

REQUEST FOR PROPOSALS  
FOR A  
WASTEWATER CONCESSION  
FOR THE  
CITY OF YORK AND YORK CITY SEWER AUTHORITY, YORK, PENNSYLVANIA  
MUNICIPAL WASTEWATER SYSTEM

ISSUE DATE: OCTOBER 26, 2015  
INITIAL SUBMISSION DUE DATE: NOVEMBER 24, 2015  
DEADLINE TO BE INFORMED OF QUALIFICATION: JANUARY 15, 2016  
FINAL PROPOSAL DUE DATE: MAY 17, 2016



ISSUED BY:

THE CITY OF YORK  
101 South George Street  
York, Pennsylvania 17401

and

THE YORK CITY SEWER AUTHORITY  
1701 Black Bridge Road  
York, Pennsylvania 17402

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## APPENDICES

Appendix A – *Initial proposed form of Concession Agreement will be delivered to all Respondents on December 23, 2015*

Appendix B – *Initial proposed form of Operating Standards will be delivered to all Respondents on December 23, 2015*

Appendix C – Calendar of Events

Appendix D – Confidentiality and Data Site Usage Agreement

Appendix E – Initial Submission Certification

Appendix F – Agreement for Proposal Security

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Appendix I – Statement of Ownership

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Appendix K – Contract and Lobbyist Disclosure

Appendix L – Business Proposal

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NOTE: The information provided herein as Appendices is intended to give the Respondents a general understanding of the System. Said information may not in all instances be up to date since the initial data, and consequently the Appendices, are not guaranteed as to accuracy.

## SECTION 1 INTRODUCTION AND GENERAL INFORMATION

### 1.1 Introduction and Purpose

The York City Sewer Authority (the “Authority”) and The City of York, York County, Pennsylvania (the “City”) are the owners of all of the assets comprising the City’s municipal wastewater system (collectively, the “System”). The Authority currently leases its portion of the System to the City, which in turn operates the entire System, pursuant to a long-term lease, dated September 15, 1987, as amended, whose term extends to December 1, 2027 (the “Lease”). The City and the Authority are considering terminating the Lease in favor of a long-term concession and lease (the “Concession”) with a qualified firm or other entity that during the term thereof (i) will provide the appropriate and necessary management, operation and maintenance services associated with the System and (ii) will also provide, or secure the provision by a qualified firm or other entity of, design and construction services for certain improvements to the System (collectively, the “Services”). The Concession is expected to be a long-term agreement granting the successful respondent (the “Concessionaire”) the exclusive right to operate the System and to collect wastewater revenues from the System through the term of the Concession, currently anticipated to be fifty (50) years. It is anticipated that if the Concession were to close successfully, the Authority would be dissolved concurrently at the time of closing and its rights and responsibilities under the Concession Agreement would be assigned to the City for the entirety of the term of the Concession.

The most valuable assets of the wastewater system are the dedicated and experienced professionals who have worked diligently over the years to make the system what it is. The value that these individuals bring to this Concession is immeasurable, and it is the intent of the City and the Authority that this value be recognized throughout this procurement process.

This request for proposals (“RFP”) provides to those interested in submitting proposals for the Concession sufficient information to enable them to prepare and submit those proposals. This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included and other requirements specific to this RFP.

The City and the Authority desire to receive from each party making an initial submission (a “Respondent”) that is qualified by the Review Committee a proposal that is fully responsive to this RFP, that indicates clear capability of providing quality Services to the System and to System customers (“Proposal”) and that includes:

- (a) an upfront Concession fee; and
- (b) annual fees for use of the System; and
- (c) an agreement on the terms of the form of concession agreement (the “Concession Agreement”) which, when completed, will be attached hereto as **Appendix A**, and of the form of operating standards (the “Operating Standards”) which, when completed, will be attached hereto as **Appendix B**, for the System.

No alternative Proposals will be accepted. In their initial submissions, each Respondent will be required to sign a certification in the form attached hereto as **Appendix E**, certifying to its bona fide belief in such capability and its intention to submit a full Proposal.

The Concession Agreement will contain terms and conditions regarding the concession and lease of the System. The Operating Standards will contain detailed requirements for operating the System in conformity with the public interest, including without limitation: quality standards, customer responsiveness standards and rate caps. There will be penalties assessed for failure to meet these standards, including operating liquidated damages.

## 1.2 Communications

All contact should be directed only to both of the Advisor Representatives listed below. Respondents should NOT contact any officials, staff or personnel at the City or the Authority regarding this RFP. Any such contact will be grounds for disqualification.

*Advisor  
Representatives:*

**Primary**

Susquehanna Group Advisors, Inc.  
830 Sir Thomas Court  
Suite 150  
Harrisburg, PA 17109  
Attn: Jay Wenger, Managing Director

Phone: (717) 561-8089, ext. 5002  
email: [jwenger@susgrp.com](mailto:jwenger@susgrp.com)

**Alternate**

Susquehanna Group Advisors, Inc.  
830 Sir Thomas Court  
Suite 150  
Harrisburg, PA 17109  
Attn: John Hewlett, Director

Phone: (610) 584-5639  
email: [jhewlett@susgrp.com](mailto:jhewlett@susgrp.com)

If a Respondent has any questions regarding this RFP, the Respondent must submit the questions by email (with the subject line “*Wastewater Concession RFP Question*”) to the Advisor Representatives at both [jwenger@susgrp.com](mailto:jwenger@susgrp.com) and [jhewlett@susgrp.com](mailto:jhewlett@susgrp.com). Questions must be submitted via email no later than the date indicated on the Calendar of Events (as hereinafter defined). The Respondent shall not attempt to contact the Advisor Representatives by any other means. A Respondent who submits a question after the deadline date for receipt of questions indicated on the Calendar of Events attached hereto as **Appendix C** (the “Calendar of Events”) assumes the risk that its Proposal will not be responsive or competitive because the Authority and the City are not able to respond before the Proposal receipt date or otherwise in sufficient time for the Respondent to prepare a responsive or competitive Proposal. The Calendar of Events may be revised and restated with notice to the participating Respondent via the Data Site (defined below), and care will be taken to avoid, to the degree possible, a change to dates that would prejudice the responsiveness or competitiveness of any Proposal. If there is a conflict between any dates stated in herein and in the Calendar of Events, the Calendar of Events’ dates will control.

All questions and responses will be posted on the to the Data Site at <http://susquehannagroupadvisors.com/data-room> (the “Data Site”) and are considered as an addendum to, and part of, this RFP. Each Respondent shall be responsible to monitor the Data Site for new or revised RFP information. The City and the Authority shall not be bound by any verbal information nor shall they be bound by any written information that is either not contained within the RFP or formally issued as an addendum by the City and the Authority. The City and the Authority do not consider questions to be a protest of the RFP specifications or of the procurement.

The City will hold a pre-Proposal conference as specified on the Calendar of Events. The purpose of this conference is to provide opportunity for clarification of the RFP and to schedule a physical inspection of the System as part of each Respondent’s due diligence activity. Respondents should forward all questions to the Advisor Representatives to ensure adequate time for analysis before the City or the Authority provide an answer. Respondents may also ask questions at the conference. In view of the limited facilities available for the conference, Respondents should limit their representation to eight (8) individuals per Respondent. The pre-Proposal conference is for information only. Any answers furnished during the conference will not be official until they have been verified, in writing, and posted at the Data Site. All questions and written answers will be posted on the Data Site as an addendum to, and shall become part of, this RFP.

Subsequent to issuance of this RFP, the City and the Authority, through the issuance of an addendum to all firms that have received a copy of this RFP, may modify, supplement, amend or restate provisions of this RFP. If the City and the Authority deem it necessary to revise any part of this RFP at any time, the Advisor Representatives will post an addendum to the Data Site. (Respondents will need to register with the Advisor Representatives, execute the Confidentiality and Data Site Usage Agreement attached hereto as **Appendix D** (the “Confidentiality Agreement”) and obtain a password before Data Site access is granted.) It is the Respondent’s responsibility to periodically check the Data Site for any new information, revisions or addenda to the RFP. Answers to the questions asked during any questions and answers period also will be posted to the Data Site as an addendum to the RFP.

**RESPONDENTS MAY NOT ATTEMPT TO COMMUNICATE WITH THE CITY OR THE AUTHORITY (THROUGH THE ADVISOR REPRESENTATIVES, THE DATA SITE OR OTHERWISE) AFTER THE INITIAL SUBMISSIONS ON NOVEMBER 24, 2015 AND UNTIL THE DEADLINE FOR THE RESPONDENTS TO BE INFORMED IF THEY ARE QUALIFIED ON JANUARY 15, 2016, EXCEPT RESPONDENTS MAY SUBMIT AN AMENDED INITIAL SUBMISSIONS, IF APPLICABLE, IN THAT INTERIM PERIOD.**

*To be considered for selection, the (i) initial submissions and (ii) Proposals must arrive at the offices of the Advisor Representatives on or before the times and dates specified for them in the Calendar of Events. Initial submissions and Proposals will not be accepted via email or facsimile transmission. Respondents who send materials by mail or other delivery service should allow sufficient delivery time to ensure timely receipt. If, due to inclement weather, natural disaster, or any other cause, the offices of the Advisor Representatives are closed on the applicable response date, the deadline for submission will be automatically extended until the next business day on which the office is open. The hour for submission shall remain the same. The City and the Authority will reject, unopened, any late materials.*

### **1.3 RFP Documents**

It is the responsibility of each Respondent to inspect its copy of this RFP to determine that a complete set of the documents, including appendices, are included. If a Respondent believes that its copy of this RFP is incomplete, it should contact the Advisor Representatives. The City and the Authority will make reasonable arrangements with the Respondent to provide any missing documents, including any addenda and/or clarifications, to this RFP.

Neither the City nor the Authority, nor their officials, agents, employees or representatives, shall be responsible for errors, omissions, incomplete submissions or misinterpretations resulting from the Respondent's use of an incomplete set of RFP documents in preparing or submitting its Proposal.

The RFP documents have been made available only for the purpose of soliciting Proposals for the provision of the Services. No license or grant is conferred or implied to the Respondent or to any other person for any purpose.

### **1.4 Submission of Proposal and Proposal Security**

A Proposal submitted in response to this RFP is deemed responsive if it complies with the provisions of Sections 3.2, 3.3 and 3.6. Each Respondent must read Sections 3.2, 3.3 and 3.6 carefully in order to obtain a complete understanding of the requirements for submission of its Proposal.

Firms submitting a Proposal are required to submit together with their initial submissions a certified check or cashier's check, payable to the Authority in the amount of Twenty Five Thousand Dollars (\$25,000.00), along with an executed Agreement for Proposal Security in the form attached hereto as **Appendix F**. Any Proposal security must be valid for a period of at least one hundred eighty (180) days. No Proposal shall be considered unless accompanied by the required Proposal security. The respective Proposal security(ies) *will not be returned* to any Respondent that withdraws its Proposal at any time after May 13, 2016, as indicated in the Calendar of Events. At any time, the City or the Authority may ask for written confirmation from any Respondent that such Respondent's Proposal is still active, and if, after May 13, 2016, such Respondent does not provide such written confirmation within three (3) business days of such request by the City or the Authority, the City and the Authority may deem the Respondent to have withdrawn, and, if so, will send subsequent notice of such deemed withdrawal to the Respondent. The Proposal security submitted by the unsuccessful Respondents will be returned within ten (10) business days after the execution of the Concession Agreement by and between Authority and the successful Respondent or earlier, if the Respondent is determined to be unqualified. The Proposal security of the selected Respondent will be returned promptly after the financial close under the Concession Agreement.

### **1.5 Conditions with Respect to this RFP**

By responding to this RFP, the Respondent acknowledges and consents to the following conditions relative to the submission, review and consideration of its Proposal:

- (a) The issuance of this RFP is not intended, and shall not be construed, to commit the Authority or the City to execute any Concession Agreement.
- (b) Neither the City nor the Authority, nor their respective agents, staff or consultants, will be liable for any claims or damages resulting from the solicitation or collection of Proposals, nor will there be any reimbursement to Respondents for the cost of preparing the Proposals or for participating in this RFP process.
- (c) All Proposals will become the property of the City and the Authority and will not be returned.
- (d) Information of a confidential or proprietary nature will be kept confidential during and after the procurement process, subject to law, pursuant to Section 1.8 when such information is properly so identified by the Respondents, as further described in Section 1.8.
- (e) Failure of any Respondent to submit a Proposal that completely addresses the requirements of this RFP (including submission as part of such Proposal of all documents required to be submitted under the terms of this RFP) at the times and in the manner specified in this RFP, may result in the rejection of the Proposal in the sole discretion of the City.
- (f) All activities related to the provision of the Services as contained herein shall be subject to compliance with all applicable federal, State and local laws, environmental regulations and requirements.
- (g) Any and all initial submissions not received by 5:00 pm Eastern Time on November 24, 2015 will be returned, unopened, to the firm or person submitting such and will not be considered. Similarly, any and all Proposals not received by 2:00 pm Eastern Time on May 17, 2016 will be returned, unopened, to the firm or person submitting such and will not be considered.

## **1.6 Reservation of Rights and Options with Respect to this RFP**

The City and the Authority, in their discretion, reserve the following rights and options with regard to any Proposal:

- (a) To abandon the procurement process including the right to decline to award the Concession for any reason.
- (b) To accept the Proposal that, in the City's and the Authority's judgment, best serves the interests of the City, the Authority and the citizens of the City of York and the municipalities served by the System.



- (c) To waive any condition, requirement or informality which would otherwise constitute non-conformance of the Proposal with the provisions of this RFP.
- (d) To reject any or all Proposals.
- (e) To reject incomplete or nonresponsive Proposals.
- (f) To change or alter the terms and conditions of this RFP so long as all of the parties who have indicated an interest or have otherwise submitted information receive copies of such changes.

