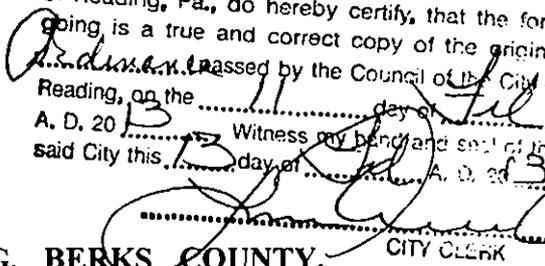


BILL NO. 8 - 2013

AN ORDINANCE

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 11 day of July A. D. 2013. Witness my hand and seal of the said City this 13 day of July A. D. 2013.

  
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 LAURELDALE BOROUGH 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  
LAURELDALE BOROUGH

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 Laureldale Borough ("Borough") for the transportation, treatment and disposal of Sewage collected in the Borough dated February 22, 1984 ("1984 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. The City desires that the costs of such additional regulatory obligations 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 1984 Agreement between the Borough and City with a new agreement.

- C. The City further desires to enter into an agreement with the Borough to establish the 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 Laureldale Borough sewage by the City of Reading in accordance 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 by this Ordinance.
- 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, such declaration 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 Feb 11, 2013

Attest: [Signature]  
City Clerk

[Signature]  
President of Council

(LAW DEPT)

Submitted to Mayor: [Signature]

Date: 2/12/13

Received by Mayor's Office: [Signature]

Date: 2/12/13

Approved by Mayor: [Signature]

Date: 2/12/13

Vetocd by Mayor: \_\_\_\_\_

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

Exhibit A

**INTER-MUNICIPAL AGREEMENT**

**CITY OF READING, PARTY OF THE FIRST PART  
AND  
LAURELDALE BOROUGH, PARTY OF THE SECOND PART**

Table of Contents:

BACKGROUND.....	- 1 -
SECTION 1. Sewage Service Area.....	- 2 -
SECTION 2. Term.....	- 2 -
SECTION 3. Definitions.....	- 3 -
SECTION 4. Reserved Capacity and Reserved Capacity Charge; Additional Connections.....	- 10 -
(A) Reserved Capacity.....	- 10 -
(B) Modifications to the Reserved Capacity.....	- 10 -
(C) Excess Discharges.....	- 10 -
(D) Additional Single Family Residential or Multi-Family Connections.....	- 12 -
(E) Additional Industrial or Commercial Users.....	- 13 -
(F) Additional Connections Outside of Area in Exhibit "B".....	- 13 -
(G) Municipality Reserved Capacity Charge.....	- 14 -
(H) Charges to the City's Residents.....	- 14 -
SECTION 5. Transportation of Sewage.....	- 15 -
SECTION 6. Information Sharing and Consultation.....	- 15 -
(A) General Obligations.....	- 15 -
(B) Municipal Advisory Committee.....	- 15 -
(C) Reports Required by Applicable Laws.....	- 18 -
(D) Industrial or Commercial User Connections.....	- 18 -
(E) Connection Records.....	- 18 -
(F) Chapter 94 Reports.....	- 18 -
(G) Failure to Provide Information.....	- 18 -
(H) Limitation of the City's Liability for Failure to Submit Reports.....	- 19 -
SECTION 7. Sewage Characteristics and Pretreatment.....	- 19 -
(A) General Obligation.....	- 19 -
(B) I/I.....	- 19 -
(C) Prohibited Sewage Characteristics.....	- 20 -
(D) Pretreatment Obligations.....	- 21 -
(E) Organic Loading Limitations.....	- 21 -
(F) Exceedances.....	- 21 -
SECTION 8. Sewage System Maintenance.....	- 22 -
(A) Maintenance and Repair.....	- 22 -
(B) Access to Municipality's and City's Sewage Facilities.....	- 22 -
(C) Limitation on the City's Liability.....	- 22 -
(D) Certifications.....	- 22 -
SECTION 9. Compensation Arrangement.....	- 22 -
(A) Method of Determining Sewage Treatment Charge.....	- 23 -
(B) Method of Determining Sewage Transportation Charge.....	- 23 -
(C) Calculating the Unit Rates.....	- 23 -

