

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 19 day of July A. D. 20 12. Witness my hand and seal of the said City this 19 day of July A. D. 20 12.

BILL NO. 112 - 2012

AN ORDINANCE

[Signature]
CITY CLERK

AN ORDINANCE OF THE CITY OF READING, BERKS COUNTY, PENNSYLVANIA, AUTHORIZING THE CITY OF READING, PURSUANT TO THE PROVISIONS OF THE SECOND CLASS CITY CODE AND THE INTERGOVERNMENTAL COOPERATION LAW TO ENTER INTO AN AGREEMENT WITH MUHLENBERG TOWNSHIP AND MUHLENBERG TOWNSHIP AUTHORITY FOR COOPERATION WITH REGARD TO TRANSPORTATION, TREATMENT AND DISPOSAL OF SEWAGE AS DESIGNATED IN THE INTERGOVERNMENTAL COOPERATION AGREEMENT.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the City of Reading, County of Berks, Commonwealth of Pennsylvania, and it is hereby **ENACTED AND ORDAINED** by the authority of the same as follows:

**INTERMUNICIPAL AGREEMENT
FOR SEWER TRANSPORTATION AND TREATMENT SERVICES WITH
MUHLENBERG TOWNSHIP AND MUHLENBERG AUTHORITY**

SECTION 1. Background.

- A. Pursuant to the Second Class City Code ("Second Class City Code"), 53 P.S. § 35102, *et seq.*, as amended, and the Intergovernmental Cooperation Act ("Intergovernmental Cooperation Act"), Act of December 19, 1996, P.L. 1158, 53 Pa. C.S.A., § 2301, *et seq.*, the City of Reading may enter into agreements with other local governments for joint performance of governmental powers, duties and functions, including, without limitation, the collection and treatment of sewage.
- B. The City of Reading ("City") entered an agreement with Muhlenberg Township ("Township") and the Muhlenberg Township Authority ("Authority") for the transportation, treatment and disposal of Sewage collected in the Township dated May 1, 1986 ("1986 Agreement"). The City of Reading entered into a Consent Decree with the United States Environmental Protection Agency ("EPA") and the Pennsylvania Department of Environmental Protection ("DEP") which was filed on November 7, 2005 with the United States District Court for the Eastern District of Pennsylvania, which Consent Decree applies additional regulatory obligations on the City including greater demands for treatment and improvements in the operation of the City's Sewage System. The City desires the costs of such additional regulatory obligations to be shared on a connection and volumetric basis with municipalities whose Sewage Systems connect to the City of Reading's Sewage System and whose Sewage is treated by the City. The City further seeks the assistance of municipalities whose sewage the City treats in complying with the additional regulatory obligations. The alterations to the treatment facilities and other changes in operations mandated by the Consent Decree require

replacement of the 1986 Agreement between the Township, City and Authority with a new agreement.

- C. The City further desires to enter into an agreement with the Township and Authority to establish their respective duties and responsibilities with regards to the transportation, treatment and disposal of sewage pursuant to an Intergovernmental Cooperation Agreement ("Agreement") which is attached hereto and made a part hereof as Exhibit "A".

SECTION 2. Authority to Enter Agreement.

The Mayor of the City of Reading is hereby authorized and directed to execute and deliver the Agreement, and to execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry out the Agreement and the transactions to be effected under the Agreement.

SECTION 3. Specific Findings.

As required by the Intergovernmental Cooperation Act, the following matters are specifically found and determined:

- A. The conditions of the agreement are set forth in the Agreement.
- B. The term of the Agreement, as provided in Section 2 thereof, continues in effect until December 31, 2052, subject to automatic ten (10) year renewals.
- C. The purpose and objectives of the Agreement are for the transportation, treatment and disposal of Muhlenberg Township sewage by the City of Reading in accord with a Consent Decree entered into by the City with the EPA and DEP.
- D. The financial terms of the Agreement are set forth in Section 9 of the Agreement.
- E. A Municipal Advisory Committee will be created to serve in an advisory capacity as described in Section 6B of the Agreement.
- F. All property shall be acquired, managed, or disposed of pursuant to the Agreement in accordance with the terms of the Agreement. No acquisition of real property or real estate is authorized.
- G. No new entity has been created by the Agreement that would require employees or insurance therefor.

SECTION 4. Miscellaneous.

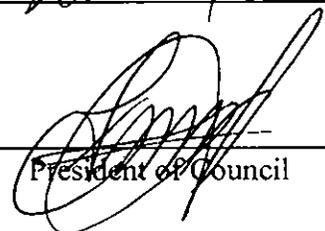
- A. Severability. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not

affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the within Ordinance. The City hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or word that may be declared illegal, unconstitutional or invalid.

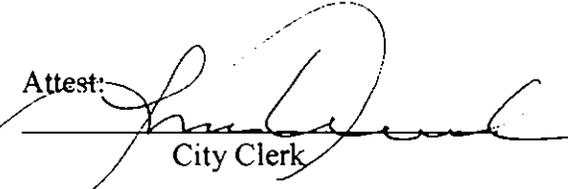
SECTION 5. Effective

A. This Ordinance shall be effective ten (10) days after passage.

Enacted Nov 19, 2012



President of Council

Attest: 

City Clerk

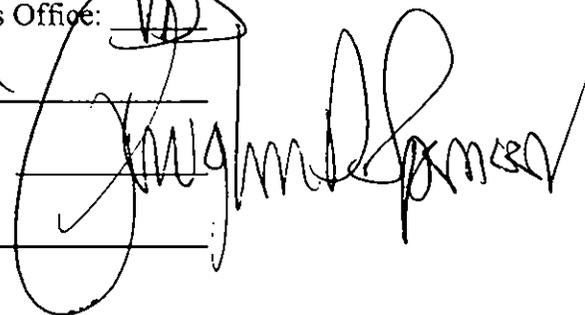
(LAW DEPT)

Submitted to Mayor: 

Date: 12/26/12

Received by Mayor's Office: 

Date: 11/20/12

Approved by Mayor: 

Date: 11/21/12

Vetoed by Mayor: _____

Date: _____

EXHIBIT "A"

INTER-MUNICIPAL AGREEMENT

**CITY OF READING, PARTY OF THE FIRST PART
AND
MUHLENBERG TOWNSHIP AND MUHLENBERG TOWNSHIP AUTHORITY, PARTIES
OF THE SECOND PART**

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- EXHIBIT "I": ANNUAL REPORT FORMS

THIS INTER-MUNICIPAL AGREEMENT (the "**Agreement**"), dated the _____ day of _____, 2012, ("**Effective Date**") by and among the CITY OF READING, Berks County, Pennsylvania, a Municipal Corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called "**City**") and MUHLENBERG TOWNSHIP AUTHORITY, organized and existing under the laws of the Commonwealth of Pennsylvania, (hereinafter called "**Authority**"), and the MUHLENBERG TOWNSHIP, organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called "**Township**"). For purposes of this Agreement, the Authority and Township shall collectively be referred to herein as the "**Municipality**" and the City, Authority and Township shall collectively be referred to herein as the "**Parties**".

BACKGROUND

A. WHEREAS, the Parties entered into an agreement(s), dated May 1, 1986, as amended, wherein, inter alia, it provided for the transportation, treatment, and disposal of Sewage collected in the Township by and through the Municipality's Sewage collection and transportation system to the City's Sewage mains for further transportation and treatment at the City's Sewage Treatment Plant (the "**Prior Agreements**"); and

B. WHEREAS, conditions, economically and technically, have drastically changed since the Prior Agreements were executed; and

C. WHEREAS, the City entered into a Consent Decree with the United States Environmental Protection Agency ("**EPA**") and the Pennsylvania Department of Environmental Protection ("**DEP**"), which was filed on November 7, 2005, with the United States District Court for the Eastern District of Pennsylvania, Docket Number 2:04-cv-05696 and which is attached hereto as Exhibit "A" ("**Consent Decree**"); and

D. WHEREAS, evolving regulatory requirements and obligations imposed on the City continue to demand greater degrees of treatment and improvement in the operation of the City's Sewage System, including, but not limited to, reducing infiltration of stormwater into the City's Sewage System, constructing structural upgrades, and implementing additional treatment processes; and

E. WHEREAS, such greater degrees of treatment and improvement require substantially more operational and capital expenditures by the City than were originally contemplated by the Parties when the Prior Agreements were executed; and

F. WHEREAS, wherever reasonably quantifiable, with the exception of treatment of Industrial or Commercial Sewage, the most equitable method of charging for the Sewage service rendered by the City is on a connection and volumetric basis; and

G. WHEREAS, the cost of transportation and treatment of Sewage collected from connections outside of the City should not be subsidized by the City or its residents and the cost of transportation and treatment of Sewage collected from the City or its residents should not be subsidized by the Municipality or its residents, except as expressly set forth herein; and

H. WHEREAS, the Consent Decree imposes requirements on the Parties which include, but are not limited to, reporting data, limiting concentrations of pollutants in Sewage influent, and enforcing civil penalties or enjoining the discharge from Industrial or Commercial Users with Sewage exceeding influent limitations established by the City, Municipality, or Applicable Laws; and

I. WHEREAS, the City requires the assistance and cooperation of the Municipality to perform the obligations set forth under Applicable Laws in order to prevent a potential ban or moratorium on the treatment of additional Sewage connections to the Sewage Treatment Plant; and

J. WHEREAS, the Parties desire to enter into this Agreement to set forth the Parties' respective obligations for the treatment of Sewage emanating from certain areas of the Municipality and as such the Parties agree that this Agreement shall supersede and replace the Prior Agreements.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the Parties, intending to be legally bound hereby, agree to and with each other as follows:

SECTION 1. Sewage Service Area.

Subject to the terms of this Agreement and the Municipality's Reserved Capacity, the City hereby agrees to accept Sewage originating from the portions of the Municipality marked in Exhibit "B" attached hereto and transported through the Municipality's Sewage Transportation System before entering the City's Sewage System. To the extent the City's Sewage System is capable and permitted to transport and treat such Sewage, the Municipality agrees that it will convey all Sewage originating from the portions of the Municipality marked in Exhibit "B" to the City's Sewage System for treatment except as specifically provided in this Agreement. The City shall have no obligation to accept Sewage from the Municipality except as specifically provided in this Agreement. The Sewage from the Municipality shall be transported by the Municipality to the points of connection with the City's Sewage System as set forth in Exhibit "C".

SECTION 2. Term.

This Agreement amends, supersedes and supplants the Prior Agreements, and shall remain in effect from the date of execution hereof through December 31, 2052 (the "Initial Term"); provided, however, as set forth below in this SECTION 2, the City shall have the right to renegotiate specific terms of this Agreement whenever Applicable Laws require the City to incur additional costs concerning the operation of City's Sewage System. This Agreement shall be automatically extended for additional periods of ten (10) years, unless any party, by serving written notice on the other at least twelve (12) months prior to the completion of the Initial Term or any additional ten (10) year renewal term, requests that the Agreement be revised, rescinded or abrogated.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall be automatically extended, under the same terms and conditions as stated herein, to the maturity date

of any debt incurred by City to finance renovations, improvements or additions to City's Sewage System and the Municipality shall not have the right to terminate this Agreement prior to the maturity date of said debt.

Whenever Applicable Laws require the expenditure of additional funds concerning the operation of City's Sewage System, which were not foreseen by the City, then specific terms of this Agreement, as identified by the City in its reasonable discretion, may be renegotiated upon written notice from City, with respect to the payment by Municipality of any such additional costs incurred by City, including, without limitation, additional costs relating to the Operating Costs of the Sewage Treatment Plant, Operating Costs of the Sewage Transportation System, Upgrading and Improvement Costs or Debt Service that are incurred by the City. Municipality and City shall each negotiate in good faith. All terms and conditions of this Agreement shall remain in full force and effect unless and until a modification to this Agreement is executed by the Parties.

SECTION 3. Definitions.

The terms defined in this SECTION 3, whenever used for reference in this Agreement, shall have the respective meanings indicated unless a different meaning clearly appears from the context.

i. **"Accredited Laboratory"** shall mean an analytical laboratory accredited by the DEP or EPA to evaluate and analyze environmental media for the relevant parameters, chemicals and substances.

ii. **"Act 537 Plan"** shall mean the current, official sewage facilities plan for the Municipality required pursuant to 35 P.S. § 705.1 et seq., and the regulations promulgated thereunder, as they may be amended from time to time.

iii. **"Applicable Laws"** shall include, without limitation, all applicable local, state and federal laws, rules, regulations, codes, published guidance documents from government agencies, orders, decrees, ordinances (including, but not limited to, the City Ordinance) and all provisions of any permits, approvals, variances, or waivers from permits or approvals, applicable in any jurisdiction associated with the performance of this Agreement, including, but not limited to, the City and Municipality pretreatment programs, the Consent Decree and/or NPDES Permit.

iv. **"Best Management Practices" or "BMPs"** shall mean the schedule of activities, prohibition of practices, maintenance procedures, and other management practices to implement the requirements listed in 40 CFR § 403.5(a)(1) and (b), as it may be amended from time to time. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

v. **"BOD₅"** (Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade expressed in milligrams per liter ("**mg/L**") as determined by an Accredited Laboratory.

vi. **"City Ordinance"** shall mean the Sewage ordinance established by the City as such Sewage ordinance may be amended by the City from time to time. A true and correct copy of the current City Ordinance is attached hereto in Exhibit "D".

vii. **"Consent Decree"** shall have the meaning set forth in PARAGRAPH C in the Background section of this Agreement.

viii. **"Claims"** shall have the meaning set forth in SECTION 14.

ix. **"Contributing Municipality"** shall mean a political subdivision or authority (or a political subdivision's designated municipal authority), excluding the City, which discharges Sewage to the City's Sewage System.

x. **"Daily Volume Exceedance"** shall mean a cumulative discharge of Sewage from the Municipality's Sewage Transportation System for treatment at the City's Sewage Treatment Plant, measured over a twenty-four (24) hour period, that exceeds the Municipality's Reserved Capacity (inclusive of the daily peak factor identified in SECTION 4(A)).

xi. **"Debt Service"** shall mean all monies required for the City to make payments due on principal, interest, applicable letter of credit fees, applicable remarketing fees and sinking fund requirements on all outstanding loans, notes or bonds associated with the operation, maintenance, and Upgrading and Improvement Costs of the City Sewage System on the terms of such loans, notes or bonds. Debt Service shall also include all other reasonable expenses incurred by the City, which are associated with such loans, notes or bonds.

xii. **"Debt Service Adjustment"** shall mean the Debt Service Paid during the latest completed calendar year minus the Debt Service Projection, which was estimated for such calendar year (which may result in a negative adjustment to the Debt Service Charge).

xiii. **"Debt Service Charge"** shall have the meaning set forth in SECTION 9(D).

xiv. **"Debt Service Paid"** shall mean the total Debt Service paid by City during a calendar year.

xv. **"Debt Service Projection"** shall mean the estimated Debt Service due to be paid by the City during a calendar year as determined by the City in its reasonable discretion and accounting assumptions.

xvi. **"DEP"** shall have the meaning set forth in PARAGRAPH C in the Background section of this Agreement.

xvii. **"Domestic Sewage"** shall have the same meaning as set forth in Part 503.9 of Title 40 of the Code of Federal Regulations, as it may be amended from time to time.

xviii. **"EDU"** shall mean the equivalent dwelling unit Sewage discharged to the City's Sewage System, as calculated in SECTION 9(I).

xix. **"EPA"** shall have the meaning set forth in PARAGRAPH C in the Background section of this Agreement.

xx. **"Funding Notice"** shall have the meaning set forth in SECTION 6(B)v.

xxi. **"Hydraulic Capacity Report"** shall have the meaning set forth in SECTION 4(C)ii.

xxii. **"I/I"** shall mean infiltration/inflow of stormwater in the Sewage Transportation System.

xxiii. **"Impact Transfer"** shall have the meaning set forth in SECTION 9(K).

xxiv. **"Industrial or Commercial User(s)"** shall mean any source of discharge to the Municipality's Sewage Transportation System from any non-residential source.

xxv. **"Industrial or Commercial Sewage"** shall mean any non-Domestic Sewage.

xxvi. **"Industrial or Commercial Sewage Surcharge"** shall have the meaning set forth in SECTION 9(G).

xxvii. **"Industrial or Commercial Sewage Surcharge Formula"** shall have the meaning set forth in SECTION 9(G).

xxviii. **"Infrastructure Contingency Charge"** shall have the meaning set forth in SECTION 9(E).

xxix. **"Infrastructure Contingency Fund"** shall mean a fund established by the City for the purpose of funding unforeseen and/or emergency repair, maintenance or capital improvements to the infrastructure of the Sewage Treatment Plant or the City's Sewage System and funded through the payment of the Infrastructure Contingency Charge.

xxx. **"Initial Term"** shall have the meaning set forth in SECTION 2.

xxxi. **"Monthly Volume Exceedance"** shall mean an average daily cumulative discharge of Sewage from the Municipality's Sewage Transportation System for treatment at the City's Sewage Treatment Plant, measured over a calendar month, that exceeds the Municipality's Reserved Capacity.

xxxii. **"Multi-Family Connection"** shall mean any building or facility where more than one family is permitted to reside but does not provide for a separate lateral connection and/or meter to a Sewage Transportation System for each individual familial unit in such building or facility.

xxxiii. **"Municipal Advisory Committee"** shall mean a committee of seven persons appointed annually; the five political subdivision with the highest Reserved Capacity (including the City) shall each appoint one member, and two members shall be collectively appointed by mutual agreement from all other political subdivisions discharging Sewage to the City's Sewage System, organized and existing for the purpose of advising and consulting with the City regarding the operation, maintenance, capital improvements and borrowing related to the City's Sewage System. Each member of the Municipal Advisory Committee shall serve at the will and pleasure of the political subdivision or subdivisions which appointed such member. A representative, appointed by the Mayor of the City of Reading, shall serve as the City's committee member on the Municipal Advisory Committee.

xxxiv. **"NPDES Permit"** shall mean the currently effective City NPDES Permit No. 0026549 authorizing discharge of certain pollutants and setting forth requirements regarding the operation and maintenance of the City's Sewage System as well as effective implementation of a Pretreatment program, including any subsequent modification, re-issuance, replacement or successor to such permit.

xxxv. **"Operating Costs of the Sewage Treatment Plant"** shall include, without limitation, expenditures for appropriate direct and indirect supplies and chemicals, heat, light, power, insurance, laboratory sampling, ordinary repairs and normal maintenance, Upgrading and Improvement Costs of the Sewage Treatment Plant, salaries and wages, including, without limitation, normal fringe benefits and taxes necessary to operate City's

Sewage Treatment Plant and which are consistent with generally accepted accounting principles; however, such costs shall be reduced by funds collected by the City by way of the Industrial Commercial Sewage Surcharge or federal or state subsidies for the operation of the Sewage Treatment Plant and does not include (a) Debt Service, (b) depreciation or (c) any costs paid by way of the Infrastructure Contingency Fund. Attached hereto and made a part hereof and marked Exhibit "E" is a list of the line items that will be included in the calculation of Operating Costs of the Sewage Treatment Plant together with any items that should be included therein in accordance with generally accepted accounting principles; provided, however, the list of Operating Costs of the Sewage Treatment Plant set forth in Exhibit "E" may later be amended by mutual agreement signed by the Parties in accordance with SECTION 23(N).

xxxvi. **"Operating Costs of the Sewage Treatment Plant Adjustment"** shall mean the Operating Costs of the Sewage Treatment Plant Paid during the latest completed calendar year for which an audited financial statement exists minus the Operating Costs of the Sewage Treatment Plant Projection for such calendar year (which may result in a negative adjustment to the Treatment Unit Rate).

xxxvii. **"Operating Costs of the Sewage Treatment Plant Paid"** shall mean the total Operating Costs of the Sewage Treatment Plant paid by the City during a calendar year.

xxxviii. **"Operating Costs of the Sewage Treatment Plant Projection"** shall mean the Operating Costs of the Sewage Treatment Plant to be paid by City during a calendar year, as estimated by the City in its reasonable discretion and as presented in a operational budget, as provided in SECTION 9(F).

xxxix. **"Operating Costs of the Sewage Transportation System"** shall include, without limitation, expenditures for appropriate direct and indirect supplies and chemicals, heat, light, power, insurance, laboratory sampling, meter reading, ordinary repairs and normal maintenance, Upgrading and Improvement Costs of the City's Sewage System, salaries and wages, including, without limitation, normal fringe benefits and taxes necessary to operate City's Sewage System and which are consistent with generally accepted accounting principles; however, such costs shall be reduced by funds collected by the City by way of the Industrial Commercial Sewage Surcharge or federal or state subsidies for the operation of the Sewage Transportation System and does not include (a) Debt Service, (b) depreciation or (c) any costs paid by way of the Infrastructure Contingency Fund. Attached hereto and made a part hereof and marked Exhibit "E" is a list of the line items that will be included in the calculation of Operating Costs of the Sewage Transportation System together with any other items that should be included therein in accordance with generally accepted accounting principles; provided, however, the list of Operating Costs of the Sewage Transportation System set forth in Exhibit "E" may later be amended by mutual agreement signed by the Parties in accordance with SECTION 23(N).

xl. **"Operating Costs of the Sewage Transportation System Adjustment"** shall mean the Operating Costs of the Sewage Transportation System Paid during

the latest completed calendar year for which an audited financial statement exists minus the Operating Costs of the Sewage Transportation System Projection for such calendar year (which may result in a negative adjustment to the Transportation Unit Rate).

xli. **“Operating Costs of the Sewage Transportation System Paid”** shall mean the total Operating Costs of the Sewage Transportation System paid by the City during a calendar year less ten percent (10%) of the Operating Costs of the Sewage Transportation System attributed to the salaries and fringe benefits of staff employed by the City during such calendar year for operating the Sewage Transportation System.

xlii. **“Operating Costs of the Sewage Transportation System Projection”** shall mean the Operating Costs of the Sewage Transportation System to be paid by City during a calendar year, less ten percent (10%) of the Operating Costs of the Sewage Transportation System budgeted for the salaries and fringe benefits of staff employed by the City during such calendar year for operating the Sewage Transportation System, as estimated by the City in its reasonable discretion and as presented in an operational budget, as provided in SECTION 9(F).

xliii. **“Person”** shall mean any individual, firm, company, association, society, corporation or group.

xliv. **“pH”** shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution, as determined by a DEP and/or EPA approved test method.

xlvi. **“Pretreatment”** shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into the City’s Sewage System, as provided in Part 403 of Title 40 of the Code of Federal Regulations, as it may be amended from time to time.

xlvii. **“Prior Agreements”** shall have the meaning set forth in PARAGRAPH B in the Background section of this Agreement.

xlviii. **“Reserved Capacity”** shall have the meaning set forth in SECTION 4(A).

xlix. **“Reserved Capacity Charge”** shall have the meaning set forth in SECTION 4(G).

l. **“Sewage”** shall mean the total volume of water and water-carried wastes from I/I, residential, Industrial or Commercial Users and other sources of discharge to the Sewage System.

l. **“Sewage System”** shall mean all collective components of the City’s Sewage Transportation System and Sewage Treatment Plant.

li. **“Sewage Transportation Charge”** shall have the meaning set forth in SECTION 9(B).

lii. **“Sewage Transportation System”** shall mean all facilities, piping, pump stations and equipment used for collecting, conveying, transporting or storing Sewage for treatment at the Sewage Treatment Plant, and any extensions or additions thereto.

liii. **“Sewage Treatment Plant”** shall mean an arrangement of devices and structures used by City for treating and disposing of Sewage, presently existing and all future improvements and additions thereto.

liv. **“Sewage Treatment Charge”** shall have the meaning set forth in SECTION 9(A).

lv. **“Sewer Enterprise Fund”** shall mean the fund established by the City to (a) receive the Total Charge, except that the Infrastructure Contingency Charge shall thereafter be transferred to the Infrastructure Contingency Fund and (b) make payments for the operation of the City’s Sewage System.

lvi. **“Total Aggregate Reserved Capacity”** shall mean the aggregate sum of the Reserved Capacities allocated the political subdivisions contributing Sewage to the Sewage Treatment Plant, as identified in Exhibit “F”.

lvii. **“Total Charge”** shall mean the amount due and payable to City each quarter by Municipality for all services provided under this Agreement including, but not limited to, the Reserved Capacity Charge, the Sewage Treatment Charge, the Sewage Transportation Charge, the Debt Service Charge, the Infrastructure Contingency Charge, the Industrial or Commercial Sewage Surcharge, the Volume Exceedance Surcharge and any other charge paid by the Municipality to the City and authorized by this Agreement or Applicable Laws.

lviii. **“Total Solids”** shall mean solids that either float on the surface of, or are in suspension or dissolved in water, Sewage or other liquids, and which are determined by an Accredited Laboratory.

lix. **“Total Dissolved Solids”** shall mean solids that are dissolved and are in solution in the Sewage measured in parts per million as determined by an Accredited Laboratory.

lx. **“Total Suspended Solids”** shall mean solids suspended in Sewage measured in mg/L, which remain after settlement and mostly colloidal in character as determined by an Accredited Laboratory.

lxii. **“Transportation Unit Rate”** shall have the meaning set forth in SECTION 9(C)ii.

lxiii. **“Treatment Unit Rate”** shall have the meaning set forth in SECTION 9(C)i.

lxiii. **“Unit Rates”** shall mean the Treatment Unit Rate and Transportation Unit Rate.

lxiv. **“Upgrading and Improvement Costs”** shall include, without limitation, the cost of labor, material, equipment, printing, underwriting, and all other related costs used to improve the City’s Sewage System operations to conform with DEP and/or EPA Sewage handling, operation or treatment guidance and requirements; however, such costs shall not include Debt Service and shall be reduced by any federal or state subsidies the City receives for upgrading or improving the City’s Sewage Treatment Plant and the amount of any interest earned on sewer bond proceeds.

lxv. **“Volume Exceedance”** shall mean a Daily Volume Exceedance and/or Monthly Volume Exceedance.

lxvi. **“Volume Exceedance Surcharge”** shall have the meaning set forth in SECTION 4(C).

SECTION 4. Reserved Capacity and Reserved Capacity Charge; Additional Connections.

(A) **Reserved Capacity.**

Subject to the terms of this Agreement, the City agrees to accept for treatment from the Municipality a maximum flow of Sewage, I/I, and any other associated flow from the areas set forth on Exhibit “B”, based on the average number of gallons per day over a calendar month, as set forth in Exhibit “F”, with a daily peak factor not to exceed one and five tenths (1.5) times the permitted average number of gallons per day (the **“Reserved Capacity”**). The Municipality’s Reserved Capacity may be increased or modified only as set forth in this Agreement. The Municipality cannot decrease its Reserved Capacity without the prior written consent from the City, which may be given or withheld by the City as determined by the City in its sole discretion. The Municipality’s Reserved Capacity is reserved for the exclusive use of the Municipality or its successors and shall not be conveyed or assigned to any other Contributing Municipality, except with the prior express written approval from the City. The Municipality shall be entitled to send for treatment at the Sewage Treatment Plant flows equal to the entire Reserved Capacity immediately upon the full execution of this Agreement.

(B) Modifications to the Reserved Capacity.

The Municipality's Reserved Capacity shall be increased by the additional permitted flow resulting from any additional connections to the City's Sewage System, which has been approved by the City consistent with SECTION 4(D), SECTION 4(E) or SECTION 4(F), after payment of the Reserved Capacity Charge to the City.

When a change to any Contributing Municipality's Reserved Capacity is approved by the City, Exhibit "F" shall be amended by the City accordingly. The amended Exhibit "F" shall be incorporated in this Agreement immediately upon written notice to the Municipality by the City of such amendment. Changes to the Debt Service Charge resulting from an amendment to Exhibit "F" shall occur in accordance with SECTION 9(D).

(C) Excess Discharges.

Notwithstanding anything to the contrary in this Agreement and without limiting the City's rights under this Agreement or Applicable Laws, it shall be a violation of this Agreement for a Volume Exceedance to occur. A Volume Exceedance shall be determined by comparing the cumulative metered volume of Sewage discharged from the Municipality to the City's Sewage System over the applicable time period.

The City shall notify the Municipality upon the City's discovery of a Volume Exceedance and the Municipality shall immediately take reasonable efforts to reduce the volume of discharge to the City's Sewage System, including investigating and taking action at the source of the excess flow. The Municipality shall continue to have the right to discharge Sewage from its Sewage Transportation System into the City's Sewage System in an amount not exceeding the Volume Exceedance. The City reserves the right, but not the obligation, to take corrective actions to immediately halt any Volume Exceedance, correct any Volume Exceedance through restricting or ceasing the excess discharge, or upgrading the City's Sewage System in order to accommodate the Volume Exceedance. The City's performance of any corrective action shall not relieve or excuse the Municipality from any obligation under this Agreement or Applicable Laws. The Municipality shall reimburse the City for the City's reasonable costs incurred in taking any such corrective actions. Notwithstanding anything to the contrary in this Agreement, the City shall have no liability to the Municipality's residents for damages resulting from any corrective actions the City or its agents take to halt or correct a Volume Exceedance.

In the event of a Monthly Volume Exceedance, the Municipality shall not permit any further connections to the Municipality's Sewage Transportation System until a calendar month has completed without a Volume Exceedance or additional capacity is purchased to increase the Municipality's Reserved Capacity, such that a Volume Exceedance will not occur.

i. Volume Exceedance Surcharge.

If a Volume Exceedance occurs, the Municipality would be using facilities which may not be designed to handle the excess Sewage and for which the Municipality has not made a capital contribution; therefore, a surcharge will be imposed upon the Municipality to compensate the

City for the additional cost, expense, and administration of handling the excess discharge on the following terms and conditions (the “**Volume Exceedance Surcharge**”);

If a Daily Volume Exceedance occurs at any time during the term of the Agreement, the Municipality shall pay as a Volume Exceedance Surcharge, in addition to the Total Charge attributable to such excess discharges pursuant to this Agreement, a surcharge equal to twenty-five percent (25%) of the Unit Rates multiplied by the number of gallons of excess discharge (i.e., the number of gallons discharged minus the Reserved Capacity inclusive of the daily peak factor identified in SECTION 4(A)) divided by 50,000 (i.e., gallons per year per EDU);

If a Monthly Volume Exceedance occurs at any time during the term of the Agreement, the Municipality shall pay as a Volume Exceedance Surcharge, in addition to the Total Charge attributable to such excess discharges pursuant to this Agreement, a surcharge equal to fifty percent (50%) of the Unit Rates multiplied by the number of gallons of excess discharge (i.e., the Reserved Capacity multiplied by the number of calendar days in said calendar month subtracted from the cumulative number of gallons discharged in said calendar month), divided by 50,000 (i.e., gallons per year per EDU). If a Monthly Volume Exceedance occurs in six (6) consecutive months, said Volume Exceedance Surcharge shall double for each month thereafter until a calendar month has completed without a Monthly Volume Exceedance.

Payment of the Volume Exceedance Surcharge herein provided shall not excuse a Volume Exceedance nor shall it prevent the City from taking corrective action, as provided in this Agreement, enjoining the discharge of excess Sewage or recovering from the Municipality actual damages, costs, and expenses, including, without limitation, reasonable legal fees, incurred by the City in connection with any Volume Exceedance. All amounts collected by the City as a Volume Exceedance Surcharge shall be deposited in the Infrastructure Contingency Fund.

Notwithstanding anything to the contrary in this Agreement, the City may bring suit in law or in equity in the Court of Common Pleas of Berks County, Pennsylvania, or any other court of competent jurisdiction, to enjoin a Volume Exceedance or compel appropriate corrective action for such violation. In such event, the Municipality agrees to pay the costs and expenses including, without limitation, reasonable legal fees, incurred by the City and arising out of or relating to any such violation of this Agreement by the Municipality.

ii. Hydraulic Capacity Limitations

The Parties understand that the size, slope, material and other factors associated with the City’s Sewage Transportation System affect the hydraulic capacity for each component of the City’s Sewage Transportation System. Significant collateral damage to the City’s Sewage System may occur if its hydraulic capacity is exceeded. The City will engage an independent third party consultant to evaluate each interface between the Municipality’s Sewage Transportation System and the City’s Transportation System to identify the hydraulic capacity at each interface (the “**Hydraulic Capacity Report**”). The City will provide a draft of the Hydraulic Capacity Report to the Municipality so that the Municipality may have an opportunity to engage its own independent third party consultant (at the Municipality’s sole cost and expense) to review and comment on such report. The City’s consultant will consider all such comments received within sixty (60) days of the Municipality’s receipt of the draft Hydraulic Capacity

Report. The Municipality shall use best efforts to ensure that the hydraulic capacity of each interface between its Sewage Transportation System and the City's Sewage Transportation System, as identified in the Hydraulic Capacity Report, are not exceeded. In the event the hydraulic capacity is exceeded by the Municipality (as measured at any individual interface), the Municipality shall be strictly liable for any damages, losses, costs and/or penalties resulting from such hydraulic capacity exceedance and shall immediately take corrective measures to reduce the flow through the particular interface or make all improvements necessary to increase the hydraulic capacity to accommodate the additional flow.

(D) Additional Single Family Residential or Multi-Family Connections.

The City grants to the Municipality, subject to all of the terms and conditions of this Agreement, the right to permit the connection of additional projects, land developments, or subdivisions involving one (1) or two (2) single family residences within the area specified in Exhibit "B" to the Municipality's Sewage Transportation System to the City's Sewage System to the extent that such additional connections do not have the effect of creating a Volume Exceedance. Any projects, land developments, or subdivisions consisting of a new Multi-Family Connection and/or more than two (2) additional single family residences (including, but not limited to, individual lateral connections) within the area specified in Exhibit "B", shall be subject to the written approval of the City, which approval shall not be unreasonably withheld (if a planning module is required by law for such additional connections, the City's approval of such planning module shall constitute the City's approval required by this SECTION 4(D)). Approval of any project, land development, or subdivision involving a Multi-Family Connection and/or more than two (2) additional single family residences which will result in a Volume Exceedance based upon the reasonable estimated flows for such project, land development or subdivision shall be subject to the Municipality's payment of an additional Reserved Capacity Charge based on the Municipality's additional Reserved Capacity.

The Municipality shall provide the City with copies of any new planning committee approval, building permit and any other reasonable documentation requested by the City relating to any new connections to the Municipality's Sewage Transportation System. The Municipality shall provide the City with such information and documentation each quarter.

(E) Additional Industrial or Commercial Users.

The City grants to the Municipality, subject to all of the terms and conditions of this Agreement, the right to permit the connection of additional projects and/or land developments involving Industrial or Commercial Users within the area specified in Exhibit "B" to the Municipality's Sewage Transportation System to be treated by the City's Sewage System provided such connection will not result in a Volume Exceedance, violation of the NPDES Permit, violation of the City Ordinance or this Agreement, including, without limitation, as provided in SECTION 7. The Municipality shall provide the City with any building permit, plumbing permit and planning committee approval for any new or existing Industrial or Commercial User connected or to be connected to the Municipality's Sewage Transportation System each quarter. Upon the City's request, the Municipality shall provide all information and documentation reasonably requested by the City for the City to evaluate the quantity and quality of Sewage, which may result from the Industrial or Commercial User.

Notwithstanding the foregoing, the Municipality shall provide the City with written notice contemporaneously with the submission of any land development plan, subdivision plan, building/trade permit application to the Township or Authority and prior to (a) the connection of any new Industrial or Commercial User or (b) a change in use that would result in a modification of Sewage characteristics at the facility of any Industrial or Commercial User. Such written notice shall include the projected volume and characteristics of the Sewage from such connections. Industrial or Commercial User connections projected to discharge Industrial or Commercial Sewage (i.e., the anticipated discharge is of a character that it is not classified as Domestic Sewage) shall be subject to the written approval of the City, which approval shall not be unreasonably withheld (if a planning module is required by law for such additional connections, the City's approval of such planning module shall constitute the City's approval required by this SECTION 4(E)). Approval of any additional Industrial or Commercial User connections which will cause a Volume Exceedance based upon the reasonably estimated flows for such projects and/or land developments shall be subject to the Municipality's payment of an additional Reserved Capacity Charge based on the Municipality's additional Reserved Capacity.

(F) Additional Connections Outside of Area in Exhibit "B".

The City shall have no obligation to offer any Sewage treatment capacity to the Municipality for Sewage originating from any areas beyond the area set forth on Exhibit "B". The Municipality shall not permit any connections to its Sewage Transportation System for sources of Sewage originating from any areas beyond the area set forth on Exhibit "B" without the City's prior written approval.

The City may, in its sole discretion, provide the Municipality with written approval, which may be withheld for any reason or no reason at all, for the privilege to connect Sewage originating from areas beyond the area set forth in Exhibit "B" (if a planning module is required by law for such additional connections, the City's approval of such planning module shall constitute the City's approval required by this SECTION 4(F)). Approval of any such connections which will cause a Volume Exceedance based upon the reasonable estimated flows for such connections shall be subject to the Municipality's payment of an additional Reserved Capacity Charge. Exhibit "B" shall be automatically amended to incorporate additional areas approved in writing by the City after the City's receipt of the corresponding Reserved Capacity Charge.

If the City provides the Municipality with written approval to connect areas beyond the areas set forth in Exhibit "B", the Municipality shall provide the City with: (i) an opportunity to review and comment on the proposed amendment to the Municipality's Act 537 Plan prior to its submission to DEP consistent with the process provided in SECTION 20 of this Agreement; (ii) any building permit, plumbing permit or planning committee approval for any proposed connection to the Municipality's Sewage Transportation System; and (iii) all information and documentation reasonably requested by the City for the City to evaluate the quantity and quality of Sewage for any proposed connection to the Municipality's Sewage Transportation System.

(G) Municipality Reserved Capacity Charge.