### **1.7 Responsibilities of the Respondent in Connection with this RFP**

It is the obligation and responsibility of each Respondent before submitting a Proposal to:

- (a) Review the terms of this RFP so that it is familiar with all aspects of it.
- (b) Inspect the System to be able to determine, separate and apart from this RFP and any of the information provided by the Authority and the City, the Services it is agreeing to provide.
- (c) Analyze all applicable federal, state and local laws, regulations, ordinances, permits, approvals and orders that may affect the cost, performance or furnishing of the Services required under the terms of this RFP.
- (d) Notify the Advisor Representatives in writing prior to the submission of responses to this RFP of any conflicts, errors or discrepancies therein.

Each Respondent is responsible for obtaining whatever information it deems necessary and in undertaking all inspections, examinations and studies it deems necessary to obtain sufficient data and information to enable it to submit a Proposal. Any document provided to one Respondent will be provided to all Respondents. By submitting a Proposal, a Respondent will be deemed to have acknowledged its opportunity to undertake all inspections and to examine all necessary data and information to enable it to submit a Proposal.

At any time prior to the receipt of Proposals by the Authority and the City, Respondents may ask questions or request information. All such questions or information requests shall, together with the City's and/or the Authority's response thereto, be shared with all Respondents.

### **1.8 Confidential and Proprietary Information**

If the Respondent chooses to include material of a proprietary nature in the initial submission or the Proposal, the City and the Authority, in their sole discretion and subject to applicable law, will keep such material confidential, but only to the extent that it contains trade secrets which if disclosed would cause substantial injury to the Respondent's competitive position. However, neither the City nor the Authority will assume any liability for any loss, damage or injury

that may result from any disclosure or use of marked data or any disclosure of this or other information during the review of the initial submissions and Proposals. The Respondent must specifically identify the section of its initial submission and/or Proposal that contains such information by properly marking each applicable page. Preferably, any sections which contain material of a proprietary nature shall be severable or removable to assist the Authority in protecting this information. The Respondent also shall include the following notice in the introduction of the relevant material:

“Material in the following sections labeled “Proprietary Information”, contain information that is a trade secret which, if disclosed, would cause substantial injury to (Respondent’s) competitive position. (Respondent) requests that such data be used only for the evaluation of the Proposal, and understands that disclosure will be limited only to the extent that the City and the Authority determines it proper or to the extent that the City or the Authority deems disclosure necessary according to law. If a Concession is awarded to (Respondent), the City and the Authority will have the right to use or disclose the data as may be provided in the applicable Concession Agreement executed with the Respondent.”

***Notwithstanding the above, Proposal forms and appendices (including cost information) and revisions and markups to the Concession Agreement will not, under any circumstances, be considered proprietary or confidential information. Respondents are advised to read Section 4.3 of the RFP carefully regarding the limitations of Pennsylvania law.***

## **SECTION 2 DESCRIPTION OF THE SYSTEM ASSETS**

The System is primarily comprised of the wastewater treatment plant (the “Plant”), the interceptors (the “Interceptors”) and the collection system (the “Collection System”). The Plant and Interceptors are owned by the Authority and leased by the Authority to the City, which is responsible for its operation. The Interceptors are the pipes that convey sewage flow from the interconnected municipalities, and include 65,000 linear feet (lf) of sewer main ranging in size from 8 to 72 inches in diameter and in age from 10 to 50 years old. The Collection System is owned and operated by the City. The Collection System are the pipes that convey sewage flow from the properties within the City and is comprised of 489,000 lf of sanitary sewer pipe ranging in size from 6 to 27 inches in diameter and ranging in age from 10 to 80 years old, and includes one pumping station within the Collection System area. As a whole, the System provides sewer collection, regional wastewater conveyance, wastewater treatment and industrial pretreatment compliance.

The Authority is permitted to discharge wastewater from the treatment plant through a National Pollutant Discharge Elimination System (“NPDES”) permit, effective February 1, 2008, and discharges into Codorus Creek. The NPDES permit includes interim nutrient reporting requirements and final effluent nutrient limitations for total nitrogen and total phosphorous. A NPDES permit renewal application was submitted in July of 2012 and is currently being reviewed by Pennsylvania Department of Environmental Protection (“PADEP”). There are no known current violations under any PADEP or U.S. Environmental Protection Agency permits.

The System serves the City and six additional municipalities: Manchester Township, West Manchester Township, York Township, North York Borough, West York Borough and Spring Garden Township. The City is a party to intermunicipal agreements with those municipalities, providing for sewage treatment and disposal. Those agreements also detail how additional reserve capacity in the Plant will be distributed among the municipalities. The City has a separate agreement with Springettsbury Township for the sale of a portion of the City's capacity.

The Plant itself was originally constructed in 1916 and has been enlarged and upgraded with six major projects. The Plant has a 26 million gallons per day (MGD) hydraulic capacity and an organic capacity of 62,884 pounds per day and is located north of the City in Manchester Township on 41.6 acres.

The first major Plant project was completed in the early 1950s and converted the primary treatment plant to an activated sludge plant using the contact stabilization process. This project also added anaerobic sludge digestion. The rated plant capacity at the time was 18 MGD.

The next major upgrade was completed in the early 1980s and expanded the Plant from 18 MGD to the current rating of 26 MGD. This expansion was accomplished by the construction of an 8 MGD pure oxygen treatment system designated as Train 1 and the existing 18 MGD treatment facility was designated as Train 2. This upgrade also added chemical phosphorus removal.

By the mid-1980s, nitrification became a regulatory requirement, and the Plant was then again upgraded. This time, a third treatment train, Train 3, was added on acquired property adjacent to the existing Plant property. Train 3 provided the additional tankage required to accomplish nitrification and allowed the phosphorus removal process to be converted from chemical to biological removal. The project also added an effluent filtration system and converted the disinfection process from chlorine to ultraviolet (UV) light disinfection. At the time, the City's UV disinfection system was the largest in the eastern United States of America. A state-of-the-art, plant-wide computer control and monitoring system was added along with an engine-driven, 1,500 kW cogeneration system using the digester gas. Most of the other existing treatment facilities were improved under this major project completed by 1990.

In 1996, a need to increase the disinfection peak hydraulic treatment capacity to 57 MGD prompted a new design to replace the original UV disinfection system. To replace the existing system, a low-pressure, high-intensity system was selected and was installed within the existing channels with minor modifications. The installation of the new system was sequenced to maintain continuous operation of the Plant.

By the mid-2000s, nitrogen removal was required, and the treatment process was again modified to meet the new biological nutrient removal (BNR) requirement. At this time, the aeration system was modified to include de-nitrification while maintaining biological phosphorus removal. The BNR capacity of the Plant was set at an average daily flow rate of 18 MGD, which it was not expected to exceed within the 20 years thereafter.

In 2009, the implementation of the Ostara Pearl® process was integrated to treat liquid remaining from sludge dewatering (centrate) by removing ammonia and phosphorus and converting it into a high-quality, environmentally safe fertilizer. The process reduces the ammonia and phosphorus load in the centrate returned to the BNR treatment process. At this same time, the Plant-

wide computer control and monitoring system was updated with more modern software and hardware.

The existing 1,500 kW cogeneration system was replaced in 2010 with newer technology consisting on Capstone Microturbines with a rated capacity of 1,600 kW. The new facility replaced the internal combustion-engine-driven generators with three microturbines using methane gas and five natural gas units to generate electricity.

### **SECTION 3 INSTRUCTIONS FOR PREPARATION AND SUBMISSION OF PROPOSALS**

#### **3.1 General Provisions**

The Proposal process is divided into four phases:

**Phase I:** Initial Submission of Respondent Team Structure, Technical Capability and Financial Capability

**Phase II:** Review of Initial Submissions

**Phase III:** Respondents' Review and Inspection of System; and Concession Agreement and Operating Standards

**Phase IV:** Proposal Submission; Best and Final Offers; and Selection of Concessionaire

All Proposals submitted by the Respondents must be submitted in accordance with the procedure set forth in this Section 3. *Failure to deliver timely the initial submission prior to the date and time indicated on the Calendar of Events will result in the automatic disqualification of the potential respondent.*

#### **3.2 Initial Submission (Phase I)**

Phase I requires the Respondent to submit its initial submission for qualification. The submission will be reviewed by a Review Committee. The following criteria must be addressed in the initial submission: (a) team structure; (b) technical capability; and (c) financial capability, all as set forth below. The Review Committee will give equal weight to each of these criteria, such that each criteria will be given a maximum of 30 points for an aggregate maximum of 90 points. In order to qualify to participate in the subsequent phases, the Respondent must score at least 20 points for each criteria, and must also score at least 70 points in the aggregate. Any Respondent that does not meet the minimum criteria after the initial submission or the amended initial submission will not be permitted to participate in the subsequent phases.

#### **RESPONDENT TEAM STRUCTURE (30 points)**

To qualify as a potential Concessionaire, the Respondent must demonstrate sufficient team structure with respect to the following areas:

- (a) Adequacy of proposed team structure to provide sufficient assurance that all technical and financial obligations will be met over the life of the Concession.
- (b) Adequacy of definition of roles and responsibilities of team members and key personnel.
- (c) Adequacy of disclosure of controlling interests and team integrity.

### **TECHNICAL CAPABILITY (30 points)**

To qualify as a potential Concessionaire, the Respondent must demonstrate technical capability with respect to the following areas of expertise:

- (a) Operation and maintenance of wastewater systems.
- (b) Customer service improvements and enhancements.
- (c) Customer safety, security and environmental responsibilities.
- (d) Ability to execute an efficient, timely and seamless transition plan.
- (e) Capability to undertake required capital improvements.
- (f) Ability to offer other System enhancements with a demonstrated knowledge of technologies.

### **FINANCIAL CAPABILITY (30 points)**

To qualify as a potential Concessionaire, the Respondent must demonstrate financial capability with respect to the following areas:

- (a) Financial capability to make any upfront Concession fee payment and undertake other commitments required under the Concession Agreement.
- (b) Financial ability to maintain and upgrade the System.
- (c) Adequate sources of operating capital.
- (d) Ability to secure financing.
- (e) Ability to finance future System expansion.

### **3.3 Format and Required Information for Initial Submission (Phase I continued)**

All initial submissions should follow the format outlined below. The written initial submission shall be bound and prepared on 8-1/2" x 11" paper. A limited number of 11" x 17" fold-out sheets for exhibits are acceptable. One original and three (3) hard copies of the initial submission shall be submitted, with the original copy of the initial submission clearly marked as the original and must contain the original signed documents and the certified check. Initial submissions shall be enclosed in an opaque, sealed envelope or otherwise boxed, marked with the name and address of the Respondent and with the legend: ***"INITIAL SUBMISSION TO THE YORK MUNICIPAL WASTEWATER SYSTEM RFP."*** All pages are to be sequentially numbered. Unnecessarily elaborate initial submissions are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable. Any concerns with providing the required information should be communicated to the Advisor Representatives in a prompt manner.

- (a) Cover Page (to include identification of all team members)
- (b) Cover Letter (2 pages maximum)
- (c) Table of Contents
- (d) Executive Summary (optional)
- (e) Respondent Information:
  - (i) *Description of Respondent:* Provide a description of the team, including a description of all team members and the anticipated legal relationship (governance and capital structure) among the team members (e.g., partners, shareholders, members, operators, subcontractors, etc.) as appropriate. All equity investors should be identified.
  - (ii) *Roles of Team Members and Key Personnel:* Briefly outline the roles of the team members and key personnel. In doing so, please ensure that all the requirements as detailed in Section 3.2 are addressed.
  - (iii) *Operator:* Specifically identify the entity or entities that will act as operator of the System under the proposed Concession.
  - (iv) *Contact Person:* Provide a single contact person for all future communication between the Advisor Representatives and the Respondent. Please identify the contact person's name, title, organization, address, telephone number, fax number and email address.
  - (v) *Controlling Interest:* Identify the individuals or companies who hold a major or controlling interest in each team member.
  - (vi) *Expected Advisors:* Identify the companies and individuals who are expected to act as legal, financial or other advisors for the team.

- (vii) *Comparable Projects*: Provide a list of comparable projects in which team members have participated. Respondents should specify how these comparable projects relate to the proposed Concession, their specific role(s) on these other projects, and the extent to which team members have worked together in prior projects.
  - (viii) *References*: Provide a list of team member references. Include each reference's organization, title, email and phone number. These references should be able to describe the relevant qualifications and capabilities of each team member seeking to take leading roles in the governance, operations, and maintenance of the System.
  - (ix) *P3 Experience*: Provide at least three references, if available, in which the team or team members have experience with public-private partnerships or long-term management contracts with government entities. Include each reference's organization, title, email and phone number.
- (f) **Technical Capability**: Respondents must address the following areas with respect to technical capability:
- (i) **Operation & Maintenance Expertise**: Respondents must provide evidence demonstrating their ability to operate and maintain facilities similar to the System. Specifically, Respondents should have:
    - A. substantial wastewater facility maintenance and operation experience.
    - B. advanced knowledge of wastewater facilities maintenance, repair, construction and practical application of equipment and materials in wastewater facility operations.
    - C. demonstrated understanding in wastewater facility aging behavior to assess and determine the applicability of remedial maintenance action.
    - D. all the capabilities necessary to operate and maintain the System successfully including wastewater fee management and operations, administration, marketing and public relations.
- (g) **Customer Service**: Respondents must demonstrate their commitment to achieving the highest standards of customer service and satisfaction. Specifically, the Respondent must highlight its experience and qualifications providing excellent customer service to the public using its wastewater services. Additionally, as a prerequisite, the Respondent will be expected to provide a plan to execute a seamless transition to Concessionaire operations while maintaining the highest standards of customer service.