(D) Debt Service Charge.....	- 24 -
(E) Method of Determining the Infrastructure Contingency Charge.....	- 24 -
(F) Annual Update to the Total Quarterly Charge.....	- 25 -
(G) Method of Determining Industrial or Commercial Sewage Surcharge.....	- 25 -
(H) Other Charges.....	- 25 -
(I) Calculation of EDUs.....	- 26 -
(J) Rate Adjustment.....	- 27 -
(K) Method of Distributing Proceeds.....	- 27 -
(L) Sewer Enterprise Fund.....	- 27 -
(M) Capital Reserve Accounts Under Prior Agreements.....	- 27 -
SECTION 10. Payment.....	- 27 -
(A) Total Quarterly Charge.....	- 27 -
(B) Information Required to Accompany the Total Quarterly Charge.....	- 28 -
(C) All Other Amounts Due.....	- 28 -
(D) Late Payments.....	- 28 -
(E) Payment Related Records.....	- 29 -
SECTION 11. Meters.....	- 29 -
(A) Installation and Maintenance of Meters.....	- 29 -
(B) Meter Reading.....	- 30 -
(C) Certification of Meters.....	- 30 -
(D) Flow From Other Political Subdivisions.....	- 31 -
(E) Installation of Sampling Manholes.....	- 32 -
SECTION 12. Geographic Information System ("GIS") Map.....	- 32 -
(A) General Obligation.....	- 32 -
(B) New Industrial or Commercial User Connections.....	- 32 -
(C) Shared Information.....	- 32 -
SECTION 13. Ordinances.....	- 33 -
(A) Rental and Other Charges.....	- 33 -
(B) Pretreatment, Inspection, Access and Reports.....	- 33 -
(C) Intergovernmental Cooperation Act.....	- 35 -
SECTION 14. Indemnification.....	- 35 -
SECTION 15. Insurance.....	- 35 -
(A) The Municipality's Insurance Obligations.....	- 35 -
(B) The City's Insurance Obligations.....	- 36 -
(C) Periodic Limit Increases.....	- 36 -
SECTION 16. Inspection of Records.....	- 36 -
SECTION 17. Title Transfer.....	- 36 -
SECTION 18. Most Favorable Pricing Terms.....	- 36 -
SECTION 19. Service to Additional Municipalities.....	- 37 -
SECTION 20. Act 537 Plan.....	- 37 -
SECTION 21. Consent Decree.....	- 37 -
SECTION 22. Default.....	- 37 -
SECTION 23. Miscellaneous.....	- 38 -
(A) Counterparts.....	- 38 -
(B) Applications for Grants.....	- 38 -
(C) Compliance with Applicable Laws.....	- 38 -

(D) Governing Law; Venue .....	- 38 -
(E) Force Majeure.....	- 38 -
(F) Records Retention.....	- 39 -
(G) Severability.....	- 39 -
(H) Headings.....	- 39 -
(I) Exhibits.....	- 39 -
(J) Reference to Days.....	- 40 -
(K) Waiver.....	- 40 -
(L) Successors and Assigns.....	- 40 -
(M) Entire Agreement.....	- 40 -
(N) Modification.....	- 40 -
(O) Notices.....	- 40 -

- EXHIBIT "A": CONSENT DECREE
- EXHIBIT "B": SEWAGE SERVICE AREA
- EXHIBIT "C": CONNECTION LOCATIONS
- EXHIBIT "D": CITY ORDINANCE
- EXHIBIT "E": OPERATING COSTS
- EXHIBIT "F": RESERVED CAPACITY TABLE
- EXHIBIT "G": RESERVED CAPACITY CHARGE FEE SCHEDULE
- EXHIBIT "H": EXAMPLE CALCULATIONS
- EXHIBIT "I": QUARTERLY REPORT FORMS

THIS INTER-MUNICIPAL AGREEMENT (the "**Agreement**"), dated the 31st day of December, 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 LAURELDALE BOROUGH, organized and existing under the laws of the Commonwealth of Pennsylvania, (hereinafter called "**Municipality**"), and the City and the Municipality shall collectively be referred to herein as the "**Parties**".

### **BACKGROUND**

A. WHEREAS, the Parties entered into an agreement(s), dated February 22, 1984, 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. **"BOD<sub>5</sub>"** (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. **"Connection Point"** shall mean any point of interface where the Municipality's Sewage Transportation System connects with the Sewage Transportation System of another political subdivision or City's Sewage System.