The Municipality shall pay or cause to be paid to the City a fee in accordance with the Reserved Capacity Charge fee schedule attached hereto as Exhibit "G" and in compliance with Applicable Laws, to compensate the City for the additional engineering and treatment costs of Sewage from the additional connection to the City's Sewage Transportation System in the event the Municipality desires to or is otherwise required to increase its Reserved Capacity or add connections beyond the areas identified in Exhibit "B" (the "**Reserved Capacity Charge**"). All amounts collected by the City as a Reserved Capacity Charge shall be deposited in the Infrastructure Contingency Fund.

(H) Charges to the City's Residents.

To the extent allowed by Applicable Laws, including but not limited to, the City Ordinance, the City may charge new users in the City a reservation fee or other connection fee for new commercial and industrial connections. Such reservation fee or other connection fee charged by the City to its new users shall be determined by the City, in its reasonable discretion; provided, however, such reservation fee or other connection fee (or lack thereof) shall not affect the Municipality's obligations under this Agreement.

SECTION 5. Transportation of Sewage.

The City agrees to take all necessary steps to carry the Sewage delivered to the City's Sewage System in the quality and quantity consistent with the terms of this Agreement to the Sewage Treatment Plant, whether said connections are made directly to the Sewage Treatment Plant or to the City's Sewage Transportation System for transportation to the Sewage Treatment Plant, and to treat and dispose of such Sewage consistent with Applicable Laws.

SECTION 6. Information Sharing and Consultation.

(A) General Obligations.

The Municipality shall cooperate and share relevant information with the City in facilitating the City's management operations and maintenance of the City's Sewage System. In furtherance of the foregoing, the City shall provide the Municipality with an annual report providing a summary of the operation of the Sewage Treatment Plant. Within forty-five (45) days of the close of each calendar quarter, the City shall complete the applicable information identified in the Tables set forth in Exhibit "I" and provide the same to the Municipality.

(B) Municipal Advisory Committee

i. Establishment.

The Municipality, in cooperation with all other Contributing Municipalities, will establish a Municipal Advisory Committee with whom the City will regularly consult during the term of this Agreement.

ii. General Meetings

In addition to participation by the City as a committee member of the Municipal Advisory Committee, the City shall also participate in meetings as requested and scheduled by the Municipal Advisory Committee (subject to the reasonable availability of the City's personnel), by providing information and reports regarding the operation, maintenance, annual budget and capital improvements of the City's Sewage System and by providing such other information related to the City's Sewage System as may be reasonably requested by the Municipal Advisory Committee. The City's participation at the Municipal Advisory Committee meetings (other than the participation by the City as a committee member of the Municipal Advisory Committee) shall be by a manager or director supervising the administration of the Sewage Transportation System or Sewage Treatment Plant. The Municipal Advisory Committee shall be represented by a quorum of its members at such meetings.

The Municipal Advisory Committee shall prepare a proposed agenda for all scheduled meetings and seek input from the City on the proposed agenda. No less than ten (10) days prior to each such scheduled meeting, the Municipal Advisory Committee shall circulate an agenda to a representative from each Contributing Municipality, identifying the time, date and location of the meeting. Such agenda shall allocate time for elected official(s), municipal manager(s), engineer(s), consultant(s) and/or such other designee(s) from each Contributing Municipality, at the election of each Contributing Municipality, to submit comments or questions to the Municipal Advisory Committee for its consideration.

iii. Notice to the Municipal Advisory Committee

The Municipal Advisory Committee, acting on behalf of the Municipality, shall identify to the City the mailing and e-mail address of one person to whom the City shall direct all of the City's correspondence related to matters appropriately before the Municipal Advisory Committee. Such correspondence from the City shall be deemed received by the Municipal Advisory Committee (a) when sent, if sent by electronic mail, (b) five (5) days after having been sent by United States Postal Service, postage prepaid, or (c) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt.

iv. Written Recommendations

The Municipal Advisory Committee may make written recommendations to the City with regard to the operation, maintenance, annual budget and/or capital improvements associated with the City's Sewage System. The City shall consider all such written recommendations in good faith. However, the City (as the responsible permittee) maintains the right to determine, in its reasonable discretion, the means, methods and manners for administering, operating, maintaining and funding the City's Sewage System and shall not be obligated to adopt the written recommendation(s) of the Municipal Advisory Committee. In the event the City does not adopt a written recommendation from the Municipal Advisory Committee, the City shall provide the Municipal Advisory Committee with a written response setting forth the City's basis for not adopting such written recommendation.

v. Additional Debt and Infrastructure Contingency Fund.

When the City intends to (1) incur additional debt with regard to the City's Sewage System or (2) fund any individual project by a withdrawal from the Infrastructure Contingency Fund in excess of Five Hundred Thousand Dollars (\$500,000), the City shall provide the Municipal Advisory Committee with notice of such intention along with reasonable information about the proposed funding and the specific purpose of such funding (the "**Funding Notice**").

The Municipal Advisory Committee may request a meeting with the City regarding the proposed funding within twenty (20) days of its receipt of the applicable Funding Notice. If requested by the Municipal Advisory Committee, such meeting shall occur within thirty (30) days of the Municipal Advisory Committee's receipt of the applicable Funding Notice. The City shall participate in such requested meeting in good faith and provide the Municipal Advisory Committee with any such additional reasonable information requested by the Municipal Advisory Committee related to the same. If the Municipal Advisory Committee desires to make a written recommendation with regard the subject of the Funding Notice, the Municipal Advisory Committee shall submit its written recommendation to the City within forty (40) days of the Municipal Advisory Committee's receipt of the applicable Funding Notice. The City shall respond to such written recommendation in the manner set forth in SECTION 6(B)iv.

Except in the event of an emergency or as may be required to perform unanticipated activities required to comply with Applicable Laws, the City shall wait at least forty (40) days from the date of the Municipal Advisory Committee's receipt of the applicable Funding Notice prior to borrowing such new debt or withdrawing such funds from the Infrastructure Contingency Fund.

vi. Annual Audit Review

The City shall transmit the draft of its annual audit report regarding the Sewage System to the Municipal Advisory Committee prior to the issuance of such audit report. The Municipal Advisory Committee may review such draft audit report and may provide written comments to the City on such draft audit report within thirty (30) days after receipt of the draft audit report. The City shall not issue the final audit report until after the expiration of (a) such thirty (30) day review period if no comments are received or (b) it has responded to such written comments in the manner set forth in SECTION 6(B)iv.

vii. Annual Budget Review

The City shall transmit its annual budget for the Sewage System (including the applicable Operating Costs of the Sewage Treatment Plant Projection, Operating Costs of the Sewage Transportation System Projection and Debt Service Projection) to the Municipal Advisory Committee no later than October 10th of each year. The Municipal Advisory Committee may review such information and make a written recommendation to the City related to such annual budget within thirty (30) days of its receipt of the same and the City shall respond to such written recommendation in the manner set forth in SECTION 6(B)iv.

viii. Consideration of a Joint Municipal Authority

After the termination of the Consent Decree, the City agrees to attend a meeting, upon the request of the Municipal Advisory Committee, to discuss in good faith the feasibility of the creation of a joint municipal authority to own, operate and/or administer the City's Sewage System (or components thereof). After such meeting, the Municipal Advisory Committee may make a written recommendation to the City for the creation of such a joint municipal authority, if deemed appropriate by the Municipal Advisory Committee, which shall include a reasonably detailed (a) administrative framework for the proposed joint municipal authority, (b) list of the proposed distribution of rights and obligations among the proposed joint municipal authority, City and Contributing Municipalities, (c) summary of the proposed method for assigning, assuming or otherwise addressing any outstanding debt and liabilities attributable to the City's Sewage System (or debt and liabilities attributable to such components of the City's Sewage System as may be owned, operated and/or administered by the proposed joint municipal authority), and (d) such other matters as the Municipal Advisory Committee shall deem necessary. The City shall respond to such written recommendation in the manner set forth in SECTION 6(B)iv. Notwithstanding anything else in this Agreement, neither the City nor the Municipality shall be obligated to create a joint municipal authority.

(C) Reports Required by Applicable Laws.

The Municipality shall provide the City with all data reasonably required for the City to complete the reports required by Applicable Laws including, but not limited to, by providing data, reports or information related to:

- i. The Municipality's Industrial or Commercial Users;
- ii. Sewage discharge metering, monitoring and sampling data at each interface of the Municipality's Sewage Transportation System to the City's Sewage System; and
- iii. I/I analysis.

The Municipality shall also compel any of its Industrial or Commercial users required by Applicable Laws to have meters or sampling manholes to provide the City with all data reasonably required for the City to complete the reports required by Applicable Laws.

(D) Industrial or Commercial User Connections.

By the seventh day of each quarter, the Municipality shall prepare and provide the City with a detailed and itemized list designating the name, physical and mailing address, standard industrial classification and total metered flow (based on Sewage from meter or water meter readings as the case may be) of each and every Industrial or Commercial User connected to the Municipality's Sewage Transportation System.

(E) Connection Records.

By February 1st of each calendar year (to the extent not already included in the information and documentation furnished by the Municipality to the City in connection with the Chapter 94 report), the Municipality shall provide the City with all records necessary to validate or identify the total number of residences and Industrial or Commercial Users connected to the Municipality's Sewage Transportation System.

(F) Chapter 94 Reports.

The Municipality shall provide the City with all information or documentation required for the City to file its Chapter 94 report, as required by the DEP and Title 25, Part I, Subpart C, Article II, Chapter 94 or as required by any other Applicable Laws, as amended from time to time.

(G) Failure to Provide Information.

The Municipality shall supply all information or documentation as set forth in this Agreement or required by Applicable Laws to the City in writing. In no event shall the Municipality provide information or documentation to the City any later than thirty (30) days from receipt of the City's request. If the Municipality fails to provide information or documentation to the City in compliance with this SECTION 6(G), and as a result, the City is unable to submit a complete report which results in a ban, moratorium or prohibition being placed upon the City, the Authority, the Township or any other political subdivision as to future connections to the City's Sewage System, the Municipality shall be financially responsible for reasonable losses, damages, penalties or costs incurred by the City directly related to the Municipality's failure to provide information or documentation to the City in compliance with this SECTION 6(G).

If, through the City's sole negligence or willful misconduct, the City fails to submit a report required by Applicable Laws, and as a direct result a ban, moratorium or prohibition is placed upon the City, the Authority, or the Township as to future connections to the City's Sewage Transportation System, the City shall be financially responsible for reasonable losses incurred by the Municipality directly related to the City's sole negligence or willful misconduct in failing to file such required reports.

(H) Limitation of the City's Liability for Failure to Submit Reports.

The Municipality acknowledges and understands that the City's Sewage System services other Contributing Municipalities, which are also obligated to provide the City with information for the submission of required reports. In the event the City is unable to submit or complete a report required by Applicable Laws due to the failure of any Contributing Municipality to submit information required by the City for such report, the City shall have no financial responsibility to the Municipality or any other Person for any damages resulting therefrom.

SECTION 7. Sewage Characteristics and Pretreatment.

(A) General Obligation.

The Municipality shall not discharge any Sewage, nor permit the discharge of Sewage, from the Municipality's Sewage Transportation System to the City's Sewage System in violation of this Agreement or any Applicable Laws.

(B) I/I.

The Parties agree that they will take all reasonable efforts to ensure that the Sewage passing through their respective Sewage Transportation Systems shall not contain storm water or roof or surface drainage. The Municipality, at its sole cost and expense, shall perform reasonable upgrades or improvements to the Municipality's Sewage Transportation System to reduce I/I that the Municipality knows or reasonably should know is passing through its Sewage Transportation System, including, but not limited to, any such reasonable improvements requested by the City. The City shall perform reasonable upgrades or improvements to the City's Sewage Transportation System to reduce I/I that the City knows or reasonably should know is entering directly into its Sewage Transportation System; provided, however, the City shall not be responsible for reducing I/I that is passing through its Sewage Transportation System as a result of I/I that originates from the Municipality or other political subdivision.

(C) Prohibited Sewage Characteristics.

The Municipality shall prohibit the entrance into its Sewage Transportation System of any Sewage that (i) causes, or may cause, "pass through" or "interference," both as defined in Part 403 of Title 40 of the Code of Federal Regulations, (ii) violates any influent limitations or Pretreatment requirements under Applicable Laws, or (iii) causes the residual biosolids from the treated Sewage to require treatment prior to land application. Without limiting the generality of the foregoing, the Municipality shall prohibit the entrance into its Sewage Transportation System of Sewage having the following characteristics, chemicals or materials:

- i. having a temperature higher than 105° F;
- ii. containing more than 100 parts per million by weight of fat, oil or grease as measured by Method 1664, Revision A:N-Hexane Extractable Material (HEM; Oil and Grease) or more than 25 parts per million by weight of fat, oil or grease as measured by Silica Gel Treated N-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry;
- iii. containing any gasoline, benzene, naphtha, fuel oil or other inflammable or explosive liquid, solid or gas;
- iv. containing any unground garbage;

v. containing any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction or other interference with the proper operation of the City's Sewage System;

vi. having a pH lower than 5.0 or higher than 10.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the City's Sewage System;

vii. containing BOD₅, Total Solids, Total Dissolved Solids, Total Suspended Solids, ammonia, nitrogen, or total phosphorus of such character, quality or quantity that causes interference with the Sewage Treatment Plant processes or requires unusual attention or expense to handle such materials at the City's Sewage Treatment Plant;

viii. containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any Sewage treatment process, to constitute a hazard to humans or animals, or to create any hazard in the City's Sewage System, the receiving water or biosolids residuals;

ix. containing noxious or malodorous gas or substance capable of creating a public nuisance; unless specifically permitted, authorized and approved in writing by the City and the Commonwealth of Pennsylvania or any duly constituted board, commission or department thereof having jurisdiction in the matter; or

x. exceeding standards established by Applicable Laws.

(D) Pretreatment Obligations.

The Municipality shall be subject to, comply with and cooperate with the City's enforcement of the restrictions and conditions of any Industrial or Commercial Sewage Pretreatment programs or ordinances, including, but not limited to, the City Ordinance, as it may be amended by the City from time to time, concerning the Industrial or Commercial Users of the Municipality's Sewage Transportation System. Sewage emanating from the Municipality shall comply with all Applicable Laws, including, but not limited to, the Pretreatment obligations, processes, standards and restrictions set forth in Part 403 of Title 40 of the Code of Federal Regulations, as amended from time to time. In the event of a conflict, the more stringent standard shall apply.

(E) Organic Loading Limitations.

In the event the Sewage Treatment Plant reaches (or is projected to reach) the NPDES Permit limits for organic, solids or nutrient loading, the City may require additional Pretreatment obligations for Industrial or Commercial Users specifically designed to maintain compliance with the NPDES Permit. Notwithstanding anything else to the contrary in this Agreement, the City shall not be required to approve new connections from any political subdivision (including the

City) that will cause a projected exceedance of the organic, solids or nutrient loading limitations established by the NPDES Permit based on the conditions existing at the time the City's approval is sought. The Municipality and City agree to cooperate to identify any additional Pretreatment parameters that may be adopted to allow for further reduction of organic, solid or nutrient loading (as applicable) and/or increase organic, solids or nutrient loading limitations (as applicable) established by the NPDES Permit so such new connections may be approved.

(F) Exceedances.

In the event the Sewage discharged by the Municipality under this Agreement into the City's Sewage System violates the covenants of this SECTION 7 or otherwise requires special handling or disposal for treatment of the resulting sludge, the costs incident to providing such special handling or treatment shall be borne solely by the Municipality as an additional treatment charge; provided, however, the Municipality, after paying the City for such special handling or treatment costs, may seek to recover such special handling or treatment costs from the Person who is the source of such discharge. The Municipality shall be responsible for and shall pay the cost of any physical or structural damage to the City's Sewage System or the environment (including, but not limited to, any removal or remedial costs associated with addressing the release of hazardous substances to the environment and natural resource damages) resulting from the discharge of improper Sewage from the Municipality's Sewage Transportation System into the City's Sewage System.

The City may prohibit or prevent any Person, including the Municipality, from discharging Sewage, waste, or materials in a quantity or quality that violates this Agreement or Applicable Laws, regardless of the materiality of such violation, if prior written notice has first been provided by the City to the violator.

The Municipality shall have the right to request a split sample at the time such samples are taken by the City. All samples taken by the Municipality, including, but not limited to, any split samples, shall be analyzed by an Accredited Laboratory. Notwithstanding the foregoing, the pendency of the Municipality's analysis shall not affect any right or obligation under this Agreement.

SECTION 8. Sewage System Maintenance.

(A) Maintenance and Repair.

The City shall maintain its Sewage System in good repair and in material compliance with Applicable Laws. The Municipality shall maintain its Sewage Transportation System in good repair and in material compliance with Applicable Laws. In the event of damage to or vulnerability of the Municipality's Sewage Transportation System or at the City's request, the Municipality shall promptly repair, replace or reinforce the damaged or vulnerable component(s) of its Sewage Transportation System at the Municipality's sole cost or expense.

(B) Access to Municipality's and City's Sewage Facilities.

The City shall have the right, upon reasonable notice to the Municipality, to access the Municipality's Sewage Transportation System to investigate or evaluate the integrity of the Municipality's Sewage Transportation System. Municipality shall have the right, upon reasonable notice to City, to access the City's Sewage Transportation System and Sewage Treatment Plant to investigate or evaluate the integrity of the City's Sewage System.

(C) Limitation on the City's Liability.

The City shall not be responsible for damage to the Municipality or to any other Person caused by a malfunction of the Sewage Treatment Plant or the City's Sewage Transportation System unless such damage was caused by the gross negligence or willful misconduct of the City.

(D) Certifications.

The City agrees to provide the Municipality an annual report, certified by an engineer, that the City's Sewage System is in good operating condition.

The Municipality agrees to provide the City, upon the City's request, an annual report, certified by an engineer, that the Municipality's Sewage Transportation System is in good operating condition.

SECTION 9. Compensation Arrangement.

The Municipality shall pay the City the Total Charge for the rights, privileges, and benefits herein provided, for each EDU, as calculated in SECTION 9(I), transported into the City's Sewage Transportation System, and/or treated at the Sewage Treatment Plant, during each quarterly period.

(A) Method of Determining Sewage Treatment Charge.

The "Sewage Treatment Charge" is a charge levied by the City on the Municipality for the City's treatment of Sewage originating from the Municipality. The Sewage Treatment Charge shall be calculated by multiplying the number of EDUs of Sewage emanating from the Municipality's Sewage Transportation System into the City's Sewage System, as calculated in SECTION 9(I), by the Treatment Unit Rate.

(B) Method of Determining Sewage Transportation Charge.

The "Sewage Transportation Charge" is a charge levied by the City on the Municipality for privilege of using the City's Sewage Transportation System for the transportation of Sewage originating from the Municipality. The Sewage Transportation Charge shall be calculated by multiplying the number of EDUs of Sewage emanating from the Municipality's Sewage Transportation System into the City's Sewage Transportation System, as calculated in SECTION 9(I), by the effective Transportation Unit Rate, as calculated in SECTION 9(C)ii.

(C) Calculating the Unit Rates.

i. Treatment Unit Rate Formula.

The Treatment Unit Rate shall be calculated annually by:

(a) Adding the Operating Costs of the Sewage Treatment Plant Projection for the next calendar year to the Operating Costs of the Sewage Treatment Plant Adjustment;

(b) Dividing the result from (a) above, by the total EDUs reported by all Sewage System users to have been treated at the Sewage Treatment Plant during the latest completed calendar year.

Notwithstanding the foregoing, the Operating Costs of the Sewage Treatment Plant Adjustment shall not be incorporated in the Treatment Unit Rate as provided in SECTION 9(F) until determined by the City on the initial October 1st immediately following the first year's anniversary of the Effective Date of this Agreement. See Exhibit "H" for an example calculation of the Treatment Unit Rate.

ii. Transportation Unit Rate Formula.

The Transportation Unit Rate shall be calculated annually by:

(a) Adding the Operating Costs of the Sewage Transportation System Projection (which, as defined, includes a reduction equal to ten percent (10%) of the Operating Costs of the Sewage Transportation System budgeted for the salaries and fringe benefits of staff employed by the City during such calendar year for operating the Sewage Transportation System) for the next calendar year to the Operating Costs of the Sewage Transportation System Adjustment;

(b) Dividing the result from (a) above, by the total EDUs reported by all Sewage System users to have been transported through the City's Sewage Transportation System during the latest completed calendar year.

Notwithstanding the foregoing, the Operating Costs of the Sewage Transportation System Adjustment shall not be incorporated in the Transportation Unit Rate as provided in SECTION 9(F) until determined by the City on the initial October 1st immediately following the first year's anniversary of the Effective Date of this Agreement. See Exhibit "H" for an example calculation of the Transportation Unit Rate.

(D) Debt Service Charge.

The "**Debt Service Charge**" is a charge levied by the City on the Municipality for the Municipality's prorated share of the Debt Service paid by the City for the Sewage System. The Debt Service Charge shall be calculated annually by:

i. Adding the Debt Service Projection for the next calendar year to the Debt Service Adjustment;

ii. Multiplying such sum by the respective percentage of the Municipality's Reserved Capacity as related to the Total Aggregate Reserved Capacity for all political subdivisions (including the City) contributing flow to the Sewage Treatment Plant, as identified in Exhibit "F".

Notwithstanding the foregoing, the Debt Service Adjustment shall not be incorporated in the Debt Service Charge as provided in SECTION 9(F) until determined by the City on the initial October 1st immediately following the first year's anniversary of the Effective Date of this Agreement. See Exhibit "H" for an example calculation of the Debt Service Charge.

(E) Method of Determining the Infrastructure Contingency Charge.

The "**Infrastructure Contingency Charge**" is a charge levied by the City on each political subdivision, including the City and the Municipality, due and payable to the City each quarter of a calendar year as a component of the Total Charge, to create and continuously fund the Infrastructure Contingency Fund. The Infrastructure Contingency Charge shall be equal to ten percent (10%) of the political subdivision's Debt Service Charge for the then applicable quarter.

However, no political subdivision shall be required to pay any individual Infrastructure Contingency Charge if Infrastructure Contingency Fund exceeds twenty million dollars (\$20,000,000) at the time such Infrastructure Contingency Charge is calculated as set forth in SECTION 9(F).

(F) Annual Update to the Total Charge.

The Unit Rates, Debt Service Charge and Infrastructure Contingency Charge will be revised annually by the City. The City shall prepare the Operating Costs of the Sewage Treatment Plant Projection, Operating Costs of the Sewage Transportation System Projection and Debt Service Projection each year. At the City's election, it may also prepare a budget that includes the estimated Sewage System costs over a five-year horizon. An estimate of the Unit Rates and Debt Service Charge, including any modifications to Exhibit "F", shall be transmitted to the Municipality by the first day of October of each year. Any changes to the Unit Rates or Debt Service Charge resulting from a recommendation of the Municipality Advisory Committee and/or otherwise adopted by the City shall be transmitted to the Municipality prior to the twentieth day of December of each year. Changes to the Unit Rates and Debt Service Charge shall be effective as of the first day of January following the notice of the new Unit Rates and Debt Service Charge. Until January 1, 2013, the Total Charge shall be calculated as provided in the Prior Agreements. After January 1, 2013, the Total Charge shall be calculated as provided in this Agreement.

(G) Method of Determining Industrial or Commercial Sewage Surcharge.

The Municipality shall pay, or cause to be paid by the applicable Industrial or Commercial User(s), to the City a surcharge on Industrial or Commercial Sewage ("**Industrial or Commercial Sewage Surcharge**") calculated in accordance with the formula established by the City Ordinance attached hereto as Exhibit "D" ("**Industrial or Commercial Sewage Surcharge Formula**"). The City shall provide public notice of the intent to amend the City Ordinance in accordance with Applicable Laws and, if enacted, the new Industrial or Commercial Sewage Surcharge Formula shall immediately apply to the Total Charge.

(H) Other Charges.

The City and the Municipality agree that all other non-residential charges and fines shall be in accordance with the Industrial or Commercial Sewage Pretreatment ordinances to be in effect in both the City and the Municipality, including, but not limited to, the City Ordinance, which ordinances may be amended from time to time provided that all pertinent ordinances shall remain consistent with the general tenor and scope of this Agreement. In the event these ordinances, including, but not limited to, the City Ordinance or any amendments thereto, are in conflict with the terms of this Agreement, the Municipality shall comply with the more stringent standards.

(I) Calculation of EDUs.

EDUs shall be calculated on a quarterly basis to determine the total quantity of EDUs for that quarter. EDUs shall be calculated by using the following criteria:

- i. Each single family residential connection, regardless of the amount of Sewage emanating therefrom, shall equal one EDU.
- ii. Each Multi-Family Connection, regardless of the amount of Sewage emanating therefrom, shall equal one EDU per family unit permitted to reside in such building or facility.
- iii. Each Industrial or Commercial User discharging 12,500 gallons or less per quarter shall equal one EDU.
- iv. Each Industrial or Commercial User which discharges more than 12,500 gallons per quarter shall be allocated an EDU rating equal to the ratio of each such Industrial or Commercial User's actual discharge for each quarter, as measured by a water or Sewage meter, or by the City in its sole discretion if unmeasured, divided by 12,500 gallons.
- v. In addition to the total EDUs from single family residential connections, Multi-Family Connections and Industrial or Commercial Users, the total EDUs shall also include the total gallons of I/I, as determined from Sewage flow data measured by Sewage meters at the interface of the Municipality's Sewage Transportation System to the City's Sewage

System. If an interface is not metered with a Sewage meter, I/I shall be calculated by multiplying the average gallons of I/I per connection for a metered interface with similar characteristics as the area serviced by the unmetered interface by the number of connections to the unmetered interface, and all divided by 12,500 gallons.

vi. Should it be determined by the City that, due to a malfunctioning meter, insufficient data is available with which to compute the EDUs for a particular billing period, an average of the EDUs for the previous four (4) quarters associated with the malfunctioning meter shall be used notwithstanding any measured flow.

(J) Rate Adjustment.

In the event any component of the Total Charge is in violation of any Applicable Laws, the Total Charge shall be adjusted to the maximum rate permitted by Applicable Laws without affecting any other provision of this Agreement.

(K) Method of Distributing Proceeds.

The Total Charge shall be deposited in the Sewer Enterprise Fund upon receipt by the City. The Infrastructure Contingency Charge shall thereafter be transferred from the Sewer Enterprise Fund to the Infrastructure Contingency Fund. The City shall transfer three million dollars (\$3,000,000) from the Sewer Enterprise Fund to the City's general fund (the "**Impact Transfer**") once per calendar year. Upon the later of (i) three (3) years from the Effective Date or (ii) the termination of the Consent Decree, the Impact Transfer shall be increased each year by a percentage equal to the greater of (i) three percent (3%) or (ii) the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) in the Philadelphia-Wilmington-Atlantic City area for the most recently completed twelve (12) month period for which the index has been reported. The remaining balance of the Total Charge may be used to satisfy the Operating Costs of the Sewage Treatment Plant, Operating Costs of the Sewage Transportation System, Debt Service and any other costs, fees or obligations incurred by the City as a result of operating and maintaining its Sewage System.

(L) Sewer Enterprise Fund.

The City agrees to maintain a separate audited Sewer Enterprise Fund, which shall account for all Operating Costs of the Sewage Treatment Plant and the Operating Costs of the Sewage Transportation System on a yearly basis.

(M) Capital Reserve Accounts Under Prior Agreements.

Notwithstanding the terms of the Prior Agreements, the Municipality hereby agrees that it is not entitled to a credit against future capital improvements, capital equipment and major revisions to the City's Sewage Transportation System, Sewage Treatment Plant or Debt Service retirement associated therewith. The Municipality further hereby agrees to waive any and all of its rights to monies that were not placed by the City into the "**Capital Reserve - Sewage Transportation**" and "**Capital Reserve - Sewage Treatment**" interest bearing accounts under the Prior Agreements.

SECTION 10. Payment.

The Municipality shall pay the calculated Total Charge to the City on a quarterly basis. Payments for any fractional quarter shall be prorated. The Total Charge for each quarter is due and payable to the City within sixty (60) days of the last day of the quarter. A late payment penalty of one percent (1%) of the Total Charge per month shall be charged for each month or part of a month that payment is delayed beyond the sixty (60) day period. The Municipality shall keep accurate records of the number and classifications of all connections made to its Sewage Transportation System, which records shall be available for inspection by the City or its authorized representatives no more than four (4) times in any fiscal year.

SECTION 11. Meters.

(A) Installation and Maintenance of Meters.

i. Municipality's Meters.

The Municipality shall, at its own cost and expense, install, maintain and routinely service a meter acceptable to the City immediately before each interface between the Municipality's Sewage Transportation System and the City's Sewage System to enable the calculation of the volume of the effluent leaving the Municipality's Sewage Transportation System and then entering the City's Sewage System, except as specifically noted on Exhibit "C". The method of metering, programming parameters and the types of meters shall be satisfactory to the City. At minimum, meters shall (a) meet current technological standards, (b) have a permanent primary device appropriately sized for the location and conditions, (c) have an accurate secondary metering or measuring device, (d) be capable of electronically transmitting real-time flow rate data to the City unless the flow levels or other conditions at the particular connection make the use of such metering methods impracticable, as determined by an independent third party mutually agreeable to the City and the Municipality and (e) be installed in a manhole. The meters and accompanying manholes shall meet any specification requirements adopted by the City. Where the Municipality, at the time of execution of this Agreement, already has an established system for the electronic transmission of real-time flow rate data, such system shall satisfy the requirements of this SECTION 11(A)i(d) and the City shall be responsible for the costs of any equipment or programming necessary to receive information from such system, all with the cooperation of the Municipality and the Municipality's consultants. If an independent third party consultant determines, in its professional opinion, that any existing meter installed by the Municipality does not meet the specifications required by the terms of this Agreement, the Municipality may review and comment on such determination within sixty (60) days after receiving such determination. After considering such comments, if any, the Municipality shall repair or replace such meter (or a component thereof) consistent with the determination of the third party consultant no later than (a) ninety (90) days from receipt of the third party consultant's determination if no comments were submitted by the Municipality or (b) thirty (30) days from receipt of the third party consultant's response to the Municipality's timely comments to the determination.

The Municipality agrees to exercise due diligence to promptly correct (or provide a binding schedule for the correction of) any malfunctioning meter within no more than seven (7) days after the Municipality becomes aware of or is notified of a malfunctioning meter. The

Municipality shall be liable for and shall pay the City immediately upon demand any and all actual damages, costs and expenses incurred by the City relating to a malfunctioning meter until the malfunction is corrected by the Municipality. Should it be determined by the City that, due to a malfunctioning meter, insufficient data is available to compute the EDUs for a particular billing period, an average of the EDUs for the previous four (4) quarters shall be used.

All meters, locations and points of connection are more fully described and identified in Exhibit "C". Within thirty (30) days after the installation of any new or replacement meter, the Municipality shall provide the City with an updated and amended Exhibit "C" which clearly identifies the (i) number, type and the location of all connections with the City's Sewage System, (ii) location of each meter installed by the Municipality, (iii) area serviced by each meter installed by the Municipality and (iv) location and reasonable detail with respect to each connection in unmetered service areas. The amended Exhibit "C" shall be incorporated in this Agreement upon written approval by the City.

ii. Industrial or Commercial User Meters.

For each Industrial or Commercial User connected to the Municipality's Sewage Transportation System, the Municipality shall require that each such Industrial or Commercial User install a water meter or a Sewage flow meter for determining Domestic Sewage and Industrial or Commercial Sewage volumes.

(B) Meter Reading.

At its sole cost and expense, the Municipality shall read and record on the last working day of each quarterly billing period all applicable Sewage meter totalizers associated with the Municipality's Sewage Transportation System. The Municipality shall notify the City engineer, or his delegate, at least three (3) days in advance of such readings and shall permit a City representative to accompany the meter reader to verify results. The Municipality shall provide the City with copies of all meter readings or measuring device examinations for each meter for each quarterly billing period within twenty (20) days of the end of each quarterly billing period. In addition, the Municipality shall cause each meter installed on its behalf after the Effective Date to electronically transmit real-time flow rate data to the City, unless the flow levels or other conditions at the particular connection make the use of such metering methods impracticable, as determined by an independent third party mutually agreeable to the City and the Municipality.

If a meter reading identifies the occurrence of a Volume Exceedance, the Municipality shall notify the City in writing of the Volume Exceedance within twenty (20) days of the meter reading. The Municipality shall perform additional metered flow readings every ten (10) days until the Volume Exceedance has ceased. The Municipality shall notify the City engineer, or his delegate, at least three (3) days in advance of taking such readings and shall permit a City representative to accompany the meter reader to verify results. The Municipality shall promptly supply the results of all such meter readings to the City.

If the Municipality requests, the City shall permit a Municipality representative to accompany the City meter reader to verify results when the flow meters within the Sewage System are read on a quarterly basis.

(C) Certification of Meters.

The City agrees to have a third party certify and calibrate every three (3) months all Sewage flow meters at the Sewage Treatment Plant for accuracy. The Municipality shall permit the City or its contractor to certify and calibrate all of the flow meters associated with the Municipality's Sewage Transportation System measuring sewage flow entering the City's Sewage System. The City may perform such certification and calibration upon twenty-four (24) hours prior notice to the Municipality. Such third party shall also certify that the Municipality continues to use the method of metering, programming parameters and the type of primary and secondary metering devices required by the City under the terms of the Agreement. The City shall maintain records derived from the certifications/calibrations of meters and will provide such records to the Municipality upon request.

(D) Flow From Other Political Subdivisions.

If Sewage emanates from areas outside the boundaries of the Municipality, and the flow from those areas is recorded in the meter readings of the Municipality or the Municipality's flow is accounted for in another political subdivision's meter, such flow shall be included as part of the Municipality's Sewage flow volume for purposes of determining the Total Charge and Volume Exceedance Surcharge. The Municipality shall pay the City for the flow emanating from any other political subdivision through the Municipality's Sewage Transportation System or emanating from the Municipality to another political subdivision, except as otherwise provided in this Agreement. Notwithstanding any provision herein, this Agreement does not amend, modify, supplant or supersede any agreements the Township or Authority may have with another Contributing Municipality. The Municipality shall, in its sole discretion, manage its contractual relationship(s) with other Contributing Municipalities and the City shall have no responsibility or liability therefor.

If the City has a separate written treatment agreement with a political subdivision which combines its Sewage flow with the Municipality's Sewage flow prior to entering the City's Sewage System, the Municipality shall inform the City what percentage of the flow to attribute to the Municipality and what percentage of the flow to attribute to the other political subdivision. Provided that one hundred percent (100%) of the Sewage flow from the applicable Sewage Transportation System is accounted for in the attribution, the City shall separately bill the Municipality and other political subdivision. Provided, however, if the attribution provided by the Municipality and other political subdivision is disputed or does not equal one hundred percent (100%) of the Sewage flow from the applicable Sewage Transportation System, the Municipality and the other political subdivision shall be jointly and severally liable to City for the Total Charge and Volume Exceedance Surcharge for one hundred percent (100%) of the Sewage flow from the applicable Sewage Transportation System.

In order to determine if a Volume Exceedance has occurred when there is combined flow, the Reserved Capacity for the Municipality and such other political subdivision shall be combined (on a pro rated basis if 100% of the flow is not combined at the applicable metered points.)

(E) Installation of Sampling Manholes.

i. Municipality's Sampling Manholes.

The Municipality shall, at its own cost and expense, install and maintain a sampling manhole acceptable to the City immediately before each interface between the Municipality's Sewage Transportation System and the City's Sewage System to enable the testing of the effluent leaving the Municipality's Sewage Transportation System and then entering the City's Sewage System. All sampling manholes shall meet the City's requirements with respect to type, size, location and construction.

ii. Industrial or Commercial User Sampling Manholes.

Municipality shall require all new Industrial or Commercial Users to install a sampling manhole at the interface of the Industrial or Commercial Users' discharge with the Municipality's Sewage Transportation System, if warranted by the type or volume of flow to be discharged by such new user. All sampling manholes shall meet the City's requirements with respect to type, size, location and construction.

SECTION 12. Geographic Information System ("GIS") Map.

(A) General Obligation.

Upon the City's request, the Municipality shall provide the City with access to the Municipality's Sewage Transportation System and applicable records to develop a GIS map.

(B) New Industrial or Commercial User Connections.

For any new Industrial or Commercial User connection to the Municipality's Sewage Transportation System, the Municipality shall furnish to the City upon request:

i. Any GIS information reasonably requested by the City regarding the new connection in electronic format compatible with the City's GIS mapping program; and

ii. A detailed itemized list designating the name, physical and mailing address, and standard industrial classification of each new Industrial or Commercial User connected to the Municipality's Sewage Transportation System.

(C) Shared Information.

All GIS information, maps, coordinator and other data compiled by the City with respect to the Municipality's Sewer System shall be shared with and provided to the Municipality, at no charge from the City to the Municipality. The Municipality shall be responsible for the cost of any software licenses required to utilize such data.

SECTION 13. Ordinances.

(A) Rental and Other Charges.

The Municipality agrees that it will, at all times, keep in full force and effect an ordinance or ordinances imposing sewer rentals and other charges so that the amounts which reasonably may be collected by the Municipality by virtue of said ordinance or ordinances, together with any other monies received by the Municipality in connection with the operation of its Sewage Transportation System shall be sufficient to provide funds in each fiscal year to pay the total of:

- i. Estimated annual cost of operating and maintaining the Municipality's Sewage Transportation System in good order and repair;
- ii. The Municipality's debt service requirements in each such year on any debt incurred to finance the construction, upgrade or improvement of the Municipality's Sewage Transportation System; and
- iii. The Total Charge required to be paid by the Municipality to the City. Should such revenues at any time be insufficient for such purposes, the said ordinance shall provide that the Municipality shall immediately take all required action to adjust its schedule of rates and charges so that the revenues estimated to be received therefrom, together with other monies collected, received or allocated, as aforesaid, shall be sufficient to comply with the requirements of SECTION 13(A).