- (h) Safety and Security: Respondents must demonstrate their ability to address and resolve safety and security issues. Specifically, the Respondent should have:
  - (i) knowledge of wastewater and public safety and security techniques and methodologies.
  - (ii) experience in emergency response support.
- (i) Capital Improvements. Respondents must demonstrate their ability to undertake efficiently the required capital improvements to the System during the term of the Concession Agreement. Respondents must demonstrate expertise in relevant wastewater engineering standards, specifications, policies, practices and processes.
- (j) Financial Capability: Respondents should address the following areas with respect to financial capability:
  - (i) *Financial Capacity to Make Upfront Payment; Maintain the Concession Assets.* Respondents must demonstrate their financial capacity to pay the upfront consideration and to maintain the System for the term of the Concession. To demonstrate sufficient financial capacity, the primary equity providers and operators must provide copies of audited financial statements for the past three years, together with any other relevant financial information. If audited financial statements cannot be provided, team members should provide enough financial information to demonstrate that they have the financial resources to successfully execute a project of this nature and scope.
  - (ii) *Ability to Raise Financing.* Respondents must provide specific evidence demonstrating their ability to raise financing for a project of this nature and scope. Specific factors that will be assessed include:
    - A. capability of issuing debt and raising equity in the current capital market.
    - B. the number and size of past relevant transactions.
    - C. specific experiences on past relevant transactions.
- (k) Confidentiality Agreement. Respondents must execute and deliver the Confidentiality Agreement attached as **Appendix D**. Respondents will be required to sign the Confidentiality Agreement to have access to the due diligence process.
- (l) Certification of Capability and Proposal Intention. Respondents will be required to sign an Initial Submission Certification in the form attached hereto as **Appendix E** and as described in Section 1.1.



- (m) Certified check and executed Agreement for Proposal Security in the form attached hereto as **Appendix F** and as described in Section 1.4.

***The Calendar of Events contains mandatory pre-Proposal conferences, Respondent meetings and submissions of document comments. Failure to attend and/or timely submit will result in a Respondent's automatic disqualification, the deemed withdrawal of the Respondent, and the forfeiture of its Proposal security.***

The Calendar of Events may be revised and restated with notice to the participating Respondent via the Data Site, and care will be taken to avoid, to the degree possible, a change to dates that would prejudice the responsiveness or competitiveness of any Proposal. If there is a conflict between any dates stated in herein and in the Calendar of Events, the Calendar of Events' dates will control.

### **3.4 Review of Initial Submissions (Phase II)**

During Phase II, the Review Committee will review the initial submissions to determine the qualification of Respondents. In accordance with the Calendar of Events, Respondents will be informed of judged deficiencies in their initial submissions, in writing, during the week of December 7, 2015. Those Respondents receiving notice of technical deficiencies will have a one-time opportunity to amend their initial submission, in writing, to attempt to address those issues. Such amendment must be received by December 23, 2015. Respondents will be informed no later than January 15, 2016 if they have been determined to be qualified.

During the period between the initial submissions on November 24, 2015 and the deadline for the Respondents to be informed if they are qualified on January 15, 2016 (the "No Communication Period"), Respondents may not attempt to communicate with the Review Committee, the City or the Authority (through the Advisor Representatives, the Data Site or otherwise), except Respondents may submit their amended initial submission, if applicable, as described above.

The Review Committee (through the Advisor Representatives, the Data Site or otherwise) reserves the right to seek further clarification and additional information at any time, including during the No Communication Period, if it determines in its discretion that such clarification or information is necessary for consideration of the Respondent's qualifications, and, in such event, the applicable Respondent(s) shall communicate as instructed.

### **3.5 System Inspection, Due Diligence, Concession Agreement and Operating Standards (Phase III)**

Promptly after selected Respondents have been notified that they are qualified to participate in subsequent phases ("Selected Respondents"), Phase III will begin. Selected Respondents will have the opportunity to conduct due diligence on the System assets through (a) scheduled System tours and additional inspections by Respondents or their agents, and (b) management presentations in the course of such tours.

On December 23, 2015, all Respondents will be provided drafts of the Concession Agreement and Operating Standards on which to comment. Under the Calendar of Events, Selected Respondents will submit a first set of clean (Word format) and blackline comments (Word or PDF format) by February 9, 2016, and, after review by the City and Authority, the Review Committee and their advisors, will attend one discussion session with representatives of the City and Authority and their advisors. A second draft of the Concession Agreement and Operating Standards will be presented by the City and the Authority on April 1, 2016. Thereafter, there will be an opportunity for Selected Respondents to submit a second set of clean (Word format) and blackline comments (Word or PDF format) by April 25, 2016. On May 6, 2016, a final version of the Concession Agreement and Operating Standards will be released by the City and Authority in advance of Proposal submissions.

A Respondent may withdraw itself at any time until May 13, 2016, provided that a written request to withdraw is timely delivered to the Advisor Representatives. The opening of all Proposals by the Authority and the City will be on May 17, 2016. *Once the Proposals have been opened by the Authority and the City, Respondents may not withdraw their Proposals for a period of one hundred eighty (180) days, as more fully described in Section 4.2 below.*

### **3.6 Proposal Submission (Phase IV)**

Phase IV involves the submission of final Proposals by all Selected Respondents. All Selected Respondents who submit a response to this RFP must comply with the requirements set forth in this Section 3.6 for submitting a final Proposal. *Provided that the Proposal requirements are met and the Respondent is found to be qualified*, the award of the Concession will be based both on the amount of up-front payment (the “Consideration”) and on the annual fees paid for use of the System (the “Annual Payments”) included as part of **Appendix L**. In accordance with Section 4.3, the contents of Proposals will not be disclosed at the time of opening of the Proposals.

- (a) Format. Each Proposal shall be in writing and formatted in accordance with the following outline:

#### **Section 1.0 Executive Summary**

**Appendix G:** Transmittal Letter

**Appendix H:** Non-Collusion Affidavit

#### **Section 2.0 Project Team and Technical Capability Information**

**Appendix I:** Statement of Ownership

**Appendix J:** Operator Information

**Appendix K:** Contract and Lobbyist Disclosure

#### **Section 3.0 Business Proposal**

**Appendix L:** Business Proposal

#### **Section 4.0 Escrow Agreement and Proposal Cash Deposit**

**Appendix M:** Escrow Agreement secured by Cash Deposit

- (b) Submission Instructions and Requirements. One original and three (3) hard copies of the Proposal shall be submitted, with the original copy of the Proposal clearly marked as the original and must contain the original signature forms and other original documents. Proposals shall be enclosed in an opaque, sealed envelope or otherwise boxed, marked with the name and address of the Respondent and with the legend: ***“PROPOSAL TO THE YORK MUNICIPAL WASTEWATER SYSTEM RFP.”*** Unnecessarily elaborate Proposals are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable. Any concerns with providing the required information should be communicated to the Advisor Representatives in a prompt manner. In accordance with Section 4.3, the contents of the Proposal will not be made public until after the award of a contract.

**THE SEALED PROPOSAL MUST BE RECEIVED NO LATER THAN 2:00 P.M. EASTERN TIME ON MAY 17, 2016.**

**IN ADDITION, RESPONDENTS MUST SUBMIT THE PROPOSAL CASH DEPOSIT AND THE DOCUMENT IN SECTION 4.0 ABOVE NO LATER THAN 2:00 P.M. EASTERN TIME ONE DAY BEFOREHAND, ON MAY 16, 2016.** Wire instructions will be provided prior to that date.

- (c) Acknowledgment and Agreement. By submitting a Proposal, Respondents acknowledge and agree to the following conditions:
- (i) All Proposals submitted in response to this RFP shall become the property of the City and the Authority. As such, after the award of the Concession, or after the opening and rejection of all Proposals, Proposals submitted will become public records subject to public review under applicable law, subject to certain exceptions as described in Section 4.3.
  - (ii) The selection of a Proposal shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of the Respondent under the Concession Agreement as may be executed between the Respondent and the Authority.
  - (iii) Respondents and their representatives shall comply with the communications protocol set forth in Section 1.2 with respect to all communications concerning this RFP.
  - (iv) Only one Proposal from each Selected Respondent shall be considered, and each Selected Respondent may not be involved in more than one Proposal. For purposes of this subclause (iv), “Selected Respondent” shall mean and include any Affiliates of Respondent, where “Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person, where the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management

and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

- (v) Proposals shall comply with all content requirements of Sections 3.2, 3.3 and 3.6. Failure to comply with such requirements may result in a Respondent's Proposal being deemed non-responsive.
- (vi) The receipt of a Proposal from any Respondent does not waive or abridge the rights of the City or the Authority to find such Respondent is not qualified or that the Respondent's Proposal is non-responsive to the requirements of this RFP.

### **3.7 Best and Final Offer (Phase IV continued)**

It is important for Selected Respondents to deliver their best offers in their Proposals. However, if the Consideration set forth in **Appendix L** of one or more of the qualifying Proposals (other than the offer setting forth the highest amount of combined Consideration and Annual Payments) is within 10% of the amount of the combined value of Consideration and Annual Payments in such highest offer, the City and the Authority will allow the Selected Respondent whose offer sets forth the highest amount of combined value of Consideration and Annual Payments and any Selected Respondent(s) whose offer is within 10% of such highest amount of combined value of Consideration and Annual Payments (the "Applicable Respondent") to increase the amount of proposed Consideration and/or Annual Payments by submitting an increased offer to the City and the Authority.

If such circumstances obtain, the City will provide instructions to all Applicable Respondents for submitting such increased Proposals; however, the timing for submission of such increased Proposals will be at the complete discretion of the City. All other terms of the offer will remain the same. No Respondent should assume that it will be given the opportunity to increase the amount of Consideration or Annual Payments offered in its Proposal under any other circumstances.

## **SECTION 4 SELECTION AND CONTINUING CONFIDENTIALITY**

### **4.1 General**

The objective of the City and the Authority in seeking responses to this RFP is to enable them to select an entity that will provide the Services in the most complete, dependable, cost effective, environmentally sound manner to the residents of the City while at the same time providing the most significant financial compensation to the City and the Authority in terms of a combination of up-front Consideration and Annual Payments. Each section of the initial submission and Proposal will be evaluated in terms of the reasonableness of the claims and/or commitments made, the completeness of the data provided, the reliability of the approach taken, the ability of the Respondent to perform, the qualifications to run the System over the long-term, and conformance with the requirements of the instructions provided in this RFP.

The project team of professionals together with staff of the City and the Authority will evaluate the responses to this RFP and make recommendations to the City and the Authority as to the technical, financial and administrative aspects of each Proposal.

#### **4.2 Concession Award and Concession Agreement Execution**

Execution of the Concession Agreement by the City and the Authority will be subject to final approval and authorization by the York City Council (“Council”) and the Board of the Authority (the “Board”). The highest amount of the combination of the Consideration and Annual Payments will be evaluated on a present value basis, assuming an annual discount rate of 5%. A recommendation will be submitted to the Council and the Board shortly after the conclusion of the Proposal process. After selection of a Proposal and approval by the Council and the Board, the selected Respondent shall be required to execute the Concession Agreement. Notwithstanding the execution of the Concession Agreement, the Proposals of all other Respondents shall remain binding on said Respondents for a period of one hundred eighty (180) days thereafter (subject to earlier termination as a result of the financial close of the Concession).

In the event that the finally selected Respondent is unable to meet its obligations under the Concession Agreement at any time prior to financial close, or to achieve financial close, the City and the Authority reserve the right to execute a Concession Agreement with the next-best-qualified Respondent as determined by the City and the Authority in their sole discretion. ***Proposals will remain open and binding on Respondents for a period of one hundred eighty (180) days following the opening of Proposals for this purpose (subject to earlier termination as a result of financial close of the Concession).***

#### **4.3 Continuing Confidentiality**

All Proposals (together with initial submissions) are the property of the City and the Authority ***and will not be returned***. At the conclusion of the procurement process, the City and the Authority may dispose of any and all materials received from Respondents in whatever manner it deems appropriate. In no event will the City or the Authority assume liability for any loss, damage or injury that may result from any disclosure or use of proprietary information.

Respondents should be aware that records of the City and the Authority are subject to the provisions of the Pennsylvania Right-to-Know Law, 65 P.S. §67.101 *et seq.* (“RTK Law”), and that, with certain exceptions, such records are subject to public disclosure. The City and the Authority understand that in responding to this RFP, Respondents will be submitting information, including financial data, that the parties desire to be kept confidential. It is the City’s and the Authority’s position that this RFP is part of a competitive proposal transaction process, and that prior to the award of a contract or prior to the opening and rejection of all Proposals, all such submissions are confidential and exempt from disclosure under Section 708(b)(26) of the RTK Law, 65 P.S. §67.708(b)(26).

Respondents are advised, however, that following the award of a contract or the opening and rejection of all Proposals, such submissions may be subject to public disclosure unless they are otherwise exempt from disclosure under another provision of the RTK Law. Records and information submitted by prospective Respondents that constitute “trade secrets” or “confidential

proprietary information” as defined in the RTK Law are exempt from disclosure under Section 708(b)(11), 65 P.S. §67.708(b)(11). “Confidential proprietary information” includes commercial and financial information which is privileged or confidential to the submitting party and the disclosure of which would cause substantial harm to the competitive position of the person who submitted the information. Any such claims may be subject to review pursuant to the procedures set forth in the RTK Law. If the City, the Authority, the Pennsylvania Office of Open Records or a court determines that such information does not qualify as a trade secret or confidential proprietary information, such information may be subject to public disclosure. Further, developments in the law or its interpretation or rulings or orders applicable to the City or the Authority may subject any information provided to the City or the Authority to public disclosure.