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

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

x. **"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.

xi. **"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)).

xii. **"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.

xiii. **"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).

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

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

xvi. **"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.

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

xviii. **"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.

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

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

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

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

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

xxiv. **"I/I Factor"** shall mean the multiplying factor used to determine the total EDUs to attribute to I/I for unmetered Connection Points, as calculated in SECTION 9(I)i(d).

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

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

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

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

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

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

xxxi. **"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.

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

xxxiii. **"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.

xxxiv. **"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.

xxxv. **"Municipal Advisory Committee"** shall mean a committee of seven persons appointed annually; the five political subdivisions 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.

xxxvi. **"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.

xxxvii. **"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).

xxxviii. **"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).

xxxix. **"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.

xl. **"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).

xli. **"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).

xlii. **"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).

xliii. **"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.

xliv. **“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).

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

xlvi. **“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.

xlvii. **“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.

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

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

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

li. **“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.

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

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

liv. **“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.

iv. **“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.

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

lvii. **“Sewer Enterprise Fund”** shall mean the fund established by the City to (a) receive the Total Quarterly 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.

lviii. **“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”.

lix. **“Total Quarterly Charge”** shall mean the sum of the the Sewage Treatment Charge, the Sewage Transportation Charge, the Debt Service Charge and the Infrastructure Contingency Charge.

lx. **“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.

lxi. **“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.

lxii. **“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.

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

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

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

lxvi. **“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.

lxvii. "Volume Exceedance" shall mean a Daily Volume Exceedance and/or Monthly Volume Exceedance.

lxviii. "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 is due the City from 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 Quarterly 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 Quarterly 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 shall be made in accordance with SECTION 10(C) and 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 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 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 discharge of

Sewage from the Municipality in excess of the Municipality's Reserved Capacity, based upon the reasonable estimated flows for such project, land development or subdivision shall be subject to the Municipality's prior payment of a 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 Municipality 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 result in a discharge of Sewage from the Municipality in excess of the Municipality's Reserved Capacity, based upon the reasonably estimated flows for such projects and/or land developments shall be subject to the Municipality's prior payment of a 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 result in a discharge of Sewage from the Municipality in excess of the Municipality's Reserved Capacity, based upon the reasonable estimated flows for such connections shall be subject to the Municipality's prior payment of a 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" which will result in a discharge of Sewage in excess of the Municipality's Reserved Capacity, based upon the reasonable estimated flows for such connections as determined by the Municipality and subject to the City's reasonable approval (the "**Reserved Capacity Charge**"). Payment of the Reserved Capacity Charge shall be made in accordance with SECTION 10(C). 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 10<sup>th</sup> 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 1<sup>st</sup> 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, Municipality 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 or Municipality 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 paid in accordance with SECTION 10(C); 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, 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 Quarterly 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 quarterly 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, as calculated in SECTION 9(C)i, in effect as of the last day of the applicable quarter.

(B) Method of Determining Sewage Transportation Charge.

The "Sewage Transportation Charge" is a quarterly 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 Transportation Unit Rate, as calculated in SECTION 9(C)ii, in effect as of the last day of the applicable quarter.

(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 Quarterly 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 Quarterly 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 Quarterly Charge shall be calculated as provided in the Prior Agreements. After January 1, 2013, the Total Quarterly 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 calculated in accordance with the formula established by the City Ordinance attached hereto as Exhibit "D" ("**Industrial or Commercial Sewage Surcharge Formula**") and any additional fines or fees due as a result of permit conditions or violations of Applicable Laws ("**Industrial or Commercial Sewage Surcharge**"). At the Municipality's request, the City will submit an invoice to each Industrial or Commercial Users within the Municipality for the applicable Industrial or Commercial Sewage Surcharge on behalf of the Municipality. In the event an Industrial or Commercial User fails to pay the entire Industrial or Commercial Sewage Surcharge due from such Industrial or Commercial User within sixty (60) days of the City's transmission of an invoice, the City may then invoice the Municipality for the outstanding balance which shall then be paid by the Municipality to the City in accordance with SECTION 10(C).

