the collection system. Reading shall complete construction in accordance with the following schedule:

- a. By no later than June 30, 2014, complete construction of the 6th and Canal 42” force main.
- b. By no later than January 31, 2018, complete upgrades to the 6th and Canal Pumping Station.
- c. By no later than January 31, 2018, complete upgrades to the 19th Ward Pumping Station.

**12. Requirement for Dedicated Sewer Fund.** In furtherance of the purpose of the Decree, the Parties agree that Reading shall maintain a dedicated sewer fund comprised of

revenues as described in Paragraph 40 of the Decree from which Reading may not assess and collect for its general revenue funds beyond three (3) million dollars per calendar year unless Reading satisfies the requirements set forth in Paragraph 40 of the Decree.

**13. Annual Meetings.** The Parties shall meet at least annually, on or about August 1 of each year, during the term of this Amendment to review Annual Progress on its implementation.

**14. Stipulated Penalties.** The payment of civil penalties to the Commonwealth of Pennsylvania contained in Section IX, paragraph 50 is hereby modified to be sent to the Attention of David Gates, Environmental Protection Compliance Specialist in substitution for Lee Yohn, Compliance Specialist.

**15. Notice.** The Notice provisions of the Decree contained in Section XIX paragraph 90 of the decree are here by modified as follows:

**As to the United States:**

Margaret L. Hutchinson, Esq.  
Assistant United States Attorney  
Civil Division Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250

**As to the United States Environmental Protection Agency:**

Christopher A. Day, Esq. (3RC20)  
Senior Assistant Regional Counsel  
United States Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Chief, NPDES Enforcement branch (3WP42)  
United States Environmental protection Agency  
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1650 Arch Street  
Philadelphia, Pa. 19103

**As to the Commonwealth of Pennsylvania:**

Gary Hepford, Esq.  
Assistant Counsel  
Pennsylvania Department of Environmental Protection  
Southcentral Regional Office  
909 Elmerton Ave.  
Harrisburg, PA 17110-8200

Regional Water Management Program Manager  
Pennsylvania Department of Environmental Protection,  
909 Elmerton Ave.  
Harrisburg, PA 17110-8200

**As to the City of Reading:**

Ralph Johnson  
Director of Public Works  
815 Washington Street  
Reading, PA 19601

John J. Miravich, Esq.  
Fox Rothschild LLP  
747 Constitution Drive  
Exton, PA 19341

Jointly submitted this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by all of the Parties:

FOR THE UNITED STATES OF AMERICA:

---

MARGARET L. HUTCHINSON  
*Assistant United States Attorney Chief, Civil Division*  
*Eastern Division of Pennsylvania*  
Assistant United States Attorney  
Civil Division Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250

FOR THE COMMONWEALTH OF PENNSYLVANIA:

---

GARY HEPFORD  
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*Pennsylvania Department of Environmental Protection*  
Southcentral Regional Office  
909 Elmerton Ave.  
Harrisburg, PA 17110-8200

FOR THE CITY OF READING:

---

JOHN J. MIRAVICH  
*Special Counsel to the City of Reading*  
*Fox Rothschild LLP*  
747 Constitution Drive  
Exton, PA 19341

<u>Obligation</u>	<u>ORIGINAL CD DATE</u>	<u>PROPOSED CD DATE OR ACTUAL DATE</u>
<b>WWTP</b>		
<b>WWTP Upgrade Alternatives</b> (including any Evaluation of Existing and Alternatives) (CD ¶18)	11/7/06	Actual Date – Submitted as part of the 537 Plan on 5/1/2012
<b>Capital Improvements Plan</b> (CD ¶19)	10/15/05	Actual Date – most recent revision submitted 6/28/2013
<b>Request for Proposals</b> ¶20	9 months from Alternative Approval	Actual Date - RFP winter 2012. Contract awarded 4/29/13
<b>Permit Application and Design</b> CD ¶21	10/15/06	Part I – 4/30/2013 Part II – 9/1/2014
<b>WWTP Construction Completion</b> ¶23	9/15/12	Proposed CD Date - 2/28/18
<b>COLLECTION SYSTEM</b>	<u>ORIGINAL CD DATE</u>	<u>PROPOSED CD DATE OR ACTUAL DATE</u>
<b>GIS mapping of sanitary sewer due</b> (CD ¶25(b))	11/7/07	Actual Date - 6/28/2013

<p><b>GIS mapping of storm water collection system due (CD ¶25(c))</b></p>	<p>11/7/08</p>	<p>Actual Date - 6/28/2013</p>
<p><b>Sanitary Sewer System Evaluation Program (CD ¶26)</b></p>	<p>January 15, 2008</p>	<p>11/30/2013 - Complete hydraulic modeling of the sanitary sewer collection system.                  3/31/2014 - Complete the I/I evaluation of the sanitary sewer collection system.                  6/30/2014 - Complete closed circuit television inspections of the sanitary sewer collection system.                  12/31/2014 - Complete the Sanitary Sewer Evaluation Survey that identifies priority areas of the sanitary sewer system that require repair, replacement, upgrade, and/or other remediation.</p>
<p><b>Rehabilitation plan must be developed to address priority areas of Reading's sewer system. (CD ¶27)</b></p>	<p>January 15, 2008</p>	<p>2/25/2015</p>
<p><b>Rehabilitation plan must be implemented. (CD ¶28)</b></p>	<p>January 15, 2012</p>	<p>6/30/2014 -Complete construction of the 6<sup>th</sup> and Canal 42" force main.                  1/31/2018 -Complete upgrades to the 6<sup>th</sup> and Canal Pumping Station.                  1/31/2018 -Complete upgrades to the 19<sup>th</sup> Ward Pumping Station.                  1/31/2018 -Complete construction of the 19<sup>th</sup> Ward pump station and force main rehabilitation projects.</p>
<p><b>Financial ¶40</b></p>	<p>ongoing</p>	
<p><b>Annual Meetings</b></p>	<p>ongoing</p>	

Attachment 2: Proposed Contract

**Engineers Joint Documents Committee  
Design and Construction Related Documents  
Instructions and License Agreement**

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2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

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Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

**General:**

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.  
General Counsel  
National Society of Professional Engineers  
1420 King Street  
Alexandria, VA 22314

Phone: (703) 684-2845  
Fax: (703) 836-4875  
e-mail: aschwartz@nspe.org

**You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

## AGREEMENT BETWEEN OWNER AND PROGRAM MANAGER

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*a practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

EJCDC No. E-582 (2004 Edition)

EJCDC E-582 Agreement Between Owner and Program Manager  
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# AGREEMENT BETWEEN OWNER AND PROGRAM MANAGER

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ “Effective Date” between  
the City of Reading, a Pennsylvania municipal corporation \_\_\_\_\_ (“Owner”) and  
\_\_\_\_\_ (“Program Manager”).