\* \* [Appendices follow] \* \*

**APPENDIX C**  
**CITY OF YORK / YORK CITY SEWER AUTHORITY**  
**CONCESSION AGREEMENT**  
**CALENDAR OF EVENTS**

October 26, 2015 (M) – RFP Issue Date

November 24 (Tu) – Initial Submissions Due by 5:00pm Eastern Time; Delivery of Proposal Security

Week of December 7 – Respondents that Provide Deficient Initial Submissions Notified of  
Deficiency

December 23 (W) – Initial Drafts of Concession Documents Issued

December 23 (W) – Amended Initial Submissions Due (*if applicable*)

January 15, 2016 (F) – Deadline to Inform Each Respondent If Its Initial Submission Has Been  
Determined To Be Qualified

Weeks of January 19 and January 25 – Pre-Proposal Conferences with Respondents; Schedule  
Physical System Inspections

February 9 (Tu) – Receive First Set of Respondent Comments and Questions on Concession  
Documents

Week of March 7 – Respondent Meetings to Review Concession Documents

April 1 (F) – Distribute Revised Concession Documents

Week of April 11 – Second Set of Respondent Meetings to Review Concession Documents

April 25 (M) – Receive Final Written Comments from Respondents

May 6 (F) – Issue Final Concession Documents

May 13 (F) – Deadline for Respondents to Withdraw and Receive Return of Proposal Security

May 16 (M) – Proposal Cash Deposit Due by 2:00 pm Eastern Time

May 17 (Tu) – Proposals Due by 2:00 pm Eastern Time

May 23 (M) – Receive Best and Final Offers (*if necessary*)

June 7 (T) – City and Authority Accept Winning Bid, Pass Ordinance and Resolution, Concession  
Agreement Executed (*date subject to adjustment*)

September 8 (Th) – Close (*date subject to adjustment*)

**APPENDIX D**  
**CITY OF YORK / YORK CITY SEWER AUTHORITY**  
**CONCESSION AGREEMENT**

**CONFIDENTIALITY AND DATA ROOM USAGE AGREEMENT**

This Confidentiality and Data Site Usage Agreement (“Agreement”) is made as of the date and by the entity written on the signature page hereto (the “Receiving Party”) in favor of the York City Sewer Authority, a body corporate and politic organized under the Pennsylvania Municipality Authorities Act, Act of June 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.* (the “Authority”), and in favor of The City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of March 19, 2014, P.L. 52, 53 P.S. §35101 *et seq.* (the “City”, and together with the Authority, “York”). Any obligation to “York” herein is to both the City and the Authority, and remedies hereunder may be exercised by either the City or the Authority or by both the City and the Authority, which are cumulative; provided that any waiver of any provision of this Agreement by “York” or any consent hereunder by “York” means a waiver or consent by the City.

York is prepared to make available to the Receiving Party certain confidential information, including through that certain virtual data site that is hosted for York (the “Data Site”) and through the respective representatives, officials, trustees, officers, employees, advisors, consultants or agents of each of the Authority or the City (together, York’s “Representatives”).

1. Confidentiality. Subject to the provisions of paragraph 2 below, the Receiving Party will not disclose any Confidential Information (as defined below) to anyone except employees of the Receiving Party and those representatives of the Receiving Party on its “project team”, in each case with a need to know for the sole purpose of the RFP and the Potential Transaction (each as defined below) and who have been informed by the Receiving Party of the confidentiality of such information and directed to keep it confidential pursuant to, and comply with, all the terms of this Agreement (collectively, “Team Members”). The Receiving Party agrees that it and its Team Members will use such information only for the purpose of preparing the Receiving Party’s submittal in response to York’s Request for Proposals for a Wastewater Concession for the Authority’s Municipal Wastewater System (the “RFP”) and evaluating, negotiating and consummating a possible long term concession and lease transaction between York and the Receiving Party (“Potential Transaction”), and for no other purpose. Upon the completion of the RFP process, or at such time if earlier that the Receiving Party is not pursuing the RFP process further, of which it is required to promptly advise York, the Receiving Party acknowledges and agrees that its access to the Data Site shall be terminated and it further agrees to destroy, and cause all Team Members to destroy, all copies of Confidential Information in its or their possession, in whatever format or medium, or as otherwise directed by York (and agrees to provide prompt written certification thereof to York, upon York’s request). Notwithstanding the destruction of the Confidential Information, the Receiving Party will continue to be bound by the terms of this Agreement.

a. “Confidential Information” means all information disclosed, in writing, orally, visually, electronically or otherwise, by York or any of its Representatives to the Receiving Party or the Team Members, including all documents, data and materials contained in the Data Site and all notes, analyses, compilations, studies, interpretations or other materials prepared by the Receiving Party or the Team Members that contain, reflect or are based upon, in whole or in part, any such information.

b. With respect to the Confidential Information, the Receiving Party specifically agrees to, and shall cause all its Team Members to:



- i. Protect and preserve the confidential and proprietary nature of all Confidential Information;
- ii. Not disclose, give, sell or otherwise transfer or make available, directly or indirectly, any Confidential Information to any person or entity other than the Receiving Party, the Team Members (pursuant the terms hereof), York or York's designated Representative that provided such Confidential Information (but not any other Representatives of York) (such other person or entity, a "Third Party");
- iii. Not disclose, give, sell or otherwise transfer or make available, directly or indirectly, any Confidential Information to any Team Member for any other purpose than the purposes expressly permitted herein;
- iv. Not use, transcribe or make records or copies of the Confidential Information except as necessary to prepare the Receiving Party's submission to the RFP or as may be automatically made on backup tapes or electronic archival systems that cannot reasonably be disabled;
- v. Limit the dissemination of the Confidential Information within the Receiving Party's own organization and within the organizations of any Team Members to those individuals with a need to know for the sole purpose of the RFP and the Potential Transaction and who have been informed by the Receiving Party of the confidentiality of such information and directed to keep it confidential pursuant to, and comply with, all the terms of this Agreement;
- vi. Notify York immediately, and in any event within five business days, of any loss or misplacement of Confidential Information, in whatever form, by the Receiving Party or any of its Team Members;
- vii. Notify York immediately, and in any event within five business days, of any unauthorized use or disclosure of the Confidential Information or any violation or breach of any term of this Agreement by the Receiving Party or any of its Team Members; and
- viii. Cooperate fully and provide any assistance necessary or reasonably requested by York or its Representatives to protect against the unauthorized use or disclosure of the Confidential Information or any violation of any term of this Agreement.

2. Exceptions.

a. The Receiving Party's and the Team Members' obligations with respect to keeping the Confidential Information confidential and with respect to the use of Confidential Information shall terminate with respect to any part of such information that becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Team Members in breach hereof.

b. Each of the Receiving Party and the Team Members shall not be precluded from disclosing or making use of any Confidential Information that was in its possession prior to the

disclosure made by York or which subsequently comes into its possession on a non-confidential basis from a source other than York, which source was not, to the knowledge of the Receiving Party or any of its Team Members, under any contractual, legal or fiduciary obligation of confidentiality to York or any other party, or that was independently developed by the Receiving Party without use of or reference to the Confidential Information.

3. Legally Compelled Disclosure. If the Receiving Party or a Team Member receives notice of it being, or attempting to be, legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil or criminal investigative demand, court order or otherwise) to disclose any Confidential Information to a Third Party or a court, the Receiving Party and the Team Member shall provide York with immediate prior written notice (to the extent not legally prohibited) of such attempted or actual compelled disclosure, and in any event within 10 days of the Receiving Party's or the Team Member's knowledge thereof, so that York may seek a protective order or other remedy. Neither the Receiving Party nor any Team Member shall oppose any action by York (and shall, if and to the extent required by York, cooperate with, assist and join with York, at York's expense, any reasonable action) to obtain an appropriate protective order, another reliable assurance that the confidential treatment will be accorded to the Confidential Information or other remedy. Thereafter, if, in the absence of a protective order, reliable assurance or other remedy, or the receipt of a written waiver by York (specifically referencing this paragraph of this Agreement), the Receiving Party or the Team Member is nonetheless, upon advice of its, his or her legal counsel, required to disclose Confidential Information, the Receiving Party or the applicable Team Member may disclose only that portion of the Confidential Information that such legal counsel advises the Receiving Party is required to be disclosed. Nothing contained in this Agreement shall be deemed to require the Receiving Party or any of the Team Members to disclose any Confidential Information.

4. Communications to Susquehanna Group Advisors, Inc. Only. Unless otherwise instructed by York, and except for notices required to be given under the express terms of this Agreement (which shall be given pursuant to paragraph 14 below), all communications regarding the RFP, the Potential Transaction or any other potential transaction with York related to the Authority's Municipal Wastewater System, requests for additional information, requests for meetings, and discussions or questions regarding procedures, will be submitted only to Susquehanna Group Advisors, Inc., as financial advisor to York, and not to York itself, any official, staff or personnel of York or any other Representative of York. Additionally, the Receiving Party agrees that neither it nor its Team Members will, directly or indirectly, contact any York personnel in any manner or for any reason related to the subject matter of this Agreement or conduct any inspections, tours or other on-site activities without the prior written consent of York (as communicated through Susquehanna Group Advisors, Inc.).

5. Rules of Data Site Use. The Data Site and all content within the Data Site may not be copied, reproduced, republished, uploaded, posted or transmitted; provided, however, that York grants the Receiving Party and the Team Members non-exclusive, non-transferable, limited permission to access and display the web pages within the Data Site, solely on a computer or computers owned and operated by the Receiving Party and the Team Members, as applicable. All materials contained within the Data Site that are made available for downloading, access or other use shall constitute "Confidential Information" and shall be governed by the terms of this Agreement. The Receiving Party shall not, and shall cause its Team Members not to, attempt to (i) download, scan, copy, print or otherwise capture any of the information contained in the Data Site, except to view, print or download information for which the view, print or download capability, respectively, has been enabled as indicated in the Data Site, and, in such event, only through the Data Site's view, print or download native functions, or (ii) circumvent any of the security features of the Data Site, and will not enable or allow Third Parties to access the Data Site using the Receiving Party's or the Team Member's, as applicable, authorization to the Data Site.

6. Indemnification. The Receiving Party agrees that its compliance with this Agreement is of utmost importance and, accordingly, the Receiving Party agrees to indemnify, defend and hold harmless York, its Representatives and any Third Party (to the extent a breach of this Agreement affects the rights or obligations of such Third Party) with respect to any claims, losses, damages and expenses (including reasonable attorneys' fees) that are attributable to or arise out of the Receiving Party's and or any Team Member's breach or violation of this Agreement. The obligations of the Receiving Party under this Agreement and the indemnification provisions provided herein shall survive termination of this Agreement. Further, the Receiving Party agrees that neither York nor any of its Representatives shall have any liability to the Receiving Party, the Team Members or any person asserting claims on behalf of the Receiving Party or its Team Members as a result of any matter associated with the transactions contemplated hereby, except in the case of willful misconduct of such party (and such exception shall apply only as to such party).

7. Insider Trading. The Receiving Party acknowledges that it is aware that U.S. federal and state securities laws prohibit, among other things, any person who has received from an issuer material, non-public information concerning the matters that are the subject of this Agreement from purchasing or selling bonds or other securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such bonds or other securities. The Receiving Party and the Team Members will comply with all applicable laws related to the Confidential Information.

8. Disclosure Relating to Negotiations or Transaction Status. Without the prior written consent of York, the Receiving Party and its Team Members shall not, directly or indirectly, (i) disclose to any Third Party (including any other potential participants directly or indirectly bidding on, or otherwise involved in, the RFP, the Potential Transaction, the concession or any other potential transaction with York related to the Authority's Municipal Wastewater System ("Potential Participants")) either the fact that discussions, negotiations or exchanges are taking place concerning possible transactions between York and the Receiving Party or any of the terms, conditions or other facts with respect to any such possible transaction(s), including the status thereof and the Receiving Party's potential participation therein, and all such facts and information shall be "Confidential Information" hereunder, or (ii) enter into any agreement, arrangement or understanding (or any discussions which might lead to such agreement, arrangement or understanding), with any Third Party (including any other Potential Participants) regarding a possible transaction involving York, and, in the case of (i) and (ii) above, only upon such Third Party executing a confidentiality and data room usage agreement acceptable to York in favor of York and its Representatives with the terms and conditions as set forth in this Agreement.

9. Non-Solicitation. In consideration of and as a condition to the Confidential Information being furnished to the Receiving Party, for a period of 24 months from the date hereof, the Receiving Party agrees and covenants to York that neither the Receiving Party nor any of its Team Members or any other agent or representative will, directly or indirectly, solicit, interfere with or endeavor to entice away from employment or engagement with York, encourage to terminate their employment or engagement with York, offer to employ or engage, or employ or engage any employee of York or any independent contractor of York (including any vendor or supplier providing products or services to or on behalf of York); provided, however, that the foregoing sentence shall not apply to any employee or independent contractor (i) responding to a general advertisement of employment or engagement not targeted at such person or (ii) whose employment or engagement has been terminated by York prior to the commencement of any employment or engagement discussions with the Receiving Party or its Team Members.

10. Waiver. The failure of York to insist, in any one or more instances, upon performance of any of the terms of this Agreement shall not be construed as a waiver or a relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term, and such failure shall in no way affect the validity of this Agreement or any of its terms. No waiver of any term of this Agreement shall be valid unless executed in writing and signed by the party to be bound thereby, and then only to the extent specified in such waiver. No waiver of any term of this Agreement shall be construed as a waiver of any other term of this Agreement, and no present waiver of any term of the Agreement shall be construed as a future waiver of such provision or condition.