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 Quarterly 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.

i. For all Connection Points for which no sewage flow meter measures Sewage discharged from the Municipality, EDUs shall be calculated on a quarterly basis to determine the total quantity of EDUs for that quarter by using the following criteria:

(a) Each single family residential connection, regardless of the amount of Sewage emanating therefrom, shall equal one EDU.

(b) 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.

(c) Each Industrial or Commercial User discharging 12,500 gallons or less per quarter shall equal one EDU.

(d) 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.

(e) 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 I/I. The number of EDUs attributed solely to I/I (which shall be in addition to the EDUs attributed to the lateral connections) shall be determined by multiplying the cumulative number of EDUs derived from SECTION 9(I)i(a) through SECTION 9(I)i(d) to the I/I Factor. The I/I Factor represents the average gallons of I/I per EDU and shall equal the difference between the number of gallons measured at a metered Connection Point with similar upstream characteristics as the unmetered Connection Point (as reasonably and mutually agreed to by the City and Municipality as identified in Exhibit C) and the total metered water consumption for all users within such area divided by the total metered water consumption for all users within such area. To the extent the Municipality or City are unable to identify a metered Connection Point with similar upstream characteristics, the I/I Factor shall equal 0.75.

ii. For all Connection Points for which a sewage flow meter measures Sewage discharged from the Municipality, EDUs shall be calculated on a quarterly basis to determine the total quantity of EDUs for that quarter by dividing the total gallons of metered Sewage flow for that quarter and divided by 12,500.

iii. 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 for a particular Connection Point, an average of the EDUs for the previous four (4) quarters associated with the malfunctioning meter shall be used for the calculation of EDUs from such Connection Point notwithstanding any measured flow.

(J) Rate Adjustment.

In the event any component of the Total Quarterly Charge is in violation of any Applicable Laws, the Total Quarterly 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 Quarterly 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 Quarterly 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.**

(A) Total Quarterly Charge.

The Municipality shall pay the calculated Total Quarterly Charge to the City on a quarterly basis. Payments for any fractional quarter shall be prorated. The Total Quarterly Charge for each quarter is due and payable to the City within sixty (60) days of the last day of the quarter.

(B) Information Required to Accompany the Total Quarterly Charge.

The Municipality shall completely fill in all of the information on the form set forth in Exhibit "I" (as it applies to the Municipality's Sewage flow) and submit such form to the City with each quarterly payment to the City. Furthermore, the Municipality shall also include the data set forth below, separated as to each Connection Point to the City's Sewage System that used to determine the total number of EDUs for each quarter.

i. Data Required for Metered Connection Points.

For all metered Connection Points, such data shall include the meter reading results, the date of the meter reading, the meter reading results from the prior quarter and, if the Municipality's Sewage is combined with Sewage from one or more political subdivision(s) at such Connection Point, the total volume of Sewage attributed to the Municipality and total volume Sewage attributed to the political subdivision(s) for the Sewage flow through such Connection Point.

ii. Data Required for Unmetered Connection Points.

For all unmetered Connection Points, such data shall include a tally of single family residential connections in the Municipality; a tally of Multi-Family Connections including the cumulative total number of family units permitted to reside in all Multi-Family Connections in the Municipality, a tally of Industrial and Commercial Users discharging less than 12,500 gallons of Sewage per quarter in the Municipality, a tally of Industrial and Commercial Users discharging more than 12,500 gallons of Sewage per quarter including the cumulative total volume of Sewage discharged (or, alternatively, total potable water consumed) from all such users in the Municipality, and the I/I Factor and total number of EDUs attributable to I/I. If the Municipality calculates the I/I Factor based on metered flow elsewhere in the Municipality as identified in Exhibit C, the Municipality shall provide the formula used to calculate the I/I Factor.

If the Municipality's Sewage flow through an unmetered Connection Point is combined with Sewage from one or more political subdivision(s), the Municipality shall identify the total number of EDUs attributed to the Municipality as well as to other political subdivision(s) for the Sewage flow through that Connection Point.

(C) All Other Amounts Due.

Any other amounts due the City from the Municipality under this Agreement or Applicable Laws (excluding the components of the Total Quarterly Charge) shall be paid by the Municipality to the City within thirty (30) days of the Municipality's receipt of an invoice relating to the same.

(D) Late Payments.

Failure to make payment when due shall result in a late payment penalty of one percent (1%) per month of the amount due and outstanding for each month or part of a month that payment is delayed.