Owner has begun a program to plan and design improvements to the existing Fritz Island Wastewater Treatment Plant (“WWTP”) and its wastewater sewer system to meet (a) the projected 2035 flow rates detailed in the Owner’s Final Act 537 Special Study dated August 2012, which is incorporated herein by reference (“Special Study”), (b) current and pending PADEP discharge limits, and (c) requirements under the Consent Decree, as amended, entered with the Federal District Court for the Eastern District of Pennsylvania in Civil Action No. 04-05696 (“Consent Decree”), which is incorporated herein by reference. As used herein, the term “Program” shall refer to the administration of the City’s obligations set forth in the Consent Decree. The Program is comprised of the following projects (each, a “Specific Project”):

1. Flowmeter Project
2. Emergency Bypass Project
3. 42-Inch Force Main Replacement Project
4. Sewer System Evaluation Survey and Rehabilitation Plan
5. Secondary Digester Rehabilitation Project
6. Fritz Island Wastewater Treatment Plant Upgrades Liquids Facilities Upgrade Project
7. Fritz Island Wastewater Treatment Plant Upgrades Solids Facilities Upgrade Project
8. Sixth and Canal Street Pump Station Short Term Improvements Project
9. Sixth and Canal Street Pump Station Long Term Improvements Project
10. 19th Ward Pump Station and Force Main Improvements Project

Owner hereby engages Program Manager, as an independent contractor, to assist Owner with the management and coordination of the Program as set forth in this Agreement. This Agreement sets forth the general terms and conditions that shall govern the relationships and performance of Owner and Program Manager with respect to the Program.

Owner and Program Manager agree as follows:

## **ARTICLE 1 – SERVICES OF PROGRAM MANAGER**

### **1.01 Scope**

- A. The Basic Services to be provided by Program Manager are those services set forth in this Agreement, except for Additional Services.
- B. If Owner authorizes Program Manager in writing to do so, then Program Manager shall perform value engineering reviews of design documents for the Specific Projects as Additional Services. Owner’s authorization of any such Additional Services shall be set forth in a written amendment to this Agreement. Compensation for such Additional Services shall be subject to and limited by the allowances set forth in Exhibit C.

- C. If Owner and Program Manager mutually agree, Program Manager shall provide other further Additional Services related to the Program. Any such mutual agreement shall only be enforceable if it is set forth in a written amendment to this Agreement signed by Owner. Each amendment shall specify the scope of Additional Services to be provided, the compensation to be paid, the time for performance, and any other terms applicable.
- D. Program Manager represents that it has been provided with sufficient time and documentation regarding the scope, status, and nature of the Specific Projects, including, without limitation, access to a SharePoint Intranet Website made available to Program Manager during a Request for Proposal process administered by Owner.
1. Special Study;
  2. Consent Decree;
  3. Draft drawings and specifications prepared by the Design Professional for the [Project(s) to be listed here] Project (\_\_\_\_\_, 2015);
  4. Limited Asbestos-Containing Materials Inspection of Old Lab Building (March 19, 2014);
  5. Limited Lead-Based Paint Inspection of Old Lab Building and Main Building Basement Pump Area (March 19, 2015);
  6. Agreement Between Owner [City of Reading] and Engineer [applicable Design Professional(s) to be listed here] for Professional Services ([Agreement date to be listed here]);
  7. Analytical results of Soil Stockpile for the Flow Meter Construction Project (November 16, 2012);
  8. Geotechnical Data Report for New 42-Inch Force Main Project (January 13, 2012 and revised on February 22, 2012);
  9. Summary of Environmental Studies to Support Permit Applications for the Replacement of the 42-Inch Force Main (July 1, 2011);
  10. Soil and Groundwater Investigation Report (July 1, 2011);
  11. Geotechnical Engineering Report for the New Meter Vault at the Fritz Island Wastewater Treatment Plant (June 13, 2011);
  12. Request for Department of the Army Jurisdictional Determination (March 29, 2011); and
  13. Mercury Investigation (April 17, 1995).

## **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

### *2.01 General*

#### A. Owner shall:

1. Pay Program Manager as set forth in Exhibit C.
2. As identified and specifically requested in writing by the Program Manager, respond to Program Manager’s requests for criteria and information as to Owner’s requirements for the Program and for each Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, expandability, and budgetary limitations.
3. As identified and specifically requested in writing by the Program Manager, furnish to Program Manager any other relevant information in Owner’s possession, including studies, surveys, maps, drawings, photographs, test results, reports, and data relative to previous designs or investigations associated with the Program.
4. Arrange for safe access to and make all provisions for Program Manager to enter upon public and private property as required for Program Manager to perform Services.
5. Provide reasonable assistance to Program Manager in securing the release of documents and information held by private entities and by public agencies and like bodies as needed in the course of the Program.
6. Review all proposals, alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Program Manager (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination), and render timely written decisions pertaining thereto.

## **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

### *3.01 Commencement*

- #### A. Program Manager shall begin rendering Services as of the Effective Date of the Agreement.

### *3.02 Time for Completion*

- #### A. Time is of the essence with regard to Program Manager’s performance of its obligations under this Agreement.
- #### B. Program Manager has reviewed the scopes of work for the Design Professionals and agrees that it will be able to perform its Services under this Agreement within such time as reasonably necessary for Owner to comply with its obligations under its contracts with its Design Professionals.

- C. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Program Manager's performance of Services.
- D. This Agreement shall expire upon the final completion of the Program as evidenced by final payment having been made on all Specific Projects.

#### **ARTICLE 4 – INVOICES AND PAYMENTS**

##### *4.01 Invoices*

- A. *Preparation and Submittal of Invoices.* Program Manager shall prepare invoices in accordance with the invoicing practices set forth in Exhibit C. Program Manager shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within sixty (60) days of receipt of an invoice meeting the requirement of Exhibit C.

##### *4.02 Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Program Manager and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Program Manager for Services and expenses within thirty (30) days after receipt of Program Manager's invoice meeting the requirements of Exhibit C and for which there is no dispute amounts due Program Manager, all outstanding sums will accrue interest at the rate of 1.0% per annum (or the maximum rate of interest permitted by law, if less) from said thirtieth (30<sup>th</sup>) day.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion. Program Manager shall not suspend or delay services on account of Owner's non-payment of disputed amounts.
- D. *Legislative Actions.* Program Manager shall not be entitled to any additional compensation as a result of any legislative action that imposes taxes, fees, or charges on Program Manager's services or compensation under this Agreement, even if such legislative action occurs after the Effective Date of the Agreement.

#### **ARTICLE 5 – GENERAL CONSIDERATIONS**

##### *5.01 Standards of Performance*

- A. The standard of care for all Services performed or furnished by Program Manager under this Agreement shall be the care and skill ordinarily used by members of the subject profession providing similar services under similar circumstances. Program Manager and its Program Subcontractors shall comply with applicable professional licensing requirements.
- B. Owner shall not be responsible for discovering deficiencies or errors with Program Manager's Services. Program Manager shall correct any such deficiencies or errors in its Services without additional compensation.

- C. Program Manager shall comply with all applicable Laws and Regulations and Owner-mandated standards.
- D. Program Manager shall not supervise, direct, or have control over a Contractor's work, nor shall Program Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by a Contractor, for safety or security at the Site, for safety precautions and programs incident to a Contractor's work in progress, or for any failure of a Contractor to comply with Laws and Regulations applicable to a Contractor's furnishing and performing the work.
- E. Program Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with the Contract Documents.
- F. Program Manager shall not be responsible for the acts or omissions of any Contractor, or of any of a Contractor's subcontractors, suppliers, agents, or employees or any other persons at a Site (except Program Manager's own employees and the Program Subcontractors) or otherwise furnishing or performing any of a Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner to a Contractor without consultation and advice of Program Manager.
- G. In the performance of Services under this Agreement, Program Manager shall be an independent contractor and shall control the manner, means and methods of its performance.
- H. Program Manager represents and warrants to Owner as follows:
  - 1. Program Manager may lawfully conduct its business in the Commonwealth of Pennsylvania with power and authority to enter into this Agreement, to carry on its business, and to incur and perform its obligations.
  - 2. The execution and delivery of this Agreement and performance by Program Manager of its obligations under this Agreement do not and will not violate any provision of law and will not result in the breach of, or constitute a default under, any agreement to which Program Manager is a party or by which it is bound.
  - 3. There is no action, suit or proceeding at law or in equity or by any governmental instrumentality or other agency now pending or, to the knowledge of Program Manager, threatened against or affecting Program Manager that, if adversely determined, would materially impair Program Manager's right to carry on business substantially as now conducted and as contemplated under this Agreement, or to perform its obligations under this Agreement, or would materially adversely affect its financial condition, except those previously disclosed to the Owner in writing.
  - 4. Program Manager possesses the necessary license or licenses to perform the Services contemplated under this Agreement in the Commonwealth of Pennsylvania.
  - 5. Program Manager possesses the expertise, experience, personnel, and resources to perform the Services and all personnel engaged to perform Services hereunder

shall be fully qualified and authorized or permitted under applicable law and regulations to perform such Services.

#### 5.02 *Authorized Program Representatives*

- A. Program Manager and Owner shall designate in writing specific individuals to act as Program Manager's and Owner's representatives with respect to the various Services to be performed or furnished by Program Manager and the responsibilities of Owner. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to specified services on behalf of each respective party.

#### 5.03 *No Construction Management Services under this Agreement*

- A. This Agreement does not require Program Manager to perform any on-site construction management services for the Specific Projects. Owner may engage an independent third party consultant to provide on-site construction management services during the Construction Phase of each Specific Project, as deemed necessary by Owner in its sole discretion.

#### 5.04 *Use of Documents*

- A. All documents prepared by Program Manager and/or its Program Subcontractors for this Project, including, without limitation, drawings, specifications (including, without limitation, those in electronic form) are the property of Owner who shall be vested with all common law, statutory and other reserved rights. At Owner's request, Program Manager and/or its Program Subcontractors shall provide Owner and any third party designated by Owner, a full and complete release in form and substance acceptable to Owner, of any and all rights Program Manager and/or its Program Subcontractors may have to all documents prepared by Program Manager and/or its Program Subcontractors for this Project. Owner shall provide Program Manager and/or its Program Subcontractors with a release and indemnity of liability arising from the use of the drawings, specifications and other documents prepared by Program Manager and/or its Program Subcontractors for this Project, in any other project of Owner other than this Project.

#### 5.05 *Insurance*

- A. Program Manager shall procure and maintain insurance as required in Exhibit G, "Insurance".
- B. Owner shall procure and maintain insurance as required in Exhibit G.
- C. Program Manager shall deliver to Owner certificates of insurance verifying the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Program Manager's Services under this Agreement and at each renewal thereafter during the term of this Agreement.
- D. At any time after the Effective Date of this Agreement, Owner may request that Program Manager or its Program Subcontractors, provide additional insurance coverage, increased limits, or reduce deductibles than those specified in Exhibit G. If so requested by Owner, and if commercially available, Program Manager shall obtain and shall require the Program

Subcontractors to obtain such additional insurance coverage, different limits, or reduced deductibles for such periods of time as requested by Owner, and Exhibit G will be amended to incorporate these requirements. Owner shall reimburse Program Manager for the additional premium costs paid solely due to the Owner's requested modifications.

#### 5.06 *Suspension and Termination*

- A. *Suspension.* At no additional cost to Owner, Owner may indefinitely suspend the Program or a Specific Project upon seven (7) days written notice to Program Manager. Program Manager shall promptly cease performing Services in such manner as to minimize any impact when the Program or Specific Project resumes. Program Manager shall receive a day-for-day extension for the performance of Services for any such suspension.
- B. *Termination.* This Agreement may be terminated:
1. Owner may immediately terminate this Agreement if Program Manager (i) refuses or fails to supply enough properly skilled workers to perform the Services, (ii) violates any laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction, (iii) becomes insolvent, suffers or permits the appointment of the receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, or (iv) otherwise materially breaches a provision of this Agreement. If Owner terminates this Agreement in accordance with this Paragraph 5.06.B.1, Owner may withhold payment for Services rendered or performed prior to the effective date of termination to offset any damages incurred by Owner.
  2. Owner may terminate this Agreement upon not less than thirty (30) days written notice to Program Manager for Owner's convenience and without cause. In the event of termination not the fault of Program Manager, Program Manager shall be compensated only for Services performed prior to termination. After Owner has made such payment, Owner shall have no further obligation or liability to Program Manager with respect to this Agreement.
  3. Program Manager shall not have the right to terminate this Agreement for any reason. Program Manager's sole remedy for a breach of this Agreement by Owner shall be the recovery of interest on past-due payments in accordance with Paragraph 4.02.B.

#### 5.07 *Controlling Law*

- A. This Agreement shall be governed by the law of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law.

#### 5.08 *Successors, Assigns, and Beneficiaries*

- A. Each Owner and Program Manager is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Program Manager (and, to the extent permitted by Paragraph 5.08.B, the assigns of Owner and Program Manager) are hereby bound to the other party to this Agreement and to the partners, successors,

executors, administrators, elected officials and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

- B. Neither Owner nor Program Manager may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Program Manager to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Program Manager and not for the benefit of any other party.

#### 5.09 *Dispute Resolution*

- A. Owner and Program Manager agree to negotiate all disputes between them in good faith for a period of at least thirty (30) days prior to invoking the dispute resolution procedures set forth in Exhibit H or to otherwise exercising their rights under law.
- B. If the parties are unable to resolve a dispute through negotiation under Paragraph 5.09.A, then either or both may invoke the dispute resolution procedures of Exhibit H.
- C. Under no circumstances shall Program Manager be entitled to incidental, consequential, special or punitive damages or lost or anticipated profits from Owner.

#### 5.10 *Environmental Condition of Site*

- A. Owner has disclosed to Program Manager in writing the existence of Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or adjacent to the Sites.
- B. If Program Manager encounters an undisclosed Constituent of Concern, then Program Manager shall notify Owner and appropriate governmental officials if Program Manager reasonably concludes that doing so is required by applicable Laws or Regulations after giving Owner seven (7) days to make such disclosure.
- C. It is acknowledged by both parties that Program Manager's scope of Basic Services does not include any services related to undisclosed Constituents of Concern. If Program Manager or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Owner shall retain appropriate

specialist consultant(s) or contractor(s) to identify and, as appropriate in Owner's sole discretion, abate, remediate, remove, isolate or address the Constituents of Concern.

- D. Owner acknowledges that Program Manager is performing professional Services for Owner and that Program Manager is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or adjacent to any Site in connection with Program Manager's activities under this Agreement.

#### 5.11 *Indemnification*

- A. *Indemnification by Program Manager:* Program Manager shall indemnify, defend and hold harmless (immediately upon demand) the Owner, its elected officials, directors, officers and employees, from and against any and all third party claims, losses, damages, expenses, costs or other liabilities, including reasonable attorneys' fees, arising out of, or resulting from any breach of the provisions set forth herein and/or the error or negligent act or omission of Program Manager or its Program Subcontractors, or any of their directors, officers, agents and/or employees or anyone directly or indirectly employed by them or anyone whose acts or omissions they may be liable. Program Manager shall further indemnify, defend and hold harmless (immediately upon demand) the Owner, its directors, officers and employees from and against any and all claims made for infringement of any copyright, trademark or patent arising out of the use of any Documents furnished by Program Manager in the performance of this Agreement.

#### 5.12 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement shall be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Equal Opportunity:*
1. Program Manager shall not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. Program Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Program Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Owner may elect to provide Program Manager with the required form of notice.
  2. Program Manager shall, in all solicitations or advertisements for employees placed by or on behalf of Program Manager, state that all qualified applicants will receive

consideration for employment without regard to race, color, religion, sex, or national origin.

3. In the event of Program Manager's noncompliance with the non-discrimination clauses above or with any applicable laws, this Agreement may be canceled, terminated, or suspended, in whole or in part, and Program Manager may be declared ineligible for further contracts with Owner.
  4. Program Manager shall include the subparagraphs set forth in Paragraph 5.12.F in every subcontract or purchase order.
- C. *Employment of Certain Persons Prohibited.* No person who is serving an incomplete sentence in a penal or correctional institution shall be employed on the services covered by this Agreement.
- D. *Right to Audit Records.* Owner shall be entitled to audit the books and records of Program Manager or any of its Program Subcontractors to the extent that such books and records relate to this Agreement or the performance of the Project. Such books and records shall be maintained by Program Manager and its Program Subcontractors for a period of three (3) years from the date of final payment under this Agreement unless a shorter period is otherwise authorized in writing.
- E. *Dissemination of Information.* Program Manager shall not release any information related to the Project or performance of Services under this Agreement, nor publish any report or documents relating to Owner, the account or performance of Services this Agreement without prior written consent of Owner. Program Manager shall indemnify and hold harmless Owner, its officers, agents, elected officials and employees from all liability or damages which may be incurred by reason of Program Manager's unapproved dissemination, publication and distribution, or circulation, in any manner whatsoever, of any information, data, documents, or material pertaining to Owner, the account or this Agreement by Program Manager or its agents or employees.
- F. *Business Privilege License and Tax.* In addition to all other taxes and license fees, Program Manager shall pay to the City of Reading the applicable Business Privilege Tax and maintain a Business Privilege License during the term of this Agreement.

#### 5.13 *Survival*

- A. Paragraphs 5.01.A, 5.04.A, 5.06.B (and its subparagraphs), 5.07.A, 5.09 (and its subparagraphs), 5.11.A, 5.12.A, 5.12.E, and H1.01 (and its subparagraphs) shall survive the expiration or sooner termination of this Agreement.

#### 5.14 *Severability*

- A. Any provision or part of this Agreement held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Program Manager, who agree that this Agreement shall be amended to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## 5.15 *Waiver*

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

## 5.16 *Headings*

- A. The headings used in this Agreement are for general reference only and do not have special significance.

# ARTICLE 6 – DEFINITIONS

## 6.01 *Defined Terms*

- A. Wherever used in this Agreement (including, without limitation, the Exhibits and Appendices attached hereto and any Amendments or Task Orders that may hereinafter be incorporated herein) and printed with initial capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:
  1. *Additional Services* – Services which are not included in Basic Services to be performed for or furnished to Owner by Program Manager.
  2. *Agreement* – This “Agreement between Owner and Program Manager,” including those Exhibits listed in Article 7.
  3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  4. *Basic Services* – All Services, other than Additional Services, required to be performed for or furnished to Owner by Program Manager in accordance with this Agreement.
  5. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  6. *Construction Contract* – The entire and integrated written agreement between Owner and a Contractor concerning a Specific Project under the Program.

7. *Contract Documents* – Documents that establish the rights and obligations of Owner and Contractor under a Construction Contract for a Specific Project and include the construction agreement between Owner and Contractor, addenda (which pertain to the Contract Documents), a contractor’s bid (including documentation accompanying the bid and any post-bid documentation submitted prior to the notice of award) when attached as an exhibit to the construction agreement, the notice to proceed, the bonds, appropriate certifications, the general conditions, the Specifications, and the Drawings as the same are more specifically identified in the construction agreement, together with all written amendments, change orders, work change directives, field orders, and Program Manager’s written interpretations and clarifications issued on or after the effective date of the construction agreement. Approved shop drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
8. *Contractor* – An individual or entity with whom Owner enters into a Construction Contract for a Specific Project.
9. *Construction Phase* – The phase of a Specific Project commencing upon the issuance of a Notice to Proceed to all prime Contractors for the applicable Specific Project.
10. *Design Professionals* – Architects, engineers, consultants and professionals excluding Program Manager, providing architectural or engineering design services.
11. *Documents* – Data, reports, drawings, specifications, record drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Program Manager to Owner pursuant to this Agreement.
12. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
13. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
14. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
15. *PCBs* – Polychlorinated biphenyls.
16. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at 32 degrees Fahrenheit and 14.7 pounds per square inch absolute, such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

17. *Program Subcontractors* – Individuals or entities having a contract with Program Manager to furnish Services, materials, or equipment with respect to the Program or a Specific Project as Program Manager’s independent professional associates, consultants, subcontractors, suppliers, or vendors.
  18. *Radioactive Materials* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
  19. *Reimbursable Expenses* – The expenses incurred directly by Program Manager in connection with the performing or furnishing of Basic and Additional Services for the Program as specifically listed in Appendix 1 to Exhibit C.
  20. *Services* – Any task performed or required to be performed by Program Manager under this Agreement or amendment thereto, including, without limitation, Basic Services and Additional Services.
  21. *Site* – Lands or areas subject to investigation, use, improvement, or development under the Program; including, but not limited to, specific locations at which construction is to occur; and including any lands indicated in any Contract Documents for a Specific Project as being furnished by Owner upon which construction is to be performed; rights-of-way and easements for access to construction locations; and such other lands or facilities furnished by Owner which are designated for the use of Program Manager or a Contractor.
  22. *Specific Project* – A construction project carried out under the Program.
- B. Capitalized terms not defined herein shall have the meaning set forth in the “Standard General Conditions of the Construction Contract” as prepared by Engineers Joint Contract Documents Committee (EJCDC C-700, 2013 Edition).

## ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

### 7.01 Exhibits

Exhibit Letter	Exhibit Title
A	Program Manager’s Services
B	[Reserved]
C	Payments to Program Manager for Services and Reimbursable Expenses
Appendix 1 to Exhibit C	Reimbursable Expenses Schedule
Appendix 2 to Exhibit C	Standard Hourly Rates Schedule
D	Key Persons
E	[Reserved]

F	[Reserved]
G	Insurance
H	Dispute Resolution

7.02 *Entire Agreement*

- A. This Agreement constitutes the entire agreement between Owner and Program Manager and supersedes all prior written or oral understandings, including, without limitation, Owner's Request for Proposals and Program Manager's Proposal in response thereto. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

The Effective Date of this Agreement is \_\_\_\_\_ , \_\_\_\_\_

Owner: City of Reading, a Pennsylvania municipal corporation

Program Manager: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name and Title: Vaughn D. Spencer Mayor

Name and Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Name and Title: Charles Younger Solicitor

License or Firm's Certificate No. (if required by state law): \_\_\_\_\_

Date Signed: \_\_\_\_\_

State of: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

Managing Director  
City of Reading  
815 Washington St.  
Reading, PA 19601

With a copy to:

John J. Miravich, Esq.  
Fox Rothschild LLP  
747 Constitution Drive  
Exton, PA 19341

Designated Representative:

Designated Representative:

Amy Morriss

\_\_\_\_\_

Title: Wastewater Treatment Plant Supervisor

Title: \_\_\_\_\_

Phone Number: (610) 655-6502

Phone Number: \_\_\_\_\_

E-Mail Address: amy.morriss@readingpa.org

E-Mail Address: \_\_\_\_\_

This is **EXHIBIT A**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Program Manager** dated \_\_\_\_\_, \_\_\_\_\_.

### **Program Manager's Services**

A.1.01 Program Manager's Basic Services. Services to be provided by Program Manager as Basic Services shall include, without limitation, the following:

- A. **General Program Management**. The following tasks shall be performed as to the Program in its entirety, taking into account all aspects of each Specific Project, as applicable:
1. Provide overall administration and coordination of the Program, including, without limitation:
    - a) Gather Owner's existing baseline information, including, without limitation:
      - (i) Business plans, facilities plans, and other planning documents;
      - (ii) Drawings and data regarding existing facilities;
      - (iii) Analysis of current and projected facility usage; and
      - (iv) Environmental assessments, soil surveys, land use planning information regarding current properties and facilities.
    - b) Establish and maintain a computer based project management and communications system to include, without limitation, document tracking and management systems, updates to the Program and each Specific Project, executive status reports, notices, project information exchange and scheduling, correspondence inventory and retrieval system, a reference library for the Program and each Specific Project and internet website utilizing hardware and software.
  2. At the request of Owner in writing, prepare for, develop agenda, attend, manage, take minutes, and perform any necessary follow up from up to twenty (20) in-person meetings with Owner's staff, administration, or City Council to discuss the Program or the Design Professional of a Specific Project to discuss Program Manager's peer review of the design at the various points for Owner's review and approval of the design documents ("Program Meetings").
  3. Act as Owner's representative with respect to the Design Professionals, by, including, without limitation:
    - a) Understanding the design documents for each Specific Project to coordinate implementation of the overall Program;

- b) Periodically reviewing the schedules for each Specific Project included in the contract for the respective Design Professional and recommending approaches to Owner and the Design Professional to address any delays;
  - c) Facilitating communication and coordination among the Design Professionals;
  - d) Facilitating communication between Owner and the Design Professionals; and
  - e) Reviewing, evaluating and commenting on the value and merit of change order proposals from Design Professionals.
4. Development and update monthly a Program master plan which shall include, without limitation:
- a) The expected scope of Program activities;
  - b) An identification of key participants for each activity;
  - c) A program master schedule showing the order and duration of Program activities, milestones, and time critical events for each Specific Project; and
  - d) A monthly progress report for each Specific Project.
5. Prepare and update each month a master financial drawdown schedule itemized for each Specific Project which includes, without limitation, an accounting system for each Specific Project that tracks and compares budgeted amounts and actual expenditures (including, without limitation, overall hard and soft cost budgets for each Specific Project), cash flow projections for each Specific Project, and key dates for obtaining capital funding and grants.
6. Assist in communicating with regulatory and funding agencies, including, without limitation, by:
- a) Reviewing and commenting on monthly, quarterly, and other periodic reports prepared by Owner's staff or representative for submission to regulatory agencies; and
  - b) Reviewing and commenting on correspondence with regulatory and funding agencies regarding permitting, the status of the Program, and completion of the Consent Decree prepared by Owner's staff or representative.

B. **Sixth and Canal Street Pump Station Long Term Improvements Project.** In addition to the Basic Services identified above, Program Manager shall assist Owner's efforts with respect to the Sixth and Canal Street Pump Station Long Term Improvement Project by performing the following tasks:

1. Complete a peer review and provide a comprehensive set for comments from the Program Manager and Owner to the technical memoranda and design documents at submitted by the Design Professional at the 30% design phase, 60% design phase, 90% design phase, and final (100%) design phase.
2. Provide comments on all cost estimates provided by the Design Professional;
3. Provide input to construction sequencing and scheduling;
4. Provide recommendations regarding the design for multiple prime contractors;
5. Perform a constructability review of the design documents at the 60% stage; and
6. Assist Owner with responding to information requests from the Design Professional.

C. **19th Ward Pump Station and Force Main Improvements Project.** In addition to the Basic Services identified above, Program Manager shall assist Owner's efforts associated with the 19<sup>th</sup> Ward Pump Station and Force Main Improvements Project by performing the following tasks:

1. Complete a peer review and provide a comprehensive set for comments from the Program Manager and Owner to the technical memoranda and design documents at submitted by the Design Professional at the study and report phase, 30% phase, 60% phase, 90% phase, and final (100%) design phase.
2. Provide comments on all cost estimates provided by the Design Professional;
3. Provide input to construction sequencing and scheduling;
4. Provide recommendations regarding the design for multiple prime contractors;
5. Perform a constructability review of the design documents at the 60% stage; and
6. Assist Owner with responding to information requests from the Design Professional.

#### A.1.02 Additional Services

A. Program Manager shall provide value engineering Services for the Sixth and Canal Street Pump Station Long Term Improvements Project and/or 19<sup>th</sup> Ward Pump Station and Force Main Improvements Project, as requested by Owner, as an Additional Service subject to the allowance set forth in Exhibit C.

- B. The attendance of Program Manager at more than twenty (20) Program Meetings shall be compensated as an Additional Service at the hourly rates set forth in Appendix 2 of Exhibit C.

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Program Manager** dated \_\_\_\_\_, \_\_\_\_.

## **Payments to Program Manager for Services and Reimbursable Expenses**

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### *C.1.01 Compensation For Basic and Additional Services – Standard Hourly Rates Method of Payment*

- A. Owner shall pay Program Manager for Basic Services set forth in Exhibit A, as follows:
1. The total compensation for Basic Services (excluding the compensation for Reimbursable Expenses) shall not exceed \$\_\_\_\_\_ (“Not-to-Exceed Fee”) based on the following distribution of compensation:
    - a. \$\_\_\_\_\_ for the General Program Management;
    - b. \$\_\_\_\_\_ for the Sixth and Canal Street Pump Station Long Term Improvements Project; and
    - c. \$\_\_\_\_\_ for the 19th Ward Pump Station and Force Main Improvements Project.
  2. The compensation for Program Manager’s services above includes all labor, overhead, profit, and its Program Subcontractors’ charges for the performance of Basic Services.
  3. The amounts billed for Program Manager’s Services shall be based on the cumulative hours charged to the Program during the billing period by each class of Program Manager’s employees’ times the applicable Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Program Manager’s Subcontractors’ charges.

### *C.1.02 Compensation For Reimbursable Expenses*

- A. In addition to compensation for Basic Services, Owner shall pay Program Manager for only Reimbursable Expenses set forth in Appendix 1 to this Exhibit C at the applicable rates set forth therein, not to exceed \$\_\_\_\_\_.
- B. The amounts payable to Program Manager for Reimbursable Expenses will be the Program-related internal expenses actually incurred or allocated by Program Manager, plus all invoiced external Reimbursable Expenses allocable to the Program without markup.
- C. In order to be entitled to reimbursement for Program-related internal Reimbursable Expenses, Program Manager shall provide an itemized invoice of each expense and the date such Reimbursable Expense was incurred. In order to be entitled to reimbursement for external Reimbursable Expenses, Program Manager shall submit to Owner copies of third party invoices, bills or vouchers identifying third party costs.

### C.1.03 *Other Provisions Concerning Payment Invoicing*

- A. Subject to the limitations to Program Manager's compensation in Paragraph C.1.01, above, whenever Program Manager is entitled to compensation for the charges of its Program Subcontractors performing Basic Services, those charges shall be in accordance with the hourly rates set forth in Appendix 2 to Exhibit C and invoiced in the same manner as required by Paragraph C.1.04 of this Agreement.
- B. To the extent necessary to verify Program Manager's charges and upon Owner's timely request, Program Manager shall make copies of such records available to Owner at cost.

### C.1.04 *Invoicing*

- A. By the 15th day of each month, Program Manager shall submit a detailed invoice to Owner by electronic mail which identifies the specific tasks of the Services performed by Program Manager and/or its Program Subcontractors in the preceding month. Each invoice shall clearly set forth in single line items: a detailed description of each action performed by each person (with their corresponding billing rate) and the time required to perform such action to the nearest quarter of an hour. Progress reports shall accompany each invoice in MS Word format.
- B. If the Owner reasonably determines that Program Manager's invoice lacks sufficient detail or is inappropriately block billed, the Owner shall notify Program Manager promptly and Owner shall have no obligation to make payment on a rejected invoice until corrected. Program Manager shall revise the invoice in accordance with the requirements of this Agreement and resubmit to the Owner.
- C. No payments made under this Agreement shall be evidence of the proper performance of this Agreement, either in whole or in part, and no payment, including the final payment, shall be construed to be an acceptance of defective or improper services or relieve Program Manager of its responsibility to perform its services in a professional manner and in accordance with the terms of this Agreement.
- D. In the event of any dispute between the Owner and the Program Manager as to the percentage or quality of work completed or the absence of supporting documentation, the Owner shall not be obligated to pay the amount in dispute until a final resolution of the dispute and Program Manager shall continue to perform its duties and responsibilities under this Agreement, including, without limitation, the Services, during the pendency of such dispute.
- E. To the extent necessary to verify Program Manager's charges and upon Owner's timely request, Program Manager shall make copies of all relevant records available to Owner.

### C.1.05 *Value Engineering Additional Services*

- A. Owner shall compensate Program Manager for the value engineering Additional Services approved by Owner in accordance with A.1.02.A at an amount equal to the cumulative hours charged to the Program by Program Manager's employees times Standard Hourly

Rates set forth in Appendix 2 to Exhibit C for each applicable billing class for all value engineering Additional Services performed on the Program. Unless otherwise authorized by Owner in a written amendment to this Agreement, Program Manager's compensation for value engineering Additional Services is subject to a maximum allowance of \$\_\_\_\_\_.

- B. Prior to performing value engineering Additional Services for any Specific Project, Program Manager shall provide Owner with an estimated total compensation for such value engineering Additional Services and obtain Owner's prior written approval before the time-value of such value engineering Additional Services exceeds its written estimate.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Program Manager** dated \_\_\_\_\_, \_\_\_\_.

## **Reimbursable Expenses Schedule**

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Reimbursable expenses for Services performed on the date of the Agreement are:

Copies of 8 ½” x 11” documents: \$0.10 per black and white photocopy  
\$0.20 per color photocopy

Copies of 11” x 17” documents: \$0.20 per black and white photocopy  
\$0.25 per color photocopy

Drawing plots, blue lines,  
xerographic prints, extra-large prints: \$0.30 per square foot

Outsource Printing: Reimbursable at cost with the Owner’s prior approval

Auto Mileage: \$0.555 per mile

Parking fees: At cost

Meals: Reimbursable at cost with the Owner’s prior approval

Overnight Accommodations: Reimbursable at cost when out-of-state travel is required by the Owner in writing

Third party graphic services, such as printing charges, plotting, reproduction, and binding shall be reimbursable at cost

Rented equipment, title research, courier and express services shall be reimbursable at cost

Expenses for telephone (including, without limitation, long distance and mobile charges), facsimile, data, internet, and computer charges are not Reimbursable Expenses.

This is **Appendix 2 to EXHIBIT C**, consisting of 2 page, referred to in and part of the **Agreement between Owner and Program Manager** dated \_\_\_\_\_, \_\_\_\_.

**Standard Hourly Rates Schedule**

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A. Standard Hourly Rates

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to Program Manager’s specific team members and each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

B. Hourly rates by team member:

Team member name	Hourly Rate

C. Hourly rates by job title for subsequent team members:

Job Title	Hourly Rate


This is **EXHIBIT D**, consisting of 2 page, referred to in and part of the **Agreement between Owner and Program Manager** dated \_\_\_\_\_, \_\_\_\_.

## **Key Persons**

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### *D.1.01 Key Persons*

- A. Program Manager hereby agrees to assign the key persons listed below to the Program (“Key Persons”):
- a. Name, Title, Phone, Address, E-Mail
    - i. Specific description of tasks to be performed
  - b. Name, Title, Phone, Address, E-Mail
    - i. Specific description of tasks to be performed
  - c. Name, Title, Phone, Address, E-Mail
    - i. Specific description of tasks to be performed
  - d. Name, Title, Phone, Address, E-Mail
    - i. Specific description of tasks to be performed
  - e. Etc . . .
- B. Program Manager shall cause Key Persons to devote sufficient time to oversee the prosecution and completion of the Program in accordance with this Agreement as a Basic Service. The Key Persons shall be responsible for performing their respective tasks and Construction Manager shall not substitute the Key Persons performance of such tasks without the prior written approval of the Owner, which approval may be withheld in the Owner’s sole discretion. Program Manager shall be responsible, out of Program Manager’s own funds, for all costs and expenses related to the employment of such Key Persons. All persons employed by Program Manager or its Program Subcontractors, including, without limitation, Key Persons, shall be exclusively controlled by, and shall be the employees of, Program Manager (or, as applicable, a Program Subcontractor) and not of Owner, and Owner shall have no liability, responsibility or authority with respect thereto.
- C. Program Manager shall replace any person providing Services, including, without limitation, Key Persons, upon Owner’s request, which may be made at any time and for any reason.
- D. Program Manager shall not replace Key Persons except with Owner’s express prior written approval, which may be withheld by Owner in its sole discretion. In the event Owner or Program Manager requests the replacement of a Key Person, Program Manager shall immediately propose a new person to replace such Key Person. Owner shall have the

opportunity to review the résumé and interview such proposed new person. Owner shall have the right to disapprove the appointment of any new proposed new Key Person in Owner's sole discretion. If Owner approves the replacement of a Key Person, this Exhibit D shall be amended to reflect such change.

This is **EXHIBIT G**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Program Manager** dated \_\_\_\_\_, \_\_\_\_\_.

## **Insurance**

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### G.1.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Program Manager:

- |  |             |
|--|-------------|
| a. Workers' Compensation:  | Statutory   |
| b. Employer's Liability:   |             |
| 1) Each Accident   | \$100,000   |
| 2) Disease, Policy Limit   | \$500,000   |
| 3) Disease, Each Employee  | \$100,000   |
| c. General Liability:  |             |
| 1) Each Occurrence (Bodily Injury and Property Damage)                               | \$1,000,000 |
| 2) Annual Aggregate  | \$2,000,000 |
| 3) Products and Completed Operations (per Project aggregate)                         | \$2,000,000 |
| 4) Personal and Advertising Injury   | \$1,000,000 |
| d. Excess or Umbrella Liability:   |             |
| 1) Each Occurrence   | \$2,000,000 |
| 2) General Aggregate   | \$2,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): |             |
| Each Accident  | \$1,000,000 |
| f. Professional Liability:   |             |
| 1) Each Claim Made   | \$5,000,000 |
| 2) Annual Aggregate  | \$5,000,000 |

2. By Program Manager's Program Subcontractors:

- |                          |           |
|--------------------------|-----------|
| a. Workers' Compensation | Statutory |
| b. Employer's Liability: |           |
| 1) Each Accident         | \$100,000 |

- 2) Disease, Policy Limit \$500,000
- 3) Disease, Each Employee \$100,000

c. General Liability:

- 1) Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
- 2) Annual Aggregate \$2,000,000
- 3) Products and Completed Operations (per Project aggregate) \$2,000,000
- 4) Personal and Advertising Injury \$1,000,000

d. Excess or Umbrella Liability:

- 1) Each Occurrence \$2,000,000
- 2) General Aggregate \$2,000,000

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

- Each Accident \$1,000,000

f. Professional Liability:

- 1) Each Claim Made \$1,000,000
- 2) Annual Aggregate \$1,000,000

3. By Owner:

- a. Workers' Compensation: Statutory

b. General Liability:

- 1) Each Occurrence (Bodily Injury and Property Damage) \$1,000,000
- 2) Aggregate: \$1,000,000

c. Excess or Umbrella Liability:

- 1) Each Occurrence \$4,000,000
- 2) Aggregate \$4,000,000

B. Prior to commencement of the performance of Basic Services, Program Manager shall furnish to Owner a certificate of insurance evidencing all required coverage in at least the limits required herein, naming the City of Reading, its elected officials, agents, and employees as Additional Insured for "ongoing operations" and "products and completed operations" for a period of three (3) years after final payment under the General and Professional Liability Coverages. Coverage should be provided by ISO Endorsements CG20 10 07 04 and CG2037 07 04 or their equivalent. Program Manager's Commercial General Liability and Umbrella/Excess Policy shall be Primary to and will not require contribution from any other insurance under which the Additional Insured is a Named Insured. To the fullest extent permitted by applicable state law, all policies shall contain a Waiver of Subrogation Clause. The Certificate shall note the Project and provide that no policies may be cancelled without thirty (30) days advance written notice to Owner. Such

certificate shall be issued to: City of Reading, Attn: Risk and Safety Coordinator, 815 Washington Street, Reading, PA 19601. All insurance policies shall be in effect with companies holding an A.M. Best rating of "A-" or better or financial rating of IX or better with the A.M. Best's Company Key Rating, Guide Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Said policies shall remain in full force and effect until the expiration of the terms of the Agreement or until completion of all duties to be performed hereunder by Program Manager, whichever shall occur later.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Program Manager** dated \_\_\_\_\_, \_\_\_\_\_.

## **Dispute Resolution**

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### *H.1.08 Dispute Resolution*

- A. Prior to instituting litigation, Owner and Program Manager shall enter non-binding mediation in Berks County, Pennsylvania. The mediation shall be administered by the Berks County Bar Association and governed by its mediation rules in effect as of the date of the mediation filed. Either Owner or Program Manager may request mediation of any dispute between the parties.
- B. In the event that the Owner and Program Manager do not agree upon a mediator within ten (10) days of the request for mediation, either party may request that the Berks County Bar Association appoint a mediator.
- C. If Owner and Program Manager are unable to resolve the dispute in mediation after sixty (60) days from the appointment of the mediator, all disputes between Owner and Program Manager shall be resolved in a non-jury trial and shall be brought in the Court of Common Pleas of Berks County, Pennsylvania (the "Court") and not elsewhere. The Court shall be the exclusive and only jurisdiction for any and all disputes between Owner and Program Manager. Program Manager hereby irrevocably submits to the personal jurisdiction and venue of the Court. If Program Manager proceeds with a claim against Owner elsewhere or removes the claim to federal court, Owner shall be entitled to attorneys' fees incurred to have the claim transferred.

## Attachment 3: Supplementary Proposal Forms

## NON-COLLUSION AFFIDAVIT

### INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract pursuant to a proposal. According to the Pennsylvania Antbid-Rigging Act, 62 Pa. C.S.A § 4501, et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with proposals, such as the Proposal submitted by the Short-Listed Proposer.
2. This Non-Collusion Affidavit must be executed by a member officer or employee of the Short-Listed Proposer who is authorized to legally bind the Short-Listed Proposer. In addition, a separate Non-Collusion Affidavit must be executed by a member officer or employee authorized to bind the each subcontractor listed in the Proposal.
3. Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should carefully examine it before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Short-Listed Proposer with responsibilities for the preparation, approval or submission of the Proposal.
4. If the Proposal is submitted by a joint venture, each party to the venture must be identified in the Proposal documents, and a Non-Collusion Affidavit must be submitted separately on behalf of each party.
5. The term “complementary proposal” as used in the Non-Collusion Affidavit has the meaning commonly associated with that term in the RFP process, and includes the knowing submission of a proposal higher than the proposal of another firm, any intentionally high or noncompetitive proposal, and any form of proposal submitted for the purpose of giving a false appearance of competition.
6. Failure to file a Non-Collusion Affidavit in compliance with these instructions will result in disqualification of the Proposal.

NON-COLLUSION AFFIDAVIT

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

(1) He/She is \_\_\_\_\_ of \_\_\_\_\_, the Proposer, or subcontractor there to, that has submitted the attached Proposal (“Proposer”);

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm or person to submit a collusive or sham proposal or complementary proposal in connection with the Contract for which the attached Proposal is submitted or to refrain from submitting in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication of conference with any other Proposer, firm or person to fix the price or prices in the attached Proposal or of any other Proposer, or to fix any overhead, profit or cost element of the prices in the Proposal or the price of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Reading or any person interested in the proposed Contract;

(5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant; and,

(6) Neither the said Proposer nor any of its officers, partners, owners, agents or parties in interest, have any interest, present or prospective, that can be reasonably construed to result in a conflict of interest between them and the City of Reading, which the Proposer will be required to perform.

I state that \_\_\_\_\_ understands

(Name of Proposer)

and acknowledges that the above representations are material and important, and will be relied on by the City of Reading in awarding the Contract(s) for which the Proposal is submitted. I

understand and the Proposer understands that any misstatement in this Non-Collusion Affidavit is and shall be treated as fraudulent concealment from the City of Reading of the true facts relating to the submission of proposals for this Contract.

Proposer: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

Title: \_\_\_\_\_  
President or Vice President

Attest: \_\_\_\_\_

SWORN TO AND SUBSCRIBED

BEFORE ME THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_, 20\_\_

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

CERTIFICATION OF NON-INDEBTEDNESS TO THE CITY OF READING

The Proposer hereby certifies and represents that the Proposer and the Proposer's parent company(ies) and subsidiary(ies) are not currently indebted to the City, and will not at any time during the term of the Proposed Contract, if awarded, (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, the Proposer acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to Proposer and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Contract for default (in which case Proposer shall be liable for all excess costs and other damages resulting from the termination).

Proposer: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

Title: \_\_\_\_\_  
President or Vice President

Attest: \_\_\_\_\_

NON DISCRIMINATION STATEMENT

The undersigned hereby certifies that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, familial status, or national origin. The undersigned shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, familial status, or national origin.

Proposer: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

Title: \_\_\_\_\_  
President or Vice President

Attest: \_\_\_\_\_