11. Disclaimer of Warranty. All Confidential Information is provided “as is.” York does not make any representation or warranty of any kind, including any representation or warranty with respect to the Confidential Information, and does not make any representation or warranty (of any kind, including with respect to the Confidential Information) that is express or implied or any representation or warranty as to the quality, adequacy, completeness, accuracy, fitness for a particular purpose, sufficiency or freedom from defects of any Confidential Information. Neither York nor any of its Representatives shall have any liability as a result of the Receiving Party’s or any of its Team Member’s reliance on, or use of, the Confidential Information. The Receiving Party agrees that unless and until York executes and delivers a final definitive agreement regarding a transaction with respect to the Authority’s Municipal Wastewater System between York and the Receiving Party, York will not be under any legal, fiduciary or other obligation of any kind whatsoever with respect to such a transaction by virtue of this Agreement, and then only as specifically set forth in that agreement. The Receiving Party, for itself and on behalf of its Team Members, acknowledges and agrees that York reserves the right, in its sole discretion, to consider and enter into transactions with other parties, to reject any and all proposals made by the Receiving Party or any of its Team Members with regard to any potential transaction between York and the Receiving Party, and to terminate discussions and negotiations with the Receiving Party and its Team Members at any time. Neither York nor any of its Representatives shall have any legal, fiduciary or other duty to the Receiving Party or its Team Members with respect to the manner in which any transaction process is conducted, unless a legal duty is otherwise expressly provided in a subsequent written agreement signed by York with the Receiving Party or a Team Member.

12. Remedies. The Receiving Party acknowledges that the breach of any of the covenants or agreements contained in this Agreement by the Receiving Party or its Team Members will result in irreparable harm and continuing damages to York, and that York’s remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to York at law or in equity, in the event of any such breach, York may seek, and any court of competent jurisdiction may issue, an injunction (both preliminary and permanent), without bond, enjoining and restricting the breach or threatened breach of any such covenant or agreement, including an injunction restraining the Receiving Party and its Team Members from disclosing, in whole or in part, any Confidential Information. Neither the Receiving Party nor any of its Team Members or any other agent or representative shall oppose the granting of any such relief, and the Receiving Party agrees to waive, and to cause its Team Members Representatives to waive, any requirement for the seeming or posting of any bond in connection with any such remedy. The Receiving Party shall pay all of York’s costs and expenses (including reasonable attorney’s fees) incurred in enforcing such covenants or agreements. The remedies set forth above shall not be deemed to be the exclusive remedies for a breach by the Receiving Party or its Team Members of this Agreement, but shall be in addition to all other remedies available at law or equity to York or its Representatives.

13. Ownership. All right, title and interest in the Confidential Information, including all additions, enhancements, modifications and derivative works of the Confidential Information, shall remain exclusively with the Authority or the City, as applicable. No license, right, title or interest is granted herein, directly or indirectly, by implication or otherwise, to the Confidential Information or any

other property of York by virtue of York or any of its Representatives disclosing said Confidential Information to the Receiving Party or its Team Members, except for a limited right of use as specifically set forth in this Agreement and except such license or other rights as may be mutually and expressly agreed upon between the parties by separate written agreement. All right, title and interest in the Confidential Information shall remain exclusively with York.

14. Notices. All notices hereunder shall be in writing and personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, sent via United States certified mail, return receipt requested, postage prepaid, or sent by PDF or other electronic attachment via email, and addressed to the applicable party at its address in this Agreement, or at such other address as any party, by written notice in the manner specified in this Section to the other party, may designate from time to time. All such notices shall be deemed to have been given and received (i) upon receipt (or refusal of receipt) if given in person or personally delivered by courier, (ii) two business days after being sent by a nationally recognized overnight delivery service with postage prepaid, (iii) five business days after being sent in the United States mail, certified, return receipt requested with postage prepaid, or (iv) upon acknowledgement of receipt by the receiving party in writing (including acknowledgment by confirmatory email from the receiving party) to the sending party. Copies of any notice may be sent by facsimile or by PDF or other electronic attachment via email, but such notice shall not be deemed to have been given unless also validly given and received as specified in the immediately preceding sentence. All notices to York under this Agreement must include prominent reference to this Agreement on the first page of any such notice.

Address for Notices to York:

The City of York / York City Sewer Authority  
c/o Susquehanna Group Advisors, Inc.  
830 Sir Thomas Court, Suite 150  
Harrisburg, PA 17109  
Attn: Jay Wenger, Managing Director  
Phone: (717) 561-8089, ext. 5002  
email: [jwenger@susgrp.com](mailto:jwenger@susgrp.com)

And:

The City of York / York City Sewer Authority  
c/o Susquehanna Group Advisors, Inc.  
830 Sir Thomas Court, Suite 150  
Harrisburg, PA 17109  
Attn: John Hewlett, Director  
Phone: (610) 584-5639  
email: [jhewlett@susgrp.com](mailto:jhewlett@susgrp.com)

15. Expenses. Except as expressly provided in the second sentence of paragraph 3, the Receiving Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the RFP, the Potential Transactions and the other transactions contemplated hereby and thereby.

16. Parties. This Agreement inures to the benefit of York and its Representatives, and their respective successors and assigns, and is binding upon the Receiving Party, and its successors and permitted assigns. This Agreement shall not be construed to recognize or create a joint venture, partnership, consulting, employment or other joint business or agency relationship between or among any of the Receiving Party, the Team Members, the Authority, the Authority's Representatives, the City or the City's Representatives. Notwithstanding anything herein to the contrary, neither this Agreement nor any rights or obligations hereunder may be assigned or transferred (directly or indirectly, by operation of law,

merger, sale of equity interests, or otherwise) by the Receiving Party, and any such attempted assignment or transfer shall be null and void *ab initio*. Each of the Authority and the City reserves the right to assign this Agreement, including all of its rights, powers and privileges under this Agreement (including the right to enforce all of the terms of this Agreement), to any person or entity (including to the City or the Authority, respectively) that negotiates to enter, or enters, into any transaction (even if the transaction takes another form) reasonably contemplated in the RFP or the Confidential Information or discussed between York and the Receiving Party or its Team Members. The Receiving Party specifically acknowledges and agrees that York and each of its Representatives are beneficiaries of this Agreement.

17. Governing Law and Venue. This Agreement and any disputes arising hereunder will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania applicable to agreements made and to be performed within such Commonwealth, without regard to the conflict of laws principles thereof or of any jurisdiction. The Receiving Party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the state or federal courts located in York County, Pennsylvania, and irrevocably waives any objection to the laying of such venue, for any lawsuits, actions or other proceedings arising out of or relating to this Agreement and agrees not to commence any such lawsuit, action or other proceeding except in such courts. The Receiving Party irrevocably waives and agrees not to plead or claim that any such lawsuit, action or other proceeding brought in any such court has been brought in an inconvenient forum. **THE RECEIVING PARTY IRREVOCABLY AND ABSOLUTELY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH, ARISING UNDER OR RELATING TO THIS AGREEMENT, OR ANY MATTERS CONTEMPLATED HEREBY.** The Receiving Party agrees to take any and all action necessary or appropriate to effect any of its waivers set forth in this paragraph.

18. Severability. If any provision of this Agreement (including this provision) is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of either of the parties hereto would not be materially and adversely affected thereby: (a) such provisions shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (c) the remaining provision of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance; and (d) in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

19. Entire Agreement. This Agreement (a) constitutes the entire agreement and supersedes all written and oral communications between the Receiving Party or its Team Members and York or its Representatives relating to the subject matter hereof, and (b) may be modified or amended only by a written instrument specifically stating that it modifies this Agreement, signed by the Receiving Party and York.

20. Construction. Whenever used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender includes every gender; “any” shall mean “any and all”; “or” shall be inclusive; “including” shall mean “including without limitation”; the words “hereof,” “herein” and “hereunder” shall refer to this Agreement as a whole and not to any particular paragraph or provision of this Agreement; each of the terms “person” and “entity” as used in this Agreement shall be broadly interpreted to include the media and any corporation, partnership, group, individual or other entity; and reference to a particular paragraph of this Agreement shall include all subparagraphs thereof. The paragraph headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. By signing this Agreement, the Receiving Party acknowledges that it either has consulted with or has had the opportunity to consult with its own legal counsel. In the event an ambiguity or question of intent or interpretation arises, this Agreement

shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring York or the Receiving Party by virtue of the authorship of any of the provisions of this Agreement.

21. Signature Page. Delivery of an executed signature page to this Agreement by facsimile, pdf or other electronic transmission shall constitute delivery of an originally executed signature page.

*[signature page follows]*

IN WITNESS WHEREOF, the Receiving Party has executed this Agreement as of the date written below.

**DATED:** \_\_\_\_\_, 2015

**RECEIVING PARTY:**

\_\_\_\_\_  
(full legal name with applicable entity suffix)

A(n) \_\_\_\_\_  
(entity type and State or Commonwealth of formation)

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

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

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

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

Facsimile: (        ) \_\_\_\_\_ - \_\_\_\_\_

Phone: (        ) \_\_\_\_\_ - \_\_\_\_\_



**APPENDIX E  
CITY OF YORK / YORK CITY SEWER AUTHORITY  
CONCESSION AGREEMENT**

**INITIAL SUBMISSION CERTIFICATION**

In connection with the undersigned Respondent's initial submission to that certain Request for Proposals, issued October 26, 2015, as it may be amended from time to time (the "RFP"), by the York City Sewer Authority (the "Authority") and The City of York (the "City"), the undersigned Respondent hereby certifies to the Authority and the City as follows (and all capitalized terms used but not defined herein shall have the meaning assigned to them in the RFP):

1. The undersigned Respondent has the bona fide belief that Respondent has the capability of (i) providing the appropriate and necessary management, operation and maintenance services associated with the System, (ii) providing, or securing the provision by a qualified firm or other entity of, design and construction services for improvements to the System, and (iii) appropriately servicing the System's customers, and that all such services will be provided consistently on a quality basis.
2. The undersigned Respondent intends to submit a proposal that is fully responsive to the RFP, which will include, without limitation, (i) an upfront Concession fee as well as (ii) annual fees for use of the System.

**DATED:** \_\_\_\_\_, 2015

**RESPONDENT:**

\_\_\_\_\_  
(full legal name with applicable entity suffix)

A(n) \_\_\_\_\_  
(entity type and State/Commonwealth of formation)

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

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

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

**APPENDIX F  
CITY OF YORK / YORK CITY SEWER AUTHORITY  
CONCESSION AGREEMENT**

**AGREEMENT FOR PROPOSAL SECURITY**

This initial submission to Proposal is accompanied by bid security in the form of a Check or Cashier's Check drawn on the following banking institution:

\_\_\_\_\_  
(Name of Banking Institution)

\_\_\_\_\_  
(Address)

in the amount of Twenty Five Thousand United States Dollars (\$25,000.00). (Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the RFP (defined below).)

The undersigned Respondent hereby agrees that if it should withdraw its Proposal in response to that certain Request for Proposals, issued October 26, 2015, as it may be amended from time to time (the "RFP"), by the York City Sewer Authority (the "Authority") or The City of York, or be deemed under the terms of the RFP to have withdrawn its Proposal, at any time after May 13, 2016 (as indicated in the Calendar of Events), then the certified or cashier's check herewith submitted as Proposal security shall be due and payable thereunder to the Authority as liquidated damages for such late withdrawal. Otherwise said check or the amount thereof submitted by an unsuccessful Respondent will be returned (with no interest) within ten (10) business days after the execution of the Concession Agreement by and between Authority and the successful Respondent, and said check or the amount thereof submitted by the selected Respondent will be returned (with no interest) promptly after the closing under the Concession Agreement.

**Attach Cashier's or  
Certified Check Made  
Payable to the York City  
Sewer Authority Here**

**DATED:** \_\_\_\_\_, 2015

**RESPONDENT:**

\_\_\_\_\_  
(full legal name with applicable entity suffix)

A(n) \_\_\_\_\_  
(entity type and State/Commonwealth of formation)

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

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

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

**APPENDIX G  
CITY OF YORK / YORK CITY SEWER AUTHORITY  
CONCESSION AGREEMENT**

**TRANSMITTAL LETTER**

York City and York City Sewer Authority  
c/o Susquehanna Group Advisors, Inc. (“**SGA**”)  
830 Sir Thomas Court, Suite 150  
Harrisburg, PA 17109  
Attn: Jay Wenger, Managing Director of SGA

Re: Response to the York City (the “**City**”) and the York City Sewer Authority (the “**Authority**”) Request for Proposals for the Authority’s Municipal Wastewater System

Dear York City and York City Sewer Authority:

The entity written on the signature page hereto (the “**Respondent**”) hereby submits this Transmittal Letter and the attached Proposal (together, this “**Proposal**”) in response to the Request for Proposals issued by the City and the Authority on October 26, 2015, as it may be amended from time to time (“**RFP**”).

The undersigned Respondent hereby unconditionally and irrevocably offers to enter into the Municipal Wastewater Utility System Concession and Lease Agreement as attached as **Appendix A** to the RFP (the “**Concession Agreement**”) for identified wastewater facilities owned and operated by the City and the Authority. Capitalized terms not otherwise defined in this Transmittal Letter have the meanings set forth in the Concession Agreement.