(E) Payment Related Records.

The Municipality shall keep accurate records of the quarterly meter readings and 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 (or, if defective, repair or replace), maintain and routinely service a meter acceptable to the City immediately before each Connection Point with 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 in 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 Quarterly 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 Municipality 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 another Municipality's Sewage flow prior to entering the City's Sewage System, the Contributing Municipality owning the Connection Point shall inform the City and the other political subdivision what volume of Sewage flow in gallons (if the Connection Point is metered) or what number of EDUs (if the Connection Point is not metered) to attribute to the Municipality and what volume of Sewage flow in gallons (if the Connection Point is metered) or what number of EDUs (if the Connection Point is not metered) to attribute to the other political subdivision for each applicable Connection Point to the City's Sewage System no later than twenty days after the end of the applicable quarter. Provided that the total metered Sewage flow in gallons (if the Connection Point is metered) or total number of EDUs, as calculated in SECTION 9(1)i (if the Connection Point is not metered) at each applicable metered Connection Point to the City's System is accounted for in the attribution. The Municipality may submit the Total Quarterly Charge only as to the Sewage flow that is attributed to the Municipality at such applicable Connection Point(s) to the City's Sewage System (as opposed to the Total Quarterly Charge as to the entire Sewage flow at such Connection Point). Provided, however, if the respective attribution of Sewage flow provided by the Contributing Municipality owning the Connection Point is disputed or does not equal the total metered Sewage flow in gallons (if the Connection Point is metered) or total number of EDUs, as calculated in SECTION 9(1)i (if the Connection Point is not metered) from an applicable Connection Point to the City's Sewage System, the Municipality and the other political subdivision shall be jointly and severally liable to City for the Total Quarterly Charge and any applicable Volume Exceedance Surcharge of the Sewage flow in gallons 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 Connection Point to 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 Quarterly 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).
- iv. Any other amounts due the City from the Municipality under this Agreement or Applicable Laws.

#### **(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 Municipality 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 Municipality or its respective servants, agents or employees or the gross negligence or willful misconduct of the Municipality or its 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 Municipality, at any future time, transfers title to its Sewage Transportation System to any Person by deed or otherwise, the Municipality shall ensure that the Person shall be subject to all obligations of this Agreement. Municipality shall also be liable for the Total Quarterly Charge, any other amounts due the City from the Municipality under this Agreement or Applicable Laws 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
- viii. Exhibit "H": Example Calculations
- ix. Exhibit "I": Quarterly Report Forms

Provided, however, if an exhibit specifically provides that it shall take precedence over this Agreement, then any inconsistencies resulting therefrom shall be resolved in favor of said exhibit so that the provisions of said exhibit shall control.

(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 Municipality:

Borough of Laureldale  
Attn: President of Council  
3406 Kutztown Road  
Laureldale, PA 19605

[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)