(B) Pretreatment, Inspection, Access and Reports.

The Municipality agrees that it will adopt and, at all times during the term of this Agreement, keep in full force and effect the City Ordinance. The Municipality shall ensure that its adoption of the City Ordinance provides it and the City with the authority to impose obligations regarding Pretreatment, inspection, access and reports on each Industrial or Commercial User as reasonably necessary to implement the terms of this Agreement and comply with Applicable Laws. The City will maintain the right to have the primary enforcement authority associated with such ordinance; however, the Municipality agrees to cooperate and coordinate efforts as requested by the City and to allow the City to sue in the Municipality's name any Industrial or Commercial User discharging Sewage in violation of the terms of this Agreement, contrary to Applicable Laws or beyond the limits authorized by such Industrial or Commercial User's permit from the City authorizing the Sewage discharge. The purpose of this SECTION 13(B) is to provide the right for the City to:

- i. Have the permitting authority to establish pretreatment conditions associated with the discharge of the Industrial or Commercial User;
- ii. Access, inspect, survey, monitor or sample discharge from each Industrial or Commercial User during normal business hours, with or without notice;
- iii. Access, inspect and evaluate each Industrial or Commercial User's Pretreatment facilities during normal business hours, with or without notice;

iv. Access, inspect and evaluate records relating to Sewage generation, treatment or discharge from each Industrial or Commercial User during normal business hours, with or without notice;

v. Enforce injunctive relief, civil or criminal penalties consistent with Applicable Laws for any violation of Applicable Laws or this Agreement, including, but not limited to, the discharge limitations set forth in SECTION 7(C); and

vi. Immediately compel the discontinuance of the discharge of Sewage from any facility if the City believes, in its sole discretion, such discharge is in violation of this Agreement or Applicable Laws.

vii. The obligation for all Industrial or Commercial Users to comply will all applicable Best Management Practices;

viii. The obligation for all Industrial or Commercial Users to immediately notify the City once an Industrial or Commercial User has reason to know a discharge to the Municipality's Sewage Transportation System or the City's Sewage System occurred which may potentially create an imminent hazard to human health or the environment;

ix. The obligation for Industrial or Commercial Users to notify the City within thirty (30) days of any material change in the quality or quantity of Sewage discharge;

x. The obligation for Industrial or Commercial Users to submit all data, reports or information required by Applicable Laws for such Industrial or Commercial Users, including, but not limited to, submission of data required for and compatible with the Pretreatment computerized management system;

xi. The obligation for Industrial or Commercial Users to implement Pretreatment processes of all waste and pollutants not authorized by Applicable Law to be directly discharged to the Sewage Treatment Plant, consistent with the terms of this Agreement and Applicable Laws;

xii. The obligation for Industrial or Commercial Users to perform self monitoring for pollutants of concern as required by Applicable Laws;

xiii. Provide local limits, as provided in Part 403 of Chapter 40 of the Code of Federal Regulations and the Consent Decree, of concentrations and characteristics of Sewage discharged from Industrial or Commercial Users, consistent with the most stringent limits set forth in this Agreement or Applicable Laws; and

xiv. The obligation for Industrial or Commercial Users to install and maintain sampling ports and meters of Sewage discharge or water usage, in accordance with this Agreement.

(C) Intergovernmental Cooperation Act.

The Municipality and City agree to formally authorize intergovernmental cooperation by adoption of an ordinance in compliance with the requirements of the Intergovernmental Cooperation Act, 53 Pa. C.S.A § 2301 et seq., to allow the other to perform its obligations and enjoy its rights in accordance with the terms of this Agreement.

SECTION 14. Indemnification.

The Township and Authority, jointly and severally, shall indemnify, defend and save the City harmless from and against all claims, suits, demands, orders, penalties, losses, costs and/or damages (“**Claims**”) arising out of or relating to the breach of this Agreement by the Township, Authority, or their respective servants, agents or employees or the gross negligence or willful misconduct of the Township, Authority or their respective servants, agents or employees.

The City likewise agrees to indemnify, defend and save the Municipality harmless from and against all Claims arising out of or relating to the breach of this Agreement by the City, its servants, agents or employees or the gross negligence or willful misconduct of the City, its servants, agents or employees; provided however, for purposes of this Agreement, the Contributing Municipalities are not the City’s servants, agents or employees. Notwithstanding anything else to the contrary in this Agreement, the City shall have no responsibility or liability to the Municipality for Claims resulting directly or indirectly from the acts or omission of any political subdivision other than the City.

SECTION 15. Insurance.

(A) The Municipality’s Insurance Obligations.

Throughout the term of this Agreement, the Municipality shall maintain the following insurance coverages in effect:

- i. Comprehensive General Liability – including bodily injury and property damage, with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- ii. Public Officials Liability – included at limits of \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate.
- iii. Umbrella/Excess Liability – with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate following from underlying liability coverage.

Within ten (10) days of the Effective Date of this Agreement, the Municipality shall furnish to the City 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 insureds under the Comprehensive General Liability coverage, and providing that no policies may be cancelled without ten (10) days advance written notice to the City. All policies shall be in effect with companies holding an A.M. Best rating of "A-" or better and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Such companies shall also be acceptable to the City.

(B) The City's Insurance Obligations

Throughout the term of this Agreement, the City shall maintain the following insurance coverages in effect:

i. Comprehensive General Liability – including bodily injury and property damage, with limits of \$1,000,000 per occurrence and \$1,000,000 annual aggregate.

ii. Public Officials Liability – included at limits of \$2,000,000 for each wrongful act and \$2,000,000 annual aggregate.

iii. Premises Pollution Liability – included at limits of \$1,000,000 per pollution condition and \$1,000,000 annual aggregate.

iv. Umbrella/Excess Liability – with limits of not less than \$4,000,000 per occurrence and \$4,000,000 annual aggregate following from underlying liability coverage.

(C) Periodic Limit Increases

The insurance limits set forth herein shall be reviewed periodically and increased upon mutual agreement.

SECTION 16. Inspection of Records.

The Parties shall make available for inspection by the other parties hereto, upon reasonable request, any records and accounts associated with the financial, technical, physical or mechanical components of the other party's Sewage Transportation System and, in the case the City, its Sewage Treatment Plant. Any inspections made pursuant to this SECTION 16 shall take place not more than four (4) times during any calendar year.

SECTION 17. Title Transfer.

If the Township or Authority, at any future time, transfers title to its Sewage Transportation System to any Person by deed or otherwise, the Township or Authority shall ensure that the Person shall be subject to all obligations of this Agreement. Township and Authority shall also be liable for the Total Charge and full compliance with the obligations under this Agreement unless and until the City authorizes the assignment of this Agreement pursuant to SECTION 23(L).

SECTION 18. Most Favorable Pricing Terms.

In the event the City enters into any agreement of a similar nature concerning Sewage transportation through the City's Sewage Transportation System or the treatment at its Sewage Treatment Plant with any other Contributing Municipality, upon more favorable terms with respect to pricing (as compared to those provided in SECTION 9 of this Agreement), then the Parties hereto agree that such pricing terms shall be incorporated herein by amendment, and the City shall provide the Municipality with written notice of any more favorable terms agreed upon by the City. Upon request, the City shall furnish to the Municipality a copy of all Sewage treatment or transportation agreements fully executed between the City and any other municipality whose Sewage is transported through the City's Sewage Transportation System or treated at the Sewage Treatment Plant.

SECTION 19. Service to Additional Municipalities.

Notwithstanding anything contained herein to the contrary, the City agrees that the initial cost of any future discrete expansion, renovation, revision or improvement to its present Sewage System required solely as the result of the addition of a political subdivision not presently served by the City shall not be passed through, charged or paid in part by the Municipality.

SECTION 20. Act 537 Plan.

The Municipality shall take any and all steps, if necessary, to amend its Act 537 Plan to reflect the terms and conditions of this Agreement, Applicable Laws and the collection and treatment of Sewage by the City for the area described in Exhibit "B" no later than twelve (12) months after the Effective Date. Thereafter, the Municipality shall evaluate and comprehensively amend, if necessary, its Act 537 Plan for the areas specified in Exhibit "B" at least once every five years.

The Municipality shall provide the City with any proposed amendments to the Municipality's Act 537 at least sixty (60) days prior to submitting the proposed amendments to the Municipality's Act 537 Plan to DEP. Within thirty (30) days of receiving the Municipality's proposed amendment to the Municipality's Act 537 Plan, the City shall provide the Municipality with comments, if any. The Municipality shall, in good faith, address and modify the proposed amendment to the Municipality's Act 537 Plan consistent with the City's comments prior to submitting the proposed amendment to the Municipality's Act 537 Plan to DEP. The City reserves the right to submit comments to the proposed amendment to Municipality's Act 537 Plan during any public comment period.

SECTION 21. Consent Decree.

The Municipality agrees to cooperate and assist the City with facilitating the implementation of the requirements and recommendations contained in the Consent Decree and any related recommendations of the U.S. Department of Justice, the EPA, the DEP and any other governmental authority with jurisdiction.

SECTION 22. Default.

Except as otherwise set forth in this Agreement with respect to the City's right to injunctive relief, if any party to this Agreement believes that another party has materially breached this Agreement, the non-breaching party shall provide the breaching party with sixty (60) days prior written notice of the breach along with an explanation of the breach and basis for such belief before the non-breaching party institutes any action in arbitration, if elected by the City, or in law or equity.

The breaching party shall have sixty (60) days immediately following the written notice to cure the breach or take appropriate corrective action to cure the breach. Provided, however, the non-breaching party shall retain all legal rights to institute an action in law or equity.

SECTION 23. Miscellaneous.

(A) Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original and such counterparts shall constitute but one and the same instrument.

(B) Applications for Grants.

The City and the Municipality may, in their individual discretion, make applications for any available grants, subsidies, low interest loans or other similar payments in connection with their respective Sewage facilities. The Municipality and the City shall reasonably cooperate with each other in the application process for obtaining any such grants, subsidies, low interest loans or other similar payments.

(C) Compliance with Applicable Laws.

Without limiting the Parties' respective obligations as set forth in this Agreement, each Party shall operate its respective Sewage Transportation System (and, for the City, also its Sewage Treatment Plant) in material compliance with all Applicable Laws.

(D) Governing Law; Venue.

This Agreement has been made, executed, and delivered in, and shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. The Parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state courts located in the County of Berks, Commonwealth of Pennsylvania, and the United States District Court for the Eastern District of Pennsylvania and irrevocably agree that all actions or proceedings relating to this Agreement shall be litigated in such courts. Each party waives any objection, which it may have based on lack of personal jurisdiction, improper venue, or forum non conveniens to the conduct of any proceeding in any such court and waives personal service of any and all process upon them.

(E) Force Majeure.

Notwithstanding any other provisions of this Agreement, neither the City nor the Municipality shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, strike, or unforeseen breakdown of the Sewage Transportation System or Sewage Treatment Plant. The party so affected, however, shall proceed promptly to remedy the consequences of such event.

(F) Records Retention.

The Parties shall retain records in accordance with the Federal Water Pollution Control Act (also known as the "Clean Water Act"), 33 U.S.C.A §§ 1251 to 1387 (and the regulations promulgated thereunder) and the Municipal Records Act of 1968 (P.L 961, No. 428), 53 P.S. §§ 9001 to 9010, as it may be amended from time-to-time, and may dispose of municipal records as permitted therein.

(G) Severability.

Subject to the rate adjustment process set forth in SECTION 9(J), should any provision of this Agreement for any reason be held illegal or invalid, no other provision of this Agreement shall be affected, and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

(H) Headings.

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

(I) Exhibits.

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any conflicts, inconsistencies, discrepancies, or ambiguities between and/or within the Agreement and the exhibits attached hereto, the main body of this Agreement takes precedence over the exhibits and any inconsistency between the exhibits shall be resolved in the listed order, below, unless an exhibit expressly states otherwise:

- i. Exhibit "A": Consent Decree
- ii. Exhibit "B": Sewage Service Area
- iii. Exhibit "C": Connection Locations
- iv. Exhibit "D": City Ordinance
- v. Exhibit "E": Operating Costs
- vi. Exhibit "F": Reserved Capacity Table

vii. Exhibit "G": Reserved Capacity Charge Fee Schedule

(J) Reference to Days.

Unless specifically stated otherwise, all references to a "day" or "days" shall mean a "calendar day" or "calendar days."

(K) Waiver.

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

(L) Successors and Assigns.

The Parties hereto shall not voluntarily assign this Agreement without the prior written consent of the other parties hereto. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and assigns notwithstanding any such assignment.

(M) Entire Agreement.

This Agreement contains the entire agreement among the parties hereto, and no oral statements or representations or prior written matter not contained in this Agreement shall have any force and effect.

(N) Modification.

This Agreement may only be modified or amended in a writing signed by the Parties hereto or as specifically provided herein after the City has provided written notice of such modification to the Municipality.

(O) Notices.

All written notices and approvals given or made pursuant to this Agreement shall be deemed effectively received upon the earlier of actual receipt or: (i) the date of personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their contact information set forth below. Either party may modify its contact information upon written notice to the other party.

If to the City:

Managing Director
City of Reading
815 Washington Street
Reading, PA 19601
Fax No.: (610) 655-6034

With a copy to:

City Solicitor
City of Reading
815 Washington Street
Reading, PA 19601

If to the Authority:

Muhlenberg Township Authority
Attn: Manager
2840 Kutztown Road
Reading, PA 19605
Fax No.: (610) 929-2172

If to the Township:

Muhlenberg Township
Attn: Township Manager
5401 Leesport Avenue
Temple, PA 19560
Fax No.: (610) 921-3764

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their appropriate officers thereunto duly authorized respectively, by adoption of appropriate ordinances, and by the adoption of a resolution, and their respective seals to be hereunto affixed, all as of the day and year first above written.

CITY OF READING

By: _____
Mayor

ATTEST:

City Clerk

(SEAL)

**MUHLENBERG TOWNSHIP
AUTHORITY**

By: _____
Name: _____
Title: _____

ATTEST:

Secretary

(SEAL)

MUHLENBERG TOWNSHIP

By: _____
Name: _____
Title: _____

ATTEST:

Secretary

(SEAL)

EXHIBIT "A": CONSENT DECREE

EXHIBIT "B": SEWAGE SERVICE AREA

Notwithstanding the Municipality's obligation to convey all Sewage emanating from the Service Area, as such obligation is set forth in SECTION 1 of this Agreement, the Municipality shall not be required to connect the three hundred seventy-two (372) single-family residential lots and twenty-seven (27) non-residential lots currently serviced by on-lot sewage systems to connect to the Municipality's Sewage Transportation System.

Furthermore, the Municipality shall be permitted to service the parcels within the Service Area designated as "Planned/Future Development" in the Sewer Service Area Map attached hereto through use of on-lot sewage systems.

EXHIBIT "C": CONNECTION LOCATIONS

Connection Point "A"	
Location/Name	Front Street / Ball Park
Meter Manufacturer	Badget
Meter Model Number	2100
Meter Serial Number	5768
Metering Method	12" Parshall Flume
Meter Type	Ultrasonic
Off-Site Communications	MTA SCADA / Radio

Connection Point "B"	
Location/Name	North 5 th Street
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "C"	
Location/Name	Columbia Avenue
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "D"	
Location/Name	Raymond Street
Meter Manufacturer	Badger
Meter Model Number	2100
Meter Serial Number	6427
Metering Method	6" Parshall Flume
Meter Type	Ultrasonic
Off-Site Communications	MTA SCADA / Radio

Connection Point "E"	
Location/Name	Kutztown Road
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "F"	
Location/Name	N. 11 th Street
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "G"	
Location/Name	N. 13 th Street
Meter Manufacturer	Badger
Meter Model Number	2100
Meter Serial Number	918816
Metering Method	3" Parshall Flume
Meter Type	Ultrasonic
Off-Site Communications	None

Connection Point "H"	
Location/Name	N. 17 th Street
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "I"	
Location/Name	Hampden Blvd
Meter Manufacturer	Badger
Meter Model Number	2100
Meter Serial Number	962893
Metering Method	3" Parshall Flume
Meter Type	Ultrasonic
Off-Site Communications	None

EXHIBIT "D": CITY ORDINANCE

EXHIBIT "E": OPERATING COSTS

The Operating Costs of the Sewage Treatment Plant and the Operating Costs of the Sewage Transportation System are defined in SECTION 3 of the Agreement, and subject to subsequent amendment upon agreement by the Parties, shall be the following:

Personnel

- Salary, Wages and Taxes
- Fringe Benefits (c.g, medical, dental, vision, disability and life insurance, as applicable)
- Retirement/Pension
- Continuing Education
- Uniforms

Operation, Supplies & Equipment

- Biosolids and Residual Transportation & Disposal Fees
- Vehicles
- Vehicle/Equipment Fuels
- Chemicals
- General Supplies
- Lab Supplies
- Safety Supplies & Equipment

Contracted Services (Includes Labor and Materials)

- Laboratory
- Rentals
- Operation & Maintenance Services
- General and Administrative Services

Utilities

- Electricity
- Telephone (including data services)
- Water
- Sewer
- Building Fuel (e.g., natural gas & heating oil)

Maintenance

- Materials & Parts
- Supplies & Equipment
- General Repairs
- Minor Capital
- Instrumentation & Communication

Professional Services

- Administrative
- Technical (for example: engineer, construction manager, surveyor, geotechnical expert)
- Legal
- Financial

General & Administrative

- Indirect Costs
- Public Works Direct Cost Reimbursement
- Dues & Subscriptions
- Electronic Hardware & Software
- Office Supplies & Services
- Advertisement, Printing, Copying and Scanning
- Regulatory Permits, Fees and Fines/Penalties

Insurances and Surety Bonds**Impact Transfer****Bond Expense**

- Issuance Cost

If generally accepted accounting principles require any item of expense listed above to be described or categorized differently, then such expense shall still be deemed an Operating Costs of the Sewage Treatment Plant and the Operating Costs of the Sewage Transportation System. Notwithstanding the foregoing, the general scope of the expenses listed above may only be expanded by a written amendment in accordance with SECTION 23(N).

EXHIBIT "F": RESERVED CAPACITY TABLE

<u>Contributing Municipality</u>	<u>Reserved Capacity (gallons per day)</u>
Antietam Valley Municipal Authority	86,558
Bern Township	170,000
Cumru Township	1,875,832
Kenhorst Borough	266,190
Laureldale Borough	696,402
Mohnton Borough	46,742
Muhlenberg Township	6,011,146
City of Reading	9,541,933
Robeson Township	44,000
Shillington Borough	70,556
Spring Township	1,542,600
Wyomissing Borough	65,074
TOTAL AGGREGATE RESERVED CAPACITY:	20,417,033

EXHIBIT "G": RESERVED CAPACITY CHARGE FEE SCHEDULE

Unless otherwise amended by written agreement signed by the Parties, the Reserved Capacity Charge shall be calculated as follows:

- (1) Sixteen Dollars (\$16) per gallon of additional Reserved Capacity as compensation necessitated for the infrastructure accommodate such additional flow.

- (2) In addition, the Reserved Capacity Charge shall include payment of Five Dollars (\$5) per gallon per day as compensation for implementing and designing capital improvements necessitated by the additional Reserved Capacity.

- (3) An inflation factor of three percent (3%) of the Reserved Capacity Charge, compounded annually as of the Effective Date, shall be added to the sum of (1) and (2), above.

EXHIBIT "H": EXAMPLE CALCULATIONS

A. Unit Rates

1. Treatment Unit Rate

- Step 1: Develop a budget for the Operating Costs of the Sewage Treatment Plant for the next calendar year to establish the Operating Costs of the Sewage Treatment Plant Projection.
- Step 2: Sum the total amount of Operating Costs of the Sewage Treatment Plant that were paid in the previous calendar year, based on the audited financials.
- Step 3: Determine the amount of Operating Costs of the Sewage Treatment Plant that was projected for the previous calendar year.
- Step 4: Subtract the previous year's actual payments for operating the Sewage Treatment Plant, as calculated in the second step, from the cost projection for operating the Sewage Treatment Plant that was made for the same calendar year, as determined in the third step. (Note – during the first two years of the Agreement, there will not be an adjustment because the audited financial statements for the first full year of calculating Unit Rates will not be available until after the rates are set for Year 2 in October of Year 1)
- Step 5: Add the number from the first step to the number from the fourth step.
- Step 6: Divide the number from fifth step by the total number of EDUs reported to have been treated at the Sewage Treatment Plant for the latest calendar completed year.

Below is an example of how the Treatment Unit Rate is calculated.

Example Calculation 1(a): Assume the City is in the process of determining the Treatment Unit Rates for Year 5. The City would project the estimated cost of operating the Sewage Treatment Plant in August/September of Year 4 in order to establish the Year 5 Treatment Unit Rate by October 1 of Year 4 (as required by SECTION 9(C)). Assume the City's estimate for the Year 5 operating costs of the Sewage Treatment Plant is \$12 Million. The latest available audited financial statements available to the City in October of Year 4 would be for Year 3. Assume the results from the audited financial statements from Year 3 show that the City incurred \$12.1 Million in operational expenses for the Sewage Treatment Plant in Year 3. In October of Year 2, the City would have made a projection for its estimate of the operating costs of the Sewage Treatment for Year 3 in order to set the Treatment Unit Rate for Year 3. Assume the City projected the operating costs for Year 3 to be \$11,900,000 when the City made its Year 3 projection in August/September of Year 2. The numerator for the Year 5 Treatment Unit Rate would be determined based on the following formula:

$$\$12 \text{ Million} + (\$12.1 \text{ Million} - \$11,900,000) = \$12.2 \text{ Million}$$

An upward adjustment of \$200,000 was necessary because the City incurred \$200,000 more in operational costs than the Municipalities paid to the City in Year 3. Then, in order to determine the Treatment Unit Rate, \$12.2 Million would need to be divided by the total sum of EDUs

reported to have been treated at the Sewage Treatment Plant by all of the Contributing Municipalities (including the City) from the latest completed calendar year. For purposes of this calculation, assume 72,500 EDUs were reported to be treated at the Sewage Treatment Plant in Year 3. Therefore, the formula for the Treatment Unit Rate would be:

$$\text{\$12.2 Million} / 72,500 \text{ EDUs} = \text{\$168.27 for Sewage treatment per EDU}$$

Example Calculation 1(b): On the other hand, if the City had overestimated the projection for Year 3 (assume its projection for the operational costs of the Sewage Treatment Plant for Year 3 was \$12.2 Million), the Year 5 Treatment Unit Rate would be determined based on the following formula:

$$\text{\$12 Million} + (\text{\$12.1 Million} - \text{\$12.2 Million}) = \text{\$11.9 Million}$$

A downward adjustment would be required because the City projection was higher than the amount of operational costs it actually incurred during Year 3. Therefore, the formula for the Treatment Unit Rate would be:

$$\text{\$11.9 Million} / 72,500 \text{ EDUs} = \text{\$164.13 for Sewage treatment per EDU}$$

2. Transportation Unit Rates

- Step 1: Develop a budget for the Operating Costs of the Sewage Transportation System for the next calendar year to establish the Operating Costs of the Sewage Transportation System Projection.
- Step 2: Determine the next year's budgeted salaries and fringe benefits of staff employed by the City for operating the Sewage Transportation System for the next calendar year and multiply by ten percent (10%).
- Step 3: Subtract the amount from second step from the Operating Costs of the Sewage Transportation System Project for the next calendar, as determined in the first step.
- Step 4: Sum the total amount of Operating Costs of the Sewage Transportation System that were paid in the previous calendar year, based on the audited financials.
- Step 5: Determine the amount that was paid for the pro-rated salaries and fringe benefits of staff employed by the City for operating the Sewage Transportation System from the previous calendar year, based on the audited financials.
- Step 6: Determine the amount of Operating Costs of the Sewage Transportation System that was projected for the previous calendar year.
- Step 7: Subtract the previous year's actual payments for operating the Sewage Transportation System (less ten percent (10%) of the salaries and fringe benefits of staff employed by the City during such calendar year for operating the Sewage Transportation System), as calculated in the fourth step, from the cost projection that was made for the same calendar year, as calculated in the sixth step. (Note – during the first two years of the Agreement, there will not be an adjustment because the audited financial statements for the first full year of calculating Unit Rates will not be available until after the rates are set for Year 2 in October of Year 1)

- Step 8: Add the number from the third step to the number from the seventh step.
- Step 9: Divide the number from eighth step by the total number of EDUs reported to have been treated at the Sewage Treatment Plant for the latest calendar completed year.

Example Calculation 2: Assume the City is in the process of determining the Transportation Unit Rates for Year 5. The City would project the estimated cost of operating the Sewage Transportation System in August/September of Year 4 in order to establish the Year 5 Transportation Unit Rate by October 1 of Year 4 (as required by SECTION 9(C)). Assume the City's estimate for the Year 5 operating costs of the Sewage Transportation System is \$2 Million (\$1.2 Million of which is budgeted for the City's staff and fringe benefits for operating the Sewage Transportation System). The Operating Costs of the Transportation System Projection would be determined based on the following formula:

$$(\$2 \text{ Million} - (\$1.2 \text{ Million} \times 0.10)) = \$1.88 \text{ Million}$$

The latest available audited financial statements available to the City in October of Year 4 would be for Year 3. Assume the results from the audited financial statements from Year 3 show that the City incurred \$2.2 Million in operational expenses (\$1.1 Million of which was for salaries and fringe benefits of staff employed by the City for operating the Sewage Transportation System) for the Sewage Transportation System in Year 3. In October of Year 2, the City would have made a projection for its estimate of the operating costs of the Sewage Transportation System for Year 3 in order to set the Transportation Unit Rate for Year 3. Assume the City projected the operating costs for the Sewage Transportation System in Year 3 is \$1.9 Million (\$1.0 Million of which was for salaries and fringe benefits of staff employed by the City for operating the Sewage Transportation System) when the City made its Year 3 projection in August/September of Year 2. Operating Costs of the Transportation System Projection would be determined based on the following formula:

$$(\$2.2 \text{ Million} - (\$1.1 \text{ Million} \times 0.10)) - (\$1.9 \text{ Million} - (\$1.0 \text{ Million} \times 0.10)) = \$290,000$$

The numerator for the Year 5 Treatment Unit Rate would be determined based on the following formula:

$$\$1.88 \text{ Million} + \$290,000 = \$2.17 \text{ Million}$$

An upward adjustment of \$290,000 was necessary because the City incurred \$290,000 more in operational costs (after the adjustment for ten percent (10%) of staff salary and fringe benefits) than the Contributing Municipalities paid to the City in Year 3. Then, in order to determine the Transportation Unit Rate, \$2.17 Million would need to be divided by the total sum of EDUs reported to have been treated at the Sewage Treatment Plant by all of the Contributing Municipalities (including the City) from the latest completed calendar year. For purposes of this calculation, assume 72,500 EDUs were reported to be treated at the Sewage Treatment Plant in Year 3. Therefore, the formula for the Transportation Unit Rate would be:

$$\$2.17 \text{ Million} / 72,500 \text{ EDUs} = \$29.93 \text{ for Sewage treatment per EDU}$$

B. Debt Service Charge

Example Calculation 3: Like in Example Calculation 1, assume the City is in the process of determining the Debt Service Charge for calendar Year 5. In September of Year 4, the City projects to incur \$11 Million in Debt Service over the course of Year 5. Based on the audited financial statements from Year 3, the City paid \$14 Million in Debt Service during Year 3. However, in September of Year 2, the City projected that it would only incur \$12 Million in Debt Service.

Further assume that the Municipality has a Reserved Capacity of 500,000 gallons per day and that all of the Contributing Municipalities have reserved a capacity totaling 18 million gallons per day (i.e., the Total Aggregate Reserved Capacity).

The Debt Service Charge would be based on the following formula:

$\$11 \text{ Million} + (\$14 \text{ Million} - \$12 \text{ Million}) \times (500,000/18,000,000) = \$361,110.10$ for the total Debt Service Charge due for the entire Year 5 calendar year.

C. Infrastructure Contingency Charge

Example Calculation 4: Carrying forward all of the assumptions set forth in Example Calculation 3, the Infrastructure Contingency Charge due for the entire Year 5 calendar year would equal \$36,111.01, which is ten percent (10%) of the Debt Service Charge.

D. Volume Exceedance Surcharge

Example Calculation 5 (Daily Volume Exceedance): Assumptions for purpose of this example:

1. The current Treatment Unit Rate is \$165
2. The current Transportation Unit Rate is \$90
3. The Municipality has a Reserved Capacity of 500,000 gallons per day
4. On one day the Municipality measured an aggregate discharge of 850,000 gallons of sewage from all of its connection points to the City's Sewage System but was otherwise under 500,000 gallons per day for the rest of the calendar month

The total number of gallons used for purposes of calculating the Volume Exceedance Surcharge under the assumptions noted above would be determined by subtracting the Reserved Capacity (inclusive of the peak factor identified in SECTION 4(A) from the total gallons discharged: $850,000 - (500,000 \times 1.5) = 100,000$ gallons. The Volume Exceedance Surcharge would then be calculated based on the following formula:

$$\left(\frac{(\$165 + \$90) \times 100,000}{(50,000)} \right) \times 0.25 = \$127.50$$

Example Calculation 6 (Monthly Volume Exceedance): Assumptions for purpose of this example:

1. The current Treatment Unit Rate is \$165
2. The current Transportation Unit Rate is \$90
3. The Municipality has a Reserved Capacity of 500,000 gallons per day
4. Each day during January of Year 5, the Municipality measured an average daily aggregate discharge of 520,000 gallons of Sewage from all of its connections points to the City's Sewage System but was otherwise under the Reserved Capacity 1.5 peaking factor on each day

The total number of gallons used for purposes of calculating the Volume Exceedance Surcharge under the assumptions noted above would be determined by subtracting the Reserved Capacity from the daily average number of gallons discharged and then multiplying the result by the number of calendar days in January: $(520,000 - 500,000) \times 31 = 620,000$ gallons. The Volume Exceedance Surcharge would then be calculated based on the following formula:

$$\left(\frac{(\$165 + \$90) \times 620,000}{(50,735)} \right) \times 0.5 = \$1,581.00$$

EXHIBIT "I": ANNUAL REPORT FORMS

Quarter Ending: _____, 20__

Quarterly Debt Service Statement

USER	DEBT SERVICE PAYMENT	INFRASTRUCTURE CONTINGENCY FUND PAYMENT
Antietam Valley Municipal Authority		
Bern Township		
Cumru Township		
Kenhorst Borough		
Laureldale Borough		
Mohnton Borough		
Muhlenberg Township		
City of Reading		
Robeson Township		
Shillington Borough		
Spring Township		
Wyomissing Borough		
TOTAL FOR CURRENT QUARTER		\$
PREVIOUS BALANCE		+ \$
INTEREST		+ \$
VOLUME EXCEEDANCE SURCHARGES COLLECTED		+ \$
INFRASTRUCTURE CONTINGENCY CUMULATIVE TOTAL		\$
LESS REDUCTIONS **		- \$
INFRASTRUCTURE CONTINGENCY FUND BALANCE		= \$

** Explanation provided on separate sheet

Quarterly Sewer Flow Information

Total Volume of Sewage Flow at the Sewage Treatment Plan: _____ (Millions of Gallons)

USER	Reserved Capacity (GPD)	Quarterly Flow (Mil. Gals.)	Average Daily Flow (GPD)	Percent of Total Flow	Treatment Charge \$ _____ (per EDU)	Transport Charge \$ _____ (per EDU)	Date Payment Received by City
AVMA							
Bern Tp.							
Cumru Tp.							
Kenhorst Boro.							
Laureldale Boro.							
Mohnton Boro.							
Muhlenberg Tp.							
City of Reading							
Robeson Tp.							
Shillington Boro.							
Spring Tp.							
Wyomissing Boro.							

INTER-MUNICIPAL AGREEMENT

**CITY OF READING, PARTY OF THE FIRST PART
AND
MUHLENBERG TOWNSHIP AND MUHLENBERG AUTHORITY, PARTIES OF THE
SECOND PART**

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THIS INTER-MUNICIPAL AGREEMENT (the "Agreement"), dated the 19th day of Nov., 2012, ("Effective Date") by and among the CITY OF READING, Berks County, Pennsylvania, a Municipal Corporation organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called "City") and MUHLENBERG TOWNSHIP AUTHORITY, organized and existing under the laws of the Commonwealth of Pennsylvania, (hereinafter called "Authority"), and the MUHLENBERG TOWNSHIP, organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter called "Township"). For purposes of this Agreement, the Authority and Township shall collectively be referred to herein as the "Municipality" and the City, Authority and Township shall collectively be referred to herein as the "Parties".

BACKGROUND

A. WHEREAS, the Parties entered into an agreement(s), dated May 1, 1986, as amended, wherein, inter alia, it provided for the transportation, treatment, and disposal of Sewage collected in the Township by and through the Municipality's Sewage collection and transportation system to the City's Sewage mains for further transportation and treatment at the City's Sewage Treatment Plant (the "Prior Agreements"); and

B. WHEREAS, conditions, economically and technically, have drastically changed since the Prior Agreements were executed; and

C. WHEREAS, the City entered into a Consent Decree with the United States Environmental Protection Agency ("EPA") and the Pennsylvania Department of Environmental Protection ("DEP"), which was filed on November 7, 2005, with the United States District Court for the Eastern District of Pennsylvania, Docket Number 2:04-cv-05696 and which is attached hereto as Exhibit "A" ("Consent Decree"); and

D. WHEREAS, evolving regulatory requirements and obligations imposed on the City continue to demand greater degrees of treatment and improvement in the operation of the City's Sewage System, including, but not limited to, reducing infiltration of stormwater into the City's Sewage System, constructing structural upgrades, and implementing additional treatment processes; and

E. WHEREAS, such greater degrees of treatment and improvement require substantially more operational and capital expenditures by the City than were originally contemplated by the Parties when the Prior Agreements were executed; and

F. WHEREAS, wherever reasonably quantifiable, with the exception of treatment of Industrial or Commercial Sewage, the most equitable method of charging for the Sewage service rendered by the City is on a connection and volumetric basis; and

G. WHEREAS, the cost of transportation and treatment of Sewage collected from connections outside of the City should not be subsidized by the City or its residents and the cost of transportation and treatment of Sewage collected from the City or its residents should not be subsidized by the Municipality or its residents, except as expressly set forth herein; and

H. WHEREAS, the Consent Decree imposes requirements on the Parties which include, but are not limited to, reporting data, limiting concentrations of pollutants in Sewage influent, and enforcing civil penalties or enjoining the discharge from Industrial or Commercial Users with Sewage exceeding influent limitations established by the City, Municipality, or Applicable Laws; and

I. WHEREAS, the City requires the assistance and cooperation of the Municipality to perform the obligations set forth under Applicable Laws in order to prevent a potential ban or moratorium on the treatment of additional Sewage connections to the Sewage Treatment Plant; and

J. WHEREAS, the Parties desire to enter into this Agreement to set forth the Parties' respective obligations for the treatment of Sewage emanating from certain areas of the Municipality and as such the Parties agree that this Agreement shall supersede and replace the Prior Agreements.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the Parties, intending to be legally bound hereby, agree to and with each other as follows:

SECTION 1. Sewage Service Area.

Subject to the terms of this Agreement and the Municipality's Reserved Capacity, the City hereby agrees to accept Sewage originating from the portions of the Municipality marked in Exhibit "B" attached hereto and transported through the Municipality's Sewage Transportation System before entering the City's Sewage System. To the extent the City's Sewage System is capable and permitted to transport and treat such Sewage, the Municipality agrees that it will convey all Sewage originating from the portions of the Municipality marked in Exhibit "B" to the City's Sewage System for treatment except as specifically provided in this Agreement. The City shall have no obligation to accept Sewage from the Municipality except as specifically provided in this Agreement. The Sewage from the Municipality shall be transported by the Municipality to the points of connection with the City's Sewage System as set forth in Exhibit "C".

SECTION 2. Term.

This Agreement amends, supersedes and supplants the Prior Agreements, and shall remain in effect from the date of execution hereof through December 31, 2052 (the "**Initial Term**"); provided, however, as set forth below in this SECTION 2, the City shall have the right to renegotiate specific terms of this Agreement whenever Applicable Laws require the City to incur additional costs concerning the operation of City's Sewage System. This Agreement shall be automatically extended for additional periods of ten (10) years, unless any party, by serving written notice on the other at least twelve (12) months prior to the completion of the Initial Term or any additional ten (10) year renewal term, requests that the Agreement be revised, rescinded or abrogated.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall be automatically extended, under the same terms and conditions as stated herein, to the maturity date

of any debt incurred by City to finance renovations, improvements or additions to City's Sewage System and the Municipality shall not have the right to terminate this Agreement prior to the maturity date of said debt.

Whenever Applicable Laws require the expenditure of additional funds concerning the operation of City's Sewage System, which were not foreseen by the City, then specific terms of this Agreement, as identified by the City in its reasonable discretion, may be renegotiated upon written notice from City, with respect to the payment by Municipality of any such additional costs incurred by City, including, without limitation, additional costs relating to the Operating Costs of the Sewage Treatment Plant, Operating Costs of the Sewage Transportation System, Upgrading and Improvement Costs or Debt Service that are incurred by the City. Municipality and City shall each negotiate in good faith. All terms and conditions of this Agreement shall remain in full force and effect unless and until a modification to this Agreement is executed by both Parties.

SECTION 3. Definitions.

The terms defined in this SECTION 3, whenever used for reference in this Agreement, shall have the respective meanings indicated unless a different meaning clearly appears from the context.

i. **"Accredited Laboratory"** shall mean an analytical laboratory accredited by the DEP or EPA to evaluate and analyze environmental media for the relevant parameters, chemicals and substances.

ii. **"Act 537 Plan"** shall mean the current, official sewage facilities plan for the Municipality required pursuant to 35 P.S. § 705.1 et seq., and the regulations promulgated thereunder, as they may be amended from time to time.

iii. **"Applicable Laws"** shall include, without limitation, all applicable local, state and federal laws, rules, regulations, codes, published guidance documents from government agencies, orders, decrees, ordinances (including, but not limited to, the City Ordinance) and all provisions of any permits, approvals, variances, or waivers from permits or approvals, applicable in any jurisdiction associated with the performance of this Agreement, including, but not limited to, the City and Municipality pretreatment programs, the Consent Decree and/or NPDES Permit.

iv. **"Best Management Practices" or "BMPs"** shall mean the schedule of activities, prohibition of practices, maintenance procedures, and other management practices to implement the requirements listed in 40 CFR § 403.5(a)(1) and (b), as it may be amended from time to time. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

v. **"BOD₅"** (Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade expressed in milligrams per liter ("*mg/L*") as determined by an Accredited Laboratory.

vi. **"City Ordinance"** shall mean the Sewage ordinance established by the City as such Sewage ordinance may be amended by the City from time to time. A true and correct copy of the current City Ordinance is attached hereto in Exhibit "D".

vii. **"Consent Decree"** shall have the meaning set forth in PARAGRAPH C in the Background section of this Agreement.

viii. **"Claims"** shall have the meaning set forth in SECTION 14.

ix. **"Contributing Municipality"** shall mean a political subdivision or authority (or a political subdivision's designated municipal authority), excluding the City, which discharges Sewage to the City's Sewage System.

x. **"Daily Volume Exceedance"** shall mean a cumulative discharge of Sewage from the Municipality's Sewage Transportation System for treatment at the City's Sewage Treatment Plant, measured over a twenty-four (24) hour period, that exceeds the Municipality's Reserved Capacity (inclusive of the daily peak factor identified in SECTION 4(A)).

xi. **"Debt Service"** shall mean all monies required for the City to make payments due on principal, interest, applicable letter of credit fees, applicable remarketing fees and sinking fund requirements on all outstanding loans, notes or bonds associated with the operation, maintenance, and Upgrading and Improvement Costs of the City Sewage System on the terms of such loans, notes or bonds. Debt Service shall also include all other reasonable expenses incurred by the City, which are associated with such loans, notes or bonds.

xii. **"Debt Service Adjustment"** shall mean the Debt Service Paid during the latest completed calendar year minus the Debt Service Projection, which was estimated for such calendar year (which may result in a negative adjustment to the Debt Service Charge).

xiii. **"Debt Service Charge"** shall have the meaning set forth in SECTION 9(D).

xiv. **"Debt Service Paid"** shall mean the total Debt Service paid by City during a calendar year.

xv. **"Debt Service Projection"** shall mean the estimated Debt Service due to be paid by the City during a calendar year as determined by the City in its reasonable discretion and accounting assumptions.

xvi. **"DEP"** shall have the meaning set forth in PARAGRAPH C in the Background section of this Agreement.

xvii. **"Domestic Sewage"** shall have the same meaning as set forth in Part 503.9 of Title 40 of the Code of Federal Regulations, as it may be amended from time to time.

xviii. **"EDU"** shall mean the equivalent dwelling unit Sewage discharged to the City's Sewage System, as calculated in SECTION 9(I).

xix. **"EPA"** shall have the meaning set forth in PARAGRAPH C in the Background section of this Agreement.

xx. **"Funding Notice"** shall have the meaning set forth in SECTION 6(B)v.

xxi. **"Hydraulic Capacity Report"** shall have the meaning set forth in SECTION 4(C)ii.

xxii. **"I/I"** shall mean infiltration/inflow of stormwater in the Sewage Transportation System.

xxiii. **"Impact Transfer"** shall have the meaning set forth in SECTION 9(K).

xxiv. **"Industrial or Commercial User(s)"** shall mean any source of discharge to the Municipality's Sewage Transportation System from any non-residential source.

xxv. **"Industrial or Commercial Sewage"** shall mean any non-Domestic Sewage.

xxvi. **"Industrial or Commercial Sewage Surcharge"** shall have the meaning set forth in SECTION 9(G).

xxvii. **"Industrial or Commercial Sewage Surcharge Formula"** shall have the meaning set forth in SECTION 9(G).

xxviii. **"Infrastructure Contingency Charge"** shall have the meaning set forth in SECTION 9(E).

xxix. **"Infrastructure Contingency Fund"** shall mean a fund established by the City for the purpose of funding unforeseen and/or emergency repair, maintenance or capital improvements to the infrastructure of the Sewage Treatment Plant or the City's Sewage System and funded through the payment of the Infrastructure Contingency Charge.

xxx. **"Initial Term"** shall have the meaning set forth in SECTION 2.

xxxi. **"Monthly Volume Exceedance"** shall mean an average daily cumulative discharge of Sewage from the Municipality's Sewage Transportation System for treatment at the City's Sewage Treatment Plant, measured over a calendar month, that exceeds the Municipality's Reserved Capacity.

xxxii. **"Multi-Family Connection"** shall mean any building or facility where more than one family is permitted to reside but does not provide for a separate lateral connection and/or meter to a Sewage Transportation System for each individual familial unit in such building or facility.

xxxiii. **"Municipal Advisory Committee"** shall mean a committee of seven persons appointed annually; the five political subdivision with the highest Reserved Capacity (including the City) shall each appoint one member, and two members shall be collectively appointed by mutual agreement from all other political subdivisions discharging Sewage to the City's Sewage System, organized and existing for the purpose of advising and consulting with the City regarding the operation, maintenance, capital improvements and borrowing related to the City's Sewage System. Each member of the Municipal Advisory Committee shall serve at the will and pleasure of the political subdivision or subdivisions which appointed such member. A representative, appointed by the Mayor of the City of Reading, shall serve as the City's committee member on the Municipal Advisory Committee.

xxxiv. **"NPDES Permit"** shall mean the currently effective City NPDES Permit No. 0026549 authorizing discharge of certain pollutants and setting forth requirements regarding the operation and maintenance of the City's Sewage System as well as effective implementation of a Pretreatment program, including any subsequent modification, re-issuance, replacement or successor to such permit.

xxxv. **"Operating Costs of the Sewage Treatment Plant"** shall include, without limitation, expenditures for appropriate direct and indirect supplies and chemicals, heat, light, power, insurance, laboratory sampling, ordinary repairs and normal maintenance, Upgrading and Improvement Costs of the Sewage Treatment Plant, salaries and wages, including, without limitation, normal fringe benefits and taxes necessary to operate City's

Sewage Treatment Plant and which are consistent with generally accepted accounting principles; however, such costs shall be reduced by funds collected by the City by way of the Industrial Commercial Sewage Surcharge or federal or state subsidies for the operation of the Sewage Treatment Plant and does not include (a) Debt Service, (b) depreciation or (c) any costs paid by way of the Infrastructure Contingency Fund. Attached hereto and made a part hereof and marked Exhibit "E" is a list of the line items that will be included in the calculation of Operating Costs of the Sewage Treatment Plant together with any items that should be included therein in accordance with generally accepted accounting principles; provided, however, the list of Operating Costs of the Sewage Treatment Plant set forth in Exhibit "E" may later be amended by mutual agreement signed by the Parties in accordance with SECTION 23(N).

xxxvi. **"Operating Costs of the Sewage Treatment Plant Adjustment"** shall mean the Operating Costs of the Sewage Treatment Plant Paid during the latest completed calendar year for which an audited financial statement exists minus the Operating Costs of the Sewage Treatment Plant Projection for such calendar year (which may result in a negative adjustment to the Treatment Unit Rate).

xxxvii. **"Operating Costs of the Sewage Treatment Plant Paid"** shall mean the total Operating Costs of the Sewage Treatment Plant paid by the City during a calendar year.

xxxviii. **"Operating Costs of the Sewage Treatment Plant Projection"** shall mean the Operating Costs of the Sewage Treatment Plant to be paid by City during a calendar year, as estimated by the City in its reasonable discretion and as presented in a operational budget, as provided in SECTION 9(F).

xxxix. **"Operating Costs of the Sewage Transportation System"** shall include, without limitation, expenditures for appropriate direct and indirect supplies and chemicals, heat, light, power, insurance, laboratory sampling, meter reading, ordinary repairs and normal maintenance, Upgrading and Improvement Costs of the City's Sewage System, salaries and wages, including, without limitation, normal fringe benefits and taxes necessary to operate City's Sewage System and which are consistent with generally accepted accounting principles; however, such costs shall be reduced by funds collected by the City by way of the Industrial Commercial Sewage Surcharge or federal or state subsidies for the operation of the Sewage Transportation System and does not include (a) Debt Service, (b) depreciation or (c) any costs paid by way of the Infrastructure Contingency Fund. Attached hereto and made a part hereof and marked Exhibit "F" is a list of the line items that will be included in the calculation of Operating Costs of the Sewage Transportation System together with any other items that should be included therein in accordance with generally accepted accounting principles; provided, however, the list of Operating Costs of the Sewage Transportation System set forth in Exhibit "E" may later be amended by mutual agreement signed by the Parties in accordance with SECTION 23(N).

xl. **"Operating Costs of the Sewage Transportation System Adjustment"** shall mean the Operating Costs of the Sewage Transportation System Paid during

the latest completed calendar year for which an audited financial statement exists minus the Operating Costs of the Sewage Transportation System Projection for such calendar year (which may result in a negative adjustment to the Transportation Unit Rate).

xli. **“Operating Costs of the Sewage Transportation System Paid”** shall mean the total Operating Costs of the Sewage Transportation System paid by the City during a calendar year less ten percent (10%) of the Operating Costs of the Sewage Transportation System attributed to the salaries and fringe benefits of staff employed by the City during such calendar year for operating the Sewage Transportation System.

xlii. **“Operating Costs of the Sewage Transportation System Projection”** shall mean the Operating Costs of the Sewage Transportation System to be paid by City during a calendar year, less ten percent (10%) of the Operating Costs of the Sewage Transportation System budgeted for the salaries and fringe benefits of staff employed by the City during such calendar year for operating the Sewage Transportation System, as estimated by the City in its reasonable discretion and as presented in an operational budget, as provided in SECTION 9(F).

xliii. **“Person”** shall mean any individual, firm, company, association, society, corporation or group.

xliv. **“pH”** shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution, as determined by a DEP and/or EPA approved test method.

xlv. **“Pretreatment”** shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into the City’s Sewage System, as provided in Part 403 of Title 40 of the Code of Federal Regulations, as it may be amended from time to time.

xlvi. **“Prior Agreements”** shall have the meaning set forth in PARAGRAPH B in the Background section of this Agreement.

xlvii. **“Reserved Capacity”** shall have the meaning set forth in SECTION 4(A).

xlviii. **“Reserved Capacity Charge”** shall have the meaning set forth in SECTION 4(G).

xlix. **“Sewage”** shall mean the total volume of water and water-carried wastes from I/I, residential, Industrial or Commercial Users and other sources of discharge to the Sewage System.

i. **“Sewage System”** shall mean all collective components of the City’s Sewage Transportation System and Sewage Treatment Plant.

ii. **“Sewage Transportation Charge”** shall have the meaning set forth in SECTION 9(B).

iii. **“Sewage Transportation System”** shall mean all facilities, piping, pump stations and equipment used for collecting, conveying, transporting or storing Sewage for treatment at the Sewage Treatment Plant, and any extensions or additions thereto.

iiii. **“Sewage Treatment Plant”** shall mean an arrangement of devices and structures used by City for treating and disposing of Sewage, presently existing and all future improvements and additions thereto.

lv. **“Sewage Treatment Charge”** shall have the meaning set forth in SECTION 9(A).

lvi. **“Sewer Enterprise Fund”** shall mean the fund established by the City to (a) receive the Total Charge, except that the Infrastructure Contingency Charge shall thereafter be transferred to the Infrastructure Contingency Fund and (b) make payments for the operation of the City’s Sewage System.

lvii. **“Total Aggregate Reserved Capacity”** shall mean the aggregate sum of the Reserved Capacities allocated the political subdivisions contributing Sewage to the Sewage Treatment Plant, as identified in Exhibit “F”.

lviii. **“Total Charge”** shall mean the amount due and payable to City each quarter by Municipality for all services provided under this Agreement including, but not limited to, the Reserved Capacity Charge, the Sewage Treatment Charge, the Sewage Transportation Charge, the Debt Service Charge, the Infrastructure Contingency Charge, the Industrial or Commercial Sewage Surcharge, the Volume Exceedance Surcharge and any other charge paid by the Municipality to the City and authorized by this Agreement or Applicable Laws.

lix. **“Total Solids”** shall mean solids that either float on the surface of, or are in suspension or dissolved in water, Sewage or other liquids, and which are determined by an Accredited Laboratory.

lx. **“Total Dissolved Solids”** shall mean solids that are dissolved and are in solution in the Sewage measured in parts per million as determined by an Accredited Laboratory.

ix. “**Total Suspended Solids**” shall mean solids suspended in Sewage measured in mg/L, which remain after settlement and mostly colloidal in character as determined by an Accredited Laboratory.

lxi. “**Transportation Unit Rate**” shall have the meaning set forth in SECTION 9(C)ii.

lxii. “**Treatment Unit Rate**” shall have the meaning set forth in SECTION 9(C)i.

lxiii. “**Unit Rates**” shall mean the Treatment Unit Rate and Transportation Unit Rate.

lxiv. “**Upgrading and Improvement Costs**” shall include, without limitation, the cost of labor, material, equipment, printing, underwriting, and all other related costs used to improve the City’s Sewage System operations to conform with DEP and/or EPA Sewage handling, operation or treatment guidance and requirements; however, such costs shall not include Debt Service and shall be reduced by any federal or state subsidies the City receives for upgrading or improving the City’s Sewage Treatment Plant and the amount of any interest earned on sewer bond proceeds.

lxv. “**Volume Exceedance**” shall mean a Daily Volume Exceedance and/or Monthly Volume Exceedance.

lxvi. “**Volume Exceedance Surcharge**” shall have the meaning set forth in SECTION 4(C).

SECTION 4. Reserved Capacity and Reserved Capacity Charge; Additional Connections.

(A) Reserved Capacity.

Subject to the terms of this Agreement, the City agrees to accept for treatment from the Municipality a maximum flow of Sewage, I/I, and any other associated flow from the areas set forth on Exhibit “B”, based on the average number of gallons per day over a calendar month, as set forth in Exhibit “F”, with a daily peak factor not to exceed one and five tenths (1.5) times the permitted average number of gallons per day (the “**Reserved Capacity**”). The Municipality’s Reserved Capacity may be increased or modified only as set forth in this Agreement. The Municipality cannot decrease its Reserved Capacity without the prior written consent from the City, which may be given or withheld by the City as determined by the City in its sole discretion. The Municipality’s Reserved Capacity is reserved for the exclusive use of the Municipality or its successors and shall not be conveyed or assigned to any other Contributing Municipality, except with the prior express written approval from the City. The Municipality shall be entitled to send for treatment at the Sewage Treatment Plant flows equal to the entire Reserved Capacity immediately upon the full execution of this Agreement.

(B) Modifications to the Reserved Capacity.

The Municipality's Reserved Capacity shall be increased by the additional permitted flow resulting from any additional connections to the City's Sewage System, which has been approved by the City consistent with SECTION 4(D), SECTION 4(E) or SECTION 4(F), after payment of the Reserved Capacity Charge to the City.

When a change to any Contributing Municipality's Reserved Capacity is approved by the City, Exhibit "F" shall be amended by the City accordingly. The amended Exhibit "F" shall be incorporated in this Agreement immediately upon written notice to the Municipality by the City of such amendment. Changes to the Debt Service Charge resulting from an amendment to Exhibit "F" shall occur in accordance with SECTION 9(D).

(C) Excess Discharges.

Notwithstanding anything to the contrary in this Agreement and without limiting the City's rights under this Agreement or Applicable Laws, it shall be a violation of this Agreement for a Volume Exceedance to occur. A Volume Exceedance shall be determined by comparing the cumulative metered volume of Sewage discharged from the Municipality to the City's Sewage System over the applicable time period.

The City shall notify the Municipality upon the City's discovery of a Volume Exceedance and the Municipality shall immediately take reasonable efforts to reduce the volume of discharge to the City's Sewage System, including investigating and taking action at the source of the excess flow. The Municipality shall continue to have the right to discharge Sewage from its Sewage Transportation System into the City's Sewage System in an amount not exceeding the Volume Exceedance. The City reserves the right, but not the obligation, to take corrective actions to immediately halt any Volume Exceedance, correct any Volume Exceedance through restricting or ceasing the excess discharge, or upgrading the City's Sewage System in order to accommodate the Volume Exceedance. The City's performance of any corrective action shall not relieve or excuse the Municipality from any obligation under this Agreement or Applicable Laws. The Municipality shall reimburse the City for the City's reasonable costs incurred in taking any such corrective actions. Notwithstanding anything to the contrary in this Agreement, the City shall have no liability to the Municipality's residents for damages resulting from any corrective actions the City or its agents take to halt or correct a Volume Exceedance.

In the event of a Monthly Volume Exceedance, the Municipality shall not permit any further connections to the Municipality's Sewage Transportation System until a calendar month has completed without a Volume Exceedance or additional capacity is purchased to increase the Municipality's Reserved Capacity, such that a Volume Exceedance will not occur.

i. Volume Exceedance Surcharge.

If a Volume Exceedance occurs, the Municipality would be using facilities which may not be designed to handle the excess Sewage and for which the Municipality has not made a capital contribution; therefore, a surcharge will be imposed upon the Municipality to compensate the

City for the additional cost, expense, and administration of handling the excess discharge on the following terms and conditions (the “**Volume Exceedance Surcharge**”):

If a Daily Volume Exceedance occurs at any time during the term of the Agreement, the Municipality shall pay as a Volume Exceedance Surcharge, in addition to the Total Charge attributable to such excess discharges pursuant to this Agreement, a surcharge equal to twenty-five percent (25%) of the Unit Rates multiplied by the number of gallons of excess discharge (i.e., the number of gallons discharged minus the Reserved Capacity inclusive of the daily peak factor identified in SECTION 4(A)) divided by 50,000 (i.e., gallons per year per EDU):

If a Monthly Volume Exceedance occurs at any time during the term of the Agreement, the Municipality shall pay as a Volume Exceedance Surcharge, in addition to the Total Charge attributable to such excess discharges pursuant to this Agreement, a surcharge equal to fifty percent (50%) of the Unit Rates multiplied by the number of gallons of excess discharge (i.e., the Reserved Capacity multiplied by the number of calendar days in said calendar month subtracted from the cumulative number of gallons discharged in said calendar month), divided by 50,000 (i.e., gallons per year per EDU). If a Monthly Volume Exceedance occurs in six (6) consecutive months, said Volume Exceedance Surcharge shall double for each month thereafter until a calendar month has completed without a Monthly Volume Exceedance.

Payment of the Volume Exceedance Surcharge herein provided shall not excuse a Volume Exceedance nor shall it prevent the City from taking corrective action, as provided in this Agreement, enjoining the discharge of excess Sewage or recovering from the Municipality actual damages, costs, and expenses, including, without limitation, reasonable legal fees, incurred by the City in connection with any Volume Exceedance. All amounts collected by the City as a Volume Exceedance Surcharge shall be deposited in the Infrastructure Contingency Fund.

Notwithstanding anything to the contrary in this Agreement, the City may bring suit in law or in equity in the Court of Common Pleas of Berks County, Pennsylvania, or any other court of competent jurisdiction, to enjoin a Volume Exceedance or compel appropriate corrective action for such violation. In such event, the Municipality agrees to pay the costs and expenses including, without limitation, reasonable legal fees, incurred by the City and arising out of or relating to any such violation of this Agreement by the Municipality.

ii. Hydraulic Capacity Limitations

The Parties understand that the size, slope, material and other factors associated with the City’s Sewage Transportation System affect the hydraulic capacity for each component of the City’s Sewage Transportation System. Significant collateral damage to the City’s Sewage System may occur if its hydraulic capacity is exceeded. The City will engage an independent third party consultant to evaluate each interface between the Municipality’s Sewage Transportation System and the City’s Transportation System to identify the hydraulic capacity at each interface (the “**Hydraulic Capacity Report**”). The City will provide a draft of the Hydraulic Capacity Report to the Municipality so that the Municipality may have an opportunity to engage its own independent third party consultant (at the Municipality’s sole cost and expense) to review and comment on such report. The City’s consultant will consider all such comments received within sixty (60) days of the Municipality’s receipt of the draft Hydraulic Capacity

Report. The Municipality shall use best efforts to ensure that the hydraulic capacity of each interface between its Sewage Transportation System and the City's Sewage Transportation System, as identified in the Hydraulic Capacity Report, are not exceeded. In the event the hydraulic capacity is exceeded at any individual interface, the Municipality shall be strictly liable for any damages, losses, costs and/or penalties resulting from such hydraulic capacity exceedance and shall immediately take corrective measures to reduce the flow through the particular interface or make all improvements necessary to increase the hydraulic capacity to accommodate the additional flow.

(D) Additional Single Family Residential or Multi-Family Connections.

The City grants to the Municipality, subject to all of the terms and conditions of this Agreement, the right to permit the connection of additional projects, land developments, or subdivisions involving one (1) or two (2) single family residences within the area specified in Exhibit "B" to the Municipality's Sewage Transportation System to the City's Sewage System to the extent that such additional connections do not have the effect of creating a Volume Exceedance. Any projects, land developments, or subdivisions consisting of a new Multi-Family Connection and/or more than two (2) additional single family residences (including, but not limited to, individual lateral connections) within the area specified in Exhibit "B", shall be subject to the written approval of the City, which approval shall not be unreasonably withheld (if a planning module is required by law for such additional connections, the City's approval of such planning module shall constitute the City's approval required by this SECTION 4(D)). Approval of any project, land development, or subdivision involving a Multi-Family Connection and/or more than two (2) additional single family residences which will result in a Volume Exceedance based upon the reasonable estimated flows for such project, land development or subdivision shall be subject to the Municipality's payment of an additional Reserved Capacity Charge based on the Municipality's additional Reserved Capacity.

The Municipality shall provide the City with copies of any new planning committee approval, building permit and any other reasonable documentation requested by the City relating to any new connections to the Municipality's Sewage Transportation System. The Municipality shall provide the City with such information and documentation each quarter.

(E) Additional Industrial or Commercial Users.

The City grants to the Municipality, subject to all of the terms and conditions of this Agreement, the right to permit the connection of additional projects and/or land developments involving Industrial or Commercial Users within the area specified in Exhibit "B" to the Municipality's Sewage Transportation System to be treated by the City's Sewage System provided such connection will not result in a Volume Exceedance, violation of the NPDES Permit, violation of the City Ordinance or this Agreement, including, without limitation, as provided in SECTION 7. The Municipality shall provide the City with any building permit, plumbing permit and planning committee approval for any new or existing Industrial or Commercial User connected or to be connected to the Municipality's Sewage Transportation System each quarter. Upon the City's request, the Municipality shall provide all information and documentation reasonably requested by the City for the City to evaluate the quantity and quality of Sewage, which may result from the Industrial or Commercial User.

Notwithstanding the foregoing, the Municipality shall provide the City with written notice contemporaneously with the submission of any land development plan, subdivision plan, building/trade permit application to the Township or Authority and prior to (a) the connection of any new Industrial or Commercial User or (b) a change in use that would result in a modification of Sewage characteristics at the facility of any Industrial or Commercial User. Such written notice shall include the projected volume and characteristics of the Sewage from such connections. Industrial or Commercial User connections projected to discharge Industrial or Commercial Sewage (i.e., the anticipated discharge is of a character that it is not classified as Domestic Sewage) shall be subject to the written approval of the City, which approval shall not be unreasonably withheld (if a planning module is required by law for such additional connections, the City's approval of such planning module shall constitute the City's approval required by this SECTION 4(E)). Approval of any additional Industrial or Commercial User connections which will cause a Volume Exceedance based upon the reasonably estimated flows for such projects and/or land developments shall be subject to the Municipality's payment of an additional Reserved Capacity Charge based on the Municipality's additional Reserved Capacity.

(F) Additional Connections Outside of Area in Exhibit "B".

The City shall have no obligation to offer any Sewage treatment capacity to the Municipality for Sewage originating from any areas beyond the area set forth on Exhibit "B". The Municipality shall not permit any connections to its Sewage Transportation System for sources of Sewage originating from any areas beyond the area set forth on Exhibit "B" without the City's prior written approval.

The City may, in its sole discretion, provide the Municipality with written approval, which may be withheld for any reason or no reason at all, for the privilege to connect Sewage originating from areas beyond the area set forth in Exhibit "B" (if a planning module is required by law for such additional connections, the City's approval of such planning module shall constitute the City's approval required by this SECTION 4(F)). Approval of any such connections which will cause a Volume Exceedance based upon the reasonable estimated flows for such connections shall be subject to the Municipality's payment of an additional Reserved Capacity Charge. Exhibit "B" shall be automatically amended to incorporate additional areas approved in writing by the City after the City's receipt of the corresponding Reserved Capacity Charge.

If the City provides the Municipality with written approval to connect areas beyond the areas set forth in Exhibit "B", the Municipality shall provide the City with: (i) an opportunity to review and comment on the proposed amendment to the Municipality's Act 537 Plan prior to its submission to DEP consistent with the process provided in SECTION 20 of this Agreement; (ii) any building permit, plumbing permit or planning committee approval for any proposed connection to the Municipality's Sewage Transportation System; and (iii) all information and documentation reasonably requested by the City for the City to evaluate the quantity and quality of Sewage for any proposed connection to the Municipality's Sewage Transportation System.

(G) Municipality Reserved Capacity Charge.

The Municipality shall pay or cause to be paid to the City a fee in accordance with the Reserved Capacity Charge fee schedule attached hereto as Exhibit "G" and in compliance with Applicable Laws, to compensate the City for the additional engineering and treatment costs of Sewage from the additional connection to the City's Sewage Transportation System in the event the Municipality desires to or is otherwise required to increase its Reserved Capacity or add connections beyond the areas identified in Exhibit "B" (the "**Reserved Capacity Charge**"). All amounts collected by the City as a Reserved Capacity Charge shall be deposited in the Infrastructure Contingency Fund.

(H) Charges to the City's Residents.

To the extent allowed by Applicable Laws, including but not limited to, the City Ordinance, the City may charge new users in the City a reservation fee or other connection fee for new commercial and industrial connections. Such reservation fee or other connection fee charged by the City to its new users shall be determined by the City, in its reasonable discretion; provided, however, such reservation fee or other connection fee (or lack thereof) shall not affect the Municipality's obligations under this Agreement.

SECTION 5. Transportation of Sewage.

The City agrees to take all necessary steps to carry the Sewage delivered to the City's Sewage System in the quality and quantity consistent with the terms of this Agreement to the Sewage Treatment Plant, whether said connections are made directly to the Sewage Treatment Plant or to the City's Sewage Transportation System for transportation to the Sewage Treatment Plant, and to treat and dispose of such Sewage consistent with Applicable Laws.

SECTION 6. Information Sharing and Consultation.

(A) General Obligations.

The Municipality shall cooperate and share relevant information with the City in facilitating the City's management operations and maintenance of the City's Sewage System. In furtherance of the foregoing, the City shall provide the Municipality with an annual report providing a summary of the operation of the Sewage Treatment Plant. Within forty-five (45) days of the close of each calendar quarter, the City shall complete the applicable information identified in the Tables set forth in Exhibit "I" and provide the same to the Municipality.

(B) Municipal Advisory Committee

i. Establishment.

The Municipality, in cooperation with all other Contributing Municipalities, will establish a Municipal Advisory Committee with whom the City will regularly consult during the term of this Agreement.

ii. General Meetings

In addition to participation by the City as a committee member of the Municipal Advisory Committee, the City shall also participate in meetings as requested and scheduled by the Municipal Advisory Committee (subject to the reasonable availability of the City's personnel), by providing information and reports regarding the operation, maintenance, annual budget and capital improvements of the City's Sewage System and by providing such other information related to the City's Sewage System as may be reasonably requested by the Municipal Advisory Committee. The City's participation at the Municipal Advisory Committee meetings (other than the participation by the City as a committee member of the Municipal Advisory Committee) shall be by a manager or director supervising the administration of the Sewage Transportation System or Sewage Treatment Plant. The Municipal Advisory Committee shall be represented by a quorum of its members at such meetings.

The Municipal Advisory Committee shall prepare a proposed agenda for all scheduled meetings and seek input from the City on the proposed agenda. No less than ten (10) days prior to each such scheduled meeting, the Municipal Advisory Committee shall circulate an agenda to a representative from each Contributing Municipality, identifying the time, date and location of the meeting. Such agenda shall allocate time for elected official(s), municipal manager(s), engineer(s), consultant(s) and/or such other designee(s) from each Contributing Municipality, at the election of each Contributing Municipality, to submit comments or questions to the Municipal Advisory Committee for its consideration.

iii. Notice to the Municipal Advisory Committee

The Municipal Advisory Committee, acting on behalf of the Municipality, shall identify to the City the mailing and e-mail address of one person to whom the City shall direct all of the City's correspondence related to matters appropriately before the Municipal Advisory Committee. Such correspondence from the City shall be deemed received by the Municipal Advisory Committee (a) when sent, if sent by electronic mail, (b) five (5) days after having been sent by United States Postal Service, postage prepaid, or (c) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt.

iv. *Written Recommendations*

The Municipal Advisory Committee may make written recommendations to the City with regard to the operation, maintenance, annual budget and/or capital improvements associated with the City's Sewage System. The City shall consider all such written recommendations in good faith. However, the City (as the responsible permittee) maintains the right to determine, in its reasonable discretion, the means, methods and manners for administering, operating, maintaining and funding the City's Sewage System and shall not be obligated to adopt the written recommendation(s) of the Municipal Advisory Committee. In the event the City does not adopt a written recommendation from the Municipal Advisory Committee, the City shall provide the Municipal Advisory Committee with a written response setting forth the City's basis for not adopting such written recommendation.

v. Additional Debt and Infrastructure Contingency Fund.

When the City intends to (1) incur additional debt with regard to the City's Sewage System or (2) fund any individual project by a withdrawal from the Infrastructure Contingency Fund in excess of Five Hundred Thousand Dollars (\$500,000), the City shall provide the Municipal Advisory Committee with notice of such intention along with reasonable information about the proposed funding and the specific purpose of such funding (the "Funding Notice").

The Municipal Advisory Committee may request a meeting with the City regarding the proposed funding within twenty (20) days of its receipt of the applicable Funding Notice. If requested by the Municipal Advisory Committee, such meeting shall occur within thirty (30) days of the Municipal Advisory Committee's receipt of the applicable Funding Notice. The City shall participate in such requested meeting in good faith and provide the Municipal Advisory Committee with any such additional reasonable information requested by the Municipal Advisory Committee related to the same. If the Municipal Advisory Committee desires to make a written recommendation with regard the subject of the Funding Notice, the Municipal Advisory Committee shall submit its written recommendation to the City within forty (40) days of the Municipal Advisory Committee's receipt of the applicable Funding Notice. The City shall respond to such written recommendation in the manner set forth in SECTION 6(B)iv.

Except in the event of an emergency or as may be required to perform unanticipated activities required to comply with Applicable Laws, the City shall wait at least forty (40) days from the date of the Municipal Advisory Committee's receipt of the applicable Funding Notice prior to borrowing such new debt or withdrawing such funds from the Infrastructure Contingency Fund.

vi. Annual Audit Review

The City shall transmit the draft of its annual audit report regarding the Sewage System to the Municipal Advisory Committee prior to the issuance of such audit report. The Municipal Advisory Committee may review such draft audit report and may provide written comments to the City on such draft audit report within thirty (30) days after receipt of the draft audit report. The City shall not issue the final audit report until after the expiration of (a) such thirty (30) day review period if no comments are received or (b) it has responded to such written comments in the manner set forth in SECTION 6(B)iv.

vii. Annual Budget Review

The City shall transmit its annual budget for the Sewage System (including the applicable Operating Costs of the Sewage Treatment Plant Projection, Operating Costs of the Sewage Transportation System Projection and Debt Service Projection) to the Municipal Advisory Committee no later than October 10th of each year. The Municipal Advisory Committee may review such information and make a written recommendation to the City related to such annual budget within thirty (30) days of its receipt of the same and the City shall respond to such written recommendation in the manner set forth in SECTION 6(B)iv.

viii. Consideration of a Joint Municipal Authority

After the termination of the Consent Decree, the City agrees to attend a meeting, upon the request of the Municipal Advisory Committee, to discuss in good faith the feasibility of the creation of a joint municipal authority to own, operate and/or administer the City's Sewage System (or components thereof). After such meeting, the Municipal Advisory Committee may make a written recommendation to the City for the creation of such a joint municipal authority, if deemed appropriate by the Municipal Advisory Committee, which shall include a reasonably detailed (a) administrative framework for the proposed joint municipal authority, (b) list of the proposed distribution of rights and obligations among the proposed joint municipal authority, City and Contributing Municipalities, (c) summary of the proposed method for assigning, assuming or otherwise addressing any outstanding debt and liabilities attributable to the City's Sewage System (or debt and liabilities attributable to such components of the City's Sewage System as may be owned, operated and/or administered by the proposed joint municipal authority), and (d) such other matters as the Municipal Advisory Committee shall deem necessary. The City shall respond to such written recommendation in the manner set forth in SECTION 6(B)iv. Notwithstanding anything else in this Agreement, neither the City nor the Municipality shall be obligated to create a joint municipal authority.

(C) Reports Required by Applicable Laws.

The Municipality shall provide the City with all data reasonably required for the City to complete the reports required by Applicable Laws including, but not limited to, by providing data, reports or information related to:

- i. The Municipality's Industrial or Commercial Users;
- ii. Sewage discharge metering, monitoring and sampling data at each interface of the Municipality's Sewage Transportation System to the City's Sewage System; and
- iii. I/I analysis.

The Municipality shall also compel any of its Industrial or Commercial users required by Applicable Laws to have meters or sampling manholes to provide the City with all data reasonably required for the City to complete the reports required by Applicable Laws.

(D) Industrial or Commercial User Connections.

By the seventh day of each quarter, the Municipality shall prepare and provide the City with a detailed and itemized list designating the name, physical and mailing address, standard industrial classification and total metered flow (based on Sewage from meter or water meter readings as the case may be) of each and every Industrial or Commercial User connected to the Municipality's Sewage Transportation System.

(E) Connection Records.

By February 1st of each calendar year (to the extent not already included in the information and documentation furnished by the Municipality to the City in connection with the Chapter 94 report), the Municipality shall provide the City with all records necessary to validate or identify the total number of residences and Industrial or Commercial Users connected to the Municipality's Sewage Transportation System.

(F) Chapter 94 Reports.

The Municipality shall provide the City with all information or documentation required for the City to file its Chapter 94 report, as required by the DEP and Title 25, Part I, Subpart C, Article II, Chapter 94 or as required by any other Applicable Laws, as amended from time to time.

(G) Failure to Provide Information.

The Municipality shall supply all information or documentation as set forth in this Agreement or required by Applicable Laws to the City in writing. In no event shall the Municipality provide information or documentation to the City any later than thirty (30) days from receipt of the City's request. If the Municipality fails to provide information or documentation to the City in compliance with this SECTION 6(G), and as a result, the City is unable to submit a complete report which results in a ban, moratorium or prohibition being placed upon the City, the Authority, the Township or any other political subdivision as to future connections to the City's Sewage System, the Municipality shall be financially responsible for reasonable losses, damages, penalties or costs incurred by the City directly related to the Municipality's failure to provide information or documentation to the City in compliance with this SECTION 6(G).

If, through the City's sole negligence or willful misconduct, the City fails to submit a report required by Applicable Laws, and as a direct result a ban, moratorium or prohibition is placed upon the City, the Authority, or the Township as to future connections to the City's Sewage Transportation System, the City shall be financially responsible for reasonable losses incurred by the Municipality directly related to the City's sole negligence or willful misconduct in failing to file such required reports.

(H) Limitation of the City's Liability for Failure to Submit Reports.

The Municipality acknowledges and understands that the City's Sewage System services other Contributing Municipalities, which are also obligated to provide the City with information for the submission of required reports. In the event the City is unable to submit or complete a report required by Applicable Laws due to the failure of any Contributing Municipality to submit information required by the City for such report, the City shall have no financial responsibility to the Municipality or any other Person for any damages resulting therefrom.

SECTION 7. Sewage Characteristics and Pretreatment.

(A) General Obligation.

The Municipality shall not discharge any Sewage, nor permit the discharge of Sewage, from the Municipality's Sewage Transportation System to the City's Sewage System in violation of this Agreement or any Applicable Laws.

(B) I/I.

The Parties agree that they will take all reasonable efforts to ensure that the Sewage passing through their respective Sewage Transportation Systems shall not contain storm water or roof or surface drainage. The Municipality, at its sole cost and expense, shall perform reasonable upgrades or improvements to the Municipality's Sewage Transportation System to reduce I/I that the Municipality knows or reasonably should know is passing through its Sewage Transportation System, including, but not limited to, any such reasonable improvements requested by the City. The City shall perform reasonable upgrades or improvements to the City's Sewage Transportation System to reduce I/I that the City knows or reasonably should know is entering directly into its Sewage Transportation System; provided, however, the City shall not be responsible for reducing I/I that is passing through its Sewage Transportation System as a result of I/I that originates from the Municipality or other political subdivision.

(C) Prohibited Sewage Characteristics.

The Municipality shall prohibit the entrance into its Sewage Transportation System of any Sewage that (i) causes, or may cause, "pass through" or "interference," both as defined in Part 403 of Title 40 of the Code of Federal Regulations, (ii) violates any influent limitations or Pretreatment requirements under Applicable Laws, or (iii) causes the residual biosolids from the treated Sewage to require treatment prior to land application. Without limiting the generality of the foregoing, the Municipality shall prohibit the entrance into its Sewage Transportation System of Sewage having the following characteristics, chemicals or materials:

- i. having a temperature higher than 105° F;
- ii. containing more than 100 parts per million by weight of fat, oil or grease as measured by Method 1664, Revision A:N-Hexane Extractable Material (HEM; Oil and Grease) or more than 25 parts per million by weight of fat, oil or grease as measured by Silica Gel Treated N-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry;
- iii. containing any gasoline, benzene, naphtha, fuel oil or other inflammable or explosive liquid, solid or gas;
- iv. containing any unground garbage;

v. containing any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction or other interference with the proper operation of the City's Sewage System;

vi. having a pH lower than 5.0 or higher than 10.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the City's Sewage System;

vii. containing BOD₅, Total Solids, Total Dissolved Solids, Total Suspended Solids, ammonia, nitrogen, or total phosphorus of such character, quality or quantity that causes interference with the Sewage Treatment Plant processes or requires unusual attention or expense to handle such materials at the City's Sewage Treatment Plant;

viii. containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any Sewage treatment process, to constitute a hazard to humans or animals, or to create any hazard in the City's Sewage System, the receiving water or biosolids residuals;

ix. containing noxious or malodorous gas or substance capable of creating a public nuisance; unless specifically permitted, authorized and approved in writing by the City and the Commonwealth of Pennsylvania or any duly constituted board, commission or department thereof having jurisdiction in the matter; or

x. exceeding standards established by Applicable Laws.

(D) Pretreatment Obligations.

The Municipality shall be subject to, comply with and cooperate with the City's enforcement of the restrictions and conditions of any Industrial or Commercial Sewage Pretreatment programs or ordinances, including, but not limited to, the City Ordinance, as it may be amended by the City from time to time, concerning the Industrial or Commercial Users of the Municipality's Sewage Transportation System. Sewage emanating from the Municipality shall comply with all Applicable Laws, including, but not limited to, the Pretreatment obligations, processes, standards and restrictions set forth in Part 403 of Title 40 of the Code of Federal Regulations, as amended from time to time. In the event of a conflict, the more stringent standard shall apply.

(E) Organic Loading Limitations.

In the event the Sewage Treatment Plant reaches (or is projected to reach) the NPDES Permit limits for organic, solids or nutrient loading, the City may require additional Pretreatment obligations for Industrial or Commercial Users specifically designed to maintain compliance with the NPDES Permit. Notwithstanding anything else to the contrary in this Agreement, the City shall not be required to approve new connections from any political subdivision (including the

City) that will cause a projected exceedance of the organic, solids or nutrient loading limitations established by the NPDES Permit based on the conditions existing at the time the City's approval is sought. The Municipality and City agree to cooperate to identify any additional Pretreatment parameters that may be adopted to allow for further reduction of organic, solid or nutrient loading (as applicable) and/or increase organic, solids or nutrient loading limitations (as applicable) established by the NPDES Permit so such new connections may be approved.

(F) Exceedances.

In the event the Sewage discharged by the Municipality under this Agreement into the City's Sewage System violates the covenants of this SECTION 7 or otherwise requires special handling or disposal for treatment of the resulting sludge, the costs incident to providing such special handling or treatment shall be borne solely by the Municipality as an additional treatment charge; provided, however, the Municipality, after paying the City for such special handling or treatment costs, may seek to recover such special handling or treatment costs from the Person who is the source of such discharge. The Municipality shall be responsible for and shall pay the cost of any physical or structural damage to the City's Sewage System or the environment (including, but not limited to, any removal or remedial costs associated with addressing the release of hazardous substances to the environment and natural resource damages) resulting from the discharge of improper Sewage from the Municipality's Sewage Transportation System into the City's Sewage System.

The City may prohibit or prevent any Person, including the Municipality, from discharging Sewage, waste, or materials in a quantity or quality that violates this Agreement or Applicable Laws, regardless of the materiality of such violation, if prior written notice has first been provided by the City to the violator.

The Municipality shall have the right to request a split sample at the time such samples are taken by the City. All samples taken by the Municipality, including, but not limited to, any split samples, shall be analyzed by an Accredited Laboratory. Notwithstanding the foregoing, the pendency of the Municipality's analysis shall not affect any right or obligation under this Agreement.

SECTION 8. Sewage System Maintenance.

(A) Maintenance and Repair.

The City shall maintain its Sewage System in good repair and in material compliance with Applicable Laws. The Municipality shall maintain its Sewage Transportation System in good repair and in material compliance with Applicable Laws. In the event of damage to or vulnerability of the Municipality's Sewage Transportation System or at the City's request, the Municipality shall promptly repair, replace or reinforce the damaged or vulnerable component(s) of its Sewage Transportation System at the Municipality's sole cost or expense.

(B) Access to Municipality's and City's Sewage Facilities.

The City shall have the right, upon reasonable notice to the Municipality, to access the Municipality's Sewage Transportation System to investigate or evaluate the integrity of the Municipality's Sewage Transportation System. Municipality shall have the right, upon reasonable notice to City, to access the City's Sewage Transportation System and Sewage Treatment Plant to investigate or evaluate the integrity of the City's Sewage System.

(C) Limitation on the City's Liability.

The City shall not be responsible for damage to the Municipality or to any other Person caused by a malfunction of the Sewage Treatment Plant or the City's Sewage Transportation System unless such damage was caused by the gross negligence or willful misconduct of the City.

(D) Certifications.

The City agrees to provide the Municipality an annual report, certified by an engineer, that the City's Sewage System is in good operating condition.

The Municipality agrees to provide the City, upon the City's request, an annual report, certified by an engineer, that the Municipality's Sewage Transportation System is in good operating condition.

SECTION 9. Compensation Arrangement.

The Municipality shall pay the City the Total Charge for the rights, privileges, and benefits herein provided, for each EDU, as calculated in SECTION 9(I), transported into the City's Sewage Transportation System, and/or treated at the Sewage Treatment Plant, during each quarterly period.

(A) Method of Determining Sewage Treatment Charge.

The "Sewage Treatment Charge" is a charge levied by the City on the Municipality for the City's treatment of Sewage originating from the Municipality. The Sewage Treatment Charge shall be calculated by multiplying the number of EDUs of Sewage emanating from the Municipality's Sewage Transportation System into the City's Sewage System, as calculated in SECTION 9(I), by the Treatment Unit Rate.

(B) Method of Determining Sewage Transportation Charge.

The "Sewage Transportation Charge" is a charge levied by the City on the Municipality for privilege of using the City's Sewage Transportation System for the transportation of Sewage originating from the Municipality. The Sewage Transportation Charge shall be calculated by multiplying the number of EDUs of Sewage emanating from the Municipality's Sewage Transportation System into the City's Sewage Transportation System, as calculated in SECTION 9(I), by the effective Transportation Unit Rate, as calculated in SECTION 9(C)ii.

(C) Calculating the Unit Rates.

i. Treatment Unit Rate Formula.

The Treatment Unit Rate shall be calculated annually by:

(a) Adding the Operating Costs of the Sewage Treatment Plant Projection for the next calendar year to the Operating Costs of the Sewage Treatment Plant Adjustment;

(b) Dividing the result from (a) above, by the total EDUs reported by all Sewage System users to have been treated at the Sewage Treatment Plant during the latest completed calendar year.

Notwithstanding the foregoing, the Operating Costs of the Sewage Treatment Plant Adjustment shall not be incorporated in the Treatment Unit Rate as provided in SECTION 9(F) until determined by the City on the initial October 1st immediately following the first year's anniversary of the Effective Date of this Agreement. See Exhibit "H" for an example calculation of the Treatment Unit Rate.

ii. Transportation Unit Rate Formula.

The Transportation Unit Rate shall be calculated annually by:

(a) Adding the Operating Costs of the Sewage Transportation System Projection (which, as defined, includes a reduction equal to ten percent (10%) of the Operating Costs of the Sewage Transportation System budgeted for the salaries and fringe benefits of staff employed by the City during such calendar year for operating the Sewage Transportation System) for the next calendar year to the Operating Costs of the Sewage Transportation System Adjustment;

(b) Dividing the result from (a) above, by the total EDUs reported by all Sewage System users to have been transported through the City's Sewage Transportation System during the latest completed calendar year.

Notwithstanding the foregoing, the Operating Costs of the Sewage Transportation System Adjustment shall not be incorporated in the Transportation Unit Rate as provided in SECTION 9(F) until determined by the City on the initial October 1st immediately following the first year's anniversary of the Effective Date of this Agreement. See Exhibit "H" for an example calculation of the Treatment Unit Rate (which is calculated using the same method as the Transportation Unit Rate).

(D) Debt Service Charge.

The "**Debt Service Charge**" is a charge levied by the City on the Municipality for the Municipality's prorated share of the Debt Service paid by the City for the Sewage System. The Debt Service Charge shall be calculated annually by:

i. Adding the Debt Service Projection for the next calendar year to the Debt Service Adjustment:

ii. Multiplying such sum by the respective percentage of the Municipality's Reserved Capacity as related to the Total Aggregate Reserved Capacity for all political subdivisions (including the City) contributing flow to the Sewage Treatment Plant, as identified in Exhibit "F".

Notwithstanding the foregoing, the Debt Service Adjustment shall not be incorporated in the Debt Service Charge as provided in SECTION 9(F) until determined by the City on the initial October 1st immediately following the first year's anniversary of the Effective Date of this Agreement. See Exhibit "H" for an example calculation of the Debt Service Charge.

(E) Method of Determining the Infrastructure Contingency Charge.

The "**Infrastructure Contingency Charge**" is a charge levied by the City on each political subdivision, including the City and the Municipality, due and payable to the City each quarter of a calendar year as a component of the Total Charge, to create and continuously fund the Infrastructure Contingency Fund. The Infrastructure Contingency Charge shall be equal to ten percent (10%) of the political subdivision's Debt Service Charge for the then applicable quarter.

However, no political subdivision shall be required to pay any individual Infrastructure Contingency Charge if Infrastructure Contingency Fund exceeds twenty million dollars (\$20,000,000) at the time such Infrastructure Contingency Charge is calculated as set forth in SECTION 9(F).

(F) Annual Update to the Total Charge.

The Unit Rates, Debt Service Charge and Infrastructure Contingency Charge will be revised annually by the City. The City shall prepare the Operating Costs of the Sewage Treatment Plant Projection, Operating Costs of the Sewage Transportation System Projection and Debt Service Projection each year. At the City's election, it may also prepare a budget that includes the estimated Sewage System costs over a five-year horizon. An estimate of the Unit Rates and Debt Service Charge, including any modifications to Exhibit "F", shall be transmitted to the Municipality by the first day of October of each year. Any changes to the Unit Rates or Debt Service Charge resulting from a recommendation of the Municipality Advisory Committee and/or otherwise adopted by the City shall be transmitted to the Municipality prior to the twentieth day of December of each year. Changes to the Unit Rates and Debt Service Charge shall be effective as of the first day of January following the notice of the new Unit Rates and Debt Service Charge. Until January 1, 2013, the Total Charge shall be calculated as provided in the Prior Agreements. After January 1, 2012, the Total Charge shall be calculated as provided in this Agreement.

(G) Method of Determining Industrial or Commercial Sewage Surcharge.

The Municipality shall pay, or cause to be paid by the applicable Industrial or Commercial User(s), to the City a surcharge on Industrial or Commercial Sewage ("**Industrial or Commercial Sewage Surcharge**") calculated in accordance with the formula established by the City Ordinance attached hereto as Exhibit "D" ("**Industrial or Commercial Sewage Surcharge Formula**"). The City shall provide public notice of the intent to amend the City Ordinance in accordance with Applicable Laws and, if enacted, the new Industrial or Commercial Sewage Surcharge Formula shall immediately apply to the Total Charge.

(H) Other Charges.

The City and the Municipality agree that all other non-residential charges and fines shall be in accordance with the Industrial or Commercial Sewage Pretreatment ordinances to be in effect in both the City and the Municipality, including, but not limited to, the City Ordinance, which ordinances may be amended from time to time provided that all pertinent ordinances shall remain consistent with the general tenor and scope of this Agreement. In the event these ordinances, including, but not limited to, the City Ordinance or any amendments thereto, are in conflict with the terms of this Agreement, the Municipality shall comply with the more stringent standards.

(I) Calculation of EDUs.

EDUs shall be calculated on a quarterly basis to determine the total quantity of EDUs for that quarter. EDUs shall be calculated by using the following criteria:

- i. Each single family residential connection, regardless of the amount of Sewage emanating therefrom, shall equal one EDU.
- ii. Each Multi-Family Connection, regardless of the amount of Sewage emanating therefrom, shall equal one EDU per family unit permitted to reside in such building or facility.
- iii. Each Industrial or Commercial User discharging 12,500 gallons or less per quarter shall equal one EDU.
- iv. Each Industrial or Commercial User which discharges more than 12,500 gallons per quarter shall be allocated an EDU rating equal to the ratio of each such Industrial or Commercial User's actual discharge for each quarter, as measured by a water or Sewage meter, or by the City in its sole discretion if unmetered, divided by 12,500 gallons.
- v. In addition to the total EDUs from single family residential connections, Multi-Family Connections and Industrial or Commercial Users, the total EDUs shall also include the total gallons of I/I, as determined from Sewage flow data measured by Sewage meters at the interface of the Municipality's Sewage Transportation System to the City's Sewage

System. If an interface is not metered with a Sewage meter, I/I shall be calculated by multiplying the average gallons of I/I per connection for a metered interface with similar characteristics as the area serviced by the unmetered interface by the number of connections to the unmetered interface, and all divided by 12,500 gallons.

vi. Should it be determined by the City that, due to a malfunctioning meter, insufficient data is available with which to compute the EDUs for a particular billing period, an average of the EDUs for the previous four (4) quarters associated with the malfunctioning meter shall be used notwithstanding any measured flow.

(J) Rate Adjustment.

In the event any component of the Total Charge is in violation of any Applicable Laws, the Total Charge shall be adjusted to the maximum rate permitted by Applicable Laws without affecting any other provision of this Agreement.

(K) Method of Distributing Proceeds.

The Total Charge shall be deposited in the Sewer Enterprise Fund upon receipt by the City. The Infrastructure Contingency Charge shall thereafter be transferred from the Sewer Enterprise Fund to the Infrastructure Contingency Fund. The City shall transfer three million dollars (\$3,000,000) from the Sewer Enterprise Fund to the City's general fund (the "**Impact Transfer**") once per calendar year. Upon the later of (i) three (3) years from the Effective Date or (ii) the termination of the Consent Decree, the Impact Transfer shall be increased each year by a percentage equal to the greater of (i) three percent (3%) or (ii) the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) in the Philadelphia-Wilmington-Atlantic City area for the most recently completed twelve (12) month period for which the index has been reported. The remaining balance of the Total Charge may be used to satisfy the Operating Costs of the Sewage Treatment Plant, Operating Costs of the Sewage Transportation System, Debt Service and any other costs, fees or obligations incurred by the City as a result of operating and maintaining its Sewage System.

(L) Sewer Enterprise Fund.

The City agrees to maintain a separate audited Sewer Enterprise Fund, which shall account for all Operating Costs of the Sewage Treatment Plant and the Operating Costs of the Sewage Transportation System on a yearly basis.

(M) Capital Reserve Accounts Under Prior Agreements.

Notwithstanding the terms of the Prior Agreements, the Municipality hereby agrees that it is not entitled to a credit against future capital improvements, capital equipment and major revisions to the City's Sewage Transportation System, Sewage Treatment Plant or Debt Service retirement associated therewith. The Municipality further hereby agrees to waive any and all of its rights to monies that were not placed by the City into the "**Capital Reserve - Sewage Transportation**" and "**Capital Reserve - Sewage Treatment**" interest bearing accounts under the Prior Agreements.

SECTION 10. Payment.

The Municipality shall pay the calculated Total Charge to the City on a quarterly basis. Payments for any fractional quarter shall be prorated. The Total Charge for each quarter is due and payable to the City within sixty (60) days of the last day of the quarter. A late payment penalty of one percent (1%) of the Total Charge per month shall be charged for each month or part of a month that payment is delayed beyond the sixty (60) day period. The Municipality shall keep accurate records of the number and classifications of all connections made to its Sewage Transportation System, which records shall be available for inspection by the City or its authorized representatives no more than four (4) times in any fiscal year.

SECTION 11. Meters.

(A) Installation and Maintenance of Meters.

i. Municipality's Meters.

The Municipality shall, at its own cost and expense, install, maintain and routinely service a meter acceptable to the City immediately before each interface between the Municipality's Sewage Transportation System and the City's Sewage System to enable the calculation of the volume of the effluent leaving the Municipality's Sewage Transportation System and then entering the City's Sewage System, except as specifically noted on Exhibit "C". The method of metering, programming parameters and the types of meters shall be satisfactory to the City. At minimum, meters shall (a) meet current technological standards, (b) have a permanent primary device appropriately sized for the location and conditions, (c) have an accurate secondary metering or measuring device, (d) be capable of electronically transmitting real-time flow rate data to the City unless the flow levels or other conditions at the particular connection make the use of such metering methods impracticable, as determined by an independent third party mutually agreeable to the City and the Municipality and (e) be installed in a manhole. The meters and accompanying manholes shall meet any specification requirements adopted by the City. Where the Municipality, at the time of execution of this Agreement, already has an established system for the electronic transmission of real-time flow rate data, such system shall satisfy the requirements of this SECTION 11(A)i(d) and the City shall be responsible for the costs of any equipment or programming necessary to receive information from such system, all with the cooperation of the Municipality and the Municipality's consultants. If an independent third party consultant determines, in its professional opinion, that any existing meter installed by the Municipality does not meet the specifications required by the terms of this Agreement, the Municipality may review and comment on such determination within sixty (60) days after receiving such determination. After considering such comments, if any, the Municipality shall repair or replace such meter (or a component thereof) consistent with the determination of the third party consultant no later than (a) ninety (90) days from receipt of the third party consultant's determination if no comments were submitted by the Municipality or (b) thirty (30) days from receipt of the third party consultant's response to the Municipality's timely comments to the determination.

The Municipality agrees to exercise due diligence to promptly correct (or provide a binding schedule for the correction of) any malfunctioning meter within no more than seven (7) days after the Municipality becomes aware of or is notified of a malfunctioning meter. The

Municipality shall be liable for and shall pay the City immediately upon demand any and all actual damages, costs and expenses incurred by the City relating to a malfunctioning meter until the malfunction is corrected by the Municipality. Should it be determined by the City that, due to a malfunctioning meter, insufficient data is available to compute the EDUs for a particular billing period, an average of the EDUs for the previous four (4) quarters shall be used.

All meters, locations and points of connection are more fully described and identified in Exhibit "C". Within thirty (30) days after the installation of any new or replacement meter, the Municipality shall provide the City with an updated and amended Exhibit "C" which clearly identifies the (i) number, type and the location of all connections with the City's Sewage System, (ii) location of each meter installed by the Municipality, (iii) area serviced by each meter installed by the Municipality and (iv) location and reasonable detail with respect to each connection in unmetered service areas. The amended Exhibit "C" shall be incorporated in this Agreement upon written approval by the City.

ii. Industrial or Commercial User Meters.

For each Industrial or Commercial User connected to the Municipality's Sewage Transportation System, the Municipality shall require that each such Industrial or Commercial User install a water meter or a Sewage flow meter for determining Domestic Sewage and Industrial or Commercial Sewage volumes.

(B) Meter Reading.

At its sole cost and expense, the Municipality shall read and record on the last working day of each quarterly billing period all applicable Sewage meter totalizers associated with the Municipality's Sewage Transportation System. The Municipality shall notify the City engineer, or his delegate, at least three (3) days in advance of such readings and shall permit a City representative to accompany the meter reader to verify results. The Municipality shall provide the City with copies of all meter readings or measuring device examinations for each meter for each quarterly billing period within twenty (20) days of the end of each quarterly billing period. In addition, the Municipality shall cause each meter installed on its behalf after the Effective Date to electronically transmit real-time flow rate data to the City, unless the flow levels or other conditions at the particular connection make the use of such metering methods impracticable, as determined by an independent third party mutually agreeable to the City and the Municipality.

If a meter reading identifies the occurrence of a Volume Exceedance, the Municipality shall notify the City in writing of the Volume Exceedance within twenty (20) days of the meter reading. The Municipality shall perform additional metered flow readings every ten (10) days until the Volume Exceedance has ceased. The Municipality shall notify the City engineer, or his delegate, at least three (3) days in advance of taking such readings and shall permit a City representative to accompany the meter reader to verify results. The Municipality shall promptly supply the results of all such meter readings to the City.

If the Municipality requests, the City shall permit a Municipality representative to accompany the City meter reader to verify results when the flow meters within the Sewage System are read on a quarterly basis.

(C) Certification of Meters.

The City agrees to have a third party certify and calibrate every three (3) months all Sewage flow meters at the Sewage Treatment Plant for accuracy. The Municipality shall permit the City or its contractor to certify and calibrate all of the flow meters associated with the Municipality's Sewage Transportation System measuring sewage flow entering the City's Sewage System. The City may perform such certification and calibration upon twenty-four (24) hours prior notice to the Municipality. Such third party shall also certify that the Municipality continues to use the method of metering, programming parameters and the type of primary and secondary metering devices required by the City under the terms of the Agreement. The City shall maintain records derived from the certifications/calibrations of meters and will provide such records to the Municipality upon request.

(D) Flow From Other Political Subdivisions.

If Sewage emanates from areas outside the boundaries of the Municipality, and the flow from those areas is recorded in the meter readings of the Municipality or the Municipality's flow is accounted for in another political subdivision's meter, such flow shall be included as part of the Municipality's Sewage flow volume for purposes of determining the Total Charge and Volume Exceedance Surcharge. The Municipality shall pay the City for the flow emanating from any other political subdivision through the Municipality's Sewage Transportation System or emanating from the Municipality to another political subdivision, except as otherwise provided in this Agreement. Notwithstanding any provision herein, this Agreement does not amend, modify, supplant or supersede any agreements the Township or Authority may have with another Contributing Municipality. The Municipality shall, in its sole discretion, manage its contractual relationship(s) with other Contributing Municipalities and the City shall have no responsibility or liability therefor.

If the City has a separate written treatment agreement with a political subdivision which combines its Sewage flow with the Municipality's Sewage flow prior to entering the City's Sewage System, the Municipality shall inform the City what percentage of the flow to attribute to the Municipality and what percentage of the flow to attribute to the other political subdivision. Provided that one hundred percent (100%) of the Sewage flow from the applicable Sewage Transportation System is accounted for in the attribution, the City shall separately bill the Municipality and other political subdivision. Provided, however, if the attribution provided by the Municipality and other political subdivision is disputed or does not equal one hundred percent (100%) of the Sewage flow from the applicable Sewage Transportation System, the Municipality and the other political subdivision shall be jointly and severally liable to City for the Total Charge and Volume Exceedance Surcharge for one hundred percent (100%) of the Sewage flow from the applicable Sewage Transportation System.

In order to determine if a Volume Exceedance has occurred when there is combined flow, the Reserved Capacity for the Municipality and such other political subdivision shall be combined (on a pro rated basis if 100% of the flow is not combined at the applicable metered points.)

(F) Installation of Sampling Manholes.

i. Municipality's Sampling Manholes.

The Municipality shall, at its own cost and expense, install and maintain a sampling manhole acceptable to the City immediately before each interface between the Municipality's Sewage Transportation System and the City's Sewage System to enable the testing of the effluent leaving the Municipality's Sewage Transportation System and then entering the City's Sewage System. All sampling manholes shall meet the City's requirements with respect to type, size, location and construction.

ii. Industrial or Commercial User Sampling Manholes.

Municipality shall require all new Industrial or Commercial Users to install a sampling manhole at the interface of the Industrial or Commercial Users' discharge with the Municipality's Sewage Transportation System, if warranted by the type or volume of flow to be discharged by such new user. All sampling manholes shall meet the City's requirements with respect to type, size, location and construction.

SECTION 12. Geographic Information System ("GIS") Map.

(A) General Obligation.

Upon the City's request, the Municipality shall provide the City with access to the Municipality's Sewage Transportation System and applicable records to develop a GIS map.

(B) New Industrial or Commercial User Connections.

For any new Industrial or Commercial User connection to the Municipality's Sewage Transportation System, the Municipality shall furnish to the City upon request:

i. Any GIS information reasonably requested by the City regarding the new connection in electronic format compatible with the City's GIS mapping program; and

ii. A detailed itemized list designating the name, physical and mailing address, and standard industrial classification of each new Industrial or Commercial User connected to the Municipality's Sewage Transportation System.

(C) Shared Information.

All GIS information, maps, coordinator and other data compiled by the City with respect to the Municipality's Sewer System shall be shared with and provided to the Municipality, at no charge from the City to the Municipality. The Municipality shall be responsible for the cost of any software licenses required to utilize such data.

SECTION 13. Ordinances.

(A) Rental and Other Charges.

The Municipality agrees that it will, at all times, keep in full force and effect an ordinance or ordinances imposing sewer rentals and other charges so that the amounts which reasonably may be collected by the Municipality by virtue of said ordinance or ordinances, together with any other monies received by the Municipality in connection with the operation of its Sewage Transportation System shall be sufficient to provide funds in each fiscal year to pay the total of:

- i. Estimated annual cost of operating and maintaining the Municipality's Sewage Transportation System in good order and repair;
- ii. The Municipality's debt service requirements in each such year on any debt incurred to finance the construction, upgrade or improvement of the Municipality's Sewage Transportation System; and
- iii. The Total Charge required to be paid by the Municipality to the City. Should such revenues at any time be insufficient for such purposes, the said ordinance shall provide that the Municipality shall immediately take all required action to adjust its schedule of rates and charges so that the revenues estimated to be received therefrom, together with other monies collected, received or allocated, as aforesaid, shall be sufficient to comply with the requirements of SECTION 13(A).

(B) Pretreatment, Inspection, Access and Reports.

The Municipality agrees that it will adopt and, at all times during the term of this Agreement, keep in full force and effect the City Ordinance. The Municipality shall ensure that its adoption of the City Ordinance provides it and the City with the authority to impose obligations regarding Pretreatment, inspection, access and reports on each Industrial or Commercial User as reasonably necessary to implement the terms of this Agreement and comply with Applicable Laws. The City will maintain the right to have the primary enforcement authority associated with such ordinance; however, the Municipality agrees to cooperate and coordinate efforts as requested by the City and to allow the City to sue in the Municipality's name any Industrial or Commercial User discharging Sewage in violation of the terms of this Agreement, contrary to Applicable Laws or beyond the limits authorized by such Industrial or Commercial User's permit from the City authorizing the Sewage discharge. The purpose of this SECTION 13(B) is to provide the right for the City to:

- i. Have the permitting authority to establish pretreatment conditions associated with the discharge of the Industrial or Commercial User;
- ii. Access, inspect, survey, monitor or sample discharge from each Industrial or Commercial User during normal business hours, with or without notice;
- iii. Access, inspect and evaluate each Industrial or Commercial User's Pretreatment facilities during normal business hours, with or without notice;

iv. Access, inspect and evaluate records relating to Sewage generation, treatment or discharge from each Industrial or Commercial User during normal business hours, with or without notice;

v. Enforce injunctive relief, civil or criminal penalties consistent with Applicable Laws for any violation of Applicable Laws or this Agreement, including, but not limited to, the discharge limitations set forth in SECTION 7(C); and

vi. Immediately compel the discontinuance of the discharge of Sewage from any facility if the City believes, in its sole discretion, such discharge is in violation of this Agreement or Applicable Laws.

vii. The obligation for all Industrial or Commercial Users to comply with all applicable Best Management Practices;

viii. The obligation for all Industrial or Commercial Users to immediately notify the City once an Industrial or Commercial User has reason to know a discharge to the Municipality's Sewage Transportation System or the City's Sewage System occurred which may potentially create an imminent hazard to human health or the environment;

ix. The obligation for Industrial or Commercial Users to notify the City within thirty (30) days of any material change in the quality or quantity of Sewage discharge;

x. The obligation for Industrial or Commercial Users to submit all data, reports or information required by Applicable Laws for such Industrial or Commercial Users, including, but not limited to, submission of data required for and compatible with the Pretreatment computerized management system;

xi. The obligation for Industrial or Commercial Users to implement Pretreatment processes of all waste and pollutants not authorized by Applicable Law to be directly discharged to the Sewage Treatment Plant, consistent with the terms of this Agreement and Applicable Laws;

xii. The obligation for Industrial or Commercial Users to perform self monitoring for pollutants of concern as required by Applicable Laws;

xiii. Provide local limits, as provided in Part 403 of Chapter 40 of the Code of Federal Regulations and the Consent Decree, of concentrations and characteristics of Sewage discharged from Industrial or Commercial Users, consistent with the most stringent limits set forth in this Agreement or Applicable Laws; and

xiv. The obligation for Industrial or Commercial Users to install and maintain sampling ports and meters of Sewage discharge or water usage, in accordance with this Agreement.

(C) Intergovernmental Cooperation Act.

The Municipality and City agree to formally authorize intergovernmental cooperation by adoption of an ordinance in compliance with the requirements of the Intergovernmental Cooperation Act, 53 Pa. C.S.A § 2301 et seq., to allow the other to perform its obligations and enjoy its rights in accordance with the terms of this Agreement.

SECTION 14. Indemnification.

The Township and Authority, jointly and severally, shall indemnify, defend and save the City harmless from and against all claims, suits, demands, orders, penalties, losses, costs and/or damages (“Claims”) arising out of or relating to the breach of this Agreement by the Township, Authority, or their respective servants, agents or employees or the gross negligence or willful misconduct of the Township, Authority or their respective servants, agents or employees.

The City likewise agrees to indemnify, defend and save the Municipality harmless from and against all Claims arising out of or relating to the breach of this Agreement by the City, its servants, agents or employees or the gross negligence or willful misconduct of the City, its servants, agents or employees; provided however, for purposes of this Agreement, the Contributing Municipalities are not the City’s servants, agents or employees. Notwithstanding anything else to the contrary in this Agreement, the City shall have no responsibility or liability to the Municipality for Claims resulting directly or indirectly from the acts or omission of any political subdivision other than the City.

SECTION 15. Insurance.

(A) The Municipality’s Insurance Obligations.

Throughout the term of this Agreement, the Municipality shall maintain the following insurance coverages in effect:

i. Comprehensive General Liability – including bodily injury and property damage, with limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

ii. Public Officials Liability – included at limits of \$1,000,000 for each wrongful act and \$2,000,000 annual aggregate.

iii. Umbrella/Excess Liability -- with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate following from underlying liability coverage.

Within ten (10) days of the Effective Date of this Agreement, the Municipality shall furnish to the City 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 insureds under the Comprehensive General Liability coverage, and providing that no policies may be cancelled without ten (10) days advance written notice to the City. All policies shall be in effect with companies holding an A.M. Best rating of "A-" or better and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Such companies shall also be acceptable to the City.

(B) The City's Insurance Obligations

Throughout the term of this Agreement, the City shall maintain the following insurance coverages in effect:

i. Comprehensive General Liability – including bodily injury and property damage, with limits of \$1,000,000 per occurrence and \$1,000,000 annual aggregate.

ii. Public Officials Liability – included at limits of \$2,000,000 for each wrongful act and \$2,000,000 annual aggregate.

iii. Premises Pollution Liability – included at limits of \$1,000,000 per pollution condition and \$1,000,000 annual aggregate.

iv. Umbrella/Excess Liability – with limits of not less than \$4,000,000 per occurrence and \$4,000,000 annual aggregate following from underlying liability coverage.

(C) Periodic Limit Increases

The insurance limits set forth herein shall be reviewed periodically and increased upon mutual agreement.

SECTION 16. Inspection of Records.

The Parties shall make available for inspection by the other parties hereto, upon reasonable request, any records and accounts associated with the financial, technical, physical or mechanical components of the other party's Sewage Transportation System and, in the case the City, its Sewage Treatment Plant. Any inspections made pursuant to this SECTION 16 shall take place not more than four (4) times during any calendar year.

SECTION 17. Title Transfer.

If the Township or Authority, at any future time, transfers title to its Sewage Transportation System to any Person by deed or otherwise, the Township or Authority shall ensure that the Person shall be subject to all obligations of this Agreement. Township and Authority shall also be liable for the Total Charge and full compliance with the obligations under this Agreement unless and until the City authorizes the assignment of this Agreement pursuant to SECTION 23(L).

SECTION 18. Most Favorable Pricing Terms.

In the event the City enters into any agreement of a similar nature concerning Sewage transportation through the City's Sewage Transportation System or the treatment at its Sewage Treatment Plant with any other Contributing Municipality, upon more favorable terms with respect to pricing (as compared to those provided in SECTION 9 of this Agreement), then the Parties hereto agree that such pricing terms shall be incorporated herein by amendment, and the City shall provide the Municipality with written notice of any more favorable terms agreed upon by the City. Upon request, the City shall furnish to the Municipality a copy of all Sewage treatment or transportation agreements fully executed between the City and any other municipality whose Sewage is transported through the City's Sewage Transportation System or treated at the Sewage Treatment Plant.

SECTION 19. Service to Additional Municipalities.

Notwithstanding anything contained herein to the contrary, the City agrees that the initial cost of any future discrete expansion, renovation, revision or improvement to its present Sewage System required solely as the result of the addition of a political subdivision not presently served by the City shall not be passed through, charged or paid in part by the Municipality.

SECTION 20. Act 537 Plan.

The Municipality shall take any and all steps, if necessary, to amend its Act 537 Plan to reflect the terms and conditions of this Agreement, Applicable Laws and the collection and treatment of Sewage by the City for the area described in Exhibit "B" no later than twelve (12) months after the Effective Date. Thereafter, the Municipality shall evaluate and comprehensively amend, if necessary, its Act 537 Plan for the areas specified in Exhibit "B" at least once every five years.

The Municipality shall provide the City with any proposed amendments to the Municipality's Act 537 at least sixty (60) days prior to submitting the proposed amendments to the Municipality's Act 537 Plan to DEP. Within thirty (30) days of receiving the Municipality's proposed amendment to the Municipality's Act 537 Plan, the City shall provide the Municipality with comments, if any. The Municipality shall, in good faith, address and modify the proposed amendment to the Municipality's Act 537 Plan consistent with the City's comments prior to submitting the proposed amendment to the Municipality's Act 537 Plan to DEP. The City reserves the right to submit comments to the proposed amendment to Municipality's Act 537 Plan during any public comment period.

SECTION 21. Consent Decree.

The Municipality agrees to cooperate and assist the City with facilitating the implementation of the requirements and recommendations contained in the Consent Decree and any related recommendations of the U.S. Department of Justice, the EPA, the DEP and any other governmental authority with jurisdiction.

SECTION 22. Default.

Except as otherwise set forth in this Agreement with respect to the City's right to injunctive relief, if any party to this Agreement believes that another party has materially breached this Agreement, the non-breaching party shall provide the breaching party with sixty (60) days prior written notice of the breach along with an explanation of the breach and basis for such belief before the non-breaching party institutes any action in arbitration, if elected by the City, or in law or equity.

The breaching party shall have sixty (60) days immediately following the written notice to cure the breach or take appropriate corrective action to cure the breach. Provided, however, the non-breaching party shall retain all legal rights to institute an action in law or equity.

SECTION 23. Miscellaneous.

(A) Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original and such counterparts shall constitute but one and the same instrument.

(B) Applications for Grants.

The City and the Municipality may, in their individual discretion, make applications for any available grants, subsidies, low interest loans or other similar payments in connection with their respective Sewage facilities. The Municipality and the City shall reasonably cooperate with each other in the application process for obtaining any such grants, subsidies, low interest loans or other similar payments.

(C) Compliance with Applicable Laws.

Without limiting the Parties' respective obligations as set forth in this Agreement, each Party shall operate its respective Sewage Transportation System (and, for the City, also its Sewage Treatment Plant) in material compliance with all Applicable Laws.

(D) Governing Law; Venue.

This Agreement has been made, executed, and delivered in, and shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. The Parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state courts located in the County of Berks, Commonwealth of Pennsylvania, and the United States District Court for the Eastern District of Pennsylvania and irrevocably agree that all actions or proceedings relating to this Agreement shall be litigated in such courts. Each party waives any objection, which it may have based on lack of personal jurisdiction, improper venue, or forum non conveniens to the conduct of any proceeding in any such court and waives personal service of any and all process upon them.

(E) Force Majeure.

Notwithstanding any other provisions of this Agreement, neither the City nor the Municipality shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, strike, or unforeseen breakdown of the Sewage Transportation System or Sewage Treatment Plant. The party so affected, however, shall proceed promptly to remedy the consequences of such event.

(F) Records Retention.

The Parties shall retain records in accordance with the Federal Water Pollution Control Act (also known as the "Clean Water Act"), 33 U.S.C.A §§ 1251 to 1387 (and the regulations promulgated thereunder) and the Municipal Records Act of 1968 (P.L 961, No. 428), 53 P.S. §§ 9001 to 9010, as it may be amended from time-to-time, and may dispose of municipal records as permitted therein.

(G) Severability.

Subject to the rate adjustment process set forth in SECTION 9(J), should any provision of this Agreement for any reason be held illegal or invalid, no other provision of this Agreement shall be affected, and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

(H) Headings.

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

(I) Exhibits.

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any conflicts, inconsistencies, discrepancies, or ambiguities between and/or within the Agreement and the exhibits attached hereto, the main body of this Agreement takes precedence over the exhibits and any inconsistency between the exhibits shall be resolved in the listed order, below:

- i. Exhibit "A": Consent Decree
- ii. Exhibit "B": Sewage Service Area
- iii. Exhibit "C": Connection Locations
- iv. Exhibit "D": City Ordinance
- v. Exhibit "E": Operating Costs
- vi. Exhibit "F": Reserved Capacity Table

vii. Exhibit "G": Reserved Capacity Charge Fee Schedule

(J) Reference to Days.

Unless specifically stated otherwise, all references to a "day" or "days" shall mean a "calendar day" or "calendar days."

(K) Waiver.

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

(L) Successors and Assigns.

The Parties hereto shall not voluntarily assign this Agreement without the prior written consent of the other parties hereto. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and assigns notwithstanding any such assignment.

(M) Entire Agreement.

This Agreement contains the entire agreement among the parties hereto, and no oral statements or representations or prior written matter not contained in this Agreement shall have any force and effect.

(N) Modification.

This Agreement may only be modified or amended in a writing signed by the Parties hereto or as specifically provided herein after the City has provided written notice of such modification to the Municipality.

(O) Notices.

All written notices and approvals given or made pursuant to this Agreement shall be deemed effectively received upon the earlier of actual receipt or: (i) the date of personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their contact information set forth below. Either party may modify its contact information upon written notice to the other party.

If to the City:

Managing Director
City of Reading
815 Washington Street
Reading, PA 19601
Fax No.: (610) 655-6034

With a copy to:

City Solicitor
City of Reading
815 Washington Street
Reading, PA 19601

If to the Authority:

Muhlenberg Township Authority
Attn: Manager
2840 Kutztown Road
Reading, PA 19605
Fax No.: (610) 929-2172

If to the Township:

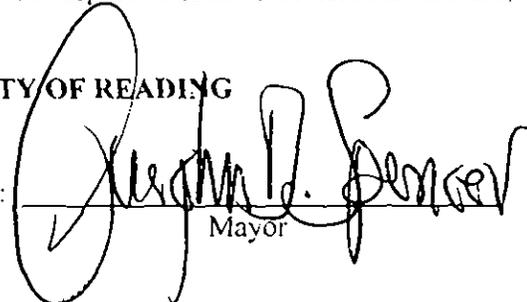
Muhlenberg Township
Attn: Township Manager
5401 Leesport Avenue
Temple, PA 19560
Fax No.: (610) 921-3764

[SIGNATURES ON THE FOLLOWING PAGE]

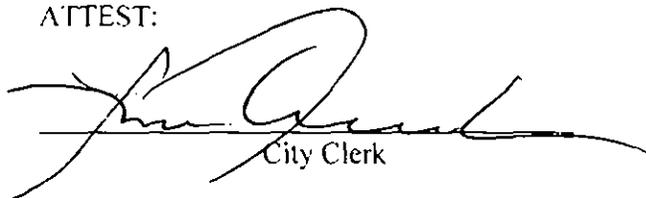
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their appropriate officers thereunto duly authorized respectively, by adoption of appropriate ordinances, and by the adoption of a resolution, and their respective seals to be hereunto affixed, all as of the day and year first above written.

CITY OF READING

By:


Mayor

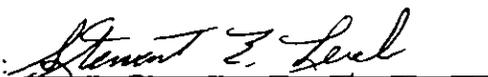
ATTEST:


City Clerk

(SEAL)

MUHLENBERG TOWNSHIP
AUTHORITY

By:


Name: Stewart Leck
Title: CHAIRMAN

ATTEST:


Secretary

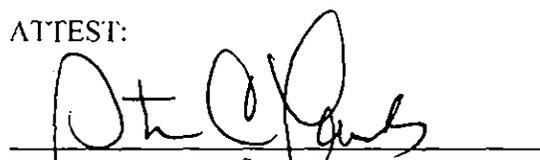
(SEAL)

MUHLENBERG TOWNSHIP

By:


Name: Michael Mataguis
Title: Pres Board & Commissioner

ATTEST:


Secretary

(SEAL)

EXHIBIT "A": 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.)
_____)

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 BOD₅, TSS, and NH₃-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 BOD₅, TSS, and NH₃-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 BOD₅, TSS, NH₃-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 20th 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:

- I. 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 3rd 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 4th 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 st to 15 th Day	\$500
16 th to 30 th Day	\$1,000
31 st to 60 th 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 st to 30 th Day	\$1000
31 st to 60 th 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 st to 15 th Day	\$500
16 th to 30 th Day	\$1,000
31 st to 60 th 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 st to 15	\$500
16 th to 30 th Day	\$1,000
31 st to 60 th 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 st to 15	\$500
16 th to 30 th Day	\$1,000
31 st to 60 th 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.	Removal of excess sediment and soil stabilization SEP	\$ 300,000
54.C	Angelica Creek Restoration SEP	\$ 95,000
54.D.	Angelica Creek Riparian Buffer SEP	\$ 55,000
54.E	Wetland Creation SEP	\$ 75,000
54.F	Annual Maintenance SEPs	\$ 5,000 per year
54.F	Access SEP	\$ 32,000
54.G	SEP Design, Final Plan and Administrative Costs	\$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 2nd 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.

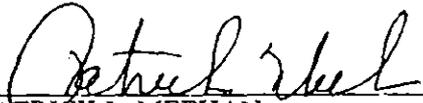
XXV. INTEGRATION/APPENDICES

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.

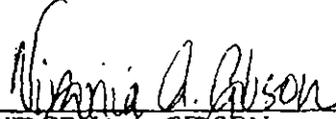
Dated and entered this _____ day of _____ 200 .

Judge

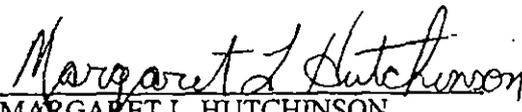
FOR THE UNITED STATES OF AMERICA:


PATRICK L. MEEHAN
United States Attorney

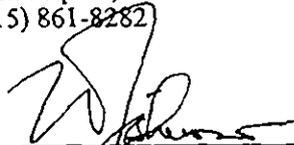
12/7/04
DATE


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

12/7/04
DATE

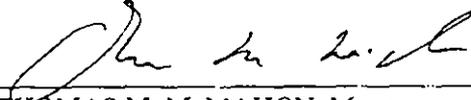

MARGARET L. HUTCHINSON
Assistant United States Attorney
U.S. Attorney's Office
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
(215) 861-8282

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

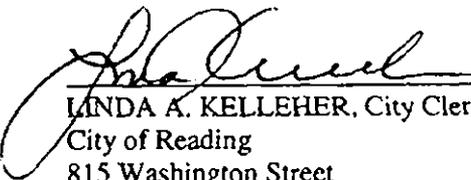
FOR THE CITY OF READING:



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

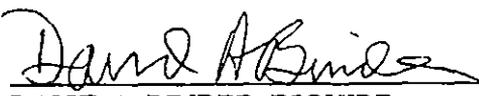
11/10/04
DATE

Attest:



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

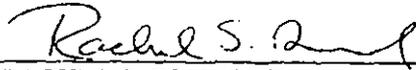
11-10-04
DATE



DAVID A. BINDER, ESQUIRE
226 North 6th Street
Reading, PA 19601
Counsel for the City of Reading

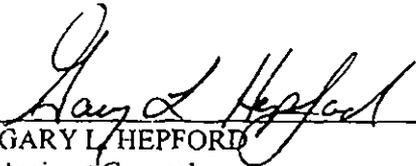
11/10/04
DATE

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
Assisant Counsel
Pennsylvania Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Ave.
Harrisburg, PA 17110-8200

11/9/04
DATE

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

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 10 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

EXHIBIT "B": SEWAGE SERVICE AREA

Notwithstanding the Municipality's obligation to convey all Sewage emanating from the Service Area, as such obligation is set forth in SECTION I of this Agreement, the Municipality shall not be required to connect the 372 single-family residential lots currently serviced by on-lot sewage systems to connect to the Municipality's Sewage Transportation System.

Furthermore, the Municipality shall be permitted to service the parcels within the Service Area designated as "Planned/Future Development" in the Sewer Service Area Map attached hereto through use of on-lot sewage systems.

EXHIBIT "C": CONNECTION LOCATIONS

Connection Point "A"	
Location/Name	Front Street / Ball Park
Meter Manufacturer	Badget
Meter Model Number	2100
Meter Serial Number	5768
Metering Method	12" Parshall Flume
Meter Type	Ultrasonic
Off-Site Communications	MTA SCADA / Radio

Connection Point "B"	
Location/Name	North 5 th Street
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "C"	
Location/Name	Columbia Avenue
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "D"	
Location/Name	Raymond Street
Meter Manufacturer	Badger
Meter Model Number	2100
Meter Serial Number	6427
Metering Method	6" Parshall Flume
Meter Type	Ultrasonic
Off-Site Communications	MTA SCADA / Radio

Connection Point "E"	
Location/Name	Kutztown Road
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "F"	
Location/Name	N. 11 th Street
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "G"	
Location/Name	N. 13 th Street
Meter Manufacturer	Badger
Meter Model Number	2100
Meter Serial Number	918816
Metering Method	3" Parshall Flume
Meter Type	Ultrasonic
Off-Site Communications	None

Connection Point "H"	
Location/Name	N. 17 th Street
Meter Manufacturer	Unmetered
Meter Model Number	N/A
Meter Serial Number	N/A
Metering Method	N/A
Meter Type	N/A
Off-Site Communications	N/A

Connection Point "I"	
Location/Name	Hampden Blvd
Meter Manufacturer	Badger
Meter Model Number	2100
Meter Serial Number	962893
Metering Method	3" Parshall Flume
Meter Type	Ultrasonic
Off-Site Communications	None

EXHIBIT "D": CITY ORDINANCE

CHAPTER 18

SEWERS AND SEWAGE DISPOSAL

PART 1

SEWER USES

- §18-101. General Provisions
- §18-102. General Sewer Use Requirements
- §18-103. Pretreatment of Wastewater
- §18-104. Wastewater Discharge Permit Application
- §18-105. Wastewater Discharge Permit Issuance Process
- §18-106. Wastewater Monitoring and Reporting Requirements
- §18-107. Compliance Monitoring
- §18-108. Confidential Information
- §18-109. Publication of Users in Significant Noncompliance
- §18-110. Administrative Enforcement Remedies
- §18-111. Judicial Enforcement Remedies
- §18-112. Supplemental Enforcement Action
- §18-113. Affirmative Defenses to Discharge Violations
- §18-114. Wastewater Treatment Rates
- §18-115. Fees
- §18-116. Seepage Discharge Permit System
- §18-117. Interference with City Property

PART 1¹

SEWER USE

§18-101. General Provisions

1. Purpose and Policy.

This Part sets forth uniform requirements for users of the publicly owned treatment works for the City of Reading, Pennsylvania, and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act, 33 U.S.C. §1251 *et seq.*, and the General Pretreatment Regulations 40 CFR., Part 403, and amendments, thereto. The objectives of this Part are:

- A. To prevent the introduction of pollutants into the publicly owned treatment works that will interfere with its operation.
- B. To prevent the introduction of pollutants into publicly owned treatment Works that will prevent or restrict the beneficial reuse of the resulting sludge from the wastewater treatment process.
- C. To prevent the introduction of pollutants into the publicly owned treatment works that will pass through the publicly owned treatment works, inadequately treated, into receiving waters, or otherwise be incompatible with the publicly owned treatment works.
- D. To protect both publicly owned treatment works personnel who may be affected by wastewater and sludge in the course of their employment and the general public.
- E. To promote reuse and recycling of industrial wastewater and sludge from the publicly owned treatment works.
- F. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the publicly owned treatment works.

¹Sewer Connections - see Third Class City Code §3201 *et seq.*, 53 P.S. §38201 *et seq.*
Power to Furnish Sewerage Facilities Outside City - see Third Class City Code §3250, 53 P.S. §38250.
Wastewater Treatment - 25 Pa.C.S.A. Ch. 95.
Sewage Pollution - 35 P.S. §691.201 *et seq.*
Industrial Wastes - see 35 P.S. §691.301 *et seq.*; 25 Pa.C.S.A. Ch. 97.
Sewage Facilities Act - see 35 P.S. §750.1 *et seq.*; 25 Pa.C.S.A. Ch. 71.
Sewage Disposal Facilities Standards - see 25 Pa.C.S.A. Ch. 73.

SEWERS AND SEWAGE DISPOSAL

- G. To enable the City of Reading to comply with its National pollutant discharge elimination system permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the publicly owned treatment works is subject.

This Part shall apply to all users of the City of Reading publicly owned treatment works and to persons outside the City who are, by contract or agreement with the City, users of the City publicly owned treatment works. The Part authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein. This Part supersedes Ordinance No. 61-84, 1-87, 104-89, 7-94, and 48-86 as amended and provisions of that Ordinance are null and void where they conflict with specifics contained herein.

2. Administration.

- A. This Part provides for the regulation of contributors to the POTW and wastewater system through the issuance of permits to certain nondomestic users and through enforcement of general requirements for users, authorizes monitoring, compliance, and enforcement activities; requires user reporting; assumes that existing customer's capacity will not be preempted; and provides for the setting of fees for their equitable distribution of costs resulting from the program established herein.
- B. This Part shall apply to all users of the POTW. Except as otherwise provided herein, the Industrial Waste Administrator shall administer, implement, and enforce the provisions of this Part. Any powers granted to or duties imposed upon the Industrial Waste Administrator may be delegated by the Industrial Waste Administrator to other City personnel or to the City's authorized agent.

3. Abbreviations and Acronyms. The following abbreviations or acronyms shall have the designated meanings:

- A. APR - Average percentage rate.
- B. ASTM - American standard testing materials.
- C. BAT - Best available treatment.
- D. BATEA - Best available technology economically achievable.
- E. BCT - Best control technology.
- F. BMP - Best management practices.
- G. BMR - Baseline monitoring report.
- H. B/N - Base/neutral.

- I. BOD - Biochemical oxygen demand.
- J. BPJ - Best professional judgment.
- K. BPT - Best professional technology.
- L. CERCLA - Comprehensive Environmental Response, Compensation and Liability Act.
- M. CFR - Code of Federal Regulations.
- N. CIU - Categorical industrial user.
- O. COD - Chemical oxygen demand.
- P. CSO - Combined sewer overflow.
- Q. CWA - Clean Water Act.
- R. CWF - Combined wastestream formula.
- S. DMR - Discharge monitoring report.
- T. DSS - Domestic sewage study.
- U. EMS - Enforcement management system.
- V. EP - Extraction procedure.
- W. EPA - Environmental Protection Agency of the United States.
- X. ERP - Enforcement response plan.
- Y. FDF - Fundamentally different factor.
- Z. FOV - Finding of violation.
- AA. FOG - Fats, oil and grease.
- BB. FR - Federal Register.
- CC. FTE - Full-time equivalent.
- DD. FWA - Flow-weighted averaging.
- EE. FWPCA - Federal Water Pollution Control Act.
- FF. GC/MS - Gas chromatograph mass spectrophotometry.

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- GG. gpd - Gallons per day.
- HH. I + I - Infiltration and inflow.
- II. IU - Industrial user.
- JJ. IWA - Industrial Waste Administrator.
- KK. IWS - Industrial waste survey.
- LL. MAHL - Maximum allowable headworks loading.
- MM. MGD - Million gallons per day.
- NN. mg/l - Milligrams per liter.
- OO. MOU - Memorandum of understanding.
- PP. MSDS - Material safety data sheet.
- QQ. NI13-N - Ammonia (NH₃) expressed as nitrogen (N).
- RR. NIOSH - National Institute of Occupational Safety and Health.
- SS. NMP - National municipal policy.
- TT. NPDES - National pollutant discharge elimination system.
- UU. NON - Notice of noncompliance.
- VV. NOV - Notice of violation.
- WW. OCPSF - Organic chemicals, plastics and synthetic fibers.
- XX. O&G - Oil and grease.
- YY. O&M - Operations and maintenance.
- ZZ. OSHA - Occupational Safety and Health Administration.
- AAA. OWEC - Office of Water Enforcement and Compliance.
- BBB. PAD - Proportioned actual domestic flow.
- CCC. PaDEP - Pennsylvania Department of Environmental Protection.
- DDD. PAH - Polynuclear aromatic hydrocarbons.

EEE. PAI - Proportioned actual industrial flow.

FFF. PASS - Pretreatment audit summary system.

GGG. PCB - Polychlorinated biphenols.

HHH. PCI - Pretreatment compliance inspection.

III. PCME - Pretreatment compliance monitoring enforcement.

JJJ. PCS - Permit compliance system.

KKK. PIRT - Pretreatment Implementation Review Task Force.

LLL. POTW - Publicly owned treatment works.

MMM. ppd - Pounds per day.

NNN. ppm - Parts per million.

OOO. ppb - Parts per billion.

PPP. PPETS - Pretreatment permits enforcement tracking system.

RRR. PQR - Permit quality review.

SSS. PSNS - Pretreatment standards for new sources.

TTT. PSES - Pretreatment standards for existing sources.

UUU. QAQC - Quality assurance quality control.

VVV. QNCR - Quarterly noncompliance report.

WWW. RCRA - Resource Conservation and Recovery Act.

XXX. RNC - Reportable noncompliance.

YYY. SARA - Superfund Amendments and Reauthorization Act.

ZZZ. SIC - Standard industrial classification.

AAAA. SIU - Significant industrial user.

BBBB. SMP - Solvent management plan.

CCCC. SNC - Significant noncompliance.

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DDDD. SPCC - Spill prevention control and countermeasures.

EEEE. SPMS - Strategic planning and management system.

FFFF. STP - Sewage treatment plant.

GGGG. STLC - Soluble threshold limit concentration.

HHHH. SU - Standard units.

IIII. SUO - Sewer Use Ordinance [this Part].

JJJJ. SWDA - Solid Waste Disposal Act.

KKKK. TCLP - Toxicity characteristic leachate procedure.

LLLL. TDS - Total dissolved solids.

MMMM. TICH - Total identifiable chlorinated hydrocarbons.

NNNN. TOMP - Toxic organic management plan.

OOOO. TRC - Technical review criteria.

PPPP. TRE - Toxicity reduction evaluation.

QQQQ. TSS - Total suspended solids.

RRRR. TTO - Total toxic organics.

SSSS. TTLC - Total threshold limit concentration.

TTTT. USC - United States Code.

UUUU. ug/l - micrograms per liter.

VVVV. VOA - Volatile organic analysis.

WWWW. VOC - Volatile organic compounds.

XXXX. VSS - Volatile suspended solids.

YYYY. WENDB - Water enforcement national data base.

ZZZZ. WEF - Water Environment Federation.

AAAAA. WQA - Water Quality Act.

BBBBB. WQS - Water quality standard.

CCCC. WWTP - wastewater treatment plant.

4. **Definitions.** Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Part, shall have the meanings hereinafter designated:

ACT or THE ACT - the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251 *et seq*

APPROVAL AUTHORITY - the EPA Regional III Administrator.

APPURTENANCE - auxiliary structures attached to a sewer which shall include, but not be limited to, pump stations, slots, regulators, outfalls, force mains, manholes, catch basins, tide gates, monitoring devices and metering chambers.

AUTHORIZED EMPLOYEES or AGENTS OF THE CITY - a person who by reason of his or her general position or job description with the City has specific duties and responsibilities to perform on behalf of the City. Also included are agents of the City, who are authorized by the IWA to act on behalf of the City through an authorization letter.

AUTHORIZED REPRESENTATIVE OF THE USER -

- (1) If the user is a corporation:
 - (a) The president, secretary, treasurer or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation.
 - (b) The manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the user is a partnership or sole proprietorship; a general partner or proprietor, respectively.
- (3) If the user is representing Federal, State or local governments, or an agent thereof, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.
- (4) The individuals described in subsections (1) - (3) above may designate another authorized representative if said authorization is submitted to the City in writing and specifies the individual or position responsible for the

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overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters of the company.

BATCH DISCHARGE - the discharge of all or part of the contents of a tank that occurs intermittently or over a short period of time.

BIOCHEMICAL OXYGEN DEMAND or BOD - the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for 5 days at 20° centigrade, usually expressed as a concentration (e.g., mg/l).

BIOLOGICALS - preparations made from living organisms and their products, including vaccines, cultures, etc., intended for use in diagnosing, immunizing or treating humans or animals or in research pertaining thereto.

BLOOD PRODUCTS - any products derived from human blood, including, but not limited to whole blood, blood plasma, platelets, red or white blood corpuscles, and other derived licensed products, such as interferon, etc.

BODY FLUIDS - liquids emanating or derived from humans including blood products, cerebrospinal, pleural, peritoneal and pericardial fluids and amniotic fluids and semen and vaginal secretions but excluding feces, urine, nasal secretions, sputum, sweat, tears, saliva and breast milk, unless any such excluded substance contains visible blood or is isolation waste.

BUILDING DRAIN - that part of the lowest horizontal piping within a building that carries water, wastewater or stormwater to a building sewer.

BUILDING SEWER - the extension from the building drain to the public sewer, or other place of disposal. Also referred to as "house connection."

BYPASS - the intentional or unintentional diversion of waste streams from any portion of a user's treatment facility.

CHAIN OF CUSTODY - written documentation such as receipts and record book entries to show the history of possession, custody and/or control of a sample from collection through analysis.

CHEMICAL OXYGEN DEMAND (COD) - a measure of the amount of oxygen required to oxidize organic and oxidizable inorganic compounds in water.

CHLORINE DEMAND - the quantity of chlorine absorbed in water, sewage or other liquids, allowing a residual of 0.1 mg/l, after 15 minutes of contact.

CITY - the City of Reading, Pennsylvania. The agent of the City who is authorized by this Part to implement the City's industrial pretreatment program shall be the Industrial Waste Administrator.

COLLECTION FACILITIES - the sewers, lift stations, and other City facilities used to collect wastewaters from individual Users within specific tributary districts and transport them to conveyance facilities for transmission to the treatment plant for processing.

COLOR - as analyzed by methods specified by 40 CFR, Part 136.

COMMERCIAL USER - a source of discharge of wastewater to the City sewer system from premises used partially or entirely for commercial purposes.

COMPOSITE SAMPLE - the sample collection technique resulting from the combination of individual wastewater grab samples taken at selected intervals based on either an increment of flow or time.

CONTACT COOLING WATER - any water used for cooling purposes which comes into direct contact with the object being cooled such as any raw material, intermediate product, waste product or finished products.

CONTROL AUTHORITY - shall refer to the City or the City of Reading POTW.

CONVENTIONAL WASTEWATER POLLUTANTS - pollutants so designated in accordance with §304(a)(4) of the Act as being effectively managed by secondary treatment as defined by 40 CFR, Part 133.

DAILY MAXIMUM - the maximum allowable discharge of a pollutant during a calendar day. Where maximum limitations are expressed in units of mass, the daily discharge is the total mass discharged over the course of a day. Where daily maximum limitations are expressed in terms of concentration, the daily discharge is the arithmetic average measurement of the pollutant derived from all measurements taken that day.

DIRECT CONNECTION - the connection of a building sewer directly to a sewer owned by the City.

DIRECT DISCHARGE - the discharge of treated or untreated wastewater directly to the waters of the Commonwealth of Pennsylvania.

DISCHARGE - the introduction of wastewater, water, and/or pollutants into the City's facilities from any source.

DOMESTIC WASTE - the normal water-carried household and toilet wastes from residences, business buildings, institutions and industrial establishments. Also known as sewage.

EASEMENT - the acquired legal right to use land owned by others for a specific purpose.

ENFORCEMENT RESPONSE PLAN - a plan which sets forth the City's enforcement response to violations of this Part, as required by 40 CFR, Part 403.

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ENVIRONMENTAL PROTECTION AGENCY OR EPA - shall refer to the U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director, or other duly authorized official of said agency.

EXISTING SOURCE - any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with §307 of the Act.

FACILITY OR FACILITIES - see "wastewater facilities."

FLASHPOINT - the temperature at which a liquid or volatile solid gives off vapor sufficient to form an ignitable mixture with the air near the surface of the liquid or within the test vessel. Flashpoint is determined by the test methods set out in 40 CFR §261.21.

GARBAGE - shall include, but not be limited to, the wastes resulting from the handling, preparation, cooking and serving of food, and from the handling, storage and sale of product.

GARBAGE DISPOSAL UNIT or GARBAGE GRINDER - a mechanical device used for grinding, shredding or macerating garbage to a small particle size before discharge to the sewer.

GRAB SAMPLE - a sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed 15 minutes.

GREASE - a substance which tests positive in the standard analytical method used for this parameter. Grease may be composed of volatile and nonvolatile residual fats, oils, fatty acids, soaps, waxes, mineral oils and other materials of similar composition.

GREASE REMOVAL DEVICE - a device for removal of grease and/or oil from a wastewater discharge.

HOLDING TANK WASTE - any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

INDIRECT CONNECTION - a building sewer connection that is not a direct connection; and whose wastewater discharge shall, notwithstanding the passage in its normal course through other sewers or conduits, ultimately discharge in whole or in part through City sewers.

INDIRECT DISCHARGE or DISCHARGE - the discharge or the introduction of pollution from any nondomestic source regulated under §307(b), (c) or (d) of the Act, 33 U.S.C. §1317, into the POTW (including holding tank waste discharge into the system).

INDUSTRIAL ESTABLISHMENT - any improved property used, in whole or in part, for manufacturing, processing, cleaning, laundering, or assembling any product,

commodity or article; or from which any process waste, as distinct from sewage, shall be discharged.

INDUSTRIAL USER - a source of indirect discharge which does not constitute a discharge of pollutants under regulations issued pursuant to §402, of the Act. In addition, industrial user shall also be defined as an establishment which discharges or introduces industrial waste into the POTW.

INDUSTRIAL WASTE - shall have the meaning ascribed to it in the Act of June 22, 1937, P.L. 1987, No. 394, known as the Clean Streams Law, and the regulations adopted thereunder.

INDUSTRIAL WASTE ADMINISTRATOR (IWA) - the person designated by the City to administer its industrial waste program and who is charged with certain duties and responsibilities by this Part or his/her duly authorized representative.

INFECTIOUS WASTES - wastewater contaminated by or containing any agent or organism, such as a virus or a bacteria, capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

INSTANTANEOUS MAXIMUM ALLOWABLE DISCHARGE LIMIT - the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

INTERFERENCE - a discharge, which alone or in conjunction with a discharge or discharges from other sources, both: (1) inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and (2) therefore, is a cause of a violation of the City's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory regulatory provisions or permits issued thereunder, or any more stringent State or local regulations; §405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

ISOLATION WASTE - biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases and specified by the Center for Disease Controls (CDC) as classification 4.

MANHOLE - a shaft or chamber leading from the surface of the ground to a sewer; large enough to enable a person to gain access to the sewer.

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MAY is permissive; **SHALL** is mandatory.

MEDICAL WASTE - any solid waste which is generated in the diagnosis, treatment (e.g., provisions of medical services), or immunization of human beings or animals in research pertaining thereto, or in the production or testing of biologicals.

MONTHLY AVERAGE - the arithmetic mean of the values for effluent samples collected over a calendar month.

MUNICIPALITY - any city, borough, township, municipal authority, county, county authority, state authority or sewer district that discharges wastewater into the sewers owned by the City.

NATIONAL CATEGORICAL PRETREATMENT STANDARD OR CATEGORICAL STANDARD - any regulation containing pollutant discharge limits promulgated by EPA in accordance with §§307(b) and (c) of the Act, 33 U.S.C. §1317, which apply to a specific category of users and which appear in 40 CFR, Chapter 1, Subchapter N, Parts 405-471.

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT - a permit issued pursuant to §402 of the Federal Water Pollution Control Act, 33 U.S.C. 1342.

NATIONAL PROHIBITIVE DISCHARGE STANDARD OR PROHIBITIVE DISCHARGE STANDARD - any regulation developed under the Authority of §301(b) of the Act and 40 CFR §403.5.

NONSIGNIFICANT INDUSTRIAL USER - a user designated as such by the IWA based on the user's discharge quantity and quality. Such users may include but are not limited to commercial users, medical offices (doctor, dentist, etc.), garages and auto repair facilities, funeral parlors, and laboratories. The ultimate determination of the status of nonsignificant industrial user is within the discretion of the IWA pursuant to the terms and conditions of this Part.

NEW SOURCE -

- (1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under §307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that Section, provided that:
 - (a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

- (c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this subsection has commenced if the owner or operator has:
 - (a) Begun, or caused to begin, as part of a continuous on site construction program:
 - 1) Any placement, assembly, or installation of facilities or equipment; or,
 - 2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies to not constitute a contractual obligation under this subsection.

NONCONTACT COOLING WATER - water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

OUTFALL - the mouth of a sewer, drain or conduit where an effluent is discharged into the receiving waters, or discharged into the POTW collection system.

OWNER or OPERATOR - any person who owns, leases, operates, or controls or supervises a source.

PASS THROUGH - a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or

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discharges from other sources, is a cause of a violation of any requirement of the City's NPDES permit, including an increase in the magnitude or duration of a violation.

PERMITTEE - shall refer to the City of Reading POTW.

PERSON - any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents or assigns. This definition includes all Federal, State, and local governmental entities. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

pH - a measure of the acidity or alkalinity of a solution, expressed in standard units.

POLLUTANT - dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity or odor).

POLLUTION - the manmade, or man induced alteration of the chemical, physical, biological or radiological integrity of water.

PRETREATMENT or TREATMENT - the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

PRETREATMENT REQUIREMENTS - any substantive or procedural requirement related to pretreatment imposed on a user, including a pretreatment standard or procedural provision of the Federal Water Pollution Control Act (62 Stat. 115, 33 U.S.C. §1251 *et seq.*) or the Act of June 22, 1937, P.L. 1987, No. 394, known as the "Clean Streams Law," or any rule or regulation, ordinance or term or condition of a permit or order adopted or issued by the Commonwealth or a POTW for the implementation or enforcement of an industrial waste pretreatment program established under the Federal Water Pollution Control Act or the Clean Streams Law.

PRETREATMENT STANDARDS OR STANDARDS - pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.

PROHIBITED DISCHARGE STANDARDS OR PROHIBITED DISCHARGES - the absolute or conditional prohibition from discharge of a substance, group of substances or type of substance as defined in §102(1) of this Part.

PUBLICLY OWNED TREATMENT WORKS OR POTW - a treatment works as defined by §212 of the Act, 33 U.S.C. §1292, which is owned by the City. This definition includes

any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

POTW TREATMENT PLANT - that portion of the POTW designed to provide treatment to wastewater.

REGULATED MEDICAL WASTE - a special category of solid waste that includes specific types of medical waste that includes solid, semisolid, or liquid materials, but does not include domestic sewage materials. This waste is subject to the handling and tracking requirements of Pennsylvania Department of Environmental Protection. Categories of regulated medical waste are defined as blood, blood products, body fluids, contaminated sharps, discarded cultures and stocks of infectious agents and associated biologicals, isolation wastes, pathological waste and oncological waste.

RESIDENTIAL USERS - persons only contributing sanitary wastewater to the municipal wastewater system.

SANITARY SEWER - a sewer that is designed to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface wastes that are not discharged intentionally.

SEPTIC TANK WASTE - any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

SEWAGE - human excrement and gray water (household showers, dishwashing operations, etc.).

SEWER - a pipe or conduit, and other appurtenance provided to carry wastewater or stormwater.

SHALL is mandatory; **MAY** is permissive.

SIGNIFICANT INDUSTRIAL USER -

- (1) A user subject to categorical pretreatment standards; or
- (2) A user that:
 - (a) Discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
 - (b) Contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or,

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- (c) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- (3) Upon a finding that a user meeting the criteria in subsection (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR §403.8(f)(6), determine that such user should not be considered a significant industrial user.

SIGNIFICANT NONCOMPLIANCE - an industrial user is in significant noncompliance if its violation meets one or more of the specific criteria set forth in 40 CFR §403.8(f)(2)(vii). For purposes of this definition, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of wastewater measurements taken during a 6 month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;
- (2) Technical review criteria (TRC) violations, defined here as those in which 33% or more of wastewater measurements taken for each pollutant parameter during a 6 month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (3) Any other discharge violation that has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;
- (4) Any discharge or pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge.
- (5) Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide within 30 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance, including failure to report and resample in accordance with §18-106(8); or,

- (8) Any other violation(s) which the City determines will adversely affect the operation or implementation of the local pretreatment program.

SLUDGE - the solids, residues, and precipitate separated from wastewater by the unit processes of a publicly owned treatment works or industrial pretreatment systems.

SLUG LEAD or SLUG - any discharge of a nonroutine, episodic nature, or at a flow rate or concentration which would cause a violation of the prohibited discharge standards in §18-102, of this Part.

SOURCE - any building, structure, facility or installation from which there is or may be the discharge of pollutants.

STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE - a classification pursuant to the *Standard Industrial Classification Manual* issued by the United States Office of Management and Budget.

STANDARD METHODS - methods for the examination of water and wastewater published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.

STATE - Commonwealth of Pennsylvania.

STORM SEWER - a sewer that carries stormwater and other wash waters or drainage, but excludes domestic, sanitary, commercial, and industrial wastes. Also called a "storm drain."

STORMWATER - any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

SURFACE WATER POLLUTANT - stormwater or other wash water or drainage carrying any pollutants which affect the characteristics of wastewater.

SUSPENDED SOLIDS - the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering in accordance with EPA laboratory procedures (40 CFR, Part 136).

SUPERINTENDENT - the person designated by the City to supervise the operation of the POTW or his/her duly authorized representative.

TOXIC POLLUTANT - any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provisions of CWA §307(a) or other Acts.

TREATMENT PLANT EFFLUENT - any discharge of pollutants from the City's facilities into wastes of the State.

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TURBIDITY - a condition in water or wastewater caused by the presence of suspended matter, resulting in the scattering and absorption of light rays and determined by measurements of light diffraction, usually reported in arbitrary turbidity units.

USER or INDUSTRIAL USER - any person who contributes, causes or permits the contribution of wastewater into the City's POTW.

WASTEWATER - the spent water of the community. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, institutions and governmental facilities whether treated or untreated, which are contributed to the POTW.

WASTEWATER FACILITIES (FACILITIES) - the structures, equipment, and processes required for the collection, treatment, and disposal of wastewater and sewage sludge which are owned and operated by the City.

WASTEWATER TREATMENT PLANT OR TREATMENT PLANT - that portion of the POTW which is designed to provide treatment of wastewater and sewage sludge sometimes used as synonymous with waste treatment plant, sewage treatment plant, or wastewater treatment works.

WATERS OF THE STATE or WATERS OF THE COMMONWEALTH - all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

ZERO DISCHARGE WASTEWATER PRETREATMENT SYSTEM - a wastewater pretreatment system with no discharge to the sewer system.

(Ord. 17-1998, 5/26/1998, §1)

§18-102. General Sewer Use Requirements.

1. Prohibited Discharge Standards.

- A. **General Prohibitions.** No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State or local pretreatment standards or requirements.
- B. **Specific Prohibitions.** No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

- (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR §261.21.
- (2) Wastewater having a pH less than 5.0 or more than 11.0, or otherwise causing corrosive structural damage to the POTW or equipment.
- (3) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than ½ inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or flushings, entrails, whole blood, medical waste, feathers, ashes, cinders, sand, stone or marble dust, metal, glass, straw, shavings grass clippings, rags, spent grains, spent hops, waste paper, paper dishes, cups, milk containers, lime slurries, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW.
- (5) Any wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C).
- (6) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (7) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
- (8) Trucked or hauled pollutants, except at discharge points designated by the City in accordance with §18-116 of this Part.
- (9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, odor problem, or a hazard to life, or to prevent entry into the sewers for maintenance or repair.
- (10) Wastewater with a true color in excess of 100 platinum cobalt units, except by dischargers with a higher limit specified in their permit.
- (11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations or any radioactive

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- wastes or isotopes of such half-life or concentration as may exceed limits established by State or Federal laws or regulations.
- (12) Stormwater, surface water, ground water, artisan well water, roof runoff, subsurface drainage, swimming pool drainage, and noncontact cooling water, unless specifically authorized by the City.
 - (13) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
 - (14) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW.
 - (15) Any garbage that has not been properly shredded to at least particles less than ½ inch in any dimension. Garbage grinders may be connected to public sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers, providing that all requirements of applicable City ordinances are satisfied.
 - (16) Chlorine demand in such quantities as to constitute a significant load on the wastewater facilities or which may cause the effluent from the City's wastewater treatment facilities to violate any state or Federal rules, regulations, or permit requirements including, but not limited to, National Pollutant Discharge Elimination System (NPDES) permits.
 - (17) Concentrations of BOD or TSS or NH₃-N which exceed specific threshold values without payment of a surcharge to cover the additional costs of treatment. The current threshold value for BOD is 300 mg/L and for TSS is 325 mg/l and for NH₃-N is 20 mg/l. Payment of a surcharge does not prevent the City from initiating any actions available under §18-102(7) below, when the City determines that any other general discharge limitations are violated. Furthermore, payment of a surcharge shall not constitute an affirmative defense to any action taken pursuant to §18-102(7) below.
 - (18) Any substance which may cause the POTW's residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under §405 of the Act: any criteria, guidelines, or regulations developed under §405 of the Act: any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or other Federal or State criteria applicable to the sludge management method being used.

- (19) Slugs as defined in §18-101(4).
 - (20) Isolation wastes or regulated medical waste (see definitions under §18-101(4)).
 - (21) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than 5% or any single reading over 10% of the Lower Explosive Limit of the meter. Materials include but are not limited to: gasoline, benzene, naphtha, fuel oil, paint products, kerosene, toluene, xylene, ethers, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides, or any other flammable or explosive substances which the City, the Pennsylvania Department of Environmental Protection, or the Environmental Protection Agency has notified the User is a fire hazard or a hazard to the City POTW.
 - (22) Discharges prohibited by state or Federal regulations.
 - (23) When the City determines that a user(s) is contributing to the POTW any of the above enumerated substances in such amounts as to interfere with the operation of the POTW, the City may: (a) Advise the user(s) of the impact of the contribution on the POTW; (2) Develop effluent limitation(s) for such user to correct the interference with the POTW; or (3) Proceed with enforcement pursuant to the provisions of this Part.
 - (24) Pollutants, substances or wastewater prohibited by this section shall not be processed or stored in a manner that they could be discharged to the POTW.
 - (25) Wastewater in excess of 100 mg/L total oil and grease of animal or vegetable origin, except by discharges with a lower limit specified in their permit. The City reserves the right to require testing by the EPA Method 1664, N-Hexane Extractable Material (HEM). [Ord. 55-2002]
 - (26) Wastewater in excess of 25 mg/L of oil and grease of petroleum or mineral oil origin except by dischargers with a higher or lower limit specified in their permit. The City reserves the right to require oil and grease testing for non-polar constituents by EPA methods employing Silica Gel Treated N-Hexane Extractable Material (EPA Method 1664, SGT-HEM; non-polar material). [Ord. 55-2002]
2. **National Categorical Pretreatment Standards.** The categorical pretreatment standards found at 40 CFR, Chapter 1, Subchapter N, Parts 405-471, are hereby incorporated.
- A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the City may impose equivalent concentration or mass limits in accordance with 40 CFR §403.6(c).

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- B. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the City shall impose an alternate limit using the combined wastestream formula in 40 CFR §403.6(e).
 - C. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR §403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
 - D. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR §403.15.
3. **Local Limits.**
- A. Limits for discharging pollutants which are of concern to the POTW will be made using headworks loading analyses which have been reviewed and approved by the EPA. Limits may be in the form of monthly average concentration, daily maximum concentration, or instantaneous maximum concentration. Limits will be contained in the wastewater discharge permits issued. The limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metal unless indicated otherwise. The City may impose mass limitations in addition to, or in place of, the concentration-based limitations above.
 - B. The City's objective in setting the limits is to restrict industrial waste discharges to the above described concentrations which will not harm either the sewer system or the treatment plant, will not have an adverse effect on the receiving stream, or will not otherwise endanger life, limb, or public property or constitute a nuisance. The City may set lower or higher limitations in specific cases if, in the opinion of the City, said actions will be consistent with the above stated objective. In the setting of such lower or higher limitations, the City will give consideration to such factors as the volume of wastewater flow in relation to flows and velocities in the sewers, degree of treatability of the waste, and other pertinent factors. The City reserves the right to reevaluate and revise the limitations as needed. All local limit changes will be submitted to the Approval Authority for approval. The more stringent of EPA or Commonwealth of Pennsylvania requirements and limitations shall apply in any case where either is more stringent than those presently in force.
 - C. An industrial user classified as a categorical industrial user shall be required to meet the EPA categorical standards, if such standards are more stringent than the local discharge limitations.
4. **State Requirements.** State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this Part.

5. **Right of Revision.** The City reserves the right to establish by ordinance limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives presented in §18-101(1) of this Part.
6. **Dilution.** No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The City may impose mass limitations on users

who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

7. **Remedies.** If any wastewater is discharged or is proposed to be discharged to the wastewater facilities in violation of the limitations or prohibitions described in §18-102, the City may:
 - A. Reject the wastes.
 - B. Require surcharge payments to be made to the City to cover its added cost of handling, monitoring, and treating the wastes which exceed threshold values in accordance with rates set and approved by the City.
 - C. Revoke a discharger's permit.
 - D. Recover any and all actual costs expended by the City in correcting any problems caused by discharges in violation of this Part.
 - E. As authorized by this Part, take any other administrative sanctions, enforcement actions, and remedial actions as may be desirable, necessary, or permitted to achieve the purpose of this Part.

8. **Accidental Discharges.**
 - A. Each user shall provide protection from accidental discharge of prohibited or other substances regulated by this Part. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review, and shall be approved by the City before construction of the facility. No user shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the City. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this Part. In the case of an accidental discharge, it is the responsibility of the user to immediately notify the City of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

 - B. **Written Notice.** Within 5 days following an accidental discharge; the user shall submit to the City a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.

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- C. **Notice to Employees.** A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall insure that all employees who may cause or suffer such an accidental discharge to occur are advised of the emergency notification procedures.

(Ord. 17-1998, 5/26/1998, §2; as amended by Ord. 55-2002, 10/28/2002, §1)

§18-103. Pretreatment of Wastewater.

1. **Pretreatment Facilities.** Users shall provide wastewater treatment as necessary to comply with this Part and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in §18-102(1) of this Part within the time limitations specified by EPA, the State, or the City, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City under the provisions of this Part. The issuance of any permit by the City for pretreatment facilities pursuant to this Part does not constitute an approval of the design of any such pretreatment system. The user remains responsible for the design, construction, operation and maintenance of an acceptable pretreatment facility. The City shall have no responsibility or liability to any user whose system fails for any reason whatsoever to produce a discharge acceptable to the City.
2. **Additional Pretreatment Measures.**
 - A. Whenever deemed necessary and with reasonable justification, the City may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this Part.
 - B. Grease, oil, and sand interceptors shall be provided when they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense. Maintenance records shall be made available to the City upon request.
 - C. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

3. **Accidental Discharge/Slug Control Plans.** At least once every 2 years, the City shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The City may require any user to develop, submit for approval, and implement such a plan. Alternatively, the City may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:
 - A. Description of discharge practices, including nonroutine batch discharges.
 - B. Description of stored chemicals that have the reasonable potential to discharge to the POTW.
 - C. Procedures for immediately notifying the City of any accidental or slug discharge, as required by §18-106(6) of this Part.
 - D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
4. **Installation of Zero Discharge Pretreatment System.** Prior to installation of a zero discharge pretreatment system, the user must submit a zero discharge pretreatment system design plan for City acceptance. In order to obtain City acceptance, the user must demonstrate that he or she will provide full pretreatment of all wastewater and will cease to discharge process wastewater to the facilities by an effective date prescribed by the City and the user must obtain a zero discharge permit from the City.

(Ord. 17-1998, 5/26/1998, §3)

§18-104. Wastewater Discharge Permit Application.

1. **Wastewater Discharges.** It shall be unlawful to discharge to the POTW any wastewater except as authorized by the City in accordance with the provisions of this Part, subject to state and Federal laws and regulations.
2. **Wastewater Analysis.** When requested by the City, a user must submit information on the nature and characteristics of its wastewater within 90 days of the request. The City is authorized to prepare a form for this purpose and may periodically require users to update this information.
3. **Wastewater Discharge Permit Requirement.**
 - A. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the City, except that a significant industrial user that has filed a timely application pursuant to §18-104(4)

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of this Part or the previous *Ord. 61-1984* may continue to discharge for the time period specified therein.

- B. The City may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this Part.
 - C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this Part and subjects the wastewater discharge permittee to the sanctions set out in §§18-110 - 18-112 of this Part. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State, and local law.
 - D. No permit holder shall discharge industrial wastewater in excess of the quantity, rate of discharge, concentrations or any other limits specified in the permit. Any person desiring to modify his or her permit must first apply for an amended permit.
4. **Wastewater Discharge Permitting: Existing Connections.** Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this Part, and does not have a permit currently, and who wishes to continue such discharges in the future, shall, within 90 days after said date, apply to the City, for a wastewater discharge permit in accordance with §104(6) of this Part, and shall not cause or allow discharges to the POTW to continue after 180 days of the effective date of this Part except in accordance with a wastewater discharge permit issued by the City.
5. **Wastewater Discharge Permitting: New Connections.** Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with §104(6) of this Part, must be filed at least 90 days prior to the date upon which any discharge will begin or recommence.
6. **Wastewater Discharge Permit Application Contents.** All users required to obtain a wastewater discharge permit must submit a permit application. The City may require all users to submit as part of an application the following information:
- A. All information required by §18-106(1)(B) of this Part.
 - B. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW.
 - C. Number of employees, hours of operation, and proposed or actual hours of operation.

- D. Each product produced by type, amount, process or processes, and rate of production.
- E. Type and amount of raw materials processed (average and maximum per day).
- F. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge and pretreatment system plans.
- G. Time and duration of discharges.
- H. Waste water constituents and characteristics. Sampling and analysis shall be performed in accordance with §304(g) of the Act and 40 CFR, Part 136, as amended.
- I. The name and concentration of any pollutants in the discharge, the number of sampling events shall be determined by the City; and a written statement as to whether or not applicable pretreatment standards are being met, and if not, whether additional in-plant modification and additional pretreatment is required for the user to meet such applicable pretreatment standards.
- J. If additional pretreatment or in-plant modification will be required to meet the pretreatment standards, the user will provide a schedule by which to achieve the standards in a timely manner. The schedule will be reported as the pretreatment compliance schedule. The following conditions shall apply to this schedule:
 - (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g. hiring an engineer, completing preliminary plans, executing contracts for major components, commencing construction, completing construction). No increment shall exceed 9 months.
 - (2) Not later than 14 days following each completion date in the schedule, the user shall submit a progress report to the City including at a minimum, whether or not, he or she complied with the increments of progress. If such increment of progress was not completed on time, the user shall also report the date on which he or she expects to complete the increment of progress, the reason for the delay, and the steps being taken by the user to return to the schedule established. In no event shall completion dates be more than 9 months apart.
- K. Information on the disposal of substances to the POTW which are considered hazardous under 40 CFR, Part 261.
- L. Signatory requirements.

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- M. Applicable fees.
 - N. Any other information as may be deemed necessary by the City to evaluate the wastewater discharge permit application. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.
7. **Application Signatories and Certification.** All wastewater discharge permit applications, user reports and inspection reports must be signed by an authorized representative of the user and contain the following certification statement:
- "I certify under penalty of law that this document and all attachments were 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 inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
8. **Wastewater Discharge Permit Decisions.**
- A. The City shall evaluate the data furnished by the user and may require additional information. Based on the application, the City may issue a wastewater discharge permit subject to the terms and conditions enumerated in the permit.
 - B. The City may deny a request for a permit when the information supplied indicates the user will be unable to reasonably meet the City's standards. Any person denied a permit may request a hearing in accordance with the provisions of §18-112(7).

(Ord. 17-1998, 5/26/1998, §4)

§18-105. Wastewater Discharge Permit Issuance Process.

1. **Wastewater Discharge Permit Duration.** A wastewater discharge permit shall be issued for a specified time period, not to exceed 5 years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than 5 years, at the discretion of the City. Each wastewater discharge permit will indicate a specific date upon which it will expire. The permit may be administratively extended by the City as long as the duration of the permit does not exceed 5 years.
2. **Wastewater Discharge Permit Contents.** Wastewater discharge permits shall be expressly subject to specific permit provisions contained therein as well as to provisions of this Part and all other regulations, user charges and fees established by the City. Wastewater discharge permits may include such conditions as are reasonably deemed necessary by the City to prevent pass through or interference, protect the quality of the

water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the City's collection system and POTW. Such conditions may include, but are not limited to, the following:

A. Wastewater discharge permits must contain:

- (1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed 5 years.
- (2) A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with §18-105(5) of this Part, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.
- (3) Effluent limits based on applicable pretreatment standards; the average and or maximum wastewater constituents permitted in the wastewater discharge.
- (4) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law, and reporting frequency.
- (5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State or local law.

B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (1) Limits on the average and/or maximum volume or rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- (3) Requirements for the development and implementation of spill and slug prevention, control plans, solvent management plans, toxic organic management plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges.
- (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.

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- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
 - (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment.
 - (7) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit.
 - (8) Requirements for maintaining and submitting technical reports and plant records relating to wastewater discharges.
 - (9) Compliance schedules.
 - (10) Provisions for authorized City employees and agents to enter and inspect the premises, including provisions for copying records, inspecting monitoring equipment and sampling effluent.
 - (11) Compliance with Federal, State and other government laws, rules and regulations.
 - (12) Signatory requirements.
 - (13) Other conditions as deemed appropriate by the City to ensure compliance with this Part, and State and Federal laws, rules and regulations.
- C. The zero discharge permit may require, among other things, that:
- (1) The zero discharge system be installed as proposed and be fully operational.
 - (2) All sewer drain lines in the facility be capped off and sealed.
 - (3) The user notify the City in writing, and obtain a revised wastewater discharge permit from the City before resuming discharge if he/she wishes to reconnect to the sewer.
 - (4) City personnel be authorized to enter such premises without delay and at reasonable times for the purpose of inspection and as otherwise authorized by this Part.

D. The nonsignificant user permit may include the items listed in subsections (A) and (B) of this subsection.

3. **Wastewater Discharge Permit Reconsideration.** The City may provide public notice of the issuance of a wastewater discharge permit. Any person, including the user, may

petition the City to reconsider the terms of a wastewater discharge permit within 30 days of notice of its issuance.

- A. Failure to submit a timely written request for review shall be deemed to be a waiver of the administrative appeal.
- B. The petitioner in its written request, must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- C. **Written Request.**
 - (1) During the pendency of a written request for a reconsideration and/or an appeal, the effective date of the wastewater discharge permit shall be stayed; provided, however, that the City shall have the right to take any and all steps necessary to cause a cessation of any discharge which would cause an immediate threat to the health and safety of any person and/or would constitute a threat to the integrity of the sanitary sewer system or the POTW.
 - (2) This Section shall only be operative to stay the effective date of the wastewater discharge permit where the City has affirmatively responded to the application and granted a stay for such reasonable time as the City deems necessary to consider the requests for reconsideration and/or appeal and, furthermore, said stay of the permit shall only be effective for the specific provisions of the permit which have either been appealed and/or a request for reconsideration has been submitted by the applicant. The request for reconsideration and/or appeal shall not be considered a stay of the entire permit, but only for those specific sections of the permit from which the applicant is seeking relief.
- D. The City shall act on the written request within a reasonable time period, not to exceed 90 days. The City's decision not to consider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered a final administrative action provided that the petitioner may file an appeal pursuant to §18-112(7) hereunder.

4. **Wastewater Discharge Permit Modification.**

- A. The City may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
 - (1) To incorporate any new or revised Federal, State or local pretreatment standards or requirements.
 - (2) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance.

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- (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.
 - (4) Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel or the receiving waters.
 - (5) Violation of any terms or conditions of the wastewater discharge permit.
 - (6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting.
 - (7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR §403.13.
 - (8) To correct typographical or other errors in the wastewater discharge permit.
 - (9) To reflect a transfer of the facility ownership or operation to a new owner or operator.
- B. A user may apply for modification of a discharge permit by filing a new application form showing substantial significant and material changes that have been proposed since filing the original application. No application for modification will be considered unless it demonstrates such changes.
- C. After a review of the application and inspection of the facility, the City may, at its discretion, modify the original permit. If such application is rejected, the existing permit shall remain in full force and effect.
- D. The user shall be informed of any proposed changes in his or her permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a hearing on modifications to his or her permit in accordance with the provisions of §18-112.
5. **Wastewater Discharge Permit Transfer.**
- A. Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least 30 days advance notice to the City and the City approves the wastewater discharge permit transfer. The notice to the City must include a written certification by the new owner or operator which:
- (1) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes.
 - (2) Identifies the specific date on which the transfer is to occur.
 - (3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

- B. Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

6. **Wastewater Discharge Permit Revocation.**

- A. The City may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (1) Failure to provide prior notification to the City of changed conditions pursuant to §18-106(5) of this Part.
- (2) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.
- (3) Falsifying self-monitoring reports.
- (4) Tampering with monitoring equipment.
- (5) Refusing to allow the City timely access to the facility premises and records.
- (6) Failure of the user to meet the effluent limitations contained in the wastewater discharge permit.
- (7) Failure to pay fines after the appeal process has been exhausted.
- (8) Failure to pay sewer charges.
- (9) Failure to meet compliance schedules.
- (10) Failure to complete a wastewater survey or the wastewater discharge permit application.
- (11) Failure to provide advance notice of the transfer of business ownership of a permitted facility.
- (12) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this Part.

- B. Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

- 7. **Wastewater Discharge Permit Reissuance.** A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with §18-104(6) of this Part, a minimum of 90 days prior to the expiration of the user's existing wastewater discharge permit.

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Having met this requirement the user's existing permit shall remain in effect until a new permit is issued.

8. **Reinstatement of Permit.** Before any further discharge of industrial wastewater may be made by a user whose permit has been revoked, the user must apply for, and be granted, a reinstatement of the terminated permit, or a new permit, as the City may require, and pay any delinquent fees and all fines, charges, and other costs occasioned by the violation. Costs shall include, but not be limited to, inspection, monitoring, sampling and related expenses; restitution to other affected parties; reasonable attorney's fees incurred by the City in enforcing the permit; disconnecting and reconnecting the user to the facility; and other actual damages incurred due to the violation; provided that where there is a bona fide dispute between the user and any other affected party, the user shall not be required to pay restitution so long as the user shall show evidence of insurance or other security that the user can pay said restitution to the affected party if it is ultimately determined that the user is liable to said third parties. Any such fines, fees, charges and costs shall be paid for by the user before any new permit will be issued, except for the provision for disputed restitution set forth above. When all costs cannot be readily determined, the City may require and accept a bond or irrevocable letter of credit which it considers sufficient and which will be subject to appropriate adjustment after all costs have been determined.
9. **Regulation of Waste Received from Other Jurisdictions.**
 - A. If another municipality, or user located within another municipality, contributes wastewater to the POTW, the City shall enter into an intermunicipal agreement with the contributing municipality.
 - B. Prior to entering into an agreement required by paragraph A, above, the City shall request the following information from the contributing municipality:
 - (1) A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality.
 - (2) An inventory of all users located within the contributing municipality that are discharging to the POTW.
 - (3) Such other information as the City may deem necessary.
 - C. An intermunicipal agreement, as required by paragraph A, above, shall contain the following conditions:
 - (1) A requirement for the contributing municipality to adopt a sewer use Part which is at least as stringent as this Part and local limits which are at least as stringent as those set out in §18-102(3) of this Part. The requirement shall specify that such Part and limits must be revised as necessary to reflect changes made to the City's Part or local limits.

- (2) A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis.
- (3) A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the City; and which of these activities will be conducted jointly by the contributing municipality and the City.
- (4) A requirement for the contributing municipality to provide the City with access to all information that the contributing municipality obtains as part of its pretreatment activities.
- (5) Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW.
- (6) Requirements for monitoring the contributing municipality's discharge.
- (7) A provision ensuring the City access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the City.
- (8) A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

(Ord. 17-1998, 5/26/1998, §5)

§18-106. Wastewater Monitoring and Reporting Requirements.

1. Baseline Monitoring Reports.

- A. Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR §403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the City a report which contains the information listed in subsection (B), below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the City a report which contains the information listed in subsection (B), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

- (1) **Identifying Information.** The name and address of the facility, including the name of the operator and owner.

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- (2) **Environmental Permits.** A list of any environmental control permits held by or for the facility.
- (3) **Description of Operations.** A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
- (4) **Flow Measurement.** Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR §403.6(e).
- (5) **Measurement of Pollutants.**
 - (a) The categorical pretreatment standards applicable to each regulated process.
 - (b) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the City, of regulated pollutants in the discharge from each regulated process. *Instantaneous, daily maximum, and long term average concentrations, or mass, where required, shall be reported.* The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in §18-106(9) of this Part.
 - (c) Sampling must be performed in accordance with procedures set out in §18-106(10) of this Part.
- (6) **Certification.** A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether *additional operation and maintenance (O&M) and/or additional pretreatment* is required to meet the pretreatment standards and requirements. (Note: For certain users, the authorized user and the qualified professional may be the same individual.)
- (7) **Compliance Schedule.** If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will *provide such additional pretreatment and/or O&M.* The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in §18-106(2) of this Part.

- (8) **Signature and Certification.** All baseline monitoring reports must be signed and certified in accordance with §18-104(7) of this Part.
2. **Compliance Schedule Progress Reports.** The following conditions shall apply to the compliance schedule required by §18-106(1)(B)(7) of this Part:
- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation).
 - B. No increment referred to above shall exceed 9 months.
 - C. The user shall submit a progress report to the City no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule.
 - D. In no event shall more than 9 months elapse between such progress reports to the City.
3. **Reports on Compliance with Categorical Pretreatment Standard Deadline.** Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the City a report containing the information described in §18-106(1)(B)(4)-(6) and (8) of this Part. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR §403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with §18-104(6) of this Part.
4. **Monitoring and Periodic Self-Monitoring Compliance Reports.**
- A. Sampling and analysis of industrial wastewater for the purpose of compliance determinations with respect to §18-102 prohibitions and limitations shall be done through industry self-monitoring and through monitoring done by the City. All analyses, including sampling results submitted in support of any application reports, evidence or required by any permit or order shall be performed in accordance with the techniques prescribed in 40 CFR, Part 136, and amendments thereto or, if 40 CFR, Part 136, does not contain sampling or analytical techniques

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for the pollutant in question, in accordance with procedures approved by EPA. The City may require an independent laboratory to conduct the sampling and analysis at the user's own cost if the user does not monitor and analyze in accordance with EPA procedures, specifically 40 CFR, Part 136.

- B. All significant industrial users shall, at a frequency determined by the City in the user's permit, but in no case less than twice per year, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic self-monitoring reports must be signed and certified in accordance with §18-104(7) of this Part. The user must also submit a self-monitoring report with the results on a form prescribed by the City, if so requested by the City.
 - C. All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
 - D. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the City, using the procedures prescribed in §18-106(9) of this Part, the results of this monitoring shall be included in the report.
 - E. The user shall ensure compliance with the record keeping requirements of §18-106(12) of this Part.
5. **Reports of Changed Conditions.** Each user must notify the City of any planned significant changes to the user's operations or system which might alter the nature, quality or volume of its wastewater at least 30 days before the change.
- A. The City may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under §18-104(6) of this Part.
 - B. The City may issue a wastewater discharge permit under §18-104(8) of this Part or modify an existing wastewater discharge permit under §18-105(4) of this Part in response to changed conditions or anticipated changed conditions.
 - C. For purposes of this requirement, significant changes include, but are not limited to, flow variations as stated in the User's permit and the discharge of any previously unreported pollutants.
6. **Reports of Potential Problems/Notifications of Accidental Spills.**
- A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or

a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the City of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

- B. Within 5 days following such discharge, the user shall, unless waived by the City, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this Part.
 - C. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (A), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- 7. **Reports from Unpermitted Users.** All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the City as the City may require.
 - 8. **Notice of Violation/Repeat Sampling and Reporting.** If sampling performed by a user indicates a violation, the user must notify the City within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within 30 days after becoming aware of the violation. The user is not required to resample if the City monitors at the user's facility at least once a month, or if the City samples between the user's initial sampling and when the user receives the results of this sampling.
 - 9. **Analytical Requirements.** All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report, for the purpose of compliance with this Part; or in fulfillment of the user's permit self-monitoring requirements, shall be performed in accordance with the techniques prescribed in 40 CFR, Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR, Part 136, does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.
 - 10. **Sample Collection.**
 - A. Except as indicated in subsection (B), below, the City reserves the right to require flow proportional composite samples whenever the user is required to collect wastewater samples. When flow proportional sampling is infeasible or derives no benefit, the City may authorize the use of time proportional sampling or a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab

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samples may be required to show compliance with instantaneous discharge limits. The City will review the appropriate method of sampling with the user.

- B. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
 - C. For automatic samplers, the intake line hose must be at least 1/4 inches (0.6 cm) internal diameter and the velocity in the intake line must be maintained at least at 2 feet per second.
11. **Timing.** Written reports will be deemed to have been submitted on the date post-marked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.
12. **Record Keeping.**
- A. Users subject to the reporting requirements of this Part shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Part and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least 3 years unless there is pending a dispute of litigation involving the subject of these records, in which case these records are to be kept for a period of 3 years following resolution of such litigation or dispute.
 - B. All users who discharge or propose to discharge wastewater directly or indirectly to the facilities shall maintain records which substantiate any information supplied in permit applications. Such records shall include, but not be limited to, pH measurements or pH tapes, chemical usage data, log sheets, hazardous waste manifests, water meter readings, effluent monitoring reports, self-monitoring compliance reports and any other informational requirements of this Part or required by a user's wastewater discharge permit or any applicable state and Federal laws and regulations. These records are to be kept for a period of 3 years unless there is pending a dispute of litigation involving the subject of these records, in which case these records are to be kept for a period of 3 years following resolution of such litigation or dispute.
13. **Selling, Closing or Moving a Business.**
- A. Any user who will be selling, closing or moving a business from its present location must notify the City in writing 30 days before disposing of any process waste, associated with the move or the cessation of business, into the sewer system if said waste is not currently permitted to be discharged. The City has a shutdown facility procedure for the discharge of wastes not previously permitted into the sewer system which must be adhered to upon selling, closing or moving a

business or operation. Failure to notify the City prior to discharging such waste into the facilities may subject the user to civil or criminal penalties in accordance with this Part. The facility shutdown procedure includes, but is not limited to, the following:

- (1) A written plan detailing how each chemical and solution is to be discharged to the sewer system, with or without treatment.
- (2) The information required in subsection (13)(A)(1) above must be reviewed and approved by the City prior to any solutions or chemicals being disposed of into the sewer system. Only those solutions approved by the City may be discharged to the sewer system. The City must be informed at least 48 hours in advance of when chemicals are to be discharged to the sewer.
- (3) The City reserves the right to request information on the final disposition of any material that the City prohibits to be discharged to the sewer.

14. Temporary Business Closings.

- A. A permitted user shall give City personnel written notice within 5 working days prior to ceasing operations which will be of 90 days or greater in duration.
- B. A permitted user shall give City personnel notice 5 working days prior to reactivating operations. The user shall not reactivate operations if the permit is suspended until after receiving written approval from the City following a City inspection.

15. Notification of the Discharge of Hazardous Waste.

- A. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR, Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications or changed conditions must be submitted under §18-106(5) of this Part. The notification requirement in this Section does not apply to pollutants already

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reported by users subject to categorical pretreatment standards under the self-monitoring requirements of §§18 106(1), (3) and (4) of this Part.

- B. Dischargers are exempt from the requirements of subsection (A) above, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR §§261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR §§261.30(d) and 261.33(e), requires a one time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
- C. In the case of any new regulations under §3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the City, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- D. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Part, a permit issued thereunder, or any applicable Federal or State law.

(Ord. 17-1998, 5/26/1998, §6)

§18-107. Inspection Powers and Compliance Monitoring.

- 1. **Right of Entry: Inspection and Sampling.** The City and its agents shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this Part and any wastewater discharge permit or order issued hereunder. Users shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.
 - A. **Powers.** Inspections shall be conducted at the discretion of the City. Duly authorized employees and agents of the City, upon presenting identification and appropriate credentials, are authorized:
 - (1) To enter without unreasonable delay and at reasonable times those premises (public or private) of any person of class of user either receiving services from the City or applying for services from the City in which a discharge source or treatment system is located or which records required to be maintained pursuant to this Part.

- (2) During regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, to have access to and to copy records pertaining to this Part, the Pretreatment Program, RCRA, and waste disposal, inspect any monitoring equipment or method required pursuant to this Part and sample and/or analyze any effluent which the owner or operator of such discharge source is required to sample and/or analyze under this Part and any Part adopted pursuant thereto.
 - (3) During such on site inspections, to carry out all inspections, surveillance, and monitoring procedures necessary to determine, independent of information supplied by any person discharging into the facilities, compliance or noncompliance with City pretreatment requirements.
- B. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City will be permitted to enter without delay for the purposes of performing specific responsibilities. The user may provide an escort for the City at his or her discretion.
- C. The City shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.
- D. **Monitoring and Metering Equipment.**
- (1) The City may require the user to install at his or her own cost monitoring or metering equipment as necessary to facilitate the accurate observation, sampling, and measurements of the wastewater discharge. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated semi-annually or at a frequency recommended by the manufacturer, to ensure their accuracy.
 - (2) The monitoring and metering equipment shall be located and maintained on the user's premises. When such a location would be impractical or cause undue hardship to the user, the City may allow such facility to be constructed in the public street or sidewalk area, with the approval of the public agency having jurisdiction over such street or sidewalk, and located so the discharge will not be obstructed by public utilities, landscaping, or parked vehicles.
- E. When more than one user discharges into a common sewer, the City may require installation of separating monitoring and metering equipment for each user. When there is a significant difference in wastewater constituents and characteristics produced by different operations of a single user, the City may require that

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- separate monitoring and metering facilities be installed for each separate discharge.
- F. Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with City Parts and any applicable construction standards required by the City or by local, State or Federal law.
 - G. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the City and shall not be replaced. The costs of clearing such access shall be born by the user.
 - H. Unreasonable delays in allowing the City to the user's premises shall be a violation of this Part.
 - I. The City shall comply with the user's reasonable health and safety policies, including the use of personal protective equipment.
2. **Search Warrants.** If the City has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Part, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Part or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City may seek issuance of a search warrant from the Court of Common Pleas of Berks County, Pennsylvania.
3. **User Documentation.**
- A. The City may, by ordinance, order, permit or letter, require any person who discharges into the facilities to:
 - (1) Establish and maintain records.
 - (2) Make reports.
 - (3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate, biological monitoring methods);
 - (4) Sample and/or analyze discharges and effluent (in accordance with the method, at the locations, at the intervals, and in the manner as the City shall prescribe).
 - (5) Provide other information relating to discharges into the facilities of the project as the City may reasonably require to ensure compliance with prescribed pretreatment. Such information shall include, but not be limited to, those records, reports and procedures required by applicable State and Federal law.

(Ord. 17-1998, 5/26/1998, §7)

§18-108. Confidential Information.

1. The EPA regulations, 40 CFR §§2.201 through 2.302 addressing confidential business information, are hereby incorporated by reference. All City employees and City agents are bound by these requirements.
2. Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the City's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information would be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR §2.302 will not be reorganized as confidential information and will be available to the public without restriction.

(Ord. 17 1998, 5/26/1998, §8)

§18-109. Publication of Users in Significant Noncompliance.

The City shall publish at least annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

- A. Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of wastewater measurements taken during a 6 month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount.
- B. Technical review criteria (TRC) violations, defined here as those in which 33% or more of wastewater measurements taken for each pollutant parameter during a 6 month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH).

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- C. Any other discharge violation that has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public.
- D. Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge.
- E. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction or attaining final compliance.
- F. Failure to provide within 30 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules.
- G. Failure to accurately report noncompliance, including failure to report and resample in accordance with §18-106(8).
- H. Any other violation(s) which the City determines will adversely affect the operation or implementation of the local pretreatment program.

(Ord. 17-1998, 5/26/1998, §9)

§18-110. Administrative Enforcement Remedies.

1. **Notification of Violation.** When the City finds that a user has violated, or continues to violate, any provision of this Part, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City may serve upon that user a written notice of violation. Within 30 days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the City. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.
2. **Consent Orders.** The City may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to §§18-110(4) and (5) of this Part and shall be judicially enforceable.
3. **Show Cause Hearing.** The City may order a user which has violated, or continues to violate, any provision of this Part, a wastewater discharge permit or order issued

hereunder, or any other pretreatment standard or requirement, to appear before the City and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 10 days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

4. **Compliance Orders.** When the City finds that a user has violated, or continues to violate, any provision of this Part, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.
5. **Cease and Desist Orders.**
 - A. When the City finds that a user has violated, or continues to violate, any provision of this Part, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the City may issue an order to the user directing it to cease and desist all such violations and directing the user to:
 - (1) Immediately comply with all requirements.
 - (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
 - B. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.
6. **Administrative Civil Penalties.**
 - A. When the City finds that a user has violated, or continues to violate, any provisions of this Part, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the City may fine such user in an amount not to exceed \$25,000 per day for each violation regardless of

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jurisdictional boundaries. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines may be assessed for each day during the period of violation. The foregoing administrative civil penalties shall be enforced in accordance with the provisions of §§18-111(2) and 18-112(6) of this Part.

- B. Unpaid charges, fines, and penalties shall, after 60 calendar days, be assessed a late charge of 10% APR. A lien against the user's property will be sought for unpaid charges, fines and penalties.
- C. Users desiring to dispute such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within 30 days of being notified of the fine. Where a request has merit, the City may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

7. Emergency Suspensions.

- A. The City may immediately suspend a user's discharge, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The City may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.
 - (1) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The City may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings in §18-110(8) of this Part are initiated against the user.
 - (2) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the City prior to the date of any show cause or termination hearing under §§18-110(3) or (8) of this Part.

- B. Nothing in this Section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

8. **Termination of Discharge.**

- A. In addition to the provisions in §18-105(6) of this Part, any user who violates the following conditions is subject to discharge termination:
 - (1) Violation of wastewater discharge permit conditions.
 - (2) Failure to accurately report the wastewater constituents and characteristics of its discharge.
 - (3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge.
 - (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.
 - (5) Violation of the pretreatment standards in §18-102 of this Part.
- B. Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under §18-110(3) of this Part why the proposed action should not be taken. Exercise of this option by the City shall not be a bar to, or a prerequisite for, taking any other action against the user.

(Ord. 17-1998, 5/26/1998, §10)

§18-111. Judicial Enforcement Remedies.

- 1. **Injunctive Relief.** When the City finds a user has violated, or continues to violate, any provision of this Part, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the City may petition the Court of Common Pleas of Berks County, Pennsylvania through the City's Attorney for appropriate legal and equitable relief for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Part on activities of the user. The City may also seek such other action as is appropriate for legal and or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.
- 2. **Civil Penalties.**
 - A. A user who has violated, or continues to violate, any provisions of this Part, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil

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penalty of \$25,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

- B. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
 - C. In determining the amount of civil liability, there shall be taken into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
 - D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.
3. **Criminal Prosecution.**
- A. A user who willfully or negligently violates any provision of this Part, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, or who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage, or any user who knowingly makes any false statements, representations or certifications in any application, record, report, plan, or other document filed, or required to be maintained pursuant to this Part, a wastewater discharge permit or order issued under this Part or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under the Part, may be subject to criminal prosecution in accordance with the applicable provisions of the Pennsylvania Crimes Code, 18 Pa.C.S.A. §101 *et seq.*
4. **Remedies Nonexclusive.** The remedies provided for in this Part are not exclusive. The City may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City may take other action against any user when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any noncompliant user.

(Ord. 17-1998, 5/26/1998, §11)

§18-112. Supplemental Enforcement Action.

- 1. **Performance Bonds.** The City may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this Part, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the

City, in a sum not to exceed a value determined by the City to be necessary to achieve consistent compliance.

2. **Liability Insurance.** The City may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this Part, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.
3. **Public Nuisances.** A violation of any provision of this Part, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the City. Any person(s) creating a public nuisance shall be subject to the provisions of the City Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.
4. **Falsifying Information.** Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Part, or wastewater discharge permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Part, is subject to prosecution in accordance with the provisions of the Pennsylvania Crimes Code pertaining to perjury and falsification in official matters pursuant to 18 Pa.C.S.A. §4901 et seq.
5. **Contractor Listing.** Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the City.
6. **Assessment of Civil Penalties.**
 - A. Pursuant to provision of the Pennsylvania Penalty Bill (Act 9 of 1992), providing for enhanced penalty authority for publicly owned treatment works' which are authorized to enforce industrial pretreatment standards for industrial waste discharges, and in addition to proceeding under any other remedy available at law or equity for violation of pretreatment standards and/or requirements, the City, as the operator of a publicly owned treatment works, may assess a civil penalty upon an industrial user for violation of any of the terms and provisions of this Part. The penalty may be assessed whether or not the violation was willful or negligent. The civil penalty shall not exceed \$25,000 per day for each violation, regardless of jurisdictional boundaries. Each violation for each separate day shall constitute a separate and distinct offense under this Section.
 - B. As part of any notice of assessment of civil penalties issued by the City to an industrial user, there shall also be included a description of the applicable appeals process to be followed, including the name, address and telephone number of the person responsible for accepting such appeal, on behalf of the City.

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- C. For purposes of this Section, a single operational upset which leads to simultaneous violations of more than one pretreatment standard or requirement shall be treated as a single violation as required by Federal Water Pollution Control Act. The City may, however, recover its costs for reestablishing the operation of the treatment works in addition to any civil penalty imposed under this Section.
- D. The City shall publicly adopt a formal, written civil penalty assessment policy (in its environment response plan) and make it publicly available. Each industrial discharger participating in the pretreatment program shall be given written notice of the policy. The penalty assessment policy shall consider:
- (1) Damage to air, water, land or other natural resources of the Commonwealth of Pennsylvania and their uses.
 - (2) Costs of restoration and abatement.
 - (3) Savings resulting to the person in consequence of the violation;
 - (4) History of past violations.
 - (5) Deterrence of future violations.
 - (6) Other relevant factors.
- E. **Uses of Penalties.** All civil penalties collected pursuant to this Section shall be placed by the City in a restricted account and shall only be used by the City and the publicly owned treatment works for the following uses:
- (1) The repair of damage and any additional maintenance needed or any additional costs imposed as a result of the violation for which the penalty was imposed.
 - (2) Pay any penalty imposed on the City or the publicly owned treatment works by the Federal or State government for violation of pretreatment standards.
 - (3) For the costs incurred by the City or publicly owned treatment works to investigate and take the enforcement action that resulted in a penalty being imposed.
 - (4) For the monitoring of discharges in the pretreatment program and for capital improvements to the treatment works, including sewage collection lines, which may be required by the pretreatment program.
 - (5) Any remaining funds may be used for capital improvements to the treatment works, including collection lines.
- F. **Injunctive Relief.**

- (1) The City shall have the power to obtain injunctive relief to enforce compliance with or restrain any violation of any pretreatment requirement or standard pursuant to and in accordance with the provisions of Pennsylvania Penalty Bill (Act 9 of 1992), 40 CFR §403.8(f)(1)(vi)(A) and any other applicable statute and/or common law. Injunctive relief shall be available upon the showing of one or more of the following:
 - (a) A discharge from an industrial user presents an imminent danger or substantial harm to the POTW or the public.
 - (b) A discharge from an industrial user presents an imminent or substantial endangerment to the environment.
 - (c) A discharge from an industrial user causes the POTW to violate any condition of its discharge permit.
 - (d) The industrial user has shown a lack of ability or intention to comply with a pretreatment standard.
- (2) Notwithstanding the preceding subsection, an injunction affecting an industrial operation not directly related to the condition or violation in question, may be issued if the Court determines that other enforcement procedures would not be adequate to affect prompt correction of the condition or violation. In addition to an injunction, the Court in any such proceedings may levy civil penalties in accordance with Act 9 of 1992 and this Part.

G. **Appeal.** An industrial user assessed with a civil penalty under the terms of this Section shall have 30 days to pay the proposed penalty in full, or, if the industrial user wishes to contest either the amount of the penalty or the fact of the violation, the industrial user must file an appeal of the action within 30 days pursuant to 2 Pa.C.S.A. (relating to administrative law and procedure). Failure to appeal within this period shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

H. The penalty authorized in this Section is intended to be concurrent and cumulative, and the provisions of this Section shall not abridge or alter any right of action or remedy, now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, available to a person, the City, Authority, or the Commonwealth of Pennsylvania.

I. Such penalty assessments may be added to the user's next scheduled sewer service or sewer surcharge bill.

7. **Administrative Hearings/Appeals.**

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- A. **Right to Appeal.** Any person or user aggrieved by any order, assessment of penalty, issuance of permit or denial of permit may appeal said order, assessment, issuance of permit or denial of permit after service of the same by the City.
- B. **Right to Hearing.** Any order, assessment of penalty, issuance of permit or denial of permit shall inform the user that a written request for an appeal on the alleged violations, order, issuance of permit or denial of permit, and/or penalty must be filed within 30 days after service of the notice to preserve the user's right to hearing. The notice will be deemed properly served upon the user if a copy is served upon him or her personally, or sent by registered or certified mail to his or her last known address, or if he or she is served with notice by an other method of service now or hereafter authorized in civil actions under the laws of the State. In an emergency situation, if written request for an appeal/hearing is not made by the user within 30 days of the service of notice, the user will be foreclosed from hearing regarding any penalty assessed. In a non-emergency situation if written request for a hearing is not made by the user within 30 days of the service of notice, the user will be foreclosed from hearing regarding any order, assessment of penalty, issuance of permit or denial of permit.
- C. **Appeal Process, Hearing Request and Conference Option.**
- (1) As stated immediately above, written request for appeal/hearing must be filed with the Director of Public Works within 30 days from the date that the City took the action which is the subject of the manner of the appeal to preserve the user's rights.
 - (2) All appeals shall contain the following information:
 - (a) The name, address and telephone number of the applicant.
 - (b) The date on which the City took the action which is the subject matter of the appeal.
 - (c) The reason(s) for such appeal, and a specification of objections setting forth the manner in which the appellant is aggrieved and the relevant issues to be resolved by the Hearing Board.
 - (d) A statement detailing the relief demanded by the appellant.
 - (3) A true and correct copy of the written appeal shall be served on a City Solicitor personally or by registered or certified mail within forty-eight hours after the appeal is filed.
 - (4) **Conference Option.** At the time an appeal is requested, the user may also request a conference with the City prior to the scheduling of an administrative hearing. Said conference will include appropriate members of the City staff and its agents. Violations and penalties will be explained and discussed. Electing this option does not foreclose and/or affect the user's

right to hearing provided that the written request for hearing was filed within 30 days of service as noted above. The purpose of this option is to provide the user with an informal forum within which to discuss the alleged violations and to expedite conclusion and/or resolution of outstanding enforcement actions. If resolution is not reached within 90 days from the date of the scheduled conference the City shall schedule the matter for formal hearing. In any event either party may request a formal hearing at any point during the conference proceedings.

(5) **Hearing Protocol.**

- (a) Upon receipt of the appeal the Hearing Board shall schedule a hearing for the appellant and give the latter written notice of the time, date and place of such hearing. A hearing will not be held if waived by the appellant or if the parties stipulate all of the essential facts or agree to submit direct or rebuttal testimony or documentary evidence in affidavit form, sworn or affirmed on personal knowledge, or by deposition.
- (b) Written briefs of the parties or their counsel may be filed with the Hearing Board and served on the opposing party, within 5 days after the hearing and prior to any adjudication.
- (c) At any hearing, parties shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The Hearing Board shall not be bound by technical rules of evidence but all relevant and material evidence of reasonable probative value shall be admissible. All witnesses shall be sworn or shall affirm.
- (d) The Hearing Board shall not be required to maintain a verbatim transcript of the hearings.
- (e) At the conclusion of the proceedings, and after consideration of the evidence and briefs of the parties, if any, the Hearing Board shall issue an adjudication which shall contain findings of facts and conclusions of law, and, if appropriate, an order. A written copy of such adjudication shall be mailed to each party.
- (f) The decision and adjudication of the Hearing Board shall be final and binding upon the parties subject to any further right of appeal which may be provided by law.
- (g) Failure to perfect an appeal in the manner and form required by this section shall be sufficient for dismissing the appeal.
- (h) The action of the City shall be final as to any person who fails to file an appeal or to perfect an appeal pursuant to this section.

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D. Hearing Board.

(1) Industrial Hearing Board.

- (a) An Industrial Hearing Board shall be appointed by the Mayor with the advice and consent of Council for resolution of differences between the City and any aggrieved party of any improved property on matters concerning interpretation and execution of the provisions of this Part by the City and to hear any appeals filed by such aggrieved parties.
- (b) No one appointed to the Industrial Hearing Board herein, either as a representative at large, legal representative, industrial representative, or registered professional engineer shall have any right or power to sit, vote, act or in any way participate with regard to any appeal of any industry with which it is in any way connected. Board members shall refrain from taking any such action on any such matter and shall avoid any conflict of interest or appearance of impropriety.

- (2) One member of the Board shall be a member of the Department of Public Works; one member shall be a professional engineer skilled in practice of sanitary engineering; one member shall be a representative of industry or manufacturing enterprise; one member shall be a lawyer; and one member shall be selected at large for his interest in accomplishing the objectives of this Part. [Ord. 14-2001]

- (3) The initial appointments to the Board shall be for the following terms:

Department of Public Works representative - 5 years. [Ord. 14-2001]

Registered professional engineer (sanitary/environmental/civil/chemical engineer) - 4 years.

Industrial representative - 3 years.

Legal representative - 2 years.

Representative at large - 1 year.

All succeeding terms shall be for a period of 5 years. The Mayor, with the consent of Council, shall appoint representatives to fill vacancies on the Board to complete unexpired terms. Interim appointments may be permitted to serve an additional full term on the Board.

- (4) The powers of the Hearing Board shall include but not be limited to the following:

- (a) To hear appeals from any person aggrieved by the application of this Part including, but not limited to, any order or decision made or issued by the City.
 - (b) To make rules with regard to conducting its hearings, such rules to be submitted to Council for their advice and consent.
 - (c) To make such findings of fact as may be required by the application this Part.
 - (d) To decide questions presented.
- (5) Any party aggrieved by any decision of said Hearing Board shall have the right to file an appeal under the Local Agency Law to the Court of Common Pleas of the County of Berks within 30 days of said decision; however, said appeal shall not act as a supersedes of any final order.
8. **Petitions for Declaratory Rulings.** Any person affected by any statutory provision administered by the City or affected by any rule or order of the City may, in accordance with state law and this Part petition the City for a declaratory ruling as to the applicability of such statute, rule or order. This petition shall clearly and concisely identify:
- A. The precise statute, rule or order under which a declaratory ruling is sought.
 - B. How the petitioner is affected by the statute, rule or order.
 - C. The petitioner's position on how the applicable statute, rule or order should be interpreted, including citations to any applicable documents or law that support the petitioner's position.
9. **Costs.** In addition to such administrative, civil, or criminal fines as may be imposed, any user who violates any provisions of this Part or any condition of a permit, or plan approval related thereof, shall be financially responsible and liable to the City in addition to normal service charges and surcharges for industrial investigation and monitoring of compliance with this Part including, but not limited to, the following:
- A. Cost of mileage, labor and materials incurred in detecting and correcting the violation.
 - B. Laboratory analysis costs associated with detecting and correcting the violation.
 - C. Additional treatment costs caused by the violation or association with detecting and correcting the violation.
 - D. Costs of any additional equipment acquired or expended by the City for detecting or correcting the violation.
 - E. Repair and/or replacement of any part of the facility damaged by the violation.

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- F. Any liability, damages, fines or penalties incurred by the City as a result of the violation.
 - G. Costs incurred in enforcing compliance, including prosecution and/or settlement of outstanding violations.
 - H. Other costs as are associated with the prosecution, negotiation and/or settlement of a violation.
10. **Denial of Access.** If the City or its duly authorized employees and agents, upon presenting identification and appropriate credentials, are denied access to carry out inspection, surveillance, and monitoring procedures as described in this Part, the City may immediately institute civil proceedings, including proceedings for necessary injunctive relief, or criminal proceedings.
11. **Inspection of Connections.** If any person shall construct, install, alter or repair any sewer or connect to any sewer in violation of the requirements of this Part the City may, in its discretion, order or direct such person to uncover and fully expose any or all portions of such sewer or connection and afford the City and its representatives adequate opportunity for examination and inspection of the work. If the connection and appurtenances thereto shall be found not to be in full accord with the requirements of this Part and the standards established and address its provisions, then the City may serve the offender with a written notice as provided in §18-110.

(Ord. 17-1998, 5/26/1998, §12; as amended by Ord. 14-2001, 5/29/2001)

§18-113. Affirmative Defenses to Discharge Violations.

- 1. **Upset.**
 - A. For the purposes of this Section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
 - B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of Subsection (C), below, are met.
 - C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset.

- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures.
 - (3) The user has submitted the following information to the City within 24 hours of becoming aware of the upset. A written submission must be provided within 5 days:
 - (a) A description of the indirect discharge and cause of noncompliance.
 - (b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue.
 - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
 - D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
 - E. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
 - F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.
 2. **Prohibited Discharge Standards.** A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in §18-102(1)(A) of this Part or the specific prohibitions in §18-102(1)(B) of this Part except §18-102(1)(B)(1), (2), (3), (8), (19), (20), (21), and (22) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:
 - A. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference.
 - B. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.
 3. **Bypass.**

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- A. For the purposes of this Section:
- (1) **BYPASS** - the intentional diversion of wastestreams from any portion of a user's treatment facility.
 - (2) **SEVERE PROPERTY DAMAGE** - substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (C) and (D) of this subsection.
- C. **Bypass.**
- (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the City, at least 10 days before the date of the bypass, if possible.
 - (2) A user shall submit oral notice to the City of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The City may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- D. **Bypass Prohibited.**
- (1) Bypass is prohibited, and the City may take an enforcement action against a user for a bypass, unless:
 - (a) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage.
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance.

- (c) The user submitted notices as required under subsection (C) of this subsection.
- (2) The City may approve an anticipated bypass, after considering its adverse effects, if the City determines that it will meet the three conditions listed in subsection (D)(1) of this Section.

(Ord. 17-1998, 5/26/1998, §13)

§18-114. Wastewater Treatment Rates.

1. Surcharge Rate.

- A. **Purpose.** Nothing contained in this Section shall be construed as prohibiting any special agreement or arrangement between the City and any person or municipality whereby industrial waste of unusual strength or character may be admitted into the sewerage system by the City subject to payment of a surcharge therefore by such person or municipality or by proper and continuous pretreatment prior to discharge into the sewerage system. The surcharge shall be based on present invested capital costs and operating costs.
- B. **Additional Charges for Strong Wastes.** There shall be additional charges for nondomestic wastes, discharged to the POTW from any industry business or commercial enterprise and having BOD₅, TSS and/or NH₃-N in excess of the average BOD₅, TSS and/or NH₃-N of normal domestic sewage. Normal domestic sewage shall be defined as having the following concentration:
 - (1) BOD₅ - 300 mg/l.
 - (2) TSS - 325 mg/l
 - (3) NH₃-N - 20 mg/l.
- C. **Surcharge Formula.** In order to determine the additional charge for nondomestic wastes with strength greater than that of normal domestic sewage, the following formula shall be used:

$$S_Q = 0.00834 Q_1 [(BOD_5-300) TA + (TSS_1-325) TB + (NH_3-N_1-20) TC]$$

Where:

S_Q is the quarterly surcharge to be added to the quarterly sewer rental charge.

0.00834 is a constant to convert waste strength expressed in mg/l to thousand pounds of waste.

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Q_1 is the quarterly volume of nondomestic wastewater flow expressed in millions of gallons.

BOD_5 is the 5 day biochemical oxygen demand of the nondomestic wastewater expressed in mg/l.

TSS_1 is the total suspended solids in mg/l of the nondomestic wastewater.

NH_3-N_1 is the ammonia, expressed as nitrogen in mg/l of the nondomestic wastewater.

300, 325 and 20 are constants expressing wasteload strength of domestic waste in mg/l for the respective pollutant parameters.

TA represents the cost incurred by the City in treating 1,000 pounds of BOD_5 . TB represents the cost of treating 1,000 pounds of total suspended solids. TC represents the cost incurred by the City in treating 1,000 pounds of ammonia. TA, TB and TC vary each year as treatment plant operation and maintenance costs change. Therefore, TA and TB and TC shall be determined at the beginning of each calendar year by the City based upon budgeted operating costs, and adopted by resolution by the City.

When a value of BOD_5 and/or total suspended solids and/or ammonia of a nondomestic waste is less than 300, 325, and 20 mg/l respectively, the value of 300, 325, and 20 mg/l respectively shall be used in the calculation of the strong waste discharge in place of the actual value which is less than 300, 325, and 20 mg/l, respectively.

- D. Said surcharge rates shall be effective February 1, 2000 and shall be applied to the first quarter 2000 surcharge bills which surcharge rates shall be as follows:

Rate Effect:

Parameter	Cost Represented in Formula by	Costs per 1,000 Pounds Rate for Period First Quarter 2000
BOD_5	TA	\$126.90
TSS	TB	\$116.71
NH_3-N	TC	\$1.281.69

Hereafter the Director of Public Works is authorized to increase surcharge rates by giving 90 days prior notice in a publication of general circulation in Berks County of said intention to increase rates and the date such increase shall take effect.

[Ord. 29-1999]

2. **Septage Rates.** Septage haulers or any other person disposing of sanitary or other waste into the sewage system of the City at designated points as herein provided shall pay a dumping fee to include the following charges:
 - A. Testing fee for each and every delivery to the City of Reading's wastewater treatment system.
 - B. Per gallon treatment charge based on the rated capacity of the waste delivery vehicle.
 - C. Per gallon surcharge based on the rate capacity of the waste delivery vehicle as payment for excessive BOD₅, total suspended solids, and total dissolved solids common to septic waste.
 - D. The rates shall be revised annually at the beginning of each year by the City through resolution.

(Ord. 17-1998, 5/26/1998, §14; as amended by Ord. 29-1999, 11/8/1999, §1)

§18-115. Fees.

1. **Purpose.** It is the purpose of this Part to provide for the recovery of costs from users of the City's wastewater disposal system for the implementation of the program established herein. The applicable charges or fees shall be set forth in the City's schedule of charges and fees.
2. **Charges and Fees.** The City may adopt charges and fees which may include:
 - A. Fees for reimbursement of costs of setting up and operating the City's pretreatment program.
 - B. Fees for monitoring, inspection and surveillance procedures.
 - C. Fees for reviewing accidental discharge procedures and construction.
 - D. Fees for permit applications.
 - E. Fees for filing appeals.
 - F. Fees for administrative hearing.
 - G. Other fees as the City may deem necessary to carry out the requirements contained herein.

SEWERS AND SEWAGE DISPOSAL

- H. Fees for removal of pollutants otherwise subject to the Federal pretreatment standards.
 - I. Fees for treatment of extra strength wastewater including extra fees for the treatment of industrial waste containing toxic waste and pollutants.
3. **Application/Sampling/Analysis.**
- A. The fee schedule applicable to filing permit applications and sampling/analysis of wastewater by the City shall as follows:
 - (1) \$500 - fee to accompany each initial industrial waste discharge permit application for categorical industries, each site.
 - (2) \$250 - fee to accompany each reapplication or revision to and industrial waste discharge permit for categorical industries, each site.
 - (3) \$100 - fee to accompany each initial industry's waste discharge permit application for noncategorical industries, each site.
 - (4) \$50 - fee to accompany each reapplication or revisions to an industrial waste discharge permit for noncategorical industries, each site.
 - (5) \$300 - charge for each scheduled or industry requested sampling and analysis and/or inspection - minimum per site.
 - (6) \$300 - charge for industries requiring sampling of multiple discharge points. \$250 - for each additional sampling over one.
 - (7) \$300 - charge for unscheduled sampling and analysis where industrial pollutants found in wastewater exceed permit limits plus out of pockets expenses for additional testing and related costs.
 - Note: Nothing shall prevent the EPA, PaDEP, or the City of Reading from imposing other fees, penalties or damages where wastewater discharged to the City's treatment works exceeds permit limits.
 - B. The fees and charges established by this Part shall apply to all industries within the City of Reading sewage service area that discharge industrial waste to the City's Fritz Island Wastewater Treatment Plant.
 - C. These fees relate solely to the matters covered by this Part and are separate from all other fees chargeable by the City.
4. **Fee Collection.**

- A. Registered bills will be mailed quarterly. Bills must be paid within 30 days of receipt. A late charge of 10% APR will be applied to all Bills paid after the due date.
- B. Sixty days after receipt, all unpaid bills, exempting cases where a repayment schedule has been approved by the City, will be subject to civil and/or criminal action(s) with all applicable charges and fees incurred by the City being applied to the debt.
- C. A list of all bills unpaid after 60 days, not including cases where other repayment arrangements have been approved by the City, may be published at least semi-annually in the largest daily newspaper published in the municipality where the POTW is located.

(Ord. 17-1998, 5/26/1998, §15)

§18-116. Septage Discharge Permit System.

- 1. **Septage Permitting System.** Licensed septage and holding tank haulers shall obtain a valid permit from the City and comply with all the conditions of this permit and this Part. The septage hauler permit shall be valid for 1 year with renewal January first of each fiscal year. The permit may be suspended or revoked according to the policies outlined in §18-105(6) of this Part. Haulers shall apply for this permit on forms provided by the City and shall submit, together with the permit fee, an application containing the following information:
 - A. Name, company name, address, telephone number.
 - B. Vehicle identification, make, and capacity.
 - C. Copy of septage hauler's license.
 - D. Any additional information requested by the City.
 - E. Signed and notarized statement certifying that the information presented in the application is correct.
 - F. Performance bond.
- 2. **Septage/Waste Disposal.**
 - A. Septic tank and holding tank waste may be introduced into the POTW only at locations designated by the City, and at such times as are established by the City. Such waste shall not violate §18-102 of this Part or any other requirements established by the City. Septic tank waste haulers will be required to obtain a hauler's permit and may be required to obtain a wastewater discharge permit.

SEWERS AND SEWAGE DISPOSAL

- B. The City shall require haulers of industrial waste to obtain wastewater discharge permits. The City may require generators of hauled industrial waste to obtain wastewater discharge permits. The City also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this Part. Gallonage and hours for delivery of waste may be reduced, extended, increased, or otherwise changed or altered by and at the discretion of the City. City personnel may require that the load be dumped over a period of a ½ hour or more, depending upon the flow and characteristics of the incoming sewage as the City's treatment plant.
 - C. Industrial waste haulers may discharge loads only at locations designated by the City. No load may be discharged without prior consent of the City. The City may collect samples of each hauled load to ensure compliance with applicable standards. The City may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
 - D. Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes. The City reserves the right to prohibit the discharge of hauled industrial waste.
 - E. Each waste hauler shall furnish the following items to the City personnel upon arrival at the septage receiving facility:
 - (1) Load manifest form (provided by the City) which states the hauling company, hauler name, vehicle license number, quantity and source (owner and address) of the septage, probable content of the septage, and a certification statement signed by the hauler and generator, attesting to the accuracy of the information provided on the load manifest form.
 - (2) Previously purchased load ticket(s) corresponding to the capacity of the truck.
 - (3) Grab samples of the septage taken by the waste hauler under supervision by the City. The City reserves the right to refuse to accept any load that is suspected of being or has been determined through sampling and analysis to be detrimental to the operations of the plant, the safety of its workers, or to the health or welfare of the public.
 - F. The hauler shall keep a copy of his/her official permit in the truck, and display the City issued permit sticker on the windshield.
 - G. The hauler shall display his tank capacity on the truck.
3. **Septage Prohibitions.**

- A. Septage haulers shall not discharge specifically prohibited waters, wastewaters, or substances to the City facilities in accordance with §18-102 of this Part.
 - B. No grease trap wastes may be discharged.
- 4. **Septage Records.** Vehicles shall be maintained and records shall be kept in accordance with State law.
 - 5. **Compliance Required.** No statement contained in this Section shall exempt the hauler from complying with all Federal, State or local requirements.

(Ord. 17-1998, 5/26/1998, §16)

§18-117. Interference with City Property.

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any City owned structure, appurtenance or equipment. No person shall dump garbage, fill, refuse or other materials on land easements, rights-of-way, or other structures, including manholes, which are part of the wastewater facilities. Persons initiating construction activities that may alter City structures must be permitted pursuant to the requirements outlined in this Part. Persons causing such interference shall be billed by the City for any actual damages, the cost of correcting the interference and may be subject to civil and/or criminal penalties of this Part.

(Ord. 17-1998, 5/26/1998, §117)

EXHIBIT "E": OPERATING COSTS

The Operating Costs of the Sewage Treatment Plant and the Operating Costs of the Sewage Transportation System are defined in SECTION 3 of the Agreement, and subject to subsequent amendment upon agreement by the Parties, shall be the following:

Personnel

- Salary, Wages and Taxes
- Fringe Benefits (e.g, medical, dental, vision, disability and life insurance, as applicable)
- Retirement/Pension
- Continuing Education
- Uniforms

Operation, Supplies & Equipment

- Biosolids and Residual Transportation & Disposal Fees
- Vehicles
- Vehicle/Equipment Fuels
- Chemicals
- General Supplies
- Lab Supplies
- Safety Supplies & Equipment

Contracted Services (Includes Labor and Materials)

- Laboratory
- Rentals
- Operation & Maintenance Services
- General and Administrative Services

Utilities

- Electricity
- Telephone (including data services)
- Water
- Sewer
- Building Fuel (e.g., natural gas & heating oil)

Maintenance

- Materials & Parts
- Supplies & Equipment
- General Repairs
- Minor Capital
- Instrumentation & Communication

Professional Services

- Administrative
- Technical (for example: engineer, construction manager, surveyor, geotechnical expert)
- Legal
- Financial

General & Administrative

- Indirect Costs
- Public Works Direct Cost Reimbursement
- Dues & Subscriptions
- Electronic Hardware & Software
- Office Supplies & Services
- Advertisement, Printing, Copying and Scanning
- Regulatory Permits, Fees and Fines/Penalties

Insurances and Surety Bonds**Impact Transfer****Bond Expense**

- Issuance Cost

If generally accepted accounting principles require any item of expense listed above to be described or categorized differently, then such expense shall still be deemed an Operating Costs of the Sewage Treatment Plant and the Operating Costs of the Sewage Transportation System. Notwithstanding the foregoing, the general scope of the expenses listed above may only be expanded by a written amendment in accordance with SECTION 23(N).

EXHIBIT "F": RESERVED CAPACITY TABLE

<u>Contributing Municipality</u>	<u>Reserved Capacity (gallons per day)</u>
Antietam Valley Municipal Authority	86,558
Bern Township	170,000
Cumru Township	1,875,832
Kenhorst Borough	266,190
Laureldale Borough	696,402
Mohnton Borough	46,742
Muhlenberg Township	6,011,146
City of Reading	9,541,933
Robeson Township	44,000
Shillington Borough	70,556
Spring Township	1,542,600
Wyomissing Borough	65,074
TOTAL AGGREGATE RESERVED CAPACITY:	20,417,033

EXHIBIT "G": RESERVED CAPACITY CHARGE FEE SCHEDULE

Unless otherwise amended by written agreement signed by the Parties, the Reserved Capacity Charge shall be calculated as follows:

- (1) Sixteen Dollars (\$16) per gallon of additional Reserved Capacity as compensation necessitated for the infrastructure accommodate such additional flow.
- (2) In addition, the Reserved Capacity Charge shall include payment of Five Dollars (\$5) per gallon per day as compensation for implementing and designing capital improvements necessitated by the additional Reserved Capacity.
- (3) An inflation factor of three percent (3%) of the Reserved Capacity Charge, compounded annually as of the Effective Date, shall be added to the sum of (1) and (2), above.

EXHIBIT "H": EXAMPLE CALCULATIONS

A. Unit Rates

1. Treatment Unit Rate

- Step 1: Develop a budget for the Operating Costs of the Sewage Treatment Plant for the next calendar year to establish the Operating Costs of the Sewage Treatment Plant Projection.
- Step 2: Sum the total amount of Operating Costs of the Sewage Treatment Plant that were paid in the previous calendar year, based on the audited financials.
- Step 3: Determine the amount of Operating Costs of the Sewage Treatment Plant that was projected for the previous calendar year.
- Step 4: Subtract the previous year's actual payments for operating the Sewage Treatment Plant, as calculated in the second step, from the cost projection for operating the Sewage Treatment Plant that was made for the same calendar year, as determined in the third step. (Note – during the first two years of the Agreement, there will not be an adjustment because the audited financial statements for the first full year of calculating Unit Rates will not be available until after the rates are set for Year 2 in October of Year 1)
- Step 5: Add the number from the first step to the number from the fourth step.
- Step 6: Divide the number from fifth step by the total number of EDUs reported to have been treated at the Sewage Treatment Plant for the latest calendar completed year.

Below is an example of how the Treatment Unit Rate is calculated.

Example Calculation 1(a): Assume the City is in the process of determining the Treatment Unit Rates for Year 5. The City would project the estimated cost of operating the Sewage Treatment Plant in August/September of Year 4 in order to establish the Year 5 Treatment Unit Rate by October 1 of Year 4 (as required by SECTION 9(C)). Assume the City's estimate for the Year 5 operating costs of the Sewage Treatment Plant is \$12 Million. The latest available audited financial statements available to the City in October of Year 4 would be for Year 3. Assume the results from the audited financial statements from Year 3 show that the City incurred \$12.1 Million in operational expenses for the Sewage Treatment Plant in Year 3. In October of Year 2, the City would have made a projection for its estimate of the operating costs of the Sewage Treatment for Year 3 in order to set the Treatment Unit Rate for Year 3. Assume the City projected the operating costs for Year 3 to be \$11,900,000 when the City made its Year 3 projection in August/September of Year 2. The numerator for the Year 5 Treatment Unit Rate would be determined based on the following formula:

$$\$12 \text{ Million} + (\$12.1 \text{ Million} - \$11,900,000) = \$12.2 \text{ Million}$$

An upward adjustment of \$200,000 was necessary because the City incurred \$200,000 more in operational costs than the Municipalities paid to the City in Year 3. Then, in order to determine the Treatment Unit Rate, \$12.2 Million would need to be divided by the total sum of EDUs

reported to have been treated at the Sewage Treatment Plant by all of the Contributing Municipalities (including the City) from the latest completed calendar year. For purposes of this calculation, assume 72,500 EDUs were reported to be treated at the Sewage Treatment Plant in Year 3. Therefore, the formula for the Treatment Unit Rate would be:

$\$12.2 \text{ Million} / 72,500 \text{ EDUs} = \$168.27 \text{ for Sewage treatment per EDU}$

Example Calculation 1(b): On the other hand, if the City had overestimated the projection for Year 3 (assume its projection for the operational costs of the Sewage Treatment Plant for Year 3 was \$12.2 Million), the Year 5 Treatment Unit Rate would be determined based on the following formula:

$\$12 \text{ Million} + (\$12.1 \text{ Million} - \$12.2 \text{ Million}) = \11.9 Million

A downward adjustment would be required because the City projection was higher than the amount of operational costs it actually incurred during Year 3. Therefore, the formula for the Treatment Unit Rate would be:

$\$11.9 \text{ Million} / 72,500 \text{ EDUs} = \$164.13 \text{ for Sewage treatment per EDU}$

2. Transportation Unit Rates

- Step 1: Develop a budget for the Operating Costs of the Sewage Transportation System for the next calendar year to establish the Operating Costs of the Sewage Transportation System Projection.
- Step 2: Determine the next year's budgeted salaries and fringe benefits of staff employed by the City for operating the Sewage Transportation System for the next calendar year and multiply by ten percent (10%).
- Step 3: Subtract the amount from second step from the Operating Costs of the Sewage Transportation System Project for the next calendar, as determined in the first step.
- Step 4: Sum the total amount of Operating Costs of the Sewage Transportation System that were paid in the previous calendar year, based on the audited financials.
- Step 5: Determine the amount that was paid for the pro-rated salaries and fringe benefits of staff employed by the City for operating the Sewage Transportation System from the previous calendar year, based on the audited financials.
- Step 6: Determine the amount of Operating Costs of the Sewage Transportation System that was projected for the previous calendar year.
- Step 7: Subtract the previous year's actual payments for operating the Sewage Transportation System (less ten percent (10%) of the salaries and fringe benefits of staff employed by the City during such calendar year for operating the Sewage Transportation System), as calculated in the fourth step, from the cost projection that was made for the same calendar year, as calculated in the sixth step. (Note – during the first two years of the Agreement, there will not be an adjustment because the audited financial statements for the first full year of calculating Unit Rates will not be available until after the rates are set for Year 2 in October of Year 1)

- Step 8: Add the number from the third step to the number from the seventh step.
- Step 9: Divide the number from eighth step by the total number of EDUs reported to have been treated at the Sewage Treatment Plant for the latest calendar completed year.

Example Calculation 2: Assume the City is in the process of determining the Transportation Unit Rates for Year 5. The City would project the estimated cost of operating the Sewage Treatment Plant in August/September of Year 4 in order to establish the Year 5 Transportation Unit Rate by October 1 of Year 4 (as required by SECTION 9(C)). Assume the City's estimate for the Year 5 operating costs of the Sewage Transportation System is \$2 Million (\$1.2 Million of which is budgeted for the City's staff and fringe benefits for operating the Sewage Transportation System). The Operating Costs of the Transportation System Projection would be determined based on the following formula:

$$(\$2 \text{ Million} - (\$1.2 \text{ Million} \times 0.10)) = \$1.88 \text{ Million}$$

The latest available audited financial statements available to the City in October of Year 4 would be for Year 3. Assume the results from the audited financial statements from Year 3 show that the City incurred \$2.2 Million in operational expenses (\$1.1 Million of which was for salaries and fringe benefits of staff employed by the City for operating the Sewage Transportation System) for the Sewage Transportation System in Year 3. In October of Year 2, the City would have made a projection for its estimate of the operating costs of the Sewage Treatment for Year 3 in order to set the Treatment Unit Rate for Year 3. Assume the City projected the operating costs for Year 3 to be \$1.9 Million (\$1.0 Million of which was for salaries and fringe benefits of staff employed by the City for operating the Sewage Transportation System) when the City made its Year 3 projection in August/September of Year 2. Operating Costs of the Transportation System Projection would be determined based on the following formula:

$$(\$2.2 \text{ Million} - (\$1.1 \text{ Million} \times 0.10)) - (\$1.9 \text{ Million} - (\$1.0 \text{ Million} \times 0.10)) = \$290,000$$

The numerator for the Year 5 Treatment Unit Rate would be determined based on the following formula:

$$\$1.88 \text{ Million} + \$290,000 = \$2.17 \text{ Million}$$

An upward adjustment of \$290,000 was necessary because the City incurred \$290,000 more in operational costs (after the adjustment for ten percent (10%) of staff salary and fringe benefits) than the Contributing Municipalities paid to the City in Year 3. Then, in order to determine the Treatment Unit Rate, \$2.17 Million would need to be divided by the total sum of EDUs reported to have been treated at the Sewage Treatment Plant by all of the Contributing Municipalities (including the City) from the latest completed calendar year. For purposes of this calculation, assume 72,500 EDUs were reported to be treated at the Sewage Treatment Plant in Year 3. Therefore, the formula for the Treatment Unit Rate would be:

$$\$2.17 \text{ Million} / 72,500 \text{ EDUs} = \$29.93 \text{ for Sewage treatment per EDU}$$

B. Debt Service Charge

Example Calculation 3: Like in Example Calculation 1, assume the City is in the process of determining the Debt Service Charge for calendar Year 5. In September of Year 4, the City projects to incur \$11 Million in Debt Service over the course of Year 5. Based on the audited financial statements from Year 3, the City paid \$14 Million in Debt Service during Year 3. However, in September of Year 2, the City projected that it would only incur \$12 Million in Debt Service.

Further assume that the Municipality has a Reserved Capacity of 500,000 gallons per day and that all of the Contributing Municipalities have reserved a capacity totaling 18 million gallons per day (i.e., the Total Aggregate Reserved Capacity).

The Debt Service Charge would be based on the following formula:

$\$11 \text{ Million} \div (\$14 \text{ Million} - \$12 \text{ Million}) \times (500,000/18,000,000) = \$361,110.10$ for the total Debt Service Charge due for the entire Year 5 calendar year.

C. Infrastructure Contingency Charge

Example Calculation 4: Carrying forward all of the assumptions set forth in Example Calculation 3, the Infrastructure Contingency Charge due for the entire Year 5 calendar year would equal \$36,111.01, which is ten percent (10%) of the Debt Service Charge.

D. Volume Exceedance Surcharge

Example Calculation 5 (Daily Volume Exceedance): Assumptions for purpose of this example:

1. The current Treatment Unit Rate is \$165
2. The current Transportation Unit Rate is \$90
3. The Municipality has a Reserved Capacity of 500,000 gallons per day
4. On one day the Municipality measured an aggregate discharge of 850,000 gallons of sewage from all of its connection points to the City's Sewage System but was otherwise under 500,000 gallons per day for the rest of the calendar month

The total number of gallons used for purposes of calculating the Volume Exceedance Surcharge under the assumptions noted above would be determined by subtracting the Reserved Capacity (inclusive of the peak factor identified in SECTION 4(A) from the total gallons discharged: $850,000 - (500,000 \times 1.5) = 100,000$ gallons. The Volume Exceedance Surcharge would then be calculated based on the following formula:

$$\left(\frac{(\$165 + \$90) \times 100,000}{(50,000)} \right) \times 0.25 = \$127.50$$

Example Calculation 6 (Monthly Volume Exceedance): Assumptions for purpose of this example:

1. The current Treatment Unit Rate is \$165
2. The current Transportation Unit Rate is \$90
3. The Municipality has a Reserved Capacity of 500,000 gallons per day
4. Each day during January of Year 5, the Municipality measured an average daily aggregate discharge of 520,000 gallons of Sewage from all of its connections points to the City's Sewage System but was otherwise under the Reserved Capacity 1.5 peaking factor on each day

The total number of gallons used for purposes of calculating the Volume Exceedance Surcharge under the assumptions noted above would be determined by subtracting the Reserved Capacity from the daily average number of gallons discharged and then multiplying the result by the number of calendar days in January: $(520,000 - 500,000) \times 31 = 620,000$ gallons. The Volume Exceedance Surcharge would then be calculated based on the following formula:

$$\left(\frac{(\$165 + \$90) \times 620,000}{(50,735)} \right) \times 0.5 = \$1,581.00$$

EXHIBIT "I": ANNUAL REPORT FORMS

Quarter Ending: _____, 20__

Quarterly Debt Service Statement

USER	DEBT SERVICE PAYMENT	INFRASTRUCTURE CONTINGENCY FUND PAYMENT
Antietam Valley Municipal Authority		
Bern Township		
Cumru Township		
Kenhorst Borough		
Laureldale Borough		
Mohnton Borough		
Muhlenberg Township		
City of Reading		
Robeson Township		
Shillington Borough		
Spring Township		
Wyomissing Borough		
TOTAL FOR CURRENT QUARTER		S
PREVIOUS BALANCE		+ \$
INTEREST		+ \$
VOLUME EXCEEDANCE SURCHARGES COLLECTED		+ \$
INFRASTRUCTURE CONTINGENCY CUMULATIVE TOTAL		S
LESS REDUCTIONS **		- \$
INFRASTRUCTURE CONTINGENCY FUND BALANCE		= \$

** Explanation provided on separate sheet

Quarterly Sewer Flow Information

Total Volume of Sewage Flow at the Sewage Treatment Plan: _____ (Millions of Gallons)

USER	Reserved Capacity (GPD)	Quarterly Flow (Mil. Gals.)	Average Daily Flow (GPD)	Percent of Total Flow	Treatment Charge \$ _____ (per EDU)	Transport Charge \$ _____ (per EDU)	Date Payment Received by City
AVMA							
Bern Tp.							
Cumru Tp.							
Kenhorst Boro.							
Laureldale Boro.							
Mohnton Boro.							
Muhlenberg Tp.							
City of Reading							
Robeson Tp.							
Shillington Boro.							
Spring Tp.							
Wyomissing Boro.							