The Respondent, by its undersigned duly authorized representative, hereby covenants, certifies, represents and warrants to the Authority and to the City as follows in connection with this Proposal:

1. ***RFP and Appendices Acknowledgement.*** The Respondent acknowledges receipt of the RFP and the following Appendices to the RFP, updated through May 6, 2016, as applicable:

Appendix

- Appendix A – Concession Agreement
- Appendix B – Operating Standards
- Appendix C – Calendar of Events
- Appendix D – Confidentiality and Data Site Usage Agreement
- Appendix E – Initial Submission Certification
- Appendix F – Agreement for Proposal Security
- Appendix G – Transmittal Letter
- Appendix H – Non-Collusion Affidavit
- Appendix I – Statement of Ownership
- Appendix J – Operator Information
- Appendix K – Contract and Lobbyist Disclosure
- Appendix L – Business Proposal

Appendix M – Escrow Agreement

2. ***Due Authorization.*** The submission of this Proposal has been duly authorized by, and is, in all respects, binding, upon the Respondent.
3. ***Completeness; Warranty as to Proposal Information.*** The Respondent has submitted its initial submission and all required RFP Appendices, and such Appendices are a part of, and are hereby incorporated into, this Proposal. All information and statements contained in the Proposal are current, true, correct and complete, and are made with full knowledge, and consent, that the City and Authority will rely on such information and statements in determining which Proposals are responsive and responsible, in ultimately selecting the Proposal deemed most advantageous to the City and Authority, and in executing the Concession Agreement.
4. ***Identity of Concessionaire and Operator.*** The Concessionaire under the Concession Agreement will be the Respondent. The Operator under the Concession Agreement will be the entity identified on **Appendix J** to the RFP.
5. ***Final Agreements.*** The Respondent agrees to enter into the Concession Agreement and Operating Standards (as attached as **Appendix B** to the RFP), in each case in the form identified as “Binding Proposal, Execution Version” or “Execution Version” as posted in the Data Site (as such term is defined in Confidentiality and Data Site Usage Agreement in favor of the Authority and the City (the “**Confidentiality Agreement**”)) for this Concession procurement (except for filling in indicated blanks and completion of Schedules as provided therein).
6. ***Consideration.*** The amount of the Consideration that Respondent will pay pursuant to Section 2.1 of the Concession Agreement will be the total set forth in **Appendix L** to the RFP.
7. ***Annual Payment.*** The annual amount of money that Respondent will pay pursuant to Section 3.23 of the Concession Agreement will be the total set forth in **Appendix L** to the RFP.
8. ***Proposal Effective Period.*** This Proposal and offer shall remain in effect and irrevocable until 5:00 p.m. Eastern Time on November 14, 2016 (the “**Termination Time**”). However, if the Authority does not give written notice to the Respondent that the Authority and the City are prepared to enter into the Concession Agreement on or prior to 5:00 p.m. Eastern Time on June 22, 2016, then, notwithstanding that this offer and the terms of this Proposal shall remain open until the Termination Time, the Proposal Cash Deposit (as hereinafter defined) and all interest or income earned thereon shall be returned to the Respondent in accordance with the Escrow Agreement in the form prescribed in **Appendix M** to the RFP (the “**Escrow Agreement**”).
9. ***Agreement Execution.*** If, at any time prior to the Termination Time, the Authority or the City should give written notice to the Respondent, at the address specified below, that they are prepared to enter into the Concession Agreement with the Respondent, the Respondent will, within two business days of its receipt of such notice, execute and deliver the Concession Agreement to the Authority and the City and within five business days of such notice re-deliver its Proposal Cash Deposit (as hereinafter defined) if the same had previously been returned to Respondent for any reason.

10. **Proposal Cash Deposit.** In accordance with Section 2.3 of the Concession Agreement, the offer set forth in this Proposal is secured by a cash deposit in the amount of \$5,000,000 (the “**Proposal Cash Deposit**”) with the Escrow Agent as provided in the Escrow Agreement.

11. **Debarment.** Neither the Respondent, the Operator nor any Team Member (as such term is defined in Confidentiality Agreement) is currently suspended, debarred or prohibited from doing business with any governmental entity.

12. **Contract Disclosures.** Except as disclosed in **Appendix K** to the RFP, neither Respondent nor any member of Respondent’s team (nor any Team Member, as such term is defined in Confidentiality Agreement) has entered into any arrangement with any person or entity involving a finder’s fee, fee splitting, firm affiliation or relationship with any broker-dealer, payments to consultants, lobbyists or commissioned representatives or other contractual arrangements that could present a real or perceived conflict of interest.

13. **No Litigation.** There is no action, suit or proceeding, at law or in equity, before any court or similar governmental entity, against the Respondent, wherein an unfavorable decision, ruling or finding would have a materially adverse effect on the ability of the Respondent to perform its obligations under the Concession Agreement or the Concession contemplated thereby, or which, in any way, would have a materially adverse effect on the validity or enforceability of the obligations proposed to be undertaken by the Respondent, or any agreement or instrument entered into by the Respondent in connection with the Concession contemplated thereby.

14. **Certain Representations.** The Respondent represents and warrants that: (i) Respondent has full power and authority to make this offer and submit this Proposal; (ii) Respondent will have full power and authority to execute and deliver the Concession Agreement pursuant to the terms hereof; (iii) such actions do not and will not violate the terms of any of the Respondent’s organizational documents or any agreement binding upon it or the terms of any Applicable Law; (iv) no further consent to this offer or Proposal or to the execution of the Concession Agreement pursuant to the terms hereof is required to be obtained from any other person, entity or governmental entity; and (v) this offer and Proposal constitute, and the Concession Agreement, if and when executed pursuant to the terms thereof, will constitute duly authorized, valid and legally binding obligations of the Respondent enforceable in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or transfers, or other laws affecting creditor’s rights generally, and subject to general principles of equity (regardless of whether in law or in equity).

15. **Material Changes.** The Respondent has disclosed in Attachment A to this Transmittal Letter all material changes from the information provided in the Respondent’s initial submission to the RFP.

*[remainder of page intentionally left blank; paragraph 16 follows]*

16. **Principal Contact.** The principal contact person of the Respondent who will serve as the interface between the City and the Authority (through Susquehanna Group Advisors, Inc., as set forth in the Confidentiality Agreement) and the Respondent for all communications is:

FULL NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

IN WITNESS WHEREOF, the Receiving Party has executed this Transmittal Letter as of the date first written below.

**Submitted by:**

**RESPONDENT:**

\_\_\_\_\_  
(full legal name with applicable entity suffix)

A(n) \_\_\_\_\_  
(entity type and State/Commonwealth of formation)

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

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

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

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

[Signature Page to Transmittal Letter]

**ATTACHMENT A  
TO THE  
TRANSMITTAL LETTER**

Material Changes from the Information Provided in the Respondent's Initial Submission to the RFP (write "None." if there are none, and attached additional pages as necessary):

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**APPENDIX H  
CITY OF YORK / YORK CITY SEWER AUTHORITY  
CONCESSION AGREEMENT**

**NON-COLLUSION AFFIDAVIT**

I, \_\_\_\_\_,  
*(designated signatory's full legal name)*

a resident of \_\_\_\_\_, in the  
*(municipality or other jurisdiction)*

State/Commonwealth of \_\_\_\_\_, of full age, being duly sworn  
*(State/Commonwealth)*

according to law, on my oath depose and say that:

(1) I am the \_\_\_\_\_ of \_\_\_\_\_,  
*(designated signatory's title) (Respondent's full legal name)*

a(n), \_\_\_\_\_ (“**Respondent**”),  
*(entity type and State/Commonwealth of formation)*

making the proposal in response to Request for Proposals for a Wastewater Concession issued by York City and the York City Sewer Authority on October 26, 2015, as amended from time to time (the “**Proposal**”), and that I executed said Proposal with full authority to do so; and

(2) The pricing information set forth in the Proposal has been arrived at independently, without collusion, fraud, consultation, communication or agreement for the purpose of restricting competition as to any matter relating to such pricing information with any other Respondent, any potential Respondent or any competitor; and

(3) Unless otherwise required by law, the pricing information that is set forth in the Proposal has not been knowingly disclosed by the Respondent or any of its agents or representatives, directly or indirectly, and will not knowingly be disclosed by the Respondent or any of its agents or representatives, directly or indirectly, to any other Respondent, any potential Respondent or any competitor prior to execution of the Agreement; and

(4) No attempt has been made or will be made by the Respondent to induce any other person or entity to submit or not to submit a Proposal, for the purpose of restricting competition in any way.

*[signature page and notary acknowledgment follow]*



I hereby affirm under the penalties of perjury that the foregoing statements are true.

\_\_\_\_\_  
*(full legal name of Respondent)*

A(n) \_\_\_\_\_  
*(entity type and State/Commonwealth of formation)*

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

Name: \_\_\_\_\_  
*(print designated signatory's name, same as above)*

Title: \_\_\_\_\_  
*(print designated signatory's title, same as above)*

\_\_\_\_\_) )  
*(State/Commonwealth)* ) ss:  
COUNTY OF \_\_\_\_\_ )

On this, the \_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public, the undersigned officer, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained and further acknowledged that he/she executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires:



**Significant Equity Owners of the Respondent:**

List the (full legal) names, business addresses and percentage ownership interests of all individuals or entities who/that own, directly or indirectly, 10% or more of the capital stock, units, partnership or membership interests, or other equity interests or securities of the Respondent (including options, warrants, other rights to acquire such equity interests or other controlling rights) (the “**Significant Equity Owners**”). If one or more such Significant Equity Owner(s) of Respondent is an entity, then list the names and addresses of all Significant Equity Owners of such entity in a manner that makes the ownership clear (until such ownership terminates at an individual/a natural person); if none, please state “None.” This disclosure must be continued until names and addresses of every Significant Equity Owner exceeding the 10% ownership criterion of each entity listed has been identified, and until we have reached the final individuals(s)/natural person(s). Additional pages may be attached.

<i>Name (full legal)</i>	<i>Address</i>	<i>%</i>

**APPENDIX J  
CITY OF YORK / YORK CITY SEWER AUTHORITY  
CONCESSION AGREEMENT**

**OPERATOR INFORMATION**

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If the Respondent is not the Operator, the Respondent must clearly identify the entity or entities that will serve as the Operator under the Concession Agreement. For the proposed Operator, please provide the following information. Additional pages may be attached.

1. **Name (full legal) & Address of Proposed Operator:**
  
2. **Operator's Primary Representative (including phone, fax and email):**
  
3. **Operator Experience (if not previously provided in response to the RFP):**
  
4. **Operator's References (if not previously provided in response to the RFP):**
  
5. **Material Change.** State below (in detail) any change in condition (financial or otherwise), development, occurrence or circumstance that could be materially adverse to the Operator that has arisen after the date of the RFP and that would have been responsive to the RFP if such change, development, occurrence or circumstance had arisen prior to the Respondent's response to the RFP:

**APPENDIX K  
CITY OF YORK / YORK CITY SEWER AUTHORITY  
CONCESSION AGREEMENT**

**CONTRACT AND LOBBYIST DISCLOSURE**

Respondent hereby certifies that except as listed below, neither Respondent nor any member of Respondent’s team has entered into any arrangement with any person or entity involving a finder’s fee, fee splitting, firm affiliation or relationship with any broker-dealer, payments to consultants, lobbyists or commissioned representatives or other contractual arrangements that could present a real or perceived conflict of interest. ( If there are no such arrangements, write “NONE.” )

<i>Name of Person or Entity</i>	<i>Disclosure and Description of Arrangement</i>

**RESPONDENT:**

\_\_\_\_\_ (full legal name with applicable entity suffix)

A(n) \_\_\_\_\_ (entity type and State/Commonwealth of formation)

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

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

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

**APPENDIX L  
CITY OF YORK / YORK CITY SEWER AUTHORITY  
CONCESSION AGREEMENT**

**BUSINESS PROPOSAL**

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The amount of the upfront Consideration that the undersigned Respondent offers to pay pursuant to Section 2.1 of the Concession Agreement is the total of US\$ \_\_\_\_\_ [*in numbers*], \_\_\_\_\_ [*in words*] United States Dollars.

The Annual Payment shall be no less than \$\_\_\_\_\_ and no more than \$\_\_\_\_\_.  
The amount of the Annual Payment that Respondent offers to pay pursuant to Section 3.23 of the Concession Agreement is US\$ \_\_\_\_\_ [*in numbers*], \_\_\_\_\_ [*in words*] United States Dollars.

**RESPONDENT:**

\_\_\_\_\_  
(full legal name with applicable entity suffix)

A(n) \_\_\_\_\_  
(entity type and State/Commonwealth of formation)

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

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

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

**APPENDIX M**  
**CITY OF YORK / YORK CITY SEWER AUTHORITY**  
**CONCESSION AGREEMENT**

**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT (this “Escrow Agreement”) is made and entered into this 16<sup>th</sup> day of May, 2016 (the “Commencement Date”) by and among Manufacturers and Traders Trust Company, a New York banking corporation, a/k/a M&T Bank, as escrow agent (the “Escrow Agent”), The City of York, York County, Pennsylvania (the “City”), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of March 19, 2014, P.L. 52, 53 P.S. §35101 *et seq.*, the York City Sewer Authority, a body corporate and politic (the “Authority”), organized under the Pennsylvania Municipality Authorities Act, Act of June 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.*, and the entity identified as the Respondent on the signature page hereto (the “Respondent”).

**RECITALS**

WHEREAS, the City and the Authority have solicited offers from respondents to enter into a Wastewater Utility System Concession and Lease Agreement, as may be amended from time to time (the “Concession Agreement”) regarding the City’s and the Authority’s Wastewater Utility System (the “Concession”) in accordance with that certain Request for Proposals, dated October 26, 2015, as may be amended from time to time (the “RFP” and, together with the Concession Agreement, the “Bid Documents”), and, for the avoidance of doubt, the Escrow Agent is not a party to the Bid Documents or any document related thereto other than this Escrow Agreement; and

WHEREAS, the Respondent intends to submit an offer in response to the RFP; and

WHEREAS, the Respondent’s offer will be secured by a cash deposit in the amount of Five Million United States Dollars (\$5,000,000) (the “Cash Deposit”); and

WHEREAS, the Respondent’s offer will be unconditional and irrevocable until 5:00 p.m. Eastern Time on November 14, 2016 (the “Offer Termination Date”).

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, the parties hereto intending to be legally bound do hereby agree as follows:

**Section 1.** For a period commencing on the Commencement Date and terminating 10 days after the final disbursement of all of the Cash Deposit deposited hereunder and any earnings thereon (the “Funds”) in accordance with the terms hereof, the Escrow Agent agrees to act as escrow agent for the Funds when received by the Escrow Agent and to promptly deposit the Cash Deposit into a segregated escrow account (the “Escrow Account”) to be established hereunder and to be held in trust for the Respondent and the Authority pursuant to the terms of this Escrow Agreement.