**LAURELDALE BOROUGH**

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

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

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

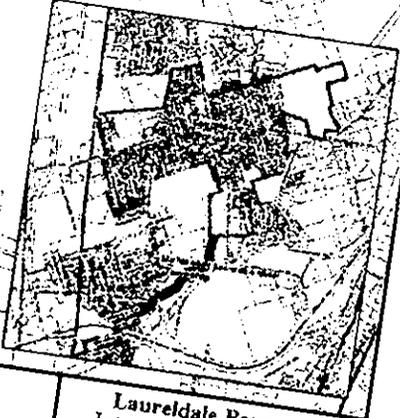
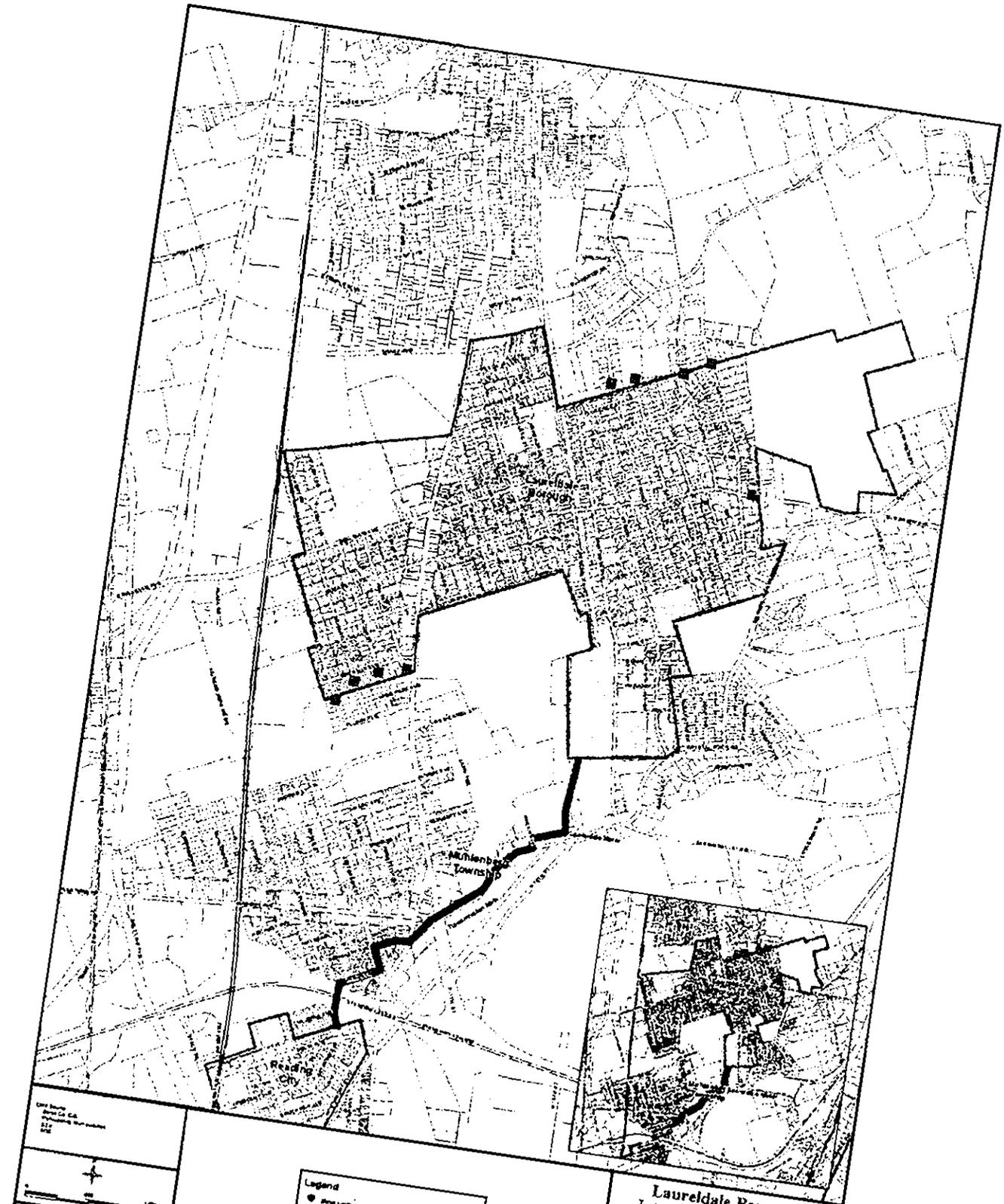
ATTEST:

\_\_\_\_\_  
Secretary

(SEAL)

EXHIBIT "A": CONSENT DECREE

**EXHIBIT "B": SEWAGE SERVICE AREA**



City of Reading  
 Planning & Zoning  
 222  
 07/2/12

- Legend**
- Area Within
  - Outside Borough Plan of Contribution to City of Reading
  - ▭ Outside City Plan of Contribution to Laureldate Borough
  - ▭ Laureldate Treatment Plant
  - ▭ Sewerage
  - ▭ All Road
  - ▭ Other Road
  - ▭ Municipal Boundary
  - ▭ Contributing Municipality Services
  - ▭ Sewer Area - Existing

**Laureldate Borough  
 Intermunicipal Agreement  
 Exhibit B  
 Sewer Service Area Map  
 As a Contributing Municipality  
 to City of Reading WWTP  
 Berks County, Pennsylvania**

SSM  
 SSM INC.  
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**EXHIBIT "C": CONNECTION LOCATIONS**

Connection Point 1

Connection Point Location	See Exhibit "B"
Meter Location*	North side of Spring Valley Road, as shown in the following map
Meter Manufacturer	Siemens Milltronics Open Channel Meter Model OCM III
Meter Model Number	Unknown as of the Effective Date
Meter Serial Number	Unknown as of the Effective Date
Metering Method	Unknown as of the Effective Date
Meter Type	Ultrasonic meter transducer mounted over a 12" Type S Parabolic flume
Off-Site Communications	Not applicable

\*In accordance with the meeting that took place on July 9, 2012, between representatives of Municipality and the City, the City agreed that the Municipality may maintain a meter for Connection Point 1 at the location identified on Exhibit B and would not be required to move the meter pit immediately prior to the interface with the City's Sewage System. Therefore, this Exhibit shall take precedence over the Agreement as it relates to the requirement to locate a meter for Connection Point 1 immediately before the Connection Point, as set forth in SECTION 11(A)i.

In consideration of the above understanding, Municipality agrees to use its best efforts to minimize the potential I/I that may enter the Municipality's Sewage System between meter and the interface with the City's Sewage System. Such efforts shall include, but are not limited to, an annual visual inspection of the interior of sewer line, repair of the sewer line with reasonable promptness and other annual maintenance consistent with industry standards.

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 (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**

<b><u>Contributing Municipality</u></b>	<b><u>Reserved Capacity (gallons per day)</u></b>
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
<b>TOTAL AGGREGATE RESERVED CAPACITY:</b>	<b>20,417,033</b>

**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 and Sewage Charges

#### 1. Treatment Unit Rate and Sewage Treatment Charge

- 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) – Treatment Unit Rate (underestimated Projection):** 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) – Treatment Unit Rate (overestimated projection):** 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 3 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:

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

**Example Calculation 1(c) - Sewage Treatment Charge:** For purposes of this calculation, assume the following:

- The Municipality has two points of connection to the City's Sewage Transportation System: Connection Point "Y" (metered) and Connection Point "Z" (unmetered).
- Through Connection Point "Y", there are 100 single family residential units (with a sum total of 1,000,000 gallons of water metered flow per quarter), a car wash (with a water metered flow of 30,000 gallons per quarter) and a doctor's office (with a water metered flow of 8,000 gallons per quarter) discharging through Connection Point "Y".
- The meter at Connection Point "Y" measures a total Sewage discharge of 1,505,600 gallons in a quarter.
- For Connection Point "Z", there are 30 single family residential units (with a sum total of 400,000 gallons of water metered flow per quarter), a car wash (with a water metered flow of 30,000 gallons per quarter) and an accountant's office (with a water metered flow of 8,000 gallons per quarter) discharging through Connection Point "Z"
- The Treatment Unit Rate provided in Example Calculation 1(b) is in effect for the applicable quarter.

The initial step to determine the Sewage Treatment Charge is to calculate the number of EDUs applied to the Municipality. Because Connection Point "Y" is metered, the formula to determine the total EDUs attributable to Connection Point "Y" would be:

$$1,505,600 / 12,500 = 120.45 \text{ EDUs}$$

Because Connection Point "Z" is not metered, the EDUs need to be tallied in accordance with SECTION 9(I)i as follows:

30 Residential Units = 30 EDUs regardless of volume

1 Commercial and Industrial discharging 30,000 gallons = 2.40 EDUs

1 Commercial and Industrial discharging less than 12,500 gallons = 1 EDU

Total tally of lateral connection EDUs = 33.40

After the lateral connections are tallied, the EDUs need to be multiplied by the I/I Factor. In this case, there is a metered Connection Point which will be assumed to have similar upstream characteristics that can be used to provide a baseline calculation for the I/I factor. In this instance, the I/I factor is determined by determining the percentage difference between the metered water flow and metered sewage flow by the following formula:

$$(1,505,600 - (1,000,000 + 30,000 + 8,000)) / 1,505,600 = 0.310$$

Therefore, the total number of EDUs resulting from I/I would be determined by the following formula:

$$33.40 \times 0.31 = 10.354$$

These EDUs would then be added together to determine the total number of EDUs for the quarter based on the following formula:

$$120.45 \text{ (Connection Point "Y" EDUs)} + 33.40 \text{ (Connection Point "Z" lateral EDUs)} + 10.354 \text{ (I/I EDUs)} = 164.20 \text{ total EDUs}$$