**Section 2.** On or before 2:00 p.m. Eastern Time on the Commencement Date, the Cash Deposit will be provided to the Escrow Agent by the Respondent and deposited into the Escrow Account. Upon receipt of the Cash Deposit, the Escrow Agent shall immediately issue a receipt to the Respondent, confirming that the Escrow Agent has received the Cash Deposit in the form attached hereto as Schedule 2. **All risk of loss, if any, in regard to such investments or reduction of the Cash Deposit resulting from such investments shall be borne solely by the Respondent, other than losses arising from the Escrow Agent's gross negligence, fraud, bad faith or willful misconduct.** The Escrow Agent shall calculate the market value on a monthly basis on the first business day of the month as of close of business on the preceding business day. If there is a deficit (a "Deficit") that reduces the market value of the Cash Deposit below Five Million United States Dollars (\$5,000,000) (the "Benchmark"), the Escrow Agent shall promptly give notice in the form attached hereto as Schedule 3 to the Authority, the City and the Respondent of the amount of such deficit ("Deficit Notice"). The Respondent agrees to replenish the Cash Deposit to reach the Benchmark through an additional deposit ("Deficit Deposit") by 2:00 p.m. Eastern Time on the third business day following receipt by the Respondent of the Deficit Notice. The Escrow Agent shall provide notice to the Authority, the City and the Respondent within one business day following the deadline for the Deficit Deposit established in the Deficit Notice if the Respondent has not fully replenished the Cash Deposit by such deadline.

**Section 3.** The Escrow Agent shall invest and reinvest the Cash Deposit in Eligible Investments (as defined in Schedule 4 hereto) at the written direction of an Authorized Respondent Representative (as defined below) without distinction between principal and income. The Escrow Agent may conclusively rely upon such written instructions as to the suitability of the directed investments hereunder. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. In the absence of investment instructions from the Authorized Respondent Representative (as defined below), the Escrow Agent shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Eligible Investments. The "Authorized Respondent Representatives" are set forth on the signature page hereto. Any interest or other earnings on the Funds shall become part of the Cash Deposit and shall be disbursed in accordance with the provisions of this Escrow Agreement. The Escrow Agent will provide monthly statements to the Authority, the City and the Respondent that will show accrued interest along with any deposits and withdrawals from the Escrow Account. It is further understood and agreed by all parties hereto that neither the Authority nor the City is responsible in any way for the investments by the Escrow Agent of the Cash Deposit or the investment earnings thereon, nor is either the Authority or the City responsible for the actions of the Escrow Agent.

**Section 4.** The Funds shall at all times be held in a separate account by the Escrow Agent and shall be disbursed only pursuant to the terms and conditions of Section 5 below.

**Section 5.** The Escrow Agent shall, as soon as practicable, but no sooner than 5:00 p.m. Eastern Time on June 7, 2016, liquidate all applicable investments and pay to the Respondent (as directed in writing by the Respondent) all Funds in the Escrow Account upon the occurrence of



any one of the following conditions: (i) upon receipt of a statement signed by the City Authorized Representative (as defined below) addressed to the Respondent and the Escrow Agent to the effect that the Respondent *has not* been selected as the potential Concessionaire for the Concession; or (ii) upon receipt of a statement signed by the City Authorized Representative at any time, and addressed to the Respondent and the Escrow Agent, to the effect that the Respondent did not tender a bid by 2:00 p.m. Eastern Time on May 17, 2016 (which statement the City Authorized Representative (as defined below) shall be required to deliver promptly after such date and time); or (iii) upon the failure of the City Authorized Representative to provide by 5:00 p.m. Eastern Time on June 22, 2016, or such later time as may be determined by mutual consent of both the City Authorized Representative and the Respondent (the “Escrow Deadline”), a statement signed by the City Authorized Representative addressed to the Escrow Agent that any entity has been selected as the potential Concessionaire for the Concession pursuant to the Bid Documents. The “City Authorized Representative” is the Business Administrator of the City.

The Escrow Agent shall (as directed in writing by the City Authorized Representative), liquidate all applicable investments and pay to the Authority all Funds in the Escrow Account upon the occurrence of any one of the following conditions: (a) upon receipt of a statement, in a form substantially similar to that attached hereto as Schedule 5 (a “City Statement”), signed by the City Authorized Representative directing disbursement to the Authority of the Funds in accordance with the applicable terms or provisions of the Bid Documents; or (b) upon receipt of a statement signed by the City Authorized Representative and signed by an Authorized Respondent Representative that the closing is taking place under the Concession Agreement; or (c) as soon as possible after 5:00 p.m. Eastern Time on the Offer Termination Date (the “Closing Escrow Deadline”).

Notwithstanding anything in this Escrow Agreement to the contrary, the selection, or the identification in any statement, by the Authority or the City of the Respondent or any other entity as the potential Concessionaire shall in no way obligate the Authority or the City to enter into any agreement, or close the Concession transaction, with such potential Concessionaire.

If the City Authorized Representative and the Respondent mutually consent to extend the Offer Termination Date, the Escrow Deadline or the Closing Escrow Deadline to a date certain (the later of which, the “Extended Escrow Deadline”), the City Authorized Representative must provide prompt, but in any event prior to the termination of this Escrow Agreement, notice in writing to the Escrow Agent of such Extended Escrow Deadline, and the term of this Escrow Agreement shall thereby automatically be extended to coincide with the Extended Escrow Deadline.

**Section 6.** All disbursements by the Escrow Agent pursuant to this Escrow Agreement shall be made by wire transfer in immediately available funds to such account or accounts as the party entitled to receive the Funds pursuant to this Escrow Agreement shall designate in writing to the Escrow Agent. The Escrow Agent undertakes to perform such duties and only such duties as are expressly set forth herein, and no implied duties or obligations may be read into this Escrow Agreement other than as may be required by applicable law. The Escrow Agent has not examined and is in no way responsible for the contents of the Bid Documents. By accepting the position of escrow agent hereunder, the Escrow Agent, the City, the Authority and the

Respondent agree that the Escrow Agent's duties and obligations are solely those set forth in this Escrow Agreement other than as may be required by applicable law.

**Section 7.** The Escrow Agent shall be responsible, in fulfilling its duties under this Escrow Agreement, to a standard of care that could fairly be attributable to an experienced corporate escrow agent. The Escrow Agent shall have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Escrow Agreement or any other agreement. In no event shall the Escrow Agent be liable, directly or indirectly, for any (i) damages or expenses arising out of the services provided hereunder, other than damages which result from the Escrow Agent's failure to act in accordance with the standards set forth in this agreement, or (ii) special, punitive, remote or speculative damages, even if the Escrow Agent has been advised of the possibility of such damages, except in cases of its gross negligence, fraud, bad faith or willful misconduct. This Escrow Agreement and all information received by the Escrow Agent is sensitive (in that it pertains to information which may be pertinent to public bidding), is confidential and may not be disclosed by the Escrow Agent to any third party without the express written permission of the City Authorized Representative and the Respondent, except as set forth in this Section 7. To the extent that the Escrow Agent deems it necessary in the carrying out of its duties to consult with its outside counsel, such outside counsel shall be informed by the Escrow Agent of the confidentiality of such information and directed to keep it confidential pursuant to the terms of this Section 7. In the event the Escrow Agent is presented with a request or demand for information or documents by any court or other administrative or governmental agency regarding this Escrow Agreement or any information or documents related thereto that may known to the Escrow Agent or be in its possession, the Escrow Agent shall immediately give notice to the Authority, the City and the Respondent, and the Authority, the City and the Respondent shall each have the opportunity to contest such request, demand or process by any means available to them before such information or documents are released or communicated by the Escrow Agent; *provided, however*, that the Escrow Agent shall not be obligated to withhold such release beyond that time as may be ordered by the court or agency, unless the demand or request is quashed or the time to produce it otherwise extended. Such confidentiality provisions shall survive the termination of this Escrow Agreement and any breach thereof may subject the Escrow Agent or its agents, attorneys, custodians or nominees (collectively, "Agents") to liability. The Escrow Agent has the right to perform any of its duties hereunder through the Agents appointed by it with due care, so long as such Agents are informed of the confidentiality obligations of the Escrow Agent imposed by this Escrow Agreement and agree to abide by such obligations.

**Section 8.** Except as to matters covered in Section 7, to the fullest extent permitted by law, the Escrow Agent shall not be liable for any action taken by it without gross negligence, willful misconduct or fraud, and in good faith, and believed by it to be authorized or within the rights or powers conferred upon it by this Escrow Agreement, and may consult with legal counsel of its own choice (whether specially retained or regularly employed) and shall have full and complete authorization and protection for any action so taken or suffered by it in accordance with the terms of this Escrow Agreement, upon such advice of such counsel. The Respondent shall be liable for and shall reimburse and indemnify the Escrow Agent and hold the Escrow Agent

harmless from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable out-of-pocket attorney's fees and expenses) (collectively, "Losses") arising from or in connection with or related to this Escrow Agreement or being Escrow Agent hereunder (including Losses incurred by Escrow Agent in connection with its successful defense, in whole or in part, of any claim of or based on gross negligence, fraud, bad faith or willful misconduct on its part); *provided* that nothing contained herein shall require Escrow Agent to be indemnified for Losses caused by its gross negligence, fraud, bad faith or willful misconduct. The terms of this indemnification shall survive the termination of the Escrow Agreement and the resignation or removal of the Escrow Agent.

**Section 9.** The Escrow Agent shall charge the escrow fees pursuant to its schedule of fees attached as Schedule 1. The full amount of the Initial Escrow Agent Fee and the full amount of one year's Annual Escrow Agent Fee shall be payable by the Respondent to Escrow Agent at as set forth on such Schedule 1. Except as otherwise expressly provided in this Escrow Agreement, each party hereto shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Escrow Agreement.

**Section 10.** The Escrow Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be entitled to any portion of the Funds in the Escrow Account under any circumstances except as provided herein. The City and the Authority hereby agrees that any actions taken by the City Authorized Representative with respect to the Funds in the Escrow Account shall be consistent with the Bid Documents.

**Section 11.** None of the Respondent, the City or the Authority hereto shall have any right, title or interest in or possession of the Funds except as specifically provided in this Escrow Agreement and shall not have the ability to pledge, convey, hypothecate or grant as security the Funds unless and until such Funds have been paid or are required to be paid to such party or parties pursuant hereto. Accordingly, the Escrow Agent shall be in sole possession of the Funds and will not act as custodian of any of the parties under this Escrow Agreement for the purposes of perfecting a security interest therein, and no creditor of any party hereto shall have any right to have or to hold the Funds as collateral for any obligation and shall not be able to obtain a security interest in any assets (tangible or intangible) contained in or relating to the Funds.

**Section 12.** There shall not be any, and the Escrow Agent shall not be bound by any, amendment, modification, cancellation or rescission of this Escrow Agreement unless the same shall be in writing and signed by all the parties hereto. Any waiver of, or consent to depart from, the requirements of any provision of this Escrow Agreement shall be effective only if it is in writing and signed by the party hereto giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right under this Escrow Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

**Section 13.** All notices hereunder shall be in writing and personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, sent via United States certified mail, return receipt requested, postage prepaid, or sent by PDF or other electronic attachment via email, and addressed to the applicable party at its address in this Escrow Agreement, or at such other address as any party, by written notice in the manner specified in this Section to the other parties, may designate from time to time. All such notices shall be deemed to have been given and received (i) upon receipt (or refusal of receipt) if given in person or personally delivered by courier, (ii) two business days after being sent by a nationally recognized overnight delivery service with postage prepaid, (iii) five business days after being sent in the United States mail, certified, return receipt requested with postage prepaid, or (iv) upon acknowledgement of receipt by the receiving party in writing (including acknowledgment by confirmatory email from the receiving party) to the sending party. Copies of any notice may be sent by facsimile or by PDF or other electronic attachment via email, but such notice shall not be deemed to have been given unless also validly given and received as specified in the immediately preceding sentence.

If to the Escrow Agent:

Manufacturers and Traders Trust Company  
c/o Wilmington Trust, N.A.  
213 Market Street, 2nd Floor  
Harrisburg, PA 17101  
Attn: Stevie C. Blackston II, CCTS, Assistant Vice President, Corporate Trust  
Services of Wilmington Trust, N.A.  
Phone: (717) 255-2113  
Fax: (717) 231-2615  
Email: scblackston@wilmingtontrust.com

If to the City or the Authority:

The City of York / York City Sewer Authority  
c/o Susquehanna Group Advisors, Inc. (“SGA”)  
830 Sir Thomas Court, Suite 150  
Harrisburg, PA 17109  
Attn: Jay Wenger, Managing Director of SGA  
Phone: (717) 561-8089, ext. 5002  
Email: jwenger@susgrp.com

and:

The City of York / York City Sewer Authority  
c/o Susquehanna Group Advisors, Inc. (“SGA”)  
830 Sir Thomas Court, Suite 150  
Harrisburg, PA 17109  
Attn: John Hewlett, Director of SGA  
Phone: (610) 584-5639  
Email: jhewlett@susgrp.com

If to the Respondent: As set forth on the signature page hereto.