In order to determine the Sewage Treatment Charge, the total EDUs would then be multiplied by the Treatment Unit Rate in the following formula:

$$164.20 \times \$164.13 = \$26,950.15 \text{ for the quarter}$$

Note: In the event there was not a metered Connection Point with similar upstream characteristics in the above hypothetical, the I/I Factor would be the default 0.2 and the formula for EDUs attributed to I/I would be:

$$33.4 \times 0.75 = 25.05$$

## 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(a) – Transportation Unit Rate (underestimated Projection):** 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:

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

**Example Calculation 2(b) – Sewage Transportation Charge:** For purposes of this calculation, assume the same expenses and revenues for Sewage transportation as set forth in Example Calculation 2(a) and the same information identified in Example Calculation 1(c) with regard to the service area characteristics, except that Connection Point “A” discharges directly into the City’s Sewage Treatment Plant. Because Connection Point “A” does not utilize any component of the City’s Sewage Transportation System, no Sewage Transportation Charge is assessed on the flow through that Connection Point. Therefore, the Municipality’s total Transportation EDUs would be derived from the following formula:

$$33.40 \text{ (Connection Point “B” lateral EDUs)} + 10.35 \text{ (I/I EDUs)} = 43.75 \text{ EDUs}$$

In order to determine the Sewage Transportation Charge, the total transportation EDUs would then be multiplied by the Transportation Unit Rate in the following formula:

$$43.75 \times \$29.93 = \$1,309.44 \text{ for the quarter}$$

## **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 for Year 3.

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 \$30
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:

$$\left( \frac{(\$165 + \$30) \times 100,000}{(50,000)} \right) \times 0.25 = \$97.50$$

**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 \$30
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:

$$\left( \frac{(\$165 + \$30) \times 620,000}{(50,000)} \right) \times 0.5 = \$1209.00$$

#### E. Reserved Capacity Charge

**Example Calculation 7:** Exhibit "G" sets forth the formula for determining the Reserved Capacity Charge. Assume the Municipality was generally operating a few thousand gallons per day below its Reserved Capacity and proposed new construction that would result in a development of 50 new single family residential houses about ten and a half years from the Effective Date. The initial step to determine the Reserved Capacity Charge is to determine the total amount of additional Reserved Capacity necessary to accommodate the additional flow. The Agreement allows for flexibility in determining the additional Reserved Capacity based on the Municipality's discretion (but subject to the City's reasonable approval). For purposes of this Example Calculation, assume that the Municipality estimated that it would need to increase its Reserved Capacity by 6,000 gallons per day to accommodate the additional flow from the new development.

The next step would be to apply the 3% annual inflation factor to \$16 (for the infrastructure improvements component of the Reserved Capacity Charge) and \$5 (for capital improvement design component of the Reserved Capacity Charge) compounded annually over ten years. The infrastructure improvement component would then equal \$21.50 and the capital improvement design component would equal \$6.72.

Therefore, the Reserved Capacity Charge would be determined based on the following formula:

$$(6,000 \times \$21.50) + (6,000 \times \$6.72) = \$169,320$$

**EXHIBIT "I": QUARTERLY REPORT FORMS**

Quarter Ending: \_\_\_\_\_, 20\_\_

**Quarterly Debt Service Statement**

USER	RESERVED CAPACITY (GPD)	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			
<b>TOTAL FOR CURRENT QUARTER</b>			\$
<b>PREVIOUS BALANCE</b>			+\$
<b>INTEREST</b>			+\$
<b>VOLUME EXCEEDANCE SURCHARGES COLLECTED</b>			+\$
<b>INFRASTRUCTURE CONTINGENCY CUMULATIVE TOTAL</b>			\$
<b>LESS REDUCTIONS **</b>			-\$
<b>INFRASTRUCTURE CONTINGENCY FUND BALANCE</b>			= \$

\*\* Explanation provided on separate sheet

**Quarterly Sewer Flow Information**

Total Volume of Sewage Flow at the Sewage Treatment Plant: \_\_\_\_\_ (Millions of Gallons)

USER	Total EDUs from lateral users from all unmetered Connection Points	Total EDUs from I/I from all unmetered Connection Points	Total Metered Flow from all metered Connection Points (Gallons x 1,000)	Total EDUs	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.							