Notwithstanding anything herein to the contrary, the Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Escrow Agreement sent by facsimile transmission or by PDF or other electronic attachment via email; *provided, however*, that each of the parties hereto desiring to provide any directions or instructions by facsimile or via email shall provide to the Escrow Agent an executed incumbency certificate in the form attached hereto as Schedule 6 listing the names, titles, email addresses and telephone numbers of the persons with authority to act hereunder, which incumbency certificate shall be amended and restated and re-executed whenever such party determines to add or delete a person from the listing. If the Respondent, the City or the Authority elects to give the Escrow Agent instructions or directions by facsimile or via email, and the Escrow Agent acts upon such instructions or directions, the Escrow Agent's understanding of such instructions and directions shall be deemed controlling; *provided* that such instructions or directions are consistent with the applicable provisions of this Escrow Agreement. The Escrow Agent shall not be liable for any losses, costs or expenses arising, directly or indirectly, from the Escrow Agent's reliance upon and compliance with such instructions or directions notwithstanding whether such instructions or directions conflict or are inconsistent with a subsequent written instruction, other than any losses which result from the Escrow Agent's gross negligence, fraud, bad faith or willful misconduct; *provided* that the instructions or directions being complied with are consistent with the applicable provisions of this Escrow Agreement. The Respondent, the City and the Authority agree to assume all risks arising out of the use of the foregoing electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

**Section 14.** This Escrow Agreement and all rights and obligations of the parties hereto arising out of or relating to this Escrow Agreement or the negotiation, execution or performance hereof, including any tort obligations, are governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to any conflict or choice of law rule or principle that would result in the imposition of the laws of another jurisdiction. ALL PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. Any action or proceeding against any party hereto relating to this Escrow Agreement may be brought and enforced in the federal or state courts in the Commonwealth of Pennsylvania in York County, and each of the parties hereto hereby irrevocably submits to the jurisdiction of such courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable law, any objection it may have now or hereafter have to the laying of venue of any such action or proceeding in such courts and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

**Section 15.** No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written evidence of such assignment in form satisfactory to the Escrow Agent shall be submitted to and accepted by the Escrow Agent and the parties hereto provide their written consent; *provided, however*, that the Authority may assign all its

rights and obligations hereunder to the City without the need of consent from the Respondent or the Escrow Agent.

**Section 16.** The Escrow Agent reserves the right to resign at any time by giving written notice of resignation, specifying the effective date thereof. Within 30 days after receiving the aforesaid notice, the parties to this Escrow Agreement agree to appoint a successor escrow agent to which the Escrow Agent shall distribute the Funds then held hereunder, less the Escrow Agent's fees hereunder. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of the 30-day period, the Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable out-of-pocket attorneys' fees which are incurred in connection with such a proceeding shall be paid, one-half by the Authority and one-half by the Respondent.

Any banking association or corporation into which the Escrow Agent may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be transferred, shall succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 17.** If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Respondent, the Authority, the City or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

**Section 18.** Nothing contained in this Escrow Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between or among any of the parties hereto. Except as expressly provided herein to the contrary, no term or provision hereof shall be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Escrow Agreement.

**Section 19.** This Escrow Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. A signature to this Escrow Agreement delivered by facsimile or email of a PDF document shall be deemed an original signature hereto and such delivery shall be deemed to have the same legal effect as delivery of an original signed copy of this Escrow Agreement.

**Section 20.** Notwithstanding anything to the contrary contained herein, parties hereto hereby acknowledge that, for federal, state and local income tax purposes, any interest, income and gain earned on or derived from the Cash Deposit or the Funds (the "Income") shall be income of the Respondent. All taxes payable on the Income shall be paid by the Respondent, whether or not the Income was distributed by the Escrow Agent during any particular year, as and to the extent required under the provisions of the U.S. Internal Revenue Code of 1986, as

amended, and the regulations promulgated thereunder (the “Code”) and other applicable tax law. The Escrow Agent shall, within the time period required by applicable law, file all required reports required to be filed by the U.S. Internal Revenue Service with respect to all Income hereunder. The Respondent agrees to provide to the Escrow Agent all forms and information necessary to accomplish such reporting or as reasonably requested by the Escrow Agent. The Escrow Agent shall, for each calendar year-end (and fiscal year-end(s) of the Respondent, the Authority and the City) (or portion(s) thereof) that it holds the Escrow Amount, report the Income of the Escrow Amount on IRS Forms 1099 which shall show the Respondent as “payee.” On or before the execution and delivery of this Escrow Agreement, the Respondent has provided to the Escrow Agent a properly completed Form W-9. Notwithstanding anything to the contrary herein, the Escrow Agent shall have no duty to prepare or file any other federal or state tax report or return with respect to any funds held pursuant to this Escrow Agreement or any income earned thereon. The Respondent is required to prepare and file any and all income or other tax returns applicable to the Escrowed Funds with all applicable federal, state and local departments of revenue in all years income is earned in any particular tax year as and to the extent required under the provisions of the Code, and other applicable tax law. The Escrow Agent shall have no responsibility for the preparation or filing of any tax or information return with respect to any transaction, whether or not related to the Agreement, that occurs outside the Escrowed Funds.

*[signature pages follow]*

IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the date first hereinabove written.

**RESPONDENT:**

\_\_\_\_\_  
(full legal name with applicable entity suffix)

A(n) \_\_\_\_\_  
(entity type and State/Commonwealth of formation)

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

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

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

Address for Notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

Facsimile: (        ) \_\_\_\_\_ - \_\_\_\_\_

Phone: (        ) \_\_\_\_\_ - \_\_\_\_\_

Federal Employer ID #: \_\_\_\_\_

For purposes of the Agreement, the “Authorized Respondent Representatives” are:

<u>Name(s)</u>	<u>Title(s)</u>
_____	_____
_____	_____
_____	_____

*[Signature Page to Escrow Agreement]*



IN WITNESS WHEREOF, the parties hereto each has caused this Escrow Agreement to be duly executed as of the date first hereinabove written.

**ESCROW AGENT:**

MANUFACTURERS AND TRADERS TRUST  
COMPANY

By: \_\_\_\_\_  
Name: Stevie C. Blackston II  
Title: Assistant Vice President

**CITY:**

THE CITY OF YORK

By: \_\_\_\_\_  
Name:  
Title:

**AUTHORITY:**

YORK CITY SEWER AUTHORITY

By: \_\_\_\_\_  
Name:  
Title:

## SCHEDULE 1

### ESCROW AGENT SCHEDULE OF FEES

Escrow Agent Fees (per Escrow Account required):

Initial Escrow Agent Fee \$ 1,500.00  
- Payable by the Respondent at the inception of the  
Escrow Account

Annual Escrow Agent Fee (rate guaranteed for a period of 3 years) \$ 1,500.00  
- Payable by the Respondent annually in Arrears. The  
Escrow Agent will pro rate the fees for accounts shorter  
than a full year.

Additionally, the Escrow Agent will be reimbursed by the Respondent for those customary out-of-pocket expenses as set forth in the other terms of this Escrow Agreement.

The above fees are contingent on the investment of funds in money market mutual funds of or available to Escrow Agent, including any proprietary fund for which the Escrow Agent or an affiliate is an investment advisor or provides other services to such fund and receives reasonable compensation for such services. Charges for any services not specifically covered in this Schedule will be billed commensurate with the services rendered, with prior written notice to all parties to this Escrow Agreement. In the event that federal, state or local laws and regulations impose new or additional duties on Escrow Agent in the conduct of its business as an escrow agent under this Escrow Agreement, then Escrow Agent may increase its fees and expense reimbursement rates under this Escrow Agreement upon at least 30 days' prior written notice to the parties to the Agreement reasonably in proportion to such new duties. In the event any extraordinary circumstances arise, Escrow Agent reserve the right to renegotiate our fees accordingly with all parties to the Agreement.

## SCHEDULE 2

### FORM OF CASH DEPOSIT RECEIPT

Manufacturers and Traders Trust Company, a New York banking corporation, a/k/a M&T Bank, as escrow agent (the "Escrow Agent"), hereby confirms receipt of \$\_\_\_\_\_ on May 16, 2016 from \_\_\_\_\_ (the "Respondent"), for deposit into the Escrow Account created under the Escrow Agreement, dated May 16, 2016 (as such may be amended, the "Escrow Agreement"), by and among the Escrow Agent, the Respondent, The City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of March 19, 2014, P.L. 52, 53 P.S. §35101 *et seq.*, and the York City Sewer Authority, a body corporate and politic, organized under the Pennsylvania Municipality Authorities Act, Act of June 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.*, which will be held pursuant to the terms of the Escrow Agreement.

MANUFACTURERS AND TRADERS TRUST  
COMPANY

By: \_\_\_\_\_  
Name: Stevie C. Blackston II  
Title: Assistant Vice President

### SCHEDULE 3

#### FORM OF DEFICIT NOTICE

Pursuant to Section 2 of the Escrow Agreement, dated May 16, 2016 (as such may be amended, the "Escrow Agreement"), by and among Manufacturers and Traders Trust Company, a New York banking corporation, a/k/a M&T Bank, as escrow agent (the "Escrow Agent"), \_\_\_\_\_ (the "Respondent"), The City of York, York County, Pennsylvania (the "City"), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of March 19, 2014, P.L. 52, 53 P.S. §35101 *et seq.*, and the York City Sewer Authority, a body corporate and politic (the "Authority"), organized under the Pennsylvania Municipality Authorities Act, Act of June 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.*, the Escrow Agent hereby informs the Respondent, the City and the Authority that there is a deficit of \$ \_\_\_\_\_ (a "Deficit") that has reduced the market value of the Cash Deposit (as defined in the Escrow Agreement) below Five Million United States Dollars (\$5,000,000) (the "Benchmark").

Pursuant to Section 2 of the Escrow Agreement, the Respondent has agreed to replenish the Cash Deposit to reach the Benchmark through an additional deposit by 2:00 p.m. Eastern Time on the third business day following receipt (determined pursuant to Section 13 of the Escrow Agreement) by the Respondent of this Deficit Notice.

Sincerely,

MANUFACTURERS AND TRADERS TRUST  
COMPANY

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

Name: Stevie C. Blackston II

Title: Assistant Vice President

## SCHEDULE 4

### **ELIGIBLE INVESTMENTS**

For purposes of this Escrow Agreement, “Eligible Investments” mean (i) obligations issued by or guaranteed by the United States of America or any agency or instrumentality thereof, (ii) insured certificates of deposit of or interest bearing accounts with national banks or corporations endowed with trust powers, having capital and surplus in excess of \$200,000,000, (iii) commercial paper of finance companies organized under the laws of any state of the United States of America that at the time of investment is rated A-1 by Standard & Poor’s Financial Services LLC (“S&P”) or P-1 by Moody’s Investors Service, Inc. (“Moody’s”), (iv) money market mutual funds that are registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940, as amended (the “1940 Act”), and operated in accordance with Rule 2a-7 of the 1940 Act and that at the time of investments are rated AAAm by S&P and/or Aaa by Moody’s, including such funds for which the Escrow Agent or an affiliate of the Escrow Agent provides investment advice or other services provided that such funds comply with this subsection (iv), or (v) any other investment mutually agreed upon by the Respondent and the City Authorized Representative as evidenced by a jointly executed writing delivered to the Escrow Agent. Initially, in the absence of other written direction, the Escrowed Funds shall be invested in Federated Prime Fund #396 – CUSIP 60934N708.

**SCHEDULE 5**

**FORM OF CITY STATEMENT**

Manufacturers and Traders Trust Company c/o Wilmington Trust, N.A.  
213 Market Street, 2nd Floor, Harrisburg, PA 17101

Attn: Stevie C. Blackston II, CCTS, Assistant Vice President, Corporate Trust Services of Wilmington Trust,  
N.A.

Fax: (717) 231-2615

Email: scblackston@wilmingtontrust.com

Re: The York Wastewater Utility System Escrow Agreement - City Statement of Disbursement

Ladies and Gentlemen:

Pursuant to Section 5(a) of the Escrow Agreement, dated May 16, 2016, by and among Manufacturers and Traders Trust Company, a New York banking corporation, a/k/a M&T Bank, as escrow agent (the "Escrow Agent"), The City of York, York County, Pennsylvania (the "City"), a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of March 19, 2014, P.L. 52, 53 P.S. §35101 *et seq.*, and the York City Sewer Authority, a body corporate and politic (the "Authority"), organized under the Pennsylvania Municipality Authorities Act, Act of June 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.*, and \_\_\_\_\_, as amended, modified or supplemented from time to time in accordance with the terms thereof, the undersigned hereby submits, on behalf of the City and the Authority, this City Statement directing the Escrow Agent to liquidate all investments in the Escrow Account and pay to the Authority all Funds in the Escrow Account. The City represent that its and the City Authorized Representative's actions are in keeping with the Bid Documents described in the Escrow Agreement.

The disbursement of Funds should be made to:

Account No.: \_\_\_\_\_

Routing No.: \_\_\_\_\_

Bank: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

THE CITY OF YORK

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

Name:

Title:

**SCHEDULE 6**

**FORM OF INCUMBENCY CERTIFICATE**

**TO PERMIT DIRECTIONS AND INSTRUCTIONS BY FACSIMILE OR  
VIA EMAIL UNDER THE ESCROW AGREEMENT**

Reference is hereby made to the Escrow Agreement, dated May 16, 2016, by and among Manufacturers and Traders Trust Company, a New York banking corporation, a/k/a M&T Bank, as escrow agent (the "Escrow Agent"), The City of York, York County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania organized under the Third Class City Code, Act of March 19, 2014, P.L. 52, 53 P.S. §35101 *et seq.*, and the York City Sewer Authority, a body corporate and politic, organized under the Pennsylvania Municipality Authorities Act, Act of June 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.*, and \_\_\_\_\_, as amended from time to time in accordance with the terms thereof (the "Escrow Agreement").

Pursuant to Section 13 of the Escrow Agreement, the undersigned party to the Escrow Agreement desires to provide directions and instructions by facsimile or via email and hereby lists and certifies the names, titles, email addresses and telephone numbers of the persons with authority to act for the undersigned party under the Escrow Agreement. This Incumbency Certificate shall be amended and restated by the undersigned party in the event such party determines to add or a delete a person from the listing below.

<u>Name</u>	<u>Title</u>	<u>Email Address</u>	<u>Telephone No.</u>	<u>Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

\_\_\_\_\_  
(*Escrow Agreement Party Providing this Certificate*)

By: \_\_\_\_\_  
Name:  
Title: