

**INTERMUNICIPAL AGREEMENT**

**THIS INTERMUNICIPAL AGREEMENT**, made this \_\_\_ day of \_\_\_\_\_, 2016, by and among:

**CITY OF YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “York”); and

**TOWNSHIP OF MANCHESTER**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “Municipality”).

**WITNESSETH**

**WHEREAS**, York owns or leases, operates and maintains the York System for rendering Wastewater collection, transmission, treatment and disposal service in and for York and certain Connected Municipalities, including the Municipality; and

**WHEREAS**, the Municipality owns, operates and maintains the Municipality’s Wastewater Collection Systems for rendering Wastewater collection and transmission service in and for certain portions of the Municipality; and

**WHEREAS**, York and the Municipality previously entered into a series of Prior Agreements that established the Municipality’s right to collect Wastewater in the Municipality’s Wastewater Collection Systems and connect its respective systems to the York System for the purpose of utilizing the York System’s wastewater treatment capacity, subject to the terms and conditions established therein; and

**WHEREAS**, pursuant to the Prior Agreements among York and the Municipality, the Municipality has been permitted to connect to the York System for the purpose of transmitting and treating Wastewater from the Municipality; and

**WHEREAS**, the Parties now desire to rescind all of the Prior Agreements in their entireties and subject themselves to the terms and conditions contained herein for the continued provision of services by York; and

**WHEREAS**, the Municipality desires to contract with York for the continued provision of Wastewater transportation, treatment and disposal services by York to the Municipality, pursuant to the terms and conditions contained herein; and

**WHEREAS**, York agrees to accept, receive, transport, treat and dispose of Wastewater from the Municipality pursuant to the terms and conditions contained herein; and

**NOW, THEREFORE**, the Parties hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has

proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

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## ARTICLE I

### Definitions

Section 1.01. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified whenever they are used or referred to herein, unless a different meaning clearly appears from the context:

- A. *“Agreement”* shall mean this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as “hereto”, “hereby”, “herein”, “hereof”, “hereunder” or other descriptive words or phrases having similar import;
- B. *“Allocated Capacity”* shall mean the amount of hydraulic capacity that a Party has reserved in the Treatment Plant pursuant to Exhibit A or Article IV hereunder;
- C. *“Allocated Capacity Default”* shall mean a discharge of Wastewater into the York System by a Party that exceeds the peak hydraulic flow rate of:
  - 1. A peaking factor multiplied by such Allocated Capacity for any hour within a 24 hour period, which peaking factor shall be established in accordance with Section 4.01 hereof; or
  - 2. 100% of the Allocated Capacity based upon the Municipality’s total flow for a three consecutive month period, divided by the number of days in that three month period;
- D. *“Attributed Flow”* shall mean the sewage flow attributed to the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow.
- E. *“Bonds”* shall mean the notes, bonds or other debt obligations previously or subsequently authorized and issued by the York City Sewer Authority or York or York’s assignee or designee, the proceeds of which would be applied for the purposes of financing Costs relating to the Treatment Plant, or notes, bonds or other debt obligations issued by the York City Sewer Authority or York or York’s assignee or designee to refund the same, where the proceeds of such bonds, notes or debt are or will be applied in part to pay Costs attributable to the Municipality, and where no Capital Contribution has been tendered by the Municipality, as applicable, to cover the full amount of its appropriate share of such Costs;
- F. *“Capacity”* shall mean the ability of the Treatment Plant to receive and effectively treat a specified load;

- G. *“Capital Contribution”* shall mean the tendering by the Municipality, as applicable, of a lump sum certain amount calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant;
- H. *“Certified Public Accountant”* shall mean a Person, who shall be Independent, appointed by the governing body of York, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the Commonwealth;
- I. *“Commonwealth”* shall mean the Commonwealth of Pennsylvania;
- J. *“Connected Municipalities”* shall mean all of the suburban communities near York, excluding the Municipality, that convey Wastewater to the Treatment Plant pursuant to separate agreements, which specifically include the Borough of North York, the Borough of West York, the Township of Spring Garden, the Township of Springettsbury, the Township of West Manchester, and the Township of York;
- K. *“Connected Municipalities Meeting”* shall mean the quarterly meeting of the Municipality, the Connected Municipalities, and York pursuant to Section 2.04;
- L. *“Connection”* shall mean the connection of a structure that generates or could generate hydraulic or organic loads to a sewer system;
- M. *“Consulting Engineers”* shall mean a Person who shall be appointed by the governing body of York, qualified to pass upon engineering questions relating to Wastewater collection, transmission, treatment and/or disposal systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth and the individual assigned to York shall be a professional engineer duly registered under laws of the Commonwealth;
- N. *“Costs,” “Costs of Acquisition,”* or *“Costs of Construction,”* as to the Treatment Plant shall mean and include all capital costs related to acquiring or constructing any portion of the Treatment Plant, and future betterments thereto, but not pertaining to any part of the York Wastewater Collection System or the Municipality’s Wastewater Collection Systems, unless specified otherwise, and shall include, but not be limited to, the following:
1. Obligations incurred and payments made or required to be made by York to workmen and laborers or to contractors, subcontractors, builders, and suppliers;
  2. Interest on Bonds during the acquisition or construction period with respect to any particular series of Bonds, less interest income earned from the investment of the proceeds derived from the Bonds during such period;
  3. Administrative expenses of York during the period of any acquisition or construction, including the financing thereof;

4. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the Treatment Plant; amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;
5. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable by York for carrying out purposes of York relating to the Treatment Plant, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Treatment Plant and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;
6. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental regulatory authority related to construction of any part of the Treatment Plant, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;
7. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations thereof, the preparation of Act 537 plans or updates, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction and the financing thereof;
8. Expenses of audits, initial compensation of a trustee or paying agent with respect to Bonds of any series; fees and expenses, if any, of a trustee, or paying agent relating to a construction fund, if any; financing costs, fees and expenses, including compensation and expenses of a financial advisor or underwriter, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses, including costs arising out of any amendments hereto; advertising expenses; premiums for insurance or contracts of suretyships insuring bondholders against the risk of nonpayment of the principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by York in connection with financing acquisition or construction and issuing Bonds;

9. Other costs, charges and expenses incident to completion of any improvements, alterations, extensions or additions to the Treatment Plant;
10. Reimbursement to York for advances made by it for any of the above items, including any interest paid or required to be paid by York with respect to any such advances, or for any other costs incurred by York or for work done by York with respect to the Treatment Plant;
11. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;
12. Any sums required to reimburse York or to pay or retire any indebtedness incurred by York, including payment of interim obligations of York, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and
13. Interest on and issuing costs of any Bonds issued in anticipation of receipt of Federal or Commonwealth grants or loan funds applied to pay such costs, less any interest income earned from the investment of the proceeds derived from the Bonds.

Such “Costs”, “Costs of Acquisition,” or “Costs of Construction” incurred in connection with the Treatment Plant, shall be reduced by any and all grants, reimbursements, subsidies or other payments designated by law, regulation, contract or agreement to be applied to payment of all or any portion of such items (except payments required under this Agreement);

- O. “DEP” shall mean the Department of Environmental Protection of the Commonwealth or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- P. “Debt Service Charge” shall mean the amounts due to York from the Municipality calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs, including principal and interest, of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant funded through Bonds issued by or on behalf of York.
- Q. “Domestic Wastes” shall mean the normal water-borne wastes from a Dwelling Unit such as wastes from kitchens, water closets, lavatories, and laundry facilities;
- R. “Dwelling Unit” shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by one family or other group of Persons living together or by a Person living alone;
- S. “Effective Date” shall mean the date the Parties hereto have executed this Agreement and have adopted this agreement pursuant to the applicable rules of their respective governing bodies;

- T. “EPA” shall mean the United States Environmental Protection Agency or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- U. “*Extra Strength Wastes*” shall mean all non-Domestic Wastes which exceed the pollutants, loadings, or waste characteristic limits contained in the pertinent pretreatment ordinance;
- V. “*Fiscal Year*” shall mean the period commencing on January 1 of each year and ending on December 31 of the same year;
- W. “GPD” shall mean gallons of Wastewater discharged during a 24 hour period from midnight to midnight;
- X. “*Hydraulic Overload*” shall mean the condition that occurs when the monthly average flow entering the Treatment Plant exceeds the hydraulic design capacity for 3 consecutive months out of the preceding 12 months or when the flow in a portion of the York System exceeds its hydraulic carrying capacity;
- Y. “*Independent*” shall mean, with respect to the Certified Public Accountant, a Person who is Independent in fact and who is not a member of the governing body, officer or employee of a Party hereto, or any elected or appointed official or employee of a Party hereto, or that is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body, officer or employee of a Party hereto, or an elected or appointed official or employee of a Party hereto; provided, however, that the fact that such Person is retained regularly by a Party hereto shall not make such Person an employee within the meaning of this definition;
- Z. “*Industrial User*” shall mean any Non-Residential Connection discharging sewage and wastes other than normal water carried domestic sewage and wastes, directly or indirectly, to the York System;
- AA. “*Interceptor*” shall mean that pipe, pump, facility, lift or other physical installation necessary for the conveyance of Wastewater from a Point of Connection to the Treatment Plant;
- BB. “*IPP*” shall have the meaning given that term in Section 6.08 hereof;
- CC. “*Monthly Average Flow*” shall mean the total flow at the Treatment Plant during a calendar month divided by the number of days in that month;
- DD. “*Municipality*” shall mean the Township of Manchester, located in York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania;
- EE. “*Municipality’s Wastewater Collection Systems*” shall refer to the Municipality’s Wastewater collection and transportation system facilities presently existing or hereafter to be acquired, constructed, owned and operated by the Municipality to provide Wastewater collection and transportation services to certain portions of the

- Municipality, together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof;
- FF. *“Non-Residential Connection”* shall mean any building, structure, room, group of rooms, establishment or facility, other than a Dwelling Unit, discharging sewage and wastes, including industrial wastes, directly or indirectly, to the York System;
- GG. *“O&M”* shall mean Operating and Maintenance;
- HH. *“O&M Charge”* shall mean the charges payable by the Municipality to York hereunder calculated pursuant to Section 5.01 hereof;
- II. *“O&M Expenses”* shall have the meaning described in Section 5.02 hereof;
- JJ. *“Organic Design Capacity”* shall mean the highest daily organic load at which the Treatment Plant can effectively treat the incoming Wastewater at the predetermined limitations contained in York’s NPDES permit;
- KK. *“Organic Overload”* shall mean the condition that occurs when the average daily influent organic load at the Treatment Plant exceeds the organic design capacity upon which the permit and Treatment Plant design are based;
- LL. *“Party”* shall mean any party to this Agreement individually;
- MM. *“Parties”* shall mean York and the Municipality;
- NN. *“Person”* or *“Persons”* shall mean an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipal corporation, a municipality, a municipal authority or any other group or legal entity;
- OO. *“Point of Connection”* shall mean point or points at which York receives and accepts Wastewater from the Municipality as shown on Exhibit B, which is incorporated herein by reference hereto, and as may be amended from time to time;
- PP. *“Prior Agreements”* shall mean all previous agreements entered into by the Parties hereto pertaining to the provision of Wastewater transportation, treatment and disposal services by York, specifically including: (i) the Agreement dated December 9, 1976 between York and the Municipality, and any and all supplements or amendments thereto;
- QQ. *“Pro Rata Share of Attributed Flow”* shall be calculated by dividing the attributable sewage flow from the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow, by the total metered flow discharged to the Treatment Plant;
- RR. *“Rental Period”* shall have the meaning given that term in Section 4.08(f) hereof;
- SS. *“Sanitary Wastewater”* shall mean all Domestic Wastes and water-borne wastes of similar character from similar facilities in offices, hotels, stores, restaurants, hospitals, schools, other commercial establishments, and industrial establishments;
- TT. *“Treatment Plant”* shall mean the existing Wastewater treatment and disposal facilities, the outfall sewer and all other facilities related to treatment and disposal of Wastewater, together with any additions, improvements, enlargements and/or

- modifications thereto and/or replacements thereof, heretofore or hereafter acquired or constructed by York, and that York deems appropriate and necessary to provide treatment and disposal of Wastewater under applicable laws of the Commonwealth;
- UU. “*Wastewater*” includes Sanitary Wastewater and/or Extra Strength Wastes, together with any ground, surface or storm water as may be present;
- VV. “*York*” shall mean the City of York, York County, Pennsylvania, a municipal corporation (a Third Class City) of the Commonwealth or its assigns, designees, successors, vendors, or concession holders;
- WW. “*York Interceptors*” shall mean the Interceptors owned York carrying the Municipality’s and York’s Wastewater flow from the Points of Connection to the Treatment Plant, but excluding any of the Municipality’s Interceptors upstream from their connection with a York Interceptor;
- XX. “*York System*” shall mean the York Wastewater Collection System, the York Interceptors and the Treatment Plant; and
- YY. “*York Wastewater Collection System*” shall mean the Wastewater collection and transportation system facilities, excluding the York Interceptors, presently existing or hereafter to be acquired, constructed, owned and operated by York to provide Wastewater collection and transportation services to certain portions of York and other bulk service customers (but not the Municipality), together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof; excluding, however, any facilities included in the definition of “Treatment Plant” and “York Interceptors”.

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## ARTICLE II

### Construction and Operation of the Treatment Plant and other Conditions

Section 2.01. *Construction and Operation of Treatment Plant.* York City Sewer Authority or its successor shall own the Treatment Plant and be the Treatment Plant permittee. York shall operate the Treatment Plant continuously, and shall pay or cause to be paid the O&M Expenses of the Treatment Plant.

Section 2.01(a). *Wastewater Collection System Costs and Operation.* The Municipality shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the Municipality’s Wastewater Collection Systems. Similarly, York shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the York Wastewater Collection System and York Interceptors, except as otherwise provided herein. The Municipality’s Wastewater Collection Systems shall each be designed, constructed, operated and maintained in a manner that will not cause them to be in violation of this Agreement and that will not cause



York to be in violation of any law or regulation of any governmental authority having jurisdiction over the Treatment Plant.

*Section 2.01(b). Operation Requirement.* Each Party shall operate and maintain its respective Wastewater collection system in a good and sound operating condition.

*Section 2.02. Connection of the Municipality's Wastewater Collection Systems and Limitations.* The Municipality shall maintain continuously during the term hereof proper connection of the Municipality's Wastewater Collection Systems to the York Interceptors, at such Points of Connection as described in Exhibit B, attached hereto. Future additional points of connection by the Municipality shall be agreed upon by the Municipality and York, and the terms and conditions applicable to such future connections shall be set forth in a separate written agreement between the Parties, which shall constitute an amendment and supplement to this Agreement.

The Municipality shall deliver to the Point of Connection all Wastewater originating within the service area described in the Act 537 Plan for the Municipality, as applicable and as amended from time to time, as being tributary to the York Interceptors and Treatment Plant and not intended for treatment by on-lot septic systems.

*Section 2.03. Cooperation; Sharing of Information.* The Parties each agree to the extent possible and economically practicable (except as otherwise required under this Agreement), to cooperate and share pertinent information with each other in facilitating the construction, maintenance and/or operation of their Wastewater collection systems, and York will provide the Municipality with any pertinent information regarding Costs, quantities of discharge, capacity or other matters relating to the Treatment Plant reasonably deemed necessary or desirable as determined by the Municipality, provided however, that in the event securing such information involves costs which would not normally be incurred as a cost of owning or operating and maintaining the Treatment Plant, the Municipality shall pay or provide for the payment of such costs. Each Party shall not be financially or otherwise responsible for the Wastewater collection system of the other Party, and the Municipality shall not be financially or otherwise responsible for the Treatment Plant except to the extent of charges required to be paid by the Municipality to York hereunder, and the performance of all terms and conditions of this Agreement. This paragraph shall not limit the obligations of the Parties set forth in the Special Requirements Article of this Agreement (Article IX).

At least forty-five (45) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, York shall submit to Municipality all material and information in its possession necessary for Municipality to submit to City the annual report referenced below. At least thirty (30) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, the

Municipality shall submit to York an annual report providing all material and information required from it by York and DEP to complete its annual wasteload management report.

*Section 2.04. Connected Municipalities Meeting.* It is agreed that the Connected Municipalities Meeting currently utilized by the Municipality, the Connected Municipalities, and York shall continue on a quarterly basis as set forth herein. The Connected Municipalities Meeting shall continue in its current form and pursuant to its current procedures, but at any time may establish its own procedures. The Connected Municipalities Meeting is intended to provide an opportunity for periodic discussion, review, and recommendations of all matters relating to this Agreement and the provision of Wastewater treatment services. Upon reasonable notice, the Municipality, any Connected Municipality, or York may call a Connected Municipality Meeting. The Connected Municipalities Meeting shall continue for the Term of Agreement set forth herein, including any extensions or renewals thereof.

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### ARTICLE III

#### Bulk Service Customer; Term of Agreement

*Section 3.01. Municipality Constitutes a Bulk Service Customer of York.* York agrees to operate and maintain in good working order and in compliance with all applicable laws, regulations and permits continuously during the term hereof the York Interceptors and the Treatment Plant, and any enlargements, additions, improvements and modifications thereto as determined solely by York, and to provide the Municipality, as a bulk service customer, Wastewater treatment, transportation, and disposal services in the Treatment Plant throughout the term hereof, as provided for herein.

*Section 3.02. Term of Agreement.* Subject to the covenants and conditions set forth herein, the term of this Agreement shall be thirty (30) years unless earlier terminated by mutual written consent of all the Parties hereto. This Agreement shall automatically renew on a year-to-year basis upon the expiration of the initial thirty (30) year term. This Agreement may be reviewed every five (5) years by the Parties, which shall report to their respective governing bodies on the sufficiency of this Agreement or any recommendations for amendments and modifications hereof.

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### ARTICLE IV

#### Allocation of Capacity in the Treatment Plant; Measurement of Flow; Capital Contribution; Updating of Treatment Plant; Additions to Treatment Plant Required by York and Calculation of Debt Service

Section 4.01. Acceptance of Flows from the Municipality. During the term hereof, the Municipality shall have the contractual right to discharge Wastewater into the York Interceptors subject to the following limitations:

Average Daily Flow (ADF):	2,434,900 Gallons/Day as a monthly average
Peak Daily Flow (PDF):	9,739,600 Gallons/Day
Peaking Factor	4.0 PDF/ADF

The Municipality covenants and agrees that it will not discharge Wastewater into the York Interceptors in a manner that constitutes an Allocated Capacity Default, as set forth herein, except as may be allowed by York hereunder.

Section 4.02. Measurement of Flow. The quantity of Wastewater discharged by the Municipality shall be determined by meter readings of the Wastewater flow meters or Wastewater flow measuring devices at the Point of Connection. The quantity of Wastewater discharged by York shall be determined by the flow measured by the Treatment Plant headworks meter, minus the quantity of Wastewater discharged by the Municipality and the Connected Municipalities.

Section 4.02(a). Flow Meters. York shall provide and install a Wastewater flow metering station at the Municipality's Point of Connection and the Treatment Plant headworks that will achieve the maximum practicable accuracy. Costs associated with the provision and installation of the Wastewater flow metering and sampling stations shall constitute O&M Expenses. The metering station shall be equipped with a flow reading system that will collect and transmit meter readings for download and a display that will allow the rate and total to be read in standard engineering units.

Section 4.02(b). Maintenance of the Flow Meter. York shall maintain the above referenced flow meter to accurately monitor flow conveyed across municipal boundaries. The flow meter shall be capable of recording flow measurements in one-minute intervals and averaging flows over the hour and day. The meter shall record and totalize all data. The record shall include at least flows at hourly and daily intervals. York shall maintain the flow meter in good working order. The flow meter shall be inspected, tested, and certified for accuracy at reasonable intervals, but no less than ninety (90) days. Calibration certification shall be done by a reputable company normally engaged in the business of meter calibration. York shall forward such inspection results, testing results, and certificates of calibration to the Municipality upon request.

In the event of a defective or inoperative flow meter, York shall have the right to take such steps as are required to repair or replace the flow meter, and the costs associated with any such maintenance, repair or replacement work shall constitute O&M expenses if costs are incurred.

Section 4.02(c). Monitoring Flow Meters. York shall have access at any and all times to the flow meters. The flow meters shall be monitored by York, which shall be

responsible for collection of data therefrom. In addition, the Municipality shall have a right of access to such records.

Section 4.02(d). Unmetered Flows. Any point of connection of the Municipality to the York System that reaches 70,000 GPD shall require the installation of a flow meter by York within nine (9) months of reaching 70,000 GPD at a mutually agreed upon location.

Section 4.02(e). Missing Flow Data. In the event reliable flow data is unavailable, due to malfunction in a flow meter, or in the recording device for said meter, York shall estimate flows for any such period as the flows for the same period in the preceding year or for the period immediately preceding the malfunction depending on which of these periods had a rainfall amount closest to that of the period of malfunction. York may use other pertinent data, such as water consumption data, in developing an estimate for the missing data. In the event of any dispute between the Parties concerning the reasonableness or accuracy of estimated flows, the dispute shall be resolved pursuant to Section 10.02.

The quantity of Wastewater discharged by the Municipality into the Treatment Plant shall be the sum of the flow measured at the applicable meters or devices at the Point of Connection for the Municipality as set forth on Exhibit B plus any unmetered or estimated flow (which may be amended from time to time as any additional connection points are permitted by York). The flow attributable to the Municipality shall be reduced by the metered flow plus any unmetered or estimated flow from any York customer providing flow into the Municipality's line prior to the Municipality's connection point with the York System.

It is understood that technology changes may permit metering changes that are more accurate. York reserves the exclusive right to determine metering changes and shall share information on any metering changes with the Municipality as it may request.

Section 4.03. Exclusive Service Provider for Designated Areas. The Municipality covenants and agrees that York, during the term hereof, shall be the sole and exclusive agency providing Wastewater transportation, treatment and disposal services for the portion of the Municipality and properties located in the drainage area contemplated to be served by the York System and Treatment Plant (which drainage area is shown on Exhibit C attached hereto), pursuant the terms and conditions herein. Further, the Municipality covenants and agrees not to construct or operate, or permit the construction or operation of, any sewage transportation or treatment facilities in competition with York.

The provisions of this Section 4.03, however, shall not prejudice the Municipality with respect to its rights to use the existing sewage treatment facilities not owned by York that are presently utilized by the Municipality; nor shall such covenants of exclusivity and non-competition be construed now, or during the term hereof, to the prejudice of the Municipality should any governmental agency of the Commonwealth or United States, specifically including DEP and the EPA, order the construction of a treatment facility or re-routing of flows to another

facility, a change in treatment flows or require the sharing of new treatment facilities with a municipality.

*Section 4.04. Expansions or Upgrades of Treatment Plant.* The Municipality shall be required to contribute to and share in the Costs of any other capital expansions or upgrades, improvements, modifications, extraordinary repairs or replacements not considered an O&M Expense, and other projects deemed by York to be of a capital nature and undertaken by York with respect to the Treatment Plant (“Capital Costs”). Any capital expansion, upgrade, improvement, modification, extraordinary repair or replacement in excess of Three Million (\$3,000,000) Dollars shall be approved by a majority of all Connected Municipalities unless such upgrade, improvement, modification, extraordinary repair or replacement has been order to be constructed by a governmental agency of the Commonwealth or United States, specifically including DEP and the EPA. York shall not separate any contracts or projects to intentionally avoid the Three Million (\$3,000,000) Dollar limitation provided herein.If York should undertake such an upgrade or modification of the Treatment Plant, which undertaking results in Costs, Costs of Acquisition or Costs of Construction to be incurred by York, then the Municipality shall pay a pro rata share of such Costs in the same proportion as its respective Allocated Capacity as costs are incurred by York for such upgrading or improvements. The Municipality shall have the right to inspect the record of all purchases and expenses involved in the construction. York shall provide to Municipality on an annual basis a five (5) year projection of expected capital improvements.

*Section 4.05. Calculation of Debt Service Charge (Contingent upon Issuance of Bonds for the Municipality).* For prior or subsequent Bonds issued to finance Capital Costs at the request of or for the benefit of the Connected Municipalities or, if applicable, other parties using the Treatment Plant, pursuant to Section 4.04, the payment of the Debt Service Charge shall commence upon issuance of the Bonds, or at such other time as may be required to assure the timely payment of debt service due on the Bonds. Such debt service charge shall be calculated in a manner consistent with the coverage and other covenants with respect to the Bonds and the calculation of the Capital Contribution hereunder, *i.e.*, the principal and interest attributable to the Capital Costs, together with financing costs, multiplied by a factor equal to the percentage that the Municipality’s capacity increase in the Treatment Plant bears to the total increased capacity of the Treatment Plant (for example if the Municipality has additional capacity of 10% of the total increased capacity and is thus responsible for paying 10% of the capital cost of the project, the Municipality shall pay 10% of any debt service charge if it elects to use Bonds to pay for its share of the capital costs). Accelerated payments made by or on behalf of York on any Bonds shall not release the Municipality of its obligation to pay the debt service charge for any Capital Costs and any Capital Contribution funded pursuant to this section during the period such Bonds would have been outstanding but for accelerated payment. An amortization schedule of all outstanding Bonds as of the date of this Agreement is attached hereto as Exhibit D, and the Parties agree that such schedule shall be updated from time to time upon the issuance of additional Bonds.

*Section 4.06. Hydraulic Overload.* In the event of Hydraulic Overload the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.07. Organic Overload. In the event of Organic Overload, the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.08. Allocated Capacity Planning. If at any time York or the Municipality's Monthly Average Flow exceeds 90% of York or the Municipality's Allocated Capacity, York or the Municipality shall, in addition to any action required as a result of any default, begin planning for the acquisition of additional capacity either by purchasing available capacity or by notifying the other of its need for additional capacity. York or the Municipality may, as an alternative to the purchase of additional capacity, submit a plan to reduce its Monthly Average Flow to comply with this Agreement. If a Party notifies the other of its need for additional capacity, the Party shall submit its plan for the acquisition of additional capacity or its plan to reduce its Monthly Average Flow to York for review and comment within 90 days of the discharge that triggered the planning. If the Municipality and York cannot agree on the plan for purchasing additional capacity or to reduce Monthly Average Flow, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereunder.

Section 4.08(a). Redistribution of Allocated Capacity.

(1) In the event any Connected Municipality or York requires additional Allocated Capacity, it shall have the option, in accordance with the following terms and procedures, to reserve additional Allocated Capacity in the Treatment Plant. In order to obtain additional Allocated Capacity, there must be in existence at the time unused treatment capacity that has been allocated to another Connected Municipality or York but which such other Connected Municipality or York is not in need of at the time and is willing to surrender.

(2) York agrees that in the event any Connected Municipality consents to a reduction of Allocated Capacity, the Allocated Capacity surrendered shall be offered to any of the Connected Municipalities and York in the discretion of the selling Connected Municipality, at the price agreed to by the selling Connected Municipality. The selling Connected Municipality must give notice, only to the other Connected Municipalities and York, of intent to sell part of its Allocated Capacity to another Connected Municipality even though it need not be offered to all other Connected Municipalities. If the Connected Municipality to whom such Allocated Capacity is offered does not wish to accept such additional Allocated Capacity, the Allocated Capacity so offered may be made available to the remaining Connected Municipalities on a pro-rata basis.

(3) Any Connected Municipality or York surrendering all or any portion of its Allocated Capacity shall be reimbursed in accordance with a mutual agreement reached with the Party purchasing such Allocated Capacity. If no Connected Municipality or York desires to purchase Allocated Capacity, then the Connected Municipality offering to sell its Allocated Capacity shall continue to be liable for all payments with respect to such reserved capacity.

(4) Where any Connected Municipality or Party acquires an interest in Allocated Capacity in the Treatment Plant, such Connected Municipality or Party must thereafter pay to York the acquiring Party's proportional share of all Costs, Capital Contributions, O&M Charges, and all other liabilities contained in this Agreement. Such acquiring Party shall be bound by the terms of this Agreement, as it may from time to time be amended.

Section 4.08(b). Defaults. Allocated Capacity Defaults shall not be permitted; however, if such a Default occurs it shall be addressed as provided for herein.

Section 4.08(c). Municipality Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by the Municipality, York shall notify the Municipality of said Default in writing, including data, if available. The Municipality shall, within sixty (60) days of said notice, acknowledge said notice and advise York of any discrepancies with such notice of default and the corrective action to be taken in the form of a remedial action plan. York shall review any discrepancies and within thirty (30) days provide a response. If the Municipality and York cannot agree on whether an Allocated Capacity Default has occurred, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In the event the Municipality submits to York a remedial action plan, York shall review the proposed remedial action plan and provide comments on the proposed remedial action within thirty (30) days of the plan being submitted. Upon approval of the proposed remedial action plan by York, the Municipality shall implement the approved corrective action within ninety (90) days of receipt of approval from York, or such longer period that may be reasonably granted by York for design, approval, construction and implementation of such corrective actions. If the Municipality and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, York may limit new connections until the conditions that cause the Municipality to be in Allocated Capacity Default or Allocated Nutrient Capacity Default are abated. If DEP or EPA requires connections to be limited then the Municipality agrees not to approve new sewer modules and/or forward such modules to York until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan, remedial action plan, or limit of connections will be fully complied with by the Municipality, and York shall be entitled to injunctive relief without the requirement of a bond and the Municipality will reimburse York's reasonable attorney fees and costs in the event of such enforcement action.

Section 4.08(d). York Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by York, York shall notify the Connected Municipalities of said Default in writing. York shall, within sixty (60) days of said notice, advise the Connected Municipalities of the corrective action to be taken. The Connected Municipalities shall review the proposed remedial action plan and provide comments on the proposed remedial action, or their approval of the the same, within thirty (30)

days of the plan being submitted. Upon approval of the proposed remedial action plan by the Connected Municipalities, York shall implement the approved corrective action within ninety (90) days of receipt of approval from the Connected Municipalities, or such longer period that may be reasonably required for design, approval, construction and implementation of such corrective actions. If the Connected Municipalities and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, if ordered by DEP or EPA, York shall limit connections so as to limit or eliminate discharges which cause York to be in Allocated Capacity Default. If DEP or EPA requires connections to be limited then York agrees not to approve new sewer modules until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan or limit of connections will be fully complied with by York, and Connected Municipalities shall be entitled to injunctive relief without the requirement of a bond and York will reimburse the Municipality's reasonable attorney fees and costs in the event of such enforcement action.

*Section 4.08(e). Default Surcharges.* Notwithstanding any contrary provisions contained herein and in addition to all other remedies provided for herein, where the Municipality exceeds its Peak Daily Flow for more than two (2) consecutive days or more in any thirty (30) day period, it shall pay York a \$1,000.00 per day surcharge.

Additionally, where the Municipality exceeds its annual Allocated Capacity in any fiscal year, it shall pay York a surcharge based on the amount of the increased cost of treatment specifically allocated and attributable to the Municipality's Allocated Capacity Default, plus a fifteen (15%) percent penalty on the value thereof.

Any surcharge penalties received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Capacity.

*Section 4.08(f). Allocated Capacity Defaults Triggering Rental Requirement.* In the event that the Municipality or York discharges Wastewater that results in an Allocated Capacity Default due to the Peak Daily Flow, established in accordance with Section 4.01 hereof, for three days or more in any one calendar week (Monday through Sunday) or three consecutive days, then the Municipality shall rent capacity from York for a one month period (the "Rental Period"), beginning on the day in which the Default was triggered.

In the event that the Municipality discharges Wastewater that results in an Allocated Capacity Default due to Average Daily Flow Allocated Capacity based upon the Municipality's total flow for a three consecutive month period, divided by the number of days in that three month period, at any time, then the Municipality shall rent capacity from York for a three month period (also the "Rental Period"), beginning on the day in which the Default was triggered.



If the Municipality is renting capacity in accordance with this section and has no additional Allocated Capacity Defaults (Default of solely the Allocated Capacity and not including the rental capacity) during the Rental Period, the Municipality is not required to continue to rent capacity after the expiration of the Rental Period. If the Municipality renting capacity does have an additional Allocated Capacity Default during the Rental Period, then York shall determine whether the Municipality must continue to rent capacity, purchase additional capacity (if available) or to take other corrective action. If the Parties cannot agree on whether to require a party to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof.

The amount of capacity rented shall be the amount of GPD that placed the Municipality in Default. The charge for such rental shall be the rate which York would charge its residential retail customers for the amount of capacity being rented, less the O&M charges allocated to such residential rate. This rental charge shall be in addition to the O&M charge that the Municipality must pay for the capacity that is being rented.

*Section 4.08(g). Special Charge.* If the Municipality discharges Wastewater at a flow rate that results in an Allocated Capacity Default and fails to, within ninety (90) days of the Default, make the necessary arrangement to eliminate or rent or purchase sufficient capacity to eliminate the Default, then the defaulting Municipality shall pay York for the amount of the excess usage an amount equal to double what the quarterly charge otherwise would have been on such excess usage for the calendar quarter in which the Default occurred.

Any Special Charge received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Flow or Nutrients.

*Section 4.08(h). Other Actions of York.* If the Municipality is in Allocated Capacity Default and the Parties cannot agree on whether to require the defaulting Municipality to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. Furthermore, if the United States, the Commonwealth, or any agency thereof promulgates a new statute, law, or regulation imposing more restrictive monitoring, discharge, or treatment requirements, York reserves the right to impose more restrictive requirements upon the Municipality to ensure compliance with the statute, law, or regulation.

*Section 4.08(i). State of Emergency.* If a state of emergency is declared by authorities of the Commonwealth of Pennsylvania or the United States of America for an area including York and/or the Municipality, York and the Municipality shall not be subject to the Default provisions of this Section during the time in which the emergency is in effect.

Section 4.08(j). Hydraulic Overload Planning. If at any time the total Average Daily Flow for the Treatment Plant exceeds 90% of such Capacity, the Parties shall meet and discuss planning to avoid any hydraulic overload or default within the York Interceptors and Treatment Plant.

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## ARTICLE V

### O&M Charges and Expenses

Section 5.01. O&M Charge. The Municipality shall pay to York an O&M Charge equivalent to the total O&M Expenses of the Treatment Plant multiplied by the Municipality's Pro Rata Share of Attributed Flow in the Treatment Plant. The O&M Expenses are those costs associated with operating and maintaining the Treatment Plant, and providing the Municipality and York's third party customers with Wastewater treatment and disposal services hereunder, and are set forth in greater detail in Section 5.02 hereof. The O&M Charge shall be payable to York or its designee quarterly in arrears. The method of charging for O&M Expenses as set forth in Article V shall begin upon the Effective Date of this Agreement. For example, if the Municipality's Pro Rata Share of Attributed Flow to the Treatment Plant is fifteen (15%) percent of the total, then the Municipality shall pay fifteen (15%) percent of the Total O&M Expenses.

Section 5.02. O&M Expenses. O&M Expenses shall include the total of all of the following items, each such item being determined for the Fiscal Year or portion thereof under consideration, of all the expenses and costs directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors.

O&M Expenses include:

- (a) power, chemicals, fuel, materials, and supplies;
- (b) costs of storing, hauling, dumping and disposal of residue or sludge from the Treatment Plant, including composting; and other costs determined by York to be costs;
- (c) actual salaries and wages of administrative, operation or maintenance personnel of York directly engaged in operating and maintaining the Treatment Plant, together with the social security and unemployment taxes, workmen's compensation, insurance premiums, health and accident insurance premiums and pension benefits (but not payments related to any unfunded pension liability), vocational training or any other benefits or costs applicable to the personnel, prorating such items in accordance with such employee's time actually spent on matters pertaining to the treatment or disposal of Wastewater compared to work spent on other matters;

(d) equipment and tools used or employed for the operation and maintenance of the Treatment Plant;

(e) costs of routine maintenance and repairs (including replacements), and costs of any work done under any contract with respect to the Treatment Plant (excluding capital upgrades or expansions);

(f) fees and expenses of the Consulting Engineers;

(g) premiums for property, boiler and machinery and comprehensive crime insurance and vehicle insurance;

(h) legal expenses;

(i) all expenses involved in purchasing nutrient or other credits, if any, required to meet NPDES permit requirement or other DEP requirements related to the Treatment Plant; and

(j) all other costs and expenses not of a capital nature, determined by York to be O&M Expenses and reasonably incurred and properly attributable, to the operation, maintenance and/or repair of the Treatment Plant, from time to time.

Such amount shall be reduced by any Federal or Commonwealth grants, reimbursements, subsidies or other payments to York designated by law or regulation for such purposes (excluding grants for capital upgrades or expansions), revenues received by York from the treatment of septage, sludge and leachate or similar substances, and the sale of nutrient or other credits.

O&M Expenses shall not include a general allocation of costs, expenses, overhead and other expense items of York or its assignees, designees, successors, vendors or concession holders but shall be limited to those expenses and costs that are directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors, but may include reasonable and supportable overhead expenses incurred by York.

Written records and accounts of all such costs and expenses shall be prepared and maintained by York and shall be available to each Party upon request. York shall maintain an accurate system of accounts and records with respect to all such O&M Expenses which shall be audited annually by a Certified Public Accountant. A copy of the audit shall be provided to the Municipality within thirty (30) days of its completion. Such accounts and records may be inspected and copied at reasonable times by the Municipality and its agents and representatives. Subsidies received by York attributable to the operation of the Treatment Plant shall be reimbursed to the Municipality proportionate to its respective Pro Rata Share of Actual Flow to the Treatment Plant.

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## ARTICLE VI

### Wastewater Quality and Pretreatment Restrictions

*Section 6.01. Uniform Standards.* York has adopted and may amend from time to time uniform Wastewater quality standards applicable to the York Wastewater Collection System, which are intended to comply with the requirements of EPA, DEP, and all other regulatory authorities.

*Section 6.02. Compelling Compliance with Standards.* The Municipality shall enact or cause to be enacted an ordinance or ordinances or adopt a resolution or resolutions, as applicable, and the Municipality will cause such ordinance or ordinances or resolution or resolutions, as applicable, to remain in full force and effect at all times, prohibiting and providing adequate penalties for the discharge into the Municipality's Wastewater Collection Systems of anything violating the above-mentioned Wastewater quality standards of York, and shall enforce the provisions thereof. Such ordinance or ordinances shall also prohibit and/or regulate, as applicable, the discharge into the Municipality's Wastewater Collection Systems by industries of prohibited Extra Strength Wastes, as prescribed in the applicable industrial pretreatment regulations adopted and amended by York from time to time. The Municipality shall not permit any discharge into the Municipality's Wastewater Collection Systems except in the manner and in accordance with the provisions of said ordinance or ordinances. After adoption or amendment of an ordinance, resolution or regulation pertaining to Wastewater, the Party adopting or amending the same shall provide a copy to the other Party to this Agreement.

The Parties shall not discharge any Extra Strength Wastes to the Treatment Plant.

*Section 6.03. Reimbursement for Damages from Improper Discharge.* The Parties shall pay the Costs of any damage to the Treatment Plant and fines or penalties resulting from discharge of improper Wastewater from the Municipality's Wastewater Collection System in violation of quality standards and restrictions, and shall indemnify and hold harmless the other with respect thereto. York shall pay or cause to be paid the Costs of any damage to the Treatment Plant resulting from discharge of improper Wastewater from the York Wastewater Collection System or from any customer (including other bulk users) of York (except the Municipality or other Connected Municipalities) in violation of the above-mentioned quality standards and restrictions, and shall indemnify and hold harmless the Municipality with respect thereto.

*Section 6.04. Sampling Manholes.* Promptly upon request by York, the Municipality, as applicable, shall require the installation of a manhole at the point of discharge from the property of any user who has the potential to discharge into the Municipality's Wastewater Collection Systems any wastes other than Domestic Wastes. Said manhole shall meet York's requirements with

respect to type, size, location and construction, so that sampling and/or metering will be facilitated. York may at any time sample the Wastewater in such manholes.

Section 6.05. Disconnection of Property. The Parties shall prohibit and prevent any Person from discharging Wastewater whose quantity or quality may have a deleterious effect on the Treatment Plant or receiving stream. When requested by York, the Municipality shall prohibit such unlawful discharge from the property to the extent permitted by law..

Section 6.06. Pipe Connection Required. The Parties each shall, to the extent possible, prohibit and prevent by ordinance the discharge of any substance into its respective Wastewater collection system, other than by and through a permanent direct pipe connection. The ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, unauthorized discharges from tank trucks or similar sources into the Municipality's Wastewater Collection Systems, York Interceptors or the York Wastewater Collection System shall be prohibited.

Section 6.07. Prohibition of Septage Discharge. The Parties each shall prohibit and prevent by ordinance the discharge of septic tank or grease trap wastes into its respective Wastewater collection system including the contents of septic tanks of existing establishments when they first connect to its respective Wastewater collection system.

Section 6.08. Implementation of Industrial Pretreatment Program. If York is required by DEP or EPA to implement an Industrial Pretreatment Program (the "IPP"), York may accept primary responsibility from time to time to implement, administer and enforce the IPP, including (but not limited to) conducting and updating Industrial User surveys, and performing inspections and sampling. The Municipality agrees to empower York to act as its agent with respect to the IPP. The Municipality shall reasonably cooperate with any enforcement action taken by York against the Municipality's Industrial Users, and shall take such action in the exercise of its own rights and police powers as may be reasonably requested by York to ensure compliance with York's IPP. The administrative costs of the Pretreatment Program will be paid by York (which costs are passed on to pre-treatment customers) and shall not be part of the O&M charges to the Municipality.

Section 6.09. Surcharge to Industrial Users. York may charge Industrial Users (which also includes landfills) an extra monthly strength surcharge (to be used to reduce O&M Expense) based on deviations over and above the strength considered normal for domestic Wastewater. To the extent reasonably possible, the Municipality agrees to assist in the collection of any surcharge due from an Industrial User in the Municipality's service area not paid within 90 days. Such surcharges shall be imposed and calculated in accordance with York's ordinances and regulations requiring the surcharges.

Section 6.10. Municipal Maintenance Waste Acceptance. York at its Treatment Plant shall accept wastes collected by the Connected Municipality as part of its routine O&M program to

maintain its collection system and facilities. Such wastes may include, but not be limited to, wastes collected during line flushing and wet well cleaning activities. No additional costs shall be charge to the Connected Municipality for acceptance of these wastes by York. The connected municipality shall be responsible for transportation of the wastes to the treatment plant.

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## ARTICLE VII

### Governmental Grants and Subsidies

*Section 7.01. Applications.* York may, at its sole discretion, make applications to the Commonwealth and to the United States, and their appropriate agencies, for any available grants, subsidies or other payments and for all permits and approvals in respect of the construction, operation and/or maintenance of the Treatment Plant, which amounts shall be applied in accordance with the terms and conditions of such grants or, if no allocation is mandated, to reduce the amounts payable by York and the Municipality on a proportional basis or as otherwise agreed, in accordance with the terms hereof. York shall be under no obligation to seek or provide funding for acquisition or construction of the Municipality's Wastewater Collection Systems, unless agreed to by York in writing.

*Section 7.02. Compliance with Law and Conditions for Grants.* The Parties hereto will take all such actions, within their legal powers, as may be required to comply with all applicable laws, regulations and permits applicable to their respective Wastewater collection systems and with agreements relating to applicable United States and Commonwealth grants and subsidies.

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## ARTICLE VIII

### Connections to Wastewater Collections Systems; Sewer Rentals and Charges

*Section 8.01. Imposition of Sewer Rates.* The Parties covenant that they will impose sewer rates or charges upon owners of improved property that shall be connected to the Municipality's Wastewater Collection System and York Wastewater Collection System for use thereof. The Parties also covenant to thereafter maintain such ordinances or resolutions or subsequent ordinances or resolutions, as applicable, imposing such sewer rates or charges in full force and effect continuously during the term hereof.

*Section 8.02. Enforcement of Sewer Rates.* The Municipality covenants to continue to enforce or to cause to be enforced sewer rates or charges in effect at any particular time and to collect or cause to be collected all amounts becoming due. If any amounts becoming due thereunder shall not be paid, in accordance with provisions thereof at the time in effect, the Municipality covenants to take or cause to be taken all reasonable steps to collect the rates.

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## ARTICLE IX

### Special Requirements

*Section 9.01. Module Approval.* Module approval shall not grant any right to make any connection to the Municipality's Wastewater Collection Systems or York's Wastewater Collection System if the new connection would cause York or the Municipality to be in Allocated Capacity Default or if York or the Municipality, at the time of the module application, is in Allocated Capacity Default. York reserves the right to review and approve module applications in accordance with its obligations under the Sewage Facilities Act (Act 537). Furthermore, if DEP requires connections to be limited then, to the extent required by DEP, York and the Municipality agree not to approve new sewer modules and/or forward such modules to York until the limit on connections is no longer in place or within the guidelines of the regulations.

*Section 9.02. Building Permits.* York and the Municipality will not issue any building permits that include connections, or permit any connections for development which do not have a previously approved sewer module or adequate hydraulic capacity, during any limit of connections imposed by DEP, except as permitted by DEP.

*Section 9.03. Connection Accounting.* As part of the annual wasteload management report (Chapter 94 Report) process, the Municipality shall provide an accounting to York, in form and content as required by York, as to existing and planned sewer connections, so as to assist York in complying with DEP's requirements.

*Section 9.04. Payment Default.* All payments required under this Agreement shall be due thirty (30) days after the date of the invoice or written demand, except for the capital contribution discussed in Section 4.04 which is due in thirty (30) days from the date of written demand, and if not paid within such period then a late charge of one (1%) percent shall be due together with, at the rate of three (3%) percent per annum, simple interest, until the amount due, including interest and penalty, is paid.

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## ARTICLE X

### Miscellaneous

*Section 10.01. Insurance; Repairs and Construction.* York will insure, or cause to be insured the Treatment Plant. Insurance, other than self-insurance, shall be with a responsible company or companies authorized and qualified to do business under laws of the Commonwealth, against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in the Commonwealth

and as shall be reviewed and approved, at least annually, by the Consulting Engineers or other insurance advisor. Such insurance policies shall be non assessable. Immediately upon the occurrence of any loss or damage to any part of the Treatment Plant which is covered by insurance, York will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by the Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the costs of such repair, replacement or reconstruction unless York determines that it is unwise to make such repair, replacement or reconstruction and shall agree upon other disposition of said insurance proceeds. In the event it becomes necessary to make any extraordinary repairs or replacements at the Treatment Plant because of damage or destruction and there are insufficient funds available from the insurance proceeds to pay the costs thereof, the Parties agree to pay their pro rata share of the additional costs in the same proportion as their Pro Rata Share of Allocated Capacity to the Treatment Plant. The Municipality agrees to share the cost of public liability insurance based upon the lowest bona-fide quote provided that the proportionate share of such cost being shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.01 hereof. The cost of the public liability insurance shall be shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof. In the event there is a judgment against York related to the Treatment Plant, which judgment is greater than the policy limits of the quoted policy, and if York has purchased a public liability policy and the judgment is greater than the policy limits, then York, the Municipality and the Connected Municipalities shall share the cost of the judgment in excess of the policy limits in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof.

*Section 10.02. Mediation.* Upon the written request of a Party, any dispute or claim in law or equity arising out of this Agreement shall be submitted to neutral, non-binding mediation prior to the commencement of arbitration, litigation, or any other proceeding before a trier of fact. The Parties agree to act in good faith to participate in mediation and to identify a mutually acceptable mediator. If they are unable to agree upon a mediator, the Parties may, after twenty (20) days have elapsed from the date of the written request for mediation, petition the Court of Common Pleas of York County to appoint a mediator. The Parties shall share equally in the costs for mediation services. If the dispute or claim is resolved through mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution to the dispute or claim in accordance with the remaining terms of this Agreement and other rights and remedies afforded by law.

Upon a Party's request for mediation, the Parties to the dispute shall have twenty (20) days to select a mediator. If the Parties cannot agree on a mediator within twenty (20) days and the mediator must be selected as set forth above, the Parties in dispute shall petition the Court of



Common Pleas of York County for the appointment of a mediator within ten (10) days of the expiration of initial twenty (20) day time period. After the selection of the mediator, the Parties shall submit to mediation for a period up to forty-five (45) days. If the dispute or claim is not resolved by the forty-fifth (45<sup>th</sup>) day after the selection of the mediator then the mediator shall provide written notice to the Parties reflecting the same and the Parties may seek alternative forms of resolution as stated above.

Section 10.03. Inspection. The Parties, as applicable, shall provide each other, from time to time, all information relevant to the proper administration of their responsibilities under this Agreement, or in respect to the interpretation hereof, as and in such form and detail as may be reasonably requested and each shall, at all reasonable times and from time to time, permit the examination and inspection of their respective records and physical facilities relevant to the subject matter of this Agreement.

Section 10.04. Force Majeure. Notwithstanding any other provision of this Agreement, no Party shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, unforeseeable breakdown of the Treatment Plant and/or their respective Wastewater collection systems, or other event beyond its reasonable control. The Party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with Costs to be shared, if applicable, to the extent provided elsewhere herein.

Section 10.05. Indemnity. Each Party agrees to indemnify, defend and save harmless the other Party against all costs, losses or damage, including payment of reasonable attorneys fees, on account of any injury to persons or property occurring in the performance of this Agreement due to its negligence or the negligence of its agents or employees; provided, however, that no Party waives any rights or immunities arising out of any applicable governmental immunity laws and statutes.

Notwithstanding the foregoing and to the extent such liability is not caused by the intentional or wilfull conduct of York, in the event of a general breakdown of the jointly used York Interceptors or the Treatment Plant so as to force the temporary cessation of sewer service contemplated hereunder, York shall not be liable to the Municipality or their sewer service customers for any damage sustained while such facilitates are out of service, and the Municipality shall indemnify and hold harmless York from any claims of its users in such event.

Section 10.07. Severability. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 10.08. Headings. The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

Section 10.09. Waiver. The failure of a Party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

Section 10.10. Assignment. This Agreement (including, without limitation, any rights under or interest in this agreement) may be assigned in whole or in part by York without the consent of the Municipality. The provisions of this Section shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the Parties. The Parties also agree that York may enter into concession, lease or other similar agreement or arrangement without the consent of the Municipality and that any obligations of the Municipality under this Agreement shall continue under such concession, lease, or other agreement. York shall provide notice concerning the identity and qualifications of potential assignees in advance of any assignment, unless otherwise prohibited by law or contractual obligation of confidentiality.

Section 10.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.12. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

Section 10.13. Supersedes Prior Agreements. This Agreement supersedes and repeals any prior agreements, contracts, and understandings, written or oral, by or between the Parties hereto with respect to the subject matter contained herein.

Section 10.14. Modification. This Agreement may be modified or amended in a writing signed by all the Parties hereto. Material pricing terms should not be modified unless 2/3 of the Connected Municipalities agree, it being the intention of the parties that the material pricing terms of this Agreement are to be uniform across the wholesale customers.

Section 10.15. Pennsylvania Law. This Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth.

Section 10.16. Recording. This Agreement may be recorded by either Party hereto.

Section 10.17. Interpretation. The Parties agree this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against York.

Section 10.18. No Unintended Third-Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall

have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 10.19. Breach. In the event of a breach of this Agreement by either Party, the non-breaching Party reserves/retains all of its rights in law and in equity (including, but not limited to, damages, injunctive relief and specific performance) to remedy such breach. Specifically, if the Municipality disconnects the Municipality's Wastewater Collection Systems such that it no longer utilizes the York System's wastewater treatment capacity during the initial term set forth in Section 3.02 or any subsequent renewal period, the Municipality shall remain liable under this Agreement for a lump sum payment to York in an amount equal to its pro-rata share of any outstanding capital expenses or Debt Service Charges as calculated pursuant to Sections 4.04 and 4.05 of this Agreement at the time of disconnection from the York System.

Section 10.20. Transportation Fund. Upon execution of this Agreement, all such Municipality funds held by York in the Transportation Fund or any other similar fund created under Prior Agreements shall be immediately returned to the Municipality. The Municipality shall share in the costs of all repairs or capital improvements to York Interceptors on the basis of each Party's Pro Rata Share of Attributed Flow through the facility to be repaired or replaced.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

ATTEST:

TOWNSHIP OF MANCHESTER,  
York County, Pennsylvania

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

CITY OF YORK

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors

**INTERMUNICIPAL AGREEMENT**

**THIS INTERMUNICIPAL AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and among:

**CITY OF YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “York”); and

**BOROUGH OF NORTH YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “Municipality”).

**WITNESSETH**

**WHEREAS**, York owns or leases, operates and maintains the York System for rendering Wastewater collection, transmission, treatment and disposal service in and for York and certain Connected Municipalities, including the Municipality; and

**WHEREAS**, the Municipality owns, operates and maintains the Municipality’s Wastewater Collection Systems for rendering Wastewater collection and transmission service in and for certain portions of the Municipality; and

**WHEREAS**, York and the Municipality previously entered into a series of Prior Agreements that established the Municipality’s right to collect Wastewater in the Municipality’s Wastewater Collection Systems and connect its respective systems to the York System for the purpose of utilizing the York System’s wastewater treatment capacity, subject to the terms and conditions established therein; and

**WHEREAS**, pursuant to the Prior Agreements among York and the Municipality, the Municipality has been permitted to connect to the York System for the purpose of transmitting and treating Wastewater from the Municipality; and

**WHEREAS**, the Parties now desire to rescind all of the Prior Agreements in their entireties and subject themselves to the terms and conditions contained herein for the continued provision of services by York; and

**WHEREAS**, the Municipality desires to contract with York for the continued provision of Wastewater transportation, treatment and disposal services by York to the Municipality, pursuant to the terms and conditions contained herein; and

**WHEREAS**, York agrees to accept, receive, transport, treat and dispose of Wastewater from the Municipality pursuant to the terms and conditions contained herein; and

**NOW, THEREFORE**, the Parties hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has

proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

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## ARTICLE I

### Definitions

Section 1.01. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified whenever they are used or referred to herein, unless a different meaning clearly appears from the context:

- A. *“Agreement”* shall mean this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as “hereto”, “hereby”, “herein”, “hereof”, “hereunder” or other descriptive words or phrases having similar import;
- B. *“Allocated Capacity”* shall mean the amount of hydraulic capacity that a Party has reserved in the Treatment Plant pursuant to Exhibit A or Article IV hereunder;
- C. *“Allocated Capacity Default”* shall mean a discharge of Wastewater into the York System by a Party that exceeds the peak hydraulic flow rate of:
  - 1. A peaking factor multiplied by such Allocated Capacity for any hour within a 24 hour period, which peaking factor shall be established in accordance with Section 4.01 hereof; or
  - 2. 100% of the Allocated Capacity based upon the Municipality’s total flow for a three consecutive month period, divided by the number of days in that three month period;
- D. *“Attributed Flow”* shall mean the sewage flow attributed to the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow.
- E. *“Bonds”* shall mean the notes, bonds or other debt obligations previously or subsequently authorized and issued by the York City Sewer Authority or York or York’s assignee or designee, the proceeds of which would be applied for the purposes of financing Costs relating to the Treatment Plant, or notes, bonds or other debt obligations issued by the York City Sewer Authority or York or York’s assignee or designee to refund the same, where the proceeds of such bonds, notes or debt are or will be applied in part to pay Costs attributable to the Municipality, and where no Capital Contribution has been tendered by the Municipality, as applicable, to cover the full amount of its appropriate share of such Costs;
- F. *“Capacity”* shall mean the ability of the Treatment Plant to receive and effectively treat a specified load;

- G. *“Capital Contribution”* shall mean the tendering by the Municipality, as applicable, of a lump sum certain amount calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant;
- H. *“Certified Public Accountant”* shall mean a Person, who shall be Independent, appointed by the governing body of York, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the Commonwealth;
- I. *“Commonwealth”* shall mean the Commonwealth of Pennsylvania;
- J. *“Connected Municipalities”* shall mean all of the suburban communities near York, excluding the Municipality, that convey Wastewater to the Treatment Plant pursuant to separate agreements, which specifically include the Borough of North York, the Borough of West York, the Township of Spring Garden, the Township of Springettsbury, the Township of West Manchester, and the Township of York;
- K. *“Connected Municipalities Meeting”* shall mean the quarterly meeting of the Municipality, the Connected Municipalities, and York pursuant to Section 2.04;
- L. *“Connection”* shall mean the connection of a structure that generates or could generate hydraulic or organic loads to a sewer system;
- M. *“Consulting Engineers”* shall mean a Person who shall be appointed by the governing body of York, qualified to pass upon engineering questions relating to Wastewater collection, transmission, treatment and/or disposal systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth and the individual assigned to York shall be a professional engineer duly registered under laws of the Commonwealth;
- N. *“Costs,” “Costs of Acquisition,”* or *“Costs of Construction,”* as to the Treatment Plant shall mean and include all capital costs related to acquiring or constructing any portion of the Treatment Plant, and future betterments thereto, but not pertaining to any part of the York Wastewater Collection System or the Municipality’s Wastewater Collection Systems, unless specified otherwise, and shall include, but not be limited to, the following:
1. Obligations incurred and payments made or required to be made by York to workmen and laborers or to contractors, subcontractors, builders, and suppliers;
  2. Interest on Bonds during the acquisition or construction period with respect to any particular series of Bonds, less interest income earned from the investment of the proceeds derived from the Bonds during such period;
  3. Administrative expenses of York during the period of any acquisition or construction, including the financing thereof;

4. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the Treatment Plant; amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;
5. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable by York for carrying out purposes of York relating to the Treatment Plant, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Treatment Plant and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;
6. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental regulatory authority related to construction of any part of the Treatment Plant, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;
7. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations thereof, the preparation of Act 537 plans or updates, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction and the financing thereof;
8. Expenses of audits, initial compensation of a trustee or paying agent with respect to Bonds of any series; fees and expenses, if any, of a trustee, or paying agent relating to a construction fund, if any; financing costs, fees and expenses, including compensation and expenses of a financial advisor or underwriter, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses, including costs arising out of any amendments hereto; advertising expenses; premiums for insurance or contracts of suretyships insuring bondholders against the risk of nonpayment of the principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by York in connection with financing acquisition or construction and issuing Bonds;

9. Other costs, charges and expenses incident to completion of any improvements, alterations, extensions or additions to the Treatment Plant;
10. Reimbursement to York for advances made by it for any of the above items, including any interest paid or required to be paid by York with respect to any such advances, or for any other costs incurred by York or for work done by York with respect to the Treatment Plant;
11. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;
12. Any sums required to reimburse York or to pay or retire any indebtedness incurred by York, including payment of interim obligations of York, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and
13. Interest on and issuing costs of any Bonds issued in anticipation of receipt of Federal or Commonwealth grants or loan funds applied to pay such costs, less any interest income earned from the investment of the proceeds derived from the Bonds.

Such “Costs”, “Costs of Acquisition,” or “Costs of Construction” incurred in connection with the Treatment Plant, shall be reduced by any and all grants, reimbursements, subsidies or other payments designated by law, regulation, contract or agreement to be applied to payment of all or any portion of such items (except payments required under this Agreement);

- O. “DEP” shall mean the Department of Environmental Protection of the Commonwealth or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- P. “Debt Service Charge” shall mean the amounts due to York from the Municipality calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs, including principal and interest, of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant funded through Bonds issued by or on behalf of York.
- Q. “Domestic Wastes” shall mean the normal water-borne wastes from a Dwelling Unit such as wastes from kitchens, water closets, lavatories, and laundry facilities;
- R. “Dwelling Unit” shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by one family or other group of Persons living together or by a Person living alone;
- S. “Effective Date” shall mean the date the Parties hereto have executed this Agreement and have adopted this agreement pursuant to the applicable rules of their respective governing bodies;



- T. “EPA” shall mean the United States Environmental Protection Agency or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- U. “*Extra Strength Wastes*” shall mean all non-Domestic Wastes which exceed the pollutants, loadings, or waste characteristic limits contained in the pertinent pretreatment ordinance;
- V. “*Fiscal Year*” shall mean the period commencing on January 1 of each year and ending on December 31 of the same year;
- W. “GPD” shall mean gallons of Wastewater discharged during a 24 hour period from midnight to midnight;
- X. “*Hydraulic Overload*” shall mean the condition that occurs when the monthly average flow entering the Treatment Plant exceeds the hydraulic design capacity for 3 consecutive months out of the preceding 12 months or when the flow in a portion of the York System exceeds its hydraulic carrying capacity;
- Y. “*Independent*” shall mean, with respect to the Certified Public Accountant, a Person who is Independent in fact and who is not a member of the governing body, officer or employee of a Party hereto, or any elected or appointed official or employee of a Party hereto, or that is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body, officer or employee of a Party hereto, or an elected or appointed official or employee of a Party hereto; provided, however, that the fact that such Person is retained regularly by a Party hereto shall not make such Person an employee within the meaning of this definition;
- Z. “*Industrial User*” shall mean any Non-Residential Connection discharging sewage and wastes other than normal water carried domestic sewage and wastes, directly or indirectly, to the York System;
- AA. “*Interceptor*” shall mean that pipe, pump, facility, lift or other physical installation necessary for the conveyance of Wastewater from a Point of Connection to the Treatment Plant;
- BB. “*IPP*” shall have the meaning given that term in Section 6.08 hereof;
- CC. “*Monthly Average Flow*” shall mean the total flow at the Treatment Plant during a calendar month divided by the number of days in that month;
- DD. “*Municipality*” shall mean the Borough of North York, located in York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania;
- EE. “*Municipality’s Wastewater Collection Systems*” shall refer to the Municipality’s Wastewater collection and transportation system facilities presently existing or hereafter to be acquired, constructed, owned and operated by the Municipality to provide Wastewater collection and transportation services to certain portions of the

- Municipality, together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof;
- FF. “*Non-Residential Connection*” shall mean any building, structure, room, group of rooms, establishment or facility, other than a Dwelling Unit, discharging sewage and wastes, including industrial wastes, directly or indirectly, to the York System;
- GG. “*O&M*” shall mean Operating and Maintenance;
- HH. “*O&M Charge*” shall mean the charges payable by the Municipality to York hereunder calculated pursuant to Section 5.01 hereof;
- II. “*O&M Expenses*” shall have the meaning described in Section 5.02 hereof;
- JJ. “*Organic Design Capacity*” shall mean the highest daily organic load at which the Treatment Plant can effectively treat the incoming Wastewater at the predetermined limitations contained in York’s NPDES permit;
- KK. “*Organic Overload*” shall mean the condition that occurs when the average daily influent organic load at the Treatment Plant exceeds the organic design capacity upon which the permit and Treatment Plant design are based;
- LL. “*Party*” shall mean any party to this Agreement individually;
- MM. “*Parties*” shall mean York and the Municipality;
- NN. “*Person*” or “*Persons*” shall mean an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipal corporation, a municipality, a municipal authority or any other group or legal entity;
- OO. “*Point of Connection*” shall mean point or points at which York receives and accepts Wastewater from the Municipality as shown on Exhibit B, which is incorporated herein by reference hereto, and as may be amended from time to time;
- PP. “*Prior Agreements*” shall mean all previous agreements entered into by the Parties hereto pertaining to the provision of Wastewater transportation, treatment and disposal services by York, specifically including: (i) the Agreement dated December 9, 1976 between York and the Municipality, and any and all supplements or amendments thereto;
- QQ. “*Pro Rata Share of Attributed Flow*” shall be calculated by dividing the attributable sewage flow from the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow, by the total metered flow discharged to the Treatment Plant;
- RR. “*Rental Period*” shall have the meaning given that term in Section 4.08(f) hereof;
- SS. “*Sanitary Wastewater*” shall mean all Domestic Wastes and water-borne wastes of similar character from similar facilities in offices, hotels, stores, restaurants, hospitals, schools, other commercial establishments, and industrial establishments;
- TT. “*Treatment Plant*” shall mean the existing Wastewater treatment and disposal facilities, the outfall sewer and all other facilities related to treatment and disposal of Wastewater, together with any additions, improvements, enlargements and/or

- modifications thereto and/or replacements thereof, heretofore or hereafter acquired or constructed by York, and that York deems appropriate and necessary to provide treatment and disposal of Wastewater under applicable laws of the Commonwealth;
- UU. “*Wastewater*” includes Sanitary Wastewater and/or Extra Strength Wastes, together with any ground, surface or storm water as may be present;
- VV. “*York*” shall mean the City of York, York County, Pennsylvania, a municipal corporation (a Third Class City) of the Commonwealth or its assigns, designees, successors, vendors, or concession holders;
- WW. “*York Interceptors*” shall mean the Interceptors owned York carrying the Municipality’s and York’s Wastewater flow from the Points of Connection to the Treatment Plant, but excluding any of the Municipality’s Interceptors upstream from their connection with a York Interceptor;
- XX. “*York System*” shall mean the York Wastewater Collection System, the York Interceptors and the Treatment Plant; and
- YY. “*York Wastewater Collection System*” shall mean the Wastewater collection and transportation system facilities, excluding the York Interceptors, presently existing or hereafter to be acquired, constructed, owned and operated by York to provide Wastewater collection and transportation services to certain portions of York and other bulk service customers (but not the Municipality), together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof; excluding, however, any facilities included in the definition of “Treatment Plant” and “York Interceptors”.

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## ARTICLE II

### Construction and Operation of the Treatment Plant and other Conditions

Section 2.01. *Construction and Operation of Treatment Plant.* York City Sewer Authority or its successor shall own the Treatment Plant and be the Treatment Plant permittee. York shall operate the Treatment Plant continuously, and shall pay or cause to be paid the O&M Expenses of the Treatment Plant.

Section 2.01(a). *Wastewater Collection System Costs and Operation.* The Municipality shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the Municipality’s Wastewater Collection Systems. Similarly, York shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the York Wastewater Collection System and York Interceptors, except as otherwise provided herein. The Municipality’s Wastewater Collection Systems shall each be designed, constructed, operated and maintained in a manner that will not cause them to be in violation of this Agreement and that will not cause

York to be in violation of any law or regulation of any governmental authority having jurisdiction over the Treatment Plant.

Section 2.01(b). Operation Requirement. Each Party shall operate and maintain its respective Wastewater collection system in a good and sound operating condition.

Section 2.02. Connection of the Municipality's Wastewater Collection Systems and Limitations. The Municipality shall maintain continuously during the term hereof proper connection of the Municipality's Wastewater Collection Systems to the York Interceptors, at such Points of Connection as described in Exhibit B, attached hereto. Future additional points of connection by the Municipality shall be agreed upon by the Municipality and York, and the terms and conditions applicable to such future connections shall be set forth in a separate written agreement between the Parties, which shall constitute an amendment and supplement to this Agreement.

The Municipality shall deliver to the Point of Connection all Wastewater originating within the service area described in the Act 537 Plan for the Municipality, as applicable and as amended from time to time, as being tributary to the York Interceptors and Treatment Plant and not intended for treatment by on-lot septic systems.

Section 2.03. Cooperation; Sharing of Information. The Parties each agree to the extent possible and economically practicable (except as otherwise required under this Agreement), to cooperate and share pertinent information with each other in facilitating the construction, maintenance and/or operation of their Wastewater collection systems, and York will provide the Municipality with any pertinent information regarding Costs, quantities of discharge, capacity or other matters relating to the Treatment Plant reasonably deemed necessary or desirable as determined by the Municipality, provided however, that in the event securing such information involves costs which would not normally be incurred as a cost of owning or operating and maintaining the Treatment Plant, the Municipality shall pay or provide for the payment of such costs. Each Party shall not be financially or otherwise responsible for the Wastewater collection system of the other Party, and the Municipality shall not be financially or otherwise responsible for the Treatment Plant except to the extent of charges required to be paid by the Municipality to York hereunder, and the performance of all terms and conditions of this Agreement. This paragraph shall not limit the obligations of the Parties set forth in the Special Requirements Article of this Agreement (Article IX).

At least forty-five (45) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, York shall submit to Municipality all material and information in its possession necessary for Municipality to submit to City the annual report referenced below. At least thirty (30) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, the

Municipality shall submit to York an annual report providing all material and information required from it by York and DEP to complete its annual wasteload management report.

*Section 2.04. Connected Municipalities Meeting.* It is agreed that the Connected Municipalities Meeting currently utilized by the Municipality, the Connected Municipalities, and York shall continue on a quarterly basis as set forth herein. The Connected Municipalities Meeting shall continue in its current form and pursuant to its current procedures, but at any time may establish its own procedures. The Connected Municipalities Meeting is intended to provide an opportunity for periodic discussion, review, and recommendations of all matters relating to this Agreement and the provision of Wastewater treatment services. Upon reasonable notice, the Municipality, any Connected Municipality, or York may call a Connected Municipality Meeting. The Connected Municipalities Meeting shall continue for the Term of Agreement set forth herein, including any extensions or renewals thereof.

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### ARTICLE III

#### Bulk Service Customer; Term of Agreement

*Section 3.01. Municipality Constitutes a Bulk Service Customer of York.* York agrees to operate and maintain in good working order and in compliance with all applicable laws, regulations and permits continuously during the term hereof the York Interceptors and the Treatment Plant, and any enlargements, additions, improvements and modifications thereto as determined solely by York, and to provide the Municipality, as a bulk service customer, Wastewater treatment, transportation, and disposal services in the Treatment Plant throughout the term hereof, as provided for herein.

*Section 3.02. Term of Agreement.* Subject to the covenants and conditions set forth herein, the term of this Agreement shall be thirty (30) years unless earlier terminated by mutual written consent of all the Parties hereto. This Agreement shall automatically renew on a year-to-year basis upon the expiration of the initial thirty (30) year term. This Agreement may be reviewed every five (5) years by the Parties, which shall report to their respective governing bodies on the sufficiency of this Agreement or any recommendations for amendments and modifications hereof.

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### ARTICLE IV

#### Allocation of Capacity in the Treatment Plant; Measurement of Flow; Capital Contribution; Updating of Treatment Plant; Additions to Treatment Plant Required by York and Calculation of Debt Service

Section 4.01. Acceptance of Flows from the Municipality. During the term hereof, the Municipality shall have the contractual right to discharge Wastewater into the York Interceptors subject to the following limitations:

Average Daily Flow (ADF):	531,200 Gallons/Day as a monthly average
Peak Daily Flow (PDF):	2,124,800 Gallons/Day
Peaking Factor	4.0 PDF/ADF

The Municipality covenants and agrees that it will not discharge Wastewater into the York Interceptors in a manner that constitutes an Allocated Capacity Default, as set forth herein, except as may be allowed by York hereunder.

Section 4.02. Measurement of Flow. The quantity of Wastewater discharged by the Municipality shall be determined by meter readings of the Wastewater flow meters or Wastewater flow measuring devices at the Point of Connection. The quantity of Wastewater discharged by York shall be determined by the flow measured by the Treatment Plant headworks meter, minus the quantity of Wastewater discharged by the Municipality and the Connected Municipalities.

Section 4.02(a). Flow Meters. York shall provide and install a Wastewater flow metering station at the Municipality's Point of Connection and the Treatment Plant headworks that will achieve the maximum practicable accuracy. Costs associated with the provision and installation of the Wastewater flow metering and sampling stations shall constitute O&M Expenses. The metering station shall be equipped with a flow reading system that will collect and transmit meter readings for download and a display that will allow the rate and total to be read in standard engineering units.

Section 4.02(b). Maintenance of the Flow Meter. York shall maintain the above referenced flow meter to accurately monitor flow conveyed across municipal boundaries. The flow meter shall be capable of recording flow measurements in one-minute intervals and averaging flows over the hour and day. The meter shall record and totalize all data. The record shall include at least flows at hourly and daily intervals. York shall maintain the flow meter in good working order. The flow meter shall be inspected, tested, and certified for accuracy at reasonable intervals, but no less than ninety (90) days. Calibration certification shall be done by a reputable company normally engaged in the business of meter calibration. York shall forward such inspection results, testing results, and certificates of calibration to the Municipality upon request.

In the event of a defective or inoperative flow meter, York shall have the right to take such steps as are required to repair or replace the flow meter, and the costs associated with any such maintenance, repair or replacement work shall constitute O&M expenses if costs are incurred.

Section 4.02(c). Monitoring Flow Meters. York shall have access at any and all times to the flow meters. The flow meters shall be monitored by York, which shall be

responsible for collection of data therefrom. In addition, the Municipality shall have a right of access to such records.

Section 4.02(d). Unmetered Flows. Any point of connection of the Municipality to the York System that reaches 70,000 GPD shall require the installation of a flow meter by York within nine (9) months of reaching 70,000 GPD at a mutually agreed upon location.

Section 4.02(e). Missing Flow Data. In the event reliable flow data is unavailable, due to malfunction in a flow meter, or in the recording device for said meter, York shall estimate flows for any such period as the flows for the same period in the preceding year or for the period immediately preceding the malfunction depending on which of these periods had a rainfall amount closest to that of the period of malfunction. York may use other pertinent data, such as water consumption data, in developing an estimate for the missing data. In the event of any dispute between the Parties concerning the reasonableness or accuracy of estimated flows, the dispute shall be resolved pursuant to Section 10.02.

The quantity of Wastewater discharged by the Municipality into the Treatment Plant shall be the sum of the flow measured at the applicable meters or devices at the Point of Connection for the Municipality as set forth on Exhibit B plus any unmetered or estimated flow (which may be amended from time to time as any additional connection points are permitted by York). The flow attributable to the Municipality shall be reduced by the metered flow plus any unmetered or estimated flow from any York customer providing flow into the Municipality's line prior to the Municipality's connection point with the York System.

It is understood that technology changes may permit metering changes that are more accurate. York reserves the exclusive right to determine metering changes and shall share information on any metering changes with the Municipality as it may request.

Section 4.03. Exclusive Service Provider for Designated Areas. The Municipality covenants and agrees that York, during the term hereof, shall be the sole and exclusive agency providing Wastewater transportation, treatment and disposal services for the portion of the Municipality and properties located in the drainage area contemplated to be served by the York System and Treatment Plant (which drainage area is shown on Exhibit C attached hereto), pursuant the terms and conditions herein. Further, the Municipality covenants and agrees not to construct or operate, or permit the construction or operation of, any sewage transportation or treatment facilities in competition with York.

The provisions of this Section 4.03, however, shall not prejudice the Municipality with respect to its rights to use the existing sewage treatment facilities not owned by York that are presently utilized by the Municipality; nor shall such covenants of exclusivity and non-competition be construed now, or during the term hereof, to the prejudice of the Municipality should any governmental agency of the Commonwealth or United States, specifically including DEP and the EPA, order the construction of a treatment facility or re-routing of flows to another

facility, a change in treatment flows or require the sharing of new treatment facilities with a municipality.

*Section 4.04. Expansions or Upgrades of Treatment Plant.* The Municipality shall be required to contribute to and share in the Costs of any other capital expansions or upgrades, improvements, modifications, extraordinary repairs or replacements not considered an O&M Expense, and other projects deemed by York to be of a capital nature and undertaken by York with respect to the Treatment Plant (“Capital Costs”). Any capital expansion, upgrade, improvement, modification, extraordinary repair or replacement in excess of Three Million (\$3,000,000) Dollars shall be approved by a majority of all Connected Municipalities unless such upgrade, improvement, modification, extraordinary repair or replacement has been ordered to be constructed by a governmental agency of the Commonwealth or United States, specifically including DEP and the EPA. York shall not separate any contracts or projects to intentionally avoid the Three Million (\$3,000,000) Dollar limitation provided herein. If York should undertake such an upgrade or modification of the Treatment Plant, which undertaking results in Costs, Costs of Acquisition or Costs of Construction to be incurred by York, then the Municipality shall pay a pro rata share of such Costs in the same proportion as its respective Allocated Capacity as costs are incurred by York for such upgrading or improvements. The Municipality shall have the right to inspect the record of all purchases and expenses involved in the construction. York shall provide to Municipality on an annual basis a five (5) year projection of expected capital improvements.

*Section 4.05. Calculation of Debt Service Charge (Contingent upon Issuance of Bonds for the Municipality).* For prior or subsequent Bonds issued to finance Capital Costs at the request of or for the benefit of the Connected Municipalities or, if applicable, other parties using the Treatment Plant, pursuant to Section 4.04, the payment of the Debt Service Charge shall commence upon issuance of the Bonds, or at such other time as may be required to assure the timely payment of debt service due on the Bonds. Such debt service charge shall be calculated in a manner consistent with the coverage and other covenants with respect to the Bonds and the calculation of the Capital Contribution hereunder, *i.e.*, the principal and interest attributable to the Capital Costs, together with financing costs, multiplied by a factor equal to the percentage that the Municipality’s capacity increase in the Treatment Plant bears to the total increased capacity of the Treatment Plant (for example if the Municipality has additional capacity of 10% of the total increased capacity and is thus responsible for paying 10% of the capital cost of the project, the Municipality shall pay 10% of any debt service charge if it elects to use Bonds to pay for its share of the capital costs). Accelerated payments made by or on behalf of York on any Bonds shall not release the Municipality of its obligation to pay the debt service charge for any Capital Costs and any Capital Contribution funded pursuant to this section during the period such Bonds would have been outstanding but for accelerated payment. An amortization schedule of all outstanding Bonds as of the date of this Agreement is attached hereto as Exhibit D, and the Parties agree that such schedule shall be updated from time to time upon the issuance of additional Bonds.

*Section 4.06. Hydraulic Overload.* In the event of Hydraulic Overload the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.



Section 4.07. Organic Overload. In the event of Organic Overload, the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.08. Allocated Capacity Planning. If at any time York or the Municipality's Monthly Average Flow exceeds 90% of York or the Municipality's Allocated Capacity, York or the Municipality shall, in addition to any action required as a result of any default, begin planning for the acquisition of additional capacity either by purchasing available capacity or by notifying the other of its need for additional capacity. York or the Municipality may, as an alternative to the purchase of additional capacity, submit a plan to reduce its Monthly Average Flow to comply with this Agreement. If a Party notifies the other of its need for additional capacity, the Party shall submit its plan for the acquisition of additional capacity or its plan to reduce its Monthly Average Flow to York for review and comment within 90 days of the discharge that triggered the planning. If the Municipality and York cannot agree on the plan for purchasing additional capacity or to reduce Monthly Average Flow, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereunder.

Section 4.08(a). Redistribution of Allocated Capacity.

(1) In the event any Connected Municipality or York requires additional Allocated Capacity, it shall have the option, in accordance with the following terms and procedures, to reserve additional Allocated Capacity in the Treatment Plant. In order to obtain additional Allocated Capacity, there must be in existence at the time unused treatment capacity that has been allocated to another Connected Municipality or York but which such other Connected Municipality or York is not in need of at the time and is willing to surrender.

(2) York agrees that in the event any Connected Municipality consents to a reduction of Allocated Capacity, the Allocated Capacity surrendered shall be offered to any of the Connected Municipalities and York in the discretion of the selling Connected Municipality, at the price agreed to by the selling Connected Municipality. The selling Connected Municipality must give notice, only to the other Connected Municipalities and York, of intent to sell part of its Allocated Capacity to another Connected Municipality even though it need not be offered to all other Connected Municipalities. If the Connected Municipality to whom such Allocated Capacity is offered does not wish to accept such additional Allocated Capacity, the Allocated Capacity so offered may be made available to the remaining Connected Municipalities on a pro-rata basis.

(3) Any Connected Municipality or York surrendering all or any portion of its Allocated Capacity shall be reimbursed in accordance with a mutual agreement reached with the Party purchasing such Allocated Capacity. If no Connected Municipality or York desires to purchase Allocated Capacity, then the Connected Municipality offering to sell its Allocated Capacity shall continue to be liable for all payments with respect to such reserved capacity.

(4) Where any Connected Municipality or Party acquires an interest in Allocated Capacity in the Treatment Plant, such Connected Municipality or Party must thereafter pay to York the acquiring Party's proportional share of all Costs, Capital Contributions, O&M Charges, and all other liabilities contained in this Agreement. Such acquiring Party shall be bound by the terms of this Agreement, as it may from time to time be amended.

Section 4.08(b). Defaults. Allocated Capacity Defaults shall not be permitted; however, if such a Default occurs it shall be addressed as provided for herein.

Section 4.08(c). Municipality Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by the Municipality, York shall notify the Municipality of said Default in writing, including data, if available. The Municipality shall, within sixty (60) days of said notice, acknowledge said notice and advise York of any discrepancies with such notice of default and the corrective action to be taken in the form of a remedial action plan. York shall review any discrepancies and within thirty (30) days provide a response. If the Municipality and York cannot agree on whether an Allocated Capacity Default has occurred, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In the event the Municipality submits to York a remedial action plan, York shall review the proposed remedial action plan and provide comments on the proposed remedial action within thirty (30) days of the plan being submitted. Upon approval of the proposed remedial action plan by York, the Municipality shall implement the approved corrective action within ninety (90) days of receipt of approval from York, or such longer period that may be reasonably granted by York for design, approval, construction and implementation of such corrective actions. If the Municipality and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, York may limit new connections until the conditions that cause the Municipality to be in Allocated Capacity Default or Allocated Nutrient Capacity Default are abated. If DEP or EPA requires connections to be limited then the Municipality agrees not to approve new sewer modules and/or forward such modules to York until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan, remedial action plan, or limit of connections will be fully complied with by the Municipality, and York shall be entitled to injunctive relief without the requirement of a bond and the Municipality will reimburse York's reasonable attorney fees and costs in the event of such enforcement action.

Section 4.08(d). York Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by York, York shall notify the Connected Municipalities of said Default in writing. York shall, within sixty (60) days of said notice, advise the Connected Municipalities of the corrective action to be taken. The Connected Municipalities shall review the proposed remedial action plan and provide comments on the proposed remedial action, or their approval of the the same, within thirty (30)

days of the plan being submitted. Upon approval of the proposed remedial action plan by the Connected Municipalities, York shall implement the approved corrective action within ninety (90) days of receipt of approval from the Connected Municipalities, or such longer period that may be reasonably required for design, approval, construction and implementation of such corrective actions. If the Connected Municipalities and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, if ordered by DEP or EPA, York shall limit connections so as to limit or eliminate discharges which cause York to be in Allocated Capacity Default. If DEP or EPA requires connections to be limited then York agrees not to approve new sewer modules until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan or limit of connections will be fully complied with by York, and Connected Municipalities shall be entitled to injunctive relief without the requirement of a bond and York will reimburse the Municipality's reasonable attorney fees and costs in the event of such enforcement action.

*Section 4.08(e). Default Surcharges.* Notwithstanding any contrary provisions contained herein and in addition to all other remedies provided for herein, where the Municipality exceeds its Peak Daily Flow for more than two (2) consecutive days or more in any thirty (30) day period, it shall pay York a \$1,000.00 per day surcharge.

Additionally, where the Municipality exceeds its annual Allocated Capacity in any fiscal year, it shall pay York a surcharge based on the amount of the increased cost of treatment specifically allocated and attributable to the Municipality's Allocated Capacity Default, plus a fifteen (15%) percent penalty on the value thereof.

Any surcharge penalties received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Capacity.

*Section 4.08(f). Allocated Capacity Defaults Triggering Rental Requirement.* In the event that the Municipality or York discharges Wastewater that results in an Allocated Capacity Default due to the Peak Daily Flow, established in accordance with Section 4.01 hereof, for three days or more in any one calendar week (Monday through Sunday) or three consecutive days, then the Municipality shall rent capacity from York for a one month period (the "Rental Period"), beginning on the day in which the Default was triggered.

In the event that the Municipality discharges Wastewater that results in an Allocated Capacity Default due to Average Daily Flow Allocated Capacity based upon the Municipality's total flow for a three consecutive month period, divided by the number of days in that three month period, at any time, then the Municipality shall rent capacity from York for a three month period (also the "Rental Period"), beginning on the day in which the Default was triggered.

If the Municipality is renting capacity in accordance with this section and has no additional Allocated Capacity Defaults (Default of solely the Allocated Capacity and not including the rental capacity) during the Rental Period, the Municipality is not required to continue to rent capacity after the expiration of the Rental Period. If the Municipality renting capacity does have an additional Allocated Capacity Default during the Rental Period, then York shall determine whether the Municipality must continue to rent capacity, purchase additional capacity (if available) or to take other corrective action. If the Parties cannot agree on whether to require a party to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof.

The amount of capacity rented shall be the amount of GPD that placed the Municipality in Default. The charge for such rental shall be the rate which York would charge its residential retail customers for the amount of capacity being rented, less the O&M charges allocated to such residential rate. This rental charge shall be in addition to the O&M charge that the Municipality must pay for the capacity that is being rented.

*Section 4.08(g). Special Charge.* If the Municipality discharges Wastewater at a flow rate that results in an Allocated Capacity Default and fails to, within ninety (90) days of the Default, make the necessary arrangement to eliminate or rent or purchase sufficient capacity to eliminate the Default, then the defaulting Municipality shall pay York for the amount of the excess usage an amount equal to double what the quarterly charge otherwise would have been on such excess usage for the calendar quarter in which the Default occurred.

Any Special Charge received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Flow or Nutrients.

*Section 4.08(h). Other Actions of York.* If the Municipality is in Allocated Capacity Default and the Parties cannot agree on whether to require the defaulting Municipality to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. Furthermore, if the United States, the Commonwealth, or any agency thereof promulgates a new statute, law, or regulation imposing more restrictive monitoring, discharge, or treatment requirements, York reserves the right to impose more restrictive requirements upon the Municipality to ensure compliance with the statute, law, or regulation.

*Section 4.08(i). State of Emergency.* If a state of emergency is declared by authorities of the Commonwealth of Pennsylvania or the United States of America for an area including York and/or the Municipality, York and the Municipality shall not be subject to the Default provisions of this Section during the time in which the emergency is in effect.

Section 4.08(j). Hydraulic Overload Planning. If at any time the total Average Daily Flow for the Treatment Plant exceeds 90% of such Capacity, the Parties shall meet and discuss planning to avoid any hydraulic overload or default within the York Interceptors and Treatment Plant.

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## ARTICLE V

### O&M Charges and Expenses

Section 5.01. O&M Charge. The Municipality shall pay to York an O&M Charge equivalent to the total O&M Expenses of the Treatment Plant multiplied by the Municipality's Pro Rata Share of Attributed Flow in the Treatment Plant. The O&M Expenses are those costs associated with operating and maintaining the Treatment Plant, and providing the Municipality and York's third party customers with Wastewater treatment and disposal services hereunder, and are set forth in greater detail in Section 5.02 hereof. The O&M Charge shall be payable to York or its designee quarterly in arrears. The method of charging for O&M Expenses as set forth in Article V shall begin upon the Effective Date of this Agreement. For example, if the Municipality's Pro Rata Share of Attributed Flow to the Treatment Plant is fifteen (15%) percent of the total, then the Municipality shall pay fifteen (15%) percent of the Total O&M Expenses.

Section 5.02. O&M Expenses. O&M Expenses shall include the total of all of the following items, each such item being determined for the Fiscal Year or portion thereof under consideration, of all the expenses and costs directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors.

O&M Expenses include:

- (a) power, chemicals, fuel, materials, and supplies;
- (b) costs of storing, hauling, dumping and disposal of residue or sludge from the Treatment Plant, including composting; and other costs determined by York to be costs;
- (c) actual salaries and wages of administrative, operation or maintenance personnel of York directly engaged in operating and maintaining the Treatment Plant, together with the social security and unemployment taxes, workmen's compensation, insurance premiums, health and accident insurance premiums and pension benefits (but not payments related to any unfunded pension liability), vocational training or any other benefits or costs applicable to the personnel, prorating such items in accordance with such employee's time actually spent on matters pertaining to the treatment or disposal of Wastewater compared to work spent on other matters;

(d) equipment and tools used or employed for the operation and maintenance of the Treatment Plant;

(e) costs of routine maintenance and repairs (including replacements), and costs of any work done under any contract with respect to the Treatment Plant (excluding capital upgrades or expansions);

(f) fees and expenses of the Consulting Engineers;

(g) premiums for property, boiler and machinery and comprehensive crime insurance and vehicle insurance;

(h) legal expenses;

(i) all expenses involved in purchasing nutrient or other credits, if any, required to meet NPDES permit requirement or other DEP requirements related to the Treatment Plant; and

(j) all other costs and expenses not of a capital nature, determined by York to be O&M Expenses and reasonably incurred and properly attributable, to the operation, maintenance and/or repair of the Treatment Plant, from time to time.

Such amount shall be reduced by any Federal or Commonwealth grants, reimbursements, subsidies or other payments to York designated by law or regulation for such purposes (excluding grants for capital upgrades or expansions), revenues received by York from the treatment of septage, sludge and leachate or similar substances, and the sale of nutrient or other credits.

O&M Expenses shall not include a general allocation of costs, expenses, overhead and other expense items of York or its assignees, designees, successors, vendors or concession holders but shall be limited to those expenses and costs that are directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors, but may include reasonable and supportable overhead expenses incurred by York.

Written records and accounts of all such costs and expenses shall be prepared and maintained by York and shall be available to each Party upon request. York shall maintain an accurate system of accounts and records with respect to all such O&M Expenses which shall be audited annually by a Certified Public Accountant. A copy of the audit shall be provided to the Municipality within thirty (30) days of its completion. Such accounts and records may be inspected and copied at reasonable times by the Municipality and its agents and representatives. Subsidies received by York attributable to the operation of the Treatment Plant shall be reimbursed to the Municipality proportionate to its respective Pro Rata Share of Actual Flow to the Treatment Plant.

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## ARTICLE VI

### Wastewater Quality and Pretreatment Restrictions

*Section 6.01. Uniform Standards.* York has adopted and may amend from time to time uniform Wastewater quality standards applicable to the York Wastewater Collection System, which are intended to comply with the requirements of EPA, DEP, and all other regulatory authorities.

*Section 6.02. Compelling Compliance with Standards.* The Municipality shall enact or cause to be enacted an ordinance or ordinances or adopt a resolution or resolutions, as applicable, and the Municipality will cause such ordinance or ordinances or resolution or resolutions, as applicable, to remain in full force and effect at all times, prohibiting and providing adequate penalties for the discharge into the Municipality's Wastewater Collection Systems of anything violating the above-mentioned Wastewater quality standards of York, and shall enforce the provisions thereof. Such ordinance or ordinances shall also prohibit and/or regulate, as applicable, the discharge into the Municipality's Wastewater Collection Systems by industries of prohibited Extra Strength Wastes, as prescribed in the applicable industrial pretreatment regulations adopted and amended by York from time to time. The Municipality shall not permit any discharge into the Municipality's Wastewater Collection Systems except in the manner and in accordance with the provisions of said ordinance or ordinances. After adoption or amendment of an ordinance, resolution or regulation pertaining to Wastewater, the Party adopting or amending the same shall provide a copy to the other Party to this Agreement.

The Parties shall not discharge any Extra Strength Wastes to the Treatment Plant.

*Section 6.03. Reimbursement for Damages from Improper Discharge.* The Parties shall pay the Costs of any damage to the Treatment Plant and fines or penalties resulting from discharge of improper Wastewater from the Municipality's Wastewater Collection System in violation of quality standards and restrictions, and shall indemnify and hold harmless the other with respect thereto. York shall pay or cause to be paid the Costs of any damage to the Treatment Plant resulting from discharge of improper Wastewater from the York Wastewater Collection System or from any customer (including other bulk users) of York (except the Municipality or other Connected Municipalities) in violation of the above-mentioned quality standards and restrictions, and shall indemnify and hold harmless the Municipality with respect thereto.

*Section 6.04. Sampling Manholes.* Promptly upon request by York, the Municipality, as applicable, shall require the installation of a manhole at the point of discharge from the property of any user who has the potential to discharge into the Municipality's Wastewater Collection Systems any wastes other than Domestic Wastes. Said manhole shall meet York's requirements with

respect to type, size, location and construction, so that sampling and/or metering will be facilitated. York may at any time sample the Wastewater in such manholes.

Section 6.05. Disconnection of Property. The Parties shall prohibit and prevent any Person from discharging Wastewater whose quantity or quality may have a deleterious effect on the Treatment Plant or receiving stream. When requested by York, the Municipality shall prohibit such unlawful discharge from the property to the extent permitted by law..

Section 6.06. Pipe Connection Required. The Parties each shall, to the extent possible, prohibit and prevent by ordinance the discharge of any substance into its respective Wastewater collection system, other than by and through a permanent direct pipe connection. The ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, unauthorized discharges from tank trucks or similar sources into the Municipality's Wastewater Collection Systems, York Interceptors or the York Wastewater Collection System shall be prohibited.

Section 6.07. Prohibition of Septage Discharge. The Parties each shall prohibit and prevent by ordinance the discharge of septic tank or grease trap wastes into its respective Wastewater collection system including the contents of septic tanks of existing establishments when they first connect to its respective Wastewater collection system.

Section 6.08. Implementation of Industrial Pretreatment Program. If York is required by DEP or EPA to implement an Industrial Pretreatment Program (the "IPP"), York may accept primary responsibility from time to time to implement, administer and enforce the IPP, including (but not limited to) conducting and updating Industrial User surveys, and performing inspections and sampling. The Municipality agrees to empower York to act as its agent with respect to the IPP. The Municipality shall reasonably cooperate with any enforcement action taken by York against the Municipality's Industrial Users, and shall take such action in the exercise of its own rights and police powers as may be reasonably requested by York to ensure compliance with York's IPP. The administrative costs of the Pretreatment Program will be paid by York (which costs are passed on to pre-treatment customers) and shall not be part of the O&M charges to the Municipality.

Section 6.09. Surcharge to Industrial Users. York may charge Industrial Users (which also includes landfills) an extra monthly strength surcharge (to be used to reduce O&M Expense) based on deviations over and above the strength considered normal for domestic Wastewater. To the extent reasonably possible, the Municipality agrees to assist in the collection of any surcharge due from an Industrial User in the Municipality's service area not paid within 90 days. Such surcharges shall be imposed and calculated in accordance with York's ordinances and regulations requiring the surcharges.

Section 6.10. Municipal Maintenance Waste Acceptance. York at its Treatment Plant shall accept wastes collected by the Connected Municipality as part of its routine O&M program to



maintain its collection system and facilities. Such wastes may include, but not be limited to, wastes collected during line flushing and wet well cleaning activities. No additional costs shall be charge to the Connected Municipality for acceptance of these wastes by York. The connected municipality shall be responsible for transportation of the wastes to the treatment plant.

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## ARTICLE VII

### Governmental Grants and Subsidies

*Section 7.01. Applications.* York may, at its sole discretion, make applications to the Commonwealth and to the United States, and their appropriate agencies, for any available grants, subsidies or other payments and for all permits and approvals in respect of the construction, operation and/or maintenance of the Treatment Plant, which amounts shall be applied in accordance with the terms and conditions of such grants or, if no allocation is mandated, to reduce the amounts payable by York and the Municipality on a proportional basis or as otherwise agreed, in accordance with the terms hereof. York shall be under no obligation to seek or provide funding for acquisition or construction of the Municipality's Wastewater Collection Systems, unless agreed to by York in writing.

*Section 7.02. Compliance with Law and Conditions for Grants.* The Parties hereto will take all such actions, within their legal powers, as may be required to comply with all applicable laws, regulations and permits applicable to their respective Wastewater collection systems and with agreements relating to applicable United States and Commonwealth grants and subsidies.

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## ARTICLE VIII

### Connections to Wastewater Collections Systems; Sewer Rentals and Charges

*Section 8.01. Imposition of Sewer Rates.* The Parties covenant that they will impose sewer rates or charges upon owners of improved property that shall be connected to the Municipality's Wastewater Collection System and York Wastewater Collection System for use thereof. The Parties also covenant to thereafter maintain such ordinances or resolutions or subsequent ordinances or resolutions, as applicable, imposing such sewer rates or charges in full force and effect continuously during the term hereof.

*Section 8.02. Enforcement of Sewer Rates.* The Municipality covenants to continue to enforce or to cause to be enforced sewer rates or charges in effect at any particular time and to collect or cause to be collected all amounts becoming due. If any amounts becoming due thereunder shall not be paid, in accordance with provisions thereof at the time in effect, the Municipality covenants to take or cause to be taken all reasonable steps to collect the rates.

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## ARTICLE IX

### Special Requirements

*Section 9.01. Module Approval.* Module approval shall not grant any right to make any connection to the Municipality's Wastewater Collection Systems or York's Wastewater Collection System if the new connection would cause York or the Municipality to be in Allocated Capacity Default or if York or the Municipality, at the time of the module application, is in Allocated Capacity Default. York reserves the right to review and approve module applications in accordance with its obligations under the Sewage Facilities Act (Act 537). Furthermore, if DEP requires connections to be limited then, to the extent required by DEP, York and the Municipality agree not to approve new sewer modules and/or forward such modules to York until the limit on connections is no longer in place or within the guidelines of the regulations.

*Section 9.02. Building Permits.* York and the Municipality will not issue any building permits that include connections, or permit any connections for development which do not have a previously approved sewer module or adequate hydraulic capacity, during any limit of connections imposed by DEP, except as permitted by DEP.

*Section 9.03. Connection Accounting.* As part of the annual wasteload management report (Chapter 94 Report) process, the Municipality shall provide an accounting to York, in form and content as required by York, as to existing and planned sewer connections, so as to assist York in complying with DEP's requirements.

*Section 9.04. Payment Default.* All payments required under this Agreement shall be due thirty (30) days after the date of the invoice or written demand, except for the capital contribution discussed in Section 4.04 which is due in thirty (30) days from the date of written demand, and if not paid within such period then a late charge of one (1%) percent shall be due together with, at the rate of three (3%) percent per annum, simple interest, until the amount due, including interest and penalty, is paid.

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## ARTICLE X

### Miscellaneous

*Section 10.01. Insurance; Repairs and Construction.* York will insure, or cause to be insured the Treatment Plant. Insurance, other than self-insurance, shall be with a responsible company or companies authorized and qualified to do business under laws of the Commonwealth, against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in the Commonwealth

and as shall be reviewed and approved, at least annually, by the Consulting Engineers or other insurance advisor. Such insurance policies shall be non assessable. Immediately upon the occurrence of any loss or damage to any part of the Treatment Plant which is covered by insurance, York will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by the Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the costs of such repair, replacement or reconstruction unless York determines that it is unwise to make such repair, replacement or reconstruction and shall agree upon other disposition of said insurance proceeds. In the event it becomes necessary to make any extraordinary repairs or replacements at the Treatment Plant because of damage or destruction and there are insufficient funds available from the insurance proceeds to pay the costs thereof, the Parties agree to pay their pro rata share of the additional costs in the same proportion as their Pro Rata Share of Allocated Capacity to the Treatment Plant. The Municipality agrees to share the cost of public liability insurance based upon the lowest bona-fide quote provided that the proportionate share of such cost being shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.01 hereof. The cost of the public liability insurance shall be shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof. In the event there is a judgment against York related to the Treatment Plant, which judgment is greater than the policy limits of the quoted policy, and if York has purchased a public liability policy and the judgment is greater than the policy limits, then York, the Municipality and the Connected Municipalities shall share the cost of the judgment in excess of the policy limits in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof.

*Section 10.02. Mediation.* Upon the written request of a Party, any dispute or claim in law or equity arising out of this Agreement shall be submitted to neutral, non-binding mediation prior to the commencement of arbitration, litigation, or any other proceeding before a trier of fact. The Parties agree to act in good faith to participate in mediation and to identify a mutually acceptable mediator. If they are unable to agree upon a mediator, the Parties may, after twenty (20) days have elapsed from the date of the written request for mediation, petition the Court of Common Pleas of York County to appoint a mediator. The Parties shall share equally in the costs for mediation services. If the dispute or claim is resolved through mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution to the dispute or claim in accordance with the remaining terms of this Agreement and other rights and remedies afforded by law.

Upon a Party's request for mediation, the Parties to the dispute shall have twenty (20) days to select a mediator. If the Parties cannot agree on a mediator within twenty (20) days and the mediator must be selected as set forth above, the Parties in dispute shall petition the Court of

Common Pleas of York County for the appointment of a mediator within ten (10) days of the expiration of initial twenty (20) day time period. After the selection of the mediator, the Parties shall submit to mediation for a period up to forty-five (45) days. If the dispute or claim is not resolved by the forty-fifth (45<sup>th</sup>) day after the selection of the mediator then the mediator shall provide written notice to the Parties reflecting the same and the Parties may seek alternative forms of resolution as stated above.

*Section 10.03. Inspection.* The Parties, as applicable, shall provide each other, from time to time, all information relevant to the proper administration of their responsibilities under this Agreement, or in respect to the interpretation hereof, as and in such form and detail as may be reasonably requested and each shall, at all reasonable times and from time to time, permit the examination and inspection of their respective records and physical facilities relevant to the subject matter of this Agreement.

*Section 10.04. Force Majeure.* Notwithstanding any other provision of this Agreement, no Party shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, unforeseeable breakdown of the Treatment Plant and/or their respective Wastewater collection systems, or other event beyond its reasonable control. The Party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with Costs to be shared, if applicable, to the extent provided elsewhere herein.

*Section 10.05. Indemnity.* Each Party agrees to indemnify, defend and save harmless the other Party against all costs, losses or damage, including payment of reasonable attorneys fees, on account of any injury to persons or property occurring in the performance of this Agreement due to its negligence or the negligence of its agents or employees; provided, however, that no Party waives any rights or immunities arising out of any applicable governmental immunity laws and statutes.

Notwithstanding the foregoing and to the extent such liability is not caused by the intentional or wilfull conduct of York, in the event of a general breakdown of the jointly used York Interceptors or the Treatment Plant so as to force the temporary cessation of sewer service contemplated hereunder, York shall not be liable to the Municipality or their sewer service customers for any damage sustained while such facilitates are out of service, and the Municipality shall indemnify and hold harmless York from any claims of its users in such event.

*Section 10.07. Severability.* Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

*Section 10.08. Headings.* The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

Section 10.09. Waiver. The failure of a Party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

Section 10.10. Assignment. This Agreement (including, without limitation, any rights under or interest in this agreement) may be assigned in whole or in part by York without the consent of the Municipality. The provisions of this Section shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the Parties. The Parties also agree that York may enter into concession, lease or other similar agreement or arrangement without the consent of the Municipality and that any obligations of the Municipality under this Agreement shall continue under such concession, lease, or other agreement. York shall provide notice concerning the identity and qualifications of potential assignees in advance of any assignment, unless otherwise prohibited by law or contractual obligation of confidentiality.

Section 10.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.12. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

Section 10.13. Supersedes Prior Agreements. This Agreement supersedes and repeals any prior agreements, contracts, and understandings, written or oral, by or between the Parties hereto with respect to the subject matter contained herein.

Section 10.14. Modification. This Agreement may be modified or amended in a writing signed by all the Parties hereto. Material pricing terms should not be modified unless 2/3 of the Connected Municipalities agree, it being the intention of the parties that the material pricing terms of this Agreement are to be uniform across the wholesale customers.

Section 10.15. Pennsylvania Law. This Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth.

Section 10.16. Recording. This Agreement may be recorded by either Party hereto.

Section 10.17. Interpretation. The Parties agree this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against York.

Section 10.18. No Unintended Third-Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall

have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 10.19. Breach. In the event of a breach of this Agreement by either Party, the non-breaching Party reserves/retains all of its rights in law and in equity (including, but not limited to, damages, injunctive relief and specific performance) to remedy such breach. Specifically, if the Municipality disconnects the Municipality's Wastewater Collection Systems such that it no longer utilizes the York System's wastewater treatment capacity during the initial term set forth in Section 3.02 or any subsequent renewal period, the Municipality shall remain liable under this Agreement for a lump sum payment to York in an amount equal to its pro-rata share of any outstanding capital expenses or Debt Service Charges as calculated pursuant to Sections 4.04 and 4.05 of this Agreement at the time of disconnection from the York System.

Section 10.20. Transportation Fund. Upon execution of this Agreement, all such Municipality funds held by York in the Transportation Fund or any other similar fund created under Prior Agreements shall be immediately returned to the Municipality. The Municipality shall share in the costs of all repairs or capital improvements to York Interceptors on the basis of each Party's Pro Rata Share of Attributed Flow through the facility to be repaired or replaced.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

ATTEST:

BOROUGH OF NORTH YORK,  
York County, Pennsylvania

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Council President, Borough Council

ATTEST:

CITY OF YORK

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors

**INTERMUNICIPAL AGREEMENT**

**THIS INTERMUNICIPAL AGREEMENT**, made this \_\_\_ day of \_\_\_\_\_, 2016, by and among:

**CITY OF YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “York”); and

**TOWNSHIP OF SPRING GARDEN**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “Municipality”).

**WITNESSETH**

**WHEREAS**, York owns or leases, operates and maintains the York System for rendering Wastewater collection, transmission, treatment and disposal service in and for York and certain Connected Municipalities, including the Municipality; and

**WHEREAS**, the Municipality owns, operates and maintains the Municipality’s Wastewater Collection Systems for rendering Wastewater collection and transmission service in and for certain portions of the Municipality; and

**WHEREAS**, York and the Municipality previously entered into a series of Prior Agreements that established the Municipality’s right to collect Wastewater in the Municipality’s Wastewater Collection Systems and connect its respective systems to the York System for the purpose of utilizing the York System’s wastewater treatment capacity, subject to the terms and conditions established therein; and

**WHEREAS**, pursuant to the Prior Agreements among York and the Municipality, the Municipality has been permitted to connect to the York System for the purpose of transmitting and treating Wastewater from the Municipality; and

**WHEREAS**, the Parties now desire to rescind all of the Prior Agreements in their entireties and subject themselves to the terms and conditions contained herein for the continued provision of services by York; and

**WHEREAS**, the Municipality desires to contract with York for the continued provision of Wastewater transportation, treatment and disposal services by York to the Municipality, pursuant to the terms and conditions contained herein; and

**WHEREAS**, York agrees to accept, receive, transport, treat and dispose of Wastewater from the Municipality pursuant to the terms and conditions contained herein; and

**NOW, THEREFORE**, the Parties hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has

proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

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## ARTICLE I

### Definitions

Section 1.01. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified whenever they are used or referred to herein, unless a different meaning clearly appears from the context:

- A. *“Agreement”* shall mean this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as “hereto”, “hereby”, “herein”, “hereof”, “hereunder” or other descriptive words or phrases having similar import;
- B. *“Allocated Capacity”* shall mean the amount of hydraulic capacity that a Party has reserved in the Treatment Plant pursuant to Exhibit A or Article IV hereunder;
- C. *“Allocated Capacity Default”* shall mean a discharge of Wastewater into the York System by a Party that exceeds the peak hydraulic flow rate of:
  - 1. A peaking factor multiplied by such Allocated Capacity for any hour within a 24 hour period, which peaking factor shall be established in accordance with Section 4.01 hereof; or
  - 2. 100% of the Allocated Capacity based upon the Municipality’s total flow for a three consecutive month period, divided by the number of days in that three month period;
- D. *“Attributed Flow”* shall mean the sewage flow attributed to the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow.
- E. *“Bonds”* shall mean the notes, bonds or other debt obligations previously or subsequently authorized and issued by the York City Sewer Authority or York or York’s assignee or designee, the proceeds of which would be applied for the purposes of financing Costs relating to the Treatment Plant, or notes, bonds or other debt obligations issued by the York City Sewer Authority or York or York’s assignee or designee to refund the same, where the proceeds of such bonds, notes or debt are or will be applied in part to pay Costs attributable to the Municipality, and where no Capital Contribution has been tendered by the Municipality, as applicable, to cover the full amount of its appropriate share of such Costs;
- F. *“Capacity”* shall mean the ability of the Treatment Plant to receive and effectively treat a specified load;



- G. *“Capital Contribution”* shall mean the tendering by the Municipality, as applicable, of a lump sum certain amount calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant;
- H. *“Certified Public Accountant”* shall mean a Person, who shall be Independent, appointed by the governing body of York, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the Commonwealth;
- I. *“Commonwealth”* shall mean the Commonwealth of Pennsylvania;
- J. *“Connected Municipalities”* shall mean all of the suburban communities near York, excluding the Municipality, that convey Wastewater to the Treatment Plant pursuant to separate agreements, which specifically include the Borough of North York, the Borough of West York, the Township of Spring Garden, the Township of Springettsbury, the Township of West Manchester, and the Township of York;
- K. *“Connected Municipalities Meeting”* shall mean the quarterly meeting of the Municipality, the Connected Municipalities, and York pursuant to Section 2.04;
- L. *“Connection”* shall mean the connection of a structure that generates or could generate hydraulic or organic loads to a sewer system;
- M. *“Consulting Engineers”* shall mean a Person who shall be appointed by the governing body of York, qualified to pass upon engineering questions relating to Wastewater collection, transmission, treatment and/or disposal systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth and the individual assigned to York shall be a professional engineer duly registered under laws of the Commonwealth;
- N. *“Costs,” “Costs of Acquisition,”* or *“Costs of Construction,”* as to the Treatment Plant shall mean and include all capital costs related to acquiring or constructing any portion of the Treatment Plant, and future betterments thereto, but not pertaining to any part of the York Wastewater Collection System or the Municipality’s Wastewater Collection Systems, unless specified otherwise, and shall include, but not be limited to, the following:
1. Obligations incurred and payments made or required to be made by York to workmen and laborers or to contractors, subcontractors, builders, and suppliers;
  2. Interest on Bonds during the acquisition or construction period with respect to any particular series of Bonds, less interest income earned from the investment of the proceeds derived from the Bonds during such period;
  3. Administrative expenses of York during the period of any acquisition or construction, including the financing thereof;

4. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the Treatment Plant; amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;
5. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable by York for carrying out purposes of York relating to the Treatment Plant, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Treatment Plant and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;
6. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental regulatory authority related to construction of any part of the Treatment Plant, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;
7. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations thereof, the preparation of Act 537 plans or updates, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction and the financing thereof;
8. Expenses of audits, initial compensation of a trustee or paying agent with respect to Bonds of any series; fees and expenses, if any, of a trustee, or paying agent relating to a construction fund, if any; financing costs, fees and expenses, including compensation and expenses of a financial advisor or underwriter, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses, including costs arising out of any amendments hereto; advertising expenses; premiums for insurance or contracts of suretyships insuring bondholders against the risk of nonpayment of the principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by York in connection with financing acquisition or construction and issuing Bonds;

9. Other costs, charges and expenses incident to completion of any improvements, alterations, extensions or additions to the Treatment Plant;
10. Reimbursement to York for advances made by it for any of the above items, including any interest paid or required to be paid by York with respect to any such advances, or for any other costs incurred by York or for work done by York with respect to the Treatment Plant;
11. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;
12. Any sums required to reimburse York or to pay or retire any indebtedness incurred by York, including payment of interim obligations of York, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and
13. Interest on and issuing costs of any Bonds issued in anticipation of receipt of Federal or Commonwealth grants or loan funds applied to pay such costs, less any interest income earned from the investment of the proceeds derived from the Bonds.

Such “Costs”, “Costs of Acquisition,” or “Costs of Construction” incurred in connection with the Treatment Plant, shall be reduced by any and all grants, reimbursements, subsidies or other payments designated by law, regulation, contract or agreement to be applied to payment of all or any portion of such items (except payments required under this Agreement);

- O. “DEP” shall mean the Department of Environmental Protection of the Commonwealth or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- P. “Debt Service Charge” shall mean the amounts due to York from the Municipality calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs, including principal and interest, of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant funded through Bonds issued by or on behalf of York.
- Q. “Domestic Wastes” shall mean the normal water-borne wastes from a Dwelling Unit such as wastes from kitchens, water closets, lavatories, and laundry facilities;
- R. “Dwelling Unit” shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by one family or other group of Persons living together or by a Person living alone;
- S. “Effective Date” shall mean the date the Parties hereto have executed this Agreement and have adopted this agreement pursuant to the applicable rules of their respective governing bodies;

- T. “EPA” shall mean the United States Environmental Protection Agency or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- U. “Extra Strength Wastes” shall mean all non-Domestic Wastes which exceed the pollutants, loadings, or waste characteristic limits contained in the pertinent pretreatment ordinance;
- V. “Fiscal Year” shall mean the period commencing on January 1 of each year and ending on December 31 of the same year;
- W. “GPD” shall mean gallons of Wastewater discharged during a 24 hour period from midnight to midnight;
- X. “Hydraulic Overload” shall mean the condition that occurs when the monthly average flow entering the Treatment Plant exceeds the hydraulic design capacity for 3 consecutive months out of the preceding 12 months or when the flow in a portion of the York System exceeds its hydraulic carrying capacity;
- Y. “Independent” shall mean, with respect to the Certified Public Accountant, a Person who is Independent in fact and who is not a member of the governing body, officer or employee of a Party hereto, or any elected or appointed official or employee of a Party hereto, or that is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body, officer or employee of a Party hereto, or an elected or appointed official or employee of a Party hereto; provided, however, that the fact that such Person is retained regularly by a Party hereto shall not make such Person an employee within the meaning of this definition;
- Z. “Industrial User” shall mean any Non-Residential Connection discharging sewage and wastes other than normal water carried domestic sewage and wastes, directly or indirectly, to the York System;
- AA. “Interceptor” shall mean that pipe, pump, facility, lift or other physical installation necessary for the conveyance of Wastewater from a Point of Connection to the Treatment Plant;
- BB. “IPP” shall have the meaning given that term in Section 6.08 hereof;
- CC. “Monthly Average Flow” shall mean the total flow at the Treatment Plant during a calendar month divided by the number of days in that month;
- DD. “Municipality” shall mean the Township of Spring Garden, located in York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania;
- EE. “Municipality’s Wastewater Collection Systems” shall refer to the Municipality’s Wastewater collection and transportation system facilities presently existing or hereafter to be acquired, constructed, owned and operated by the Municipality to provide Wastewater collection and transportation services to certain portions of the

- Municipality, together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof;
- FF. *“Non-Residential Connection”* shall mean any building, structure, room, group of rooms, establishment or facility, other than a Dwelling Unit, discharging sewage and wastes, including industrial wastes, directly or indirectly, to the York System;
- GG. *“O&M”* shall mean Operating and Maintenance;
- HH. *“O&M Charge”* shall mean the charges payable by the Municipality to York hereunder calculated pursuant to Section 5.01 hereof;
- II. *“O&M Expenses”* shall have the meaning described in Section 5.02 hereof;
- JJ. *“Organic Design Capacity”* shall mean the highest daily organic load at which the Treatment Plant can effectively treat the incoming Wastewater at the predetermined limitations contained in York’s NPDES permit;
- KK. *“Organic Overload”* shall mean the condition that occurs when the average daily influent organic load at the Treatment Plant exceeds the organic design capacity upon which the permit and Treatment Plant design are based;
- LL. *“Party”* shall mean any party to this Agreement individually;
- MM. *“Parties”* shall mean York and the Municipality;
- NN. *“Person”* or *“Persons”* shall mean an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipal corporation, a municipality, a municipal authority or any other group or legal entity;
- OO. *“Point of Connection”* shall mean point or points at which York receives and accepts Wastewater from the Municipality as shown on Exhibit B, which is incorporated herein by reference hereto, and as may be amended from time to time;
- PP. *“Prior Agreements”* shall mean all previous agreements entered into by the Parties hereto pertaining to the provision of Wastewater transportation, treatment and disposal services by York, specifically including: (i) the Agreement dated December 9, 1976 between York and the Municipality, and any and all supplements or amendments thereto;
- QQ. *“Pro Rata Share of Attributed Flow”* shall be calculated by dividing the attributable sewage flow from the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow, by the total metered flow discharged to the Treatment Plant;
- RR. *“Rental Period”* shall have the meaning given that term in Section 4.08(f) hereof;
- SS. *“Sanitary Wastewater”* shall mean all Domestic Wastes and water-borne wastes of similar character from similar facilities in offices, hotels, stores, restaurants, hospitals, schools, other commercial establishments, and industrial establishments;
- TT. *“Treatment Plant”* shall mean the existing Wastewater treatment and disposal facilities, the outfall sewer and all other facilities related to treatment and disposal of Wastewater, together with any additions, improvements, enlargements and/or

- modifications thereto and/or replacements thereof, heretofore or hereafter acquired or constructed by York, and that York deems appropriate and necessary to provide treatment and disposal of Wastewater under applicable laws of the Commonwealth;
- UU. “*Wastewater*” includes Sanitary Wastewater and/or Extra Strength Wastes, together with any ground, surface or storm water as may be present;
- VV. “*York*” shall mean the City of York, York County, Pennsylvania, a municipal corporation (a Third Class City) of the Commonwealth or its assigns, designees, successors, vendors, or concession holders;
- WW. “*York Interceptors*” shall mean the Interceptors owned York carrying the Municipality’s and York’s Wastewater flow from the Points of Connection to the Treatment Plant, but excluding any of the Municipality’s Interceptors upstream from their connection with a York Interceptor;
- XX. “*York System*” shall mean the York Wastewater Collection System, the York Interceptors and the Treatment Plant; and
- YY. “*York Wastewater Collection System*” shall mean the Wastewater collection and transportation system facilities, excluding the York Interceptors, presently existing or hereafter to be acquired, constructed, owned and operated by York to provide Wastewater collection and transportation services to certain portions of York and other bulk service customers (but not the Municipality), together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof; excluding, however, any facilities included in the definition of “Treatment Plant” and “York Interceptors”.

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## ARTICLE II

### Construction and Operation of the Treatment Plant and other Conditions

Section 2.01. *Construction and Operation of Treatment Plant.* York City Sewer Authority or its successor shall own the Treatment Plant and be the Treatment Plant permittee. York shall operate the Treatment Plant continuously, and shall pay or cause to be paid the O&M Expenses of the Treatment Plant.

Section 2.01(a). *Wastewater Collection System Costs and Operation.* The Municipality shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the Municipality’s Wastewater Collection Systems. Similarly, York shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the York Wastewater Collection System and York Interceptors, except as otherwise provided herein. The Municipality’s Wastewater Collection Systems shall each be designed, constructed, operated and maintained in a manner that will not cause them to be in violation of this Agreement and that will not cause

York to be in violation of any law or regulation of any governmental authority having jurisdiction over the Treatment Plant.

*Section 2.01(b). Operation Requirement.* Each Party shall operate and maintain its respective Wastewater collection system in a good and sound operating condition.

*Section 2.02. Connection of the Municipality's Wastewater Collection Systems and Limitations.* The Municipality shall maintain continuously during the term hereof proper connection of the Municipality's Wastewater Collection Systems to the York Interceptors, at such Points of Connection as described in Exhibit B, attached hereto. Future additional points of connection by the Municipality shall be agreed upon by the Municipality and York, and the terms and conditions applicable to such future connections shall be set forth in a separate written agreement between the Parties, which shall constitute an amendment and supplement to this Agreement.

The Municipality shall deliver to the Point of Connection all Wastewater originating within the service area described in the Act 537 Plan for the Municipality, as applicable and as amended from time to time, as being tributary to the York Interceptors and Treatment Plant and not intended for treatment by on-lot septic systems.

*Section 2.03. Cooperation; Sharing of Information.* The Parties each agree to the extent possible and economically practicable (except as otherwise required under this Agreement), to cooperate and share pertinent information with each other in facilitating the construction, maintenance and/or operation of their Wastewater collection systems, and York will provide the Municipality with any pertinent information regarding Costs, quantities of discharge, capacity or other matters relating to the Treatment Plant reasonably deemed necessary or desirable as determined by the Municipality, provided however, that in the event securing such information involves costs which would not normally be incurred as a cost of owning or operating and maintaining the Treatment Plant, the Municipality shall pay or provide for the payment of such costs. Each Party shall not be financially or otherwise responsible for the Wastewater collection system of the other Party, and the Municipality shall not be financially or otherwise responsible for the Treatment Plant except to the extent of charges required to be paid by the Municipality to York hereunder, and the performance of all terms and conditions of this Agreement. This paragraph shall not limit the obligations of the Parties set forth in the Special Requirements Article of this Agreement (Article IX).

At least forty-five (45) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, York shall submit to Municipality all material and information in its possession necessary for Municipality to submit to City the annual report referenced below. At least thirty (30) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, the

Municipality shall submit to York an annual report providing all material and information required from it by York and DEP to complete its annual wasteload management report.

*Section 2.04. Connected Municipalities Meeting.* It is agreed that the Connected Municipalities Meeting currently utilized by the Municipality, the Connected Municipalities, and York shall continue on a quarterly basis as set forth herein. The Connected Municipalities Meeting shall continue in its current form and pursuant to its current procedures, but at any time may establish its own procedures. The Connected Municipalities Meeting is intended to provide an opportunity for periodic discussion, review, and recommendations of all matters relating to this Agreement and the provision of Wastewater treatment services. Upon reasonable notice, the Municipality, any Connected Municipality, or York may call a Connected Municipality Meeting. The Connected Municipalities Meeting shall continue for the Term of Agreement set forth herein, including any extensions or renewals thereof.

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### ARTICLE III

#### Bulk Service Customer; Term of Agreement

*Section 3.01. Municipality Constitutes a Bulk Service Customer of York.* York agrees to operate and maintain in good working order and in compliance with all applicable laws, regulations and permits continuously during the term hereof the York Interceptors and the Treatment Plant, and any enlargements, additions, improvements and modifications thereto as determined solely by York, and to provide the Municipality, as a bulk service customer, Wastewater treatment, transportation, and disposal services in the Treatment Plant throughout the term hereof, as provided for herein.

*Section 3.02. Term of Agreement.* Subject to the covenants and conditions set forth herein, the term of this Agreement shall be thirty (30) years unless earlier terminated by mutual written consent of all the Parties hereto. This Agreement shall automatically renew on a year-to-year basis upon the expiration of the initial thirty (30) year term. This Agreement may be reviewed every five (5) years by the Parties, which shall report to their respective governing bodies on the sufficiency of this Agreement or any recommendations for amendments and modifications hereof.

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### ARTICLE IV

#### Allocation of Capacity in the Treatment Plant; Measurement of Flow; Capital Contribution; Updating of Treatment Plant; Additions to Treatment Plant Required by York and Calculation of Debt Service



Section 4.01. Acceptance of Flows from the Municipality. During the term hereof, the Municipality shall have the contractual right to discharge Wastewater into the York Interceptors subject to the following limitations:

Average Daily Flow (ADF):	3,011,500 Gallons/Day as a monthly average
Peak Daily Flow (PDF):	12,046,000 Gallons/Day
Peaking Factor	4.0 PDF/ADF

The Municipality covenants and agrees that it will not discharge Wastewater into the York Interceptors in a manner that constitutes an Allocated Capacity Default, as set forth herein, except as may be allowed by York hereunder.

Section 4.02. Measurement of Flow. The quantity of Wastewater discharged by the Municipality shall be determined by meter readings of the Wastewater flow meters or Wastewater flow measuring devices at the Point of Connection. The quantity of Wastewater discharged by York shall be determined by the flow measured by the Treatment Plant headworks meter, minus the quantity of Wastewater discharged by the Municipality and the Connected Municipalities.

Section 4.02(a). Flow Meters. York shall provide and install a Wastewater flow metering station at the Municipality's Point of Connection and the Treatment Plant headworks that will achieve the maximum practicable accuracy. Costs associated with the provision and installation of the Wastewater flow metering and sampling stations shall constitute O&M Expenses. The metering station shall be equipped with a flow reading system that will collect and transmit meter readings for download and a display that will allow the rate and total to be read in standard engineering units.

Section 4.02(b). Maintenance of the Flow Meter. York shall maintain the above referenced flow meter to accurately monitor flow conveyed across municipal boundaries. The flow meter shall be capable of recording flow measurements in one-minute intervals and averaging flows over the hour and day. The meter shall record and totalize all data. The record shall include at least flows at hourly and daily intervals. York shall maintain the flow meter in good working order. The flow meter shall be inspected, tested, and certified for accuracy at reasonable intervals, but no less than ninety (90) days. Calibration certification shall be done by a reputable company normally engaged in the business of meter calibration. York shall forward such inspection results, testing results, and certificates of calibration to the Municipality upon request.

In the event of a defective or inoperative flow meter, York shall have the right to take such steps as are required to repair or replace the flow meter, and the costs associated with any such maintenance, repair or replacement work shall constitute O&M expenses if costs are incurred.

Section 4.02(c). Monitoring Flow Meters. York shall have access at any and all times to the flow meters. The flow meters shall be monitored by York, which shall be

responsible for collection of data therefrom. In addition, the Municipality shall have a right of access to such records.

Section 4.02(d). Unmetered Flows. Any point of connection of the Municipality to the York System that reaches 70,000 GPD shall require the installation of a flow meter by York within nine (9) months of reaching 70,000 GPD at a mutually agreed upon location.

Section 4.02(e). Missing Flow Data. In the event reliable flow data is unavailable, due to malfunction in a flow meter, or in the recording device for said meter, York shall estimate flows for any such period as the flows for the same period in the preceding year or for the period immediately preceding the malfunction depending on which of these periods had a rainfall amount closest to that of the period of malfunction. York may use other pertinent data, such as water consumption data, in developing an estimate for the missing data. In the event of any dispute between the Parties concerning the reasonableness or accuracy of estimated flows, the dispute shall be resolved pursuant to Section 10.02.

The quantity of Wastewater discharged by the Municipality into the Treatment Plant shall be the sum of the flow measured at the applicable meters or devices at the Point of Connection for the Municipality as set forth on Exhibit B plus any unmetered or estimated flow (which may be amended from time to time as any additional connection points are permitted by York). The flow attributable to the Municipality shall be reduced by the metered flow plus any unmetered or estimated flow from any York customer providing flow into the Municipality's line prior to the Municipality's connection point with the York System.

It is understood that technology changes may permit metering changes that are more accurate. York reserves the exclusive right to determine metering changes and shall share information on any metering changes with the Municipality as it may request.

Section 4.03. Exclusive Service Provider for Designated Areas. The Municipality covenants and agrees that York, during the term hereof, shall be the sole and exclusive agency providing Wastewater transportation, treatment and disposal services for the portion of the Municipality and properties located in the drainage area contemplated to be served by the York System and Treatment Plant (which drainage area is shown on Exhibit C attached hereto), pursuant the terms and conditions herein. Further, the Municipality covenants and agrees not to construct or operate, or permit the construction or operation of, any sewage transportation or treatment facilities in competition with York.

The provisions of this Section 4.03, however, shall not prejudice the Municipality with respect to its rights to use the existing sewage treatment facilities not owned by York that are presently utilized by the Municipality; nor shall such covenants of exclusivity and non-competition be construed now, or during the term hereof, to the prejudice of the Municipality should any governmental agency of the Commonwealth or United States, specifically including DEP and the EPA, order the construction of a treatment facility or re-routing of flows to another

facility, a change in treatment flows or require the sharing of new treatment facilities with a municipality.

Section 4.04. Expansions or Upgrades of Treatment Plant. The Municipality shall be required to contribute to and share in the Costs of any other capital expansions or upgrades, improvements, modifications, extraordinary repairs or replacements not considered an O&M Expense, and other projects deemed by York to be of a capital nature and undertaken by York with respect to the Treatment Plant (“Capital Costs”). Any capital expansion, upgrade, improvement, modification, extraordinary repair or replacement in excess of Three Million (\$3,000,000) Dollars shall be approved by a majority of all Connected Municipalities unless such upgrade, improvement, modification, extraordinary repair or replacement has been ordered to be constructed by a governmental agency of the Commonwealth or United States, specifically including DEP and the EPA. York shall not separate any contracts or projects to intentionally avoid the Three Million (\$3,000,000) Dollar limitation provided herein. If York should undertake such an upgrade or modification of the Treatment Plant, which undertaking results in Costs, Costs of Acquisition or Costs of Construction to be incurred by York, then the Municipality shall pay a pro rata share of such Costs in the same proportion as its respective Allocated Capacity as costs are incurred by York for such upgrading or improvements. The Municipality shall have the right to inspect the record of all purchases and expenses involved in the construction. York shall provide to Municipality on an annual basis a five (5) year projection of expected capital improvements.

Section 4.05. Calculation of Debt Service Charge (Contingent upon Issuance of Bonds for the Municipality). For prior or subsequent Bonds issued to finance Capital Costs at the request of or for the benefit of the Connected Municipalities or, if applicable, other parties using the Treatment Plant, pursuant to Section 4.04, the payment of the Debt Service Charge shall commence upon issuance of the Bonds, or at such other time as may be required to assure the timely payment of debt service due on the Bonds. Such debt service charge shall be calculated in a manner consistent with the coverage and other covenants with respect to the Bonds and the calculation of the Capital Contribution hereunder, *i.e.*, the principal and interest attributable to the Capital Costs, together with financing costs, multiplied by a factor equal to the percentage that the Municipality’s capacity increase in the Treatment Plant bears to the total increased capacity of the Treatment Plant (for example if the Municipality has additional capacity of 10% of the total increased capacity and is thus responsible for paying 10% of the capital cost of the project, the Municipality shall pay 10% of any debt service charge if it elects to use Bonds to pay for its share of the capital costs). Accelerated payments made by or on behalf of York on any Bonds shall not release the Municipality of its obligation to pay the debt service charge for any Capital Costs and any Capital Contribution funded pursuant to this section during the period such Bonds would have been outstanding but for accelerated payment. An amortization schedule of all outstanding Bonds as of the date of this Agreement is attached hereto as Exhibit D, and the Parties agree that such schedule shall be updated from time to time upon the issuance of additional Bonds.

Section 4.06. Hydraulic Overload. In the event of Hydraulic Overload the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.07. Organic Overload. In the event of Organic Overload, the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.08. Allocated Capacity Planning. If at any time York or the Municipality's Monthly Average Flow exceeds 90% of York or the Municipality's Allocated Capacity, York or the Municipality shall, in addition to any action required as a result of any default, begin planning for the acquisition of additional capacity either by purchasing available capacity or by notifying the other of its need for additional capacity. York or the Municipality may, as an alternative to the purchase of additional capacity, submit a plan to reduce its Monthly Average Flow to comply with this Agreement. If a Party notifies the other of its need for additional capacity, the Party shall submit its plan for the acquisition of additional capacity or its plan to reduce its Monthly Average Flow to York for review and comment within 90 days of the discharge that triggered the planning. If the Municipality and York cannot agree on the plan for purchasing additional capacity or to reduce Monthly Average Flow, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereunder.

Section 4.08(a). Redistribution of Allocated Capacity.

(1) In the event any Connected Municipality or York requires additional Allocated Capacity, it shall have the option, in accordance with the following terms and procedures, to reserve additional Allocated Capacity in the Treatment Plant. In order to obtain additional Allocated Capacity, there must be in existence at the time unused treatment capacity that has been allocated to another Connected Municipality or York but which such other Connected Municipality or York is not in need of at the time and is willing to surrender.

(2) York agrees that in the event any Connected Municipality consents to a reduction of Allocated Capacity, the Allocated Capacity surrendered shall be offered to any of the Connected Municipalities and York in the discretion of the selling Connected Municipality, at the price agreed to by the selling Connected Municipality. The selling Connected Municipality must give notice, only to the other Connected Municipalities and York, of intent to sell part of its Allocated Capacity to another Connected Municipality even though it need not be offered to all other Connected Municipalities. If the Connected Municipality to whom such Allocated Capacity is offered does not wish to accept such additional Allocated Capacity, the Allocated Capacity so offered may be made available to the remaining Connected Municipalities on a pro-rata basis.

(3) Any Connected Municipality or York surrendering all or any portion of its Allocated Capacity shall be reimbursed in accordance with a mutual agreement reached with the Party purchasing such Allocated Capacity. If no Connected Municipality or York desires to purchase Allocated Capacity, then the Connected Municipality offering to sell its Allocated Capacity shall continue to be liable for all payments with respect to such reserved capacity.

(4) Where any Connected Municipality or Party acquires an interest in Allocated Capacity in the Treatment Plant, such Connected Municipality or Party must thereafter pay to York the acquiring Party's proportional share of all Costs, Capital Contributions, O&M Charges, and all other liabilities contained in this Agreement. Such acquiring Party shall be bound by the terms of this Agreement, as it may from time to time be amended.

Section 4.08(b). Defaults. Allocated Capacity Defaults shall not be permitted; however, if such a Default occurs it shall be addressed as provided for herein.

Section 4.08(c). Municipality Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by the Municipality, York shall notify the Municipality of said Default in writing, including data, if available. The Municipality shall, within sixty (60) days of said notice, acknowledge said notice and advise York of any discrepancies with such notice of default and the corrective action to be taken in the form of a remedial action plan. York shall review any discrepancies and within thirty (30) days provide a response. If the Municipality and York cannot agree on whether an Allocated Capacity Default has occurred, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In the event the Municipality submits to York a remedial action plan, York shall review the proposed remedial action plan and provide comments on the proposed remedial action within thirty (30) days of the plan being submitted. Upon approval of the proposed remedial action plan by York, the Municipality shall implement the approved corrective action within ninety (90) days of receipt of approval from York, or such longer period that may be reasonably granted by York for design, approval, construction and implementation of such corrective actions. If the Municipality and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, York may limit new connections until the conditions that cause the Municipality to be in Allocated Capacity Default or Allocated Nutrient Capacity Default are abated. If DEP or EPA requires connections to be limited then the Municipality agrees not to approve new sewer modules and/or forward such modules to York until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan, remedial action plan, or limit of connections will be fully complied with by the Municipality, and York shall be entitled to injunctive relief without the requirement of a bond and the Municipality will reimburse York's reasonable attorney fees and costs in the event of such enforcement action.

Section 4.08(d). York Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by York, York shall notify the Connected Municipalities of said Default in writing. York shall, within sixty (60) days of said notice, advise the Connected Municipalities of the corrective action to be taken. The Connected Municipalities shall review the proposed remedial action plan and provide comments on the proposed remedial action, or their approval of the the same, within thirty (30)

days of the plan being submitted. Upon approval of the proposed remedial action plan by the Connected Municipalities, York shall implement the approved corrective action within ninety (90) days of receipt of approval from the Connected Municipalities, or such longer period that may be reasonably required for design, approval, construction and implementation of such corrective actions. If the Connected Municipalities and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, if ordered by DEP or EPA, York shall limit connections so as to limit or eliminate discharges which cause York to be in Allocated Capacity Default. If DEP or EPA requires connections to be limited then York agrees not to approve new sewer modules until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan or limit of connections will be fully complied with by York, and Connected Municipalities shall be entitled to injunctive relief without the requirement of a bond and York will reimburse the Municipality's reasonable attorney fees and costs in the event of such enforcement action.

*Section 4.08(e). Default Surcharges.* Notwithstanding any contrary provisions contained herein and in addition to all other remedies provided for herein, where the Municipality exceeds its Peak Daily Flow for more than two (2) consecutive days or more in any thirty (30) day period, it shall pay York a \$1,000.00 per day surcharge.

Additionally, where the Municipality exceeds its annual Allocated Capacity in any fiscal year, it shall pay York a surcharge based on the amount of the increased cost of treatment specifically allocated and attributable to the Municipality's Allocated Capacity Default, plus a fifteen (15%) percent penalty on the value thereof.

Any surcharge penalties received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Capacity.

*Section 4.08(f). Allocated Capacity Defaults Triggering Rental Requirement.* In the event that the Municipality or York discharges Wastewater that results in an Allocated Capacity Default due to the Peak Daily Flow, established in accordance with Section 4.01 hereof, for three days or more in any one calendar week (Monday through Sunday) or three consecutive days, then the Municipality shall rent capacity from York for a one month period (the "Rental Period"), beginning on the day in which the Default was triggered.

In the event that the Municipality discharges Wastewater that results in an Allocated Capacity Default due to Average Daily Flow Allocated Capacity based upon the Municipality's total flow for a three consecutive month period, divided by the number of days in that three month period, at any time, then the Municipality shall rent capacity from York for a three month period (also the "Rental Period"), beginning on the day in which the Default was triggered.

If the Municipality is renting capacity in accordance with this section and has no additional Allocated Capacity Defaults (Default of solely the Allocated Capacity and not including the rental capacity) during the Rental Period, the Municipality is not required to continue to rent capacity after the expiration of the Rental Period. If the Municipality renting capacity does have an additional Allocated Capacity Default during the Rental Period, then York shall determine whether the Municipality must continue to rent capacity, purchase additional capacity (if available) or to take other corrective action. If the Parties cannot agree on whether to require a party to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof.

The amount of capacity rented shall be the amount of GPD that placed the Municipality in Default. The charge for such rental shall be the rate which York would charge its residential retail customers for the amount of capacity being rented, less the O&M charges allocated to such residential rate. This rental charge shall be in addition to the O&M charge that the Municipality must pay for the capacity that is being rented.

*Section 4.08(g). Special Charge.* If the Municipality discharges Wastewater at a flow rate that results in an Allocated Capacity Default and fails to, within ninety (90) days of the Default, make the necessary arrangement to eliminate or rent or purchase sufficient capacity to eliminate the Default, then the defaulting Municipality shall pay York for the amount of the excess usage an amount equal to double what the quarterly charge otherwise would have been on such excess usage for the calendar quarter in which the Default occurred.

Any Special Charge received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Flow or Nutrients.

*Section 4.08(h). Other Actions of York.* If the Municipality is in Allocated Capacity Default and the Parties cannot agree on whether to require the defaulting Municipality to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. Furthermore, if the United States, the Commonwealth, or any agency thereof promulgates a new statute, law, or regulation imposing more restrictive monitoring, discharge, or treatment requirements, York reserves the right to impose more restrictive requirements upon the Municipality to ensure compliance with the statute, law, or regulation.

*Section 4.08(i). State of Emergency.* If a state of emergency is declared by authorities of the Commonwealth of Pennsylvania or the United States of America for an area including York and/or the Municipality, York and the Municipality shall not be subject to the Default provisions of this Section during the time in which the emergency is in effect.

Section 4.08(j). Hydraulic Overload Planning. If at any time the total Average Daily Flow for the Treatment Plant exceeds 90% of such Capacity, the Parties shall meet and discuss planning to avoid any hydraulic overload or default within the York Interceptors and Treatment Plant.

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## ARTICLE V

### O&M Charges and Expenses

Section 5.01. O&M Charge. The Municipality shall pay to York an O&M Charge equivalent to the total O&M Expenses of the Treatment Plant multiplied by the Municipality's Pro Rata Share of Attributed Flow in the Treatment Plant. The O&M Expenses are those costs associated with operating and maintaining the Treatment Plant, and providing the Municipality and York's third party customers with Wastewater treatment and disposal services hereunder, and are set forth in greater detail in Section 5.02 hereof. The O&M Charge shall be payable to York or its designee quarterly in arrears. The method of charging for O&M Expenses as set forth in Article V shall begin upon the Effective Date of this Agreement. For example, if the Municipality's Pro Rata Share of Attributed Flow to the Treatment Plant is fifteen (15%) percent of the total, then the Municipality shall pay fifteen (15%) percent of the Total O&M Expenses.

Section 5.02. O&M Expenses. O&M Expenses shall include the total of all of the following items, each such item being determined for the Fiscal Year or portion thereof under consideration, of all the expenses and costs directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors.

O&M Expenses include:

- (a) power, chemicals, fuel, materials, and supplies;
- (b) costs of storing, hauling, dumping and disposal of residue or sludge from the Treatment Plant, including composting; and other costs determined by York to be costs;
- (c) actual salaries and wages of administrative, operation or maintenance personnel of York directly engaged in operating and maintaining the Treatment Plant, together with the social security and unemployment taxes, workmen's compensation, insurance premiums, health and accident insurance premiums and pension benefits (but not payments related to any unfunded pension liability), vocational training or any other benefits or costs applicable to the personnel, prorating such items in accordance with such employee's time actually spent on matters pertaining to the treatment or disposal of Wastewater compared to work spent on other matters;



(d) equipment and tools used or employed for the operation and maintenance of the Treatment Plant;

(e) costs of routine maintenance and repairs (including replacements), and costs of any work done under any contract with respect to the Treatment Plant (excluding capital upgrades or expansions);

(f) fees and expenses of the Consulting Engineers;

(g) premiums for property, boiler and machinery and comprehensive crime insurance and vehicle insurance;

(h) legal expenses;

(i) all expenses involved in purchasing nutrient or other credits, if any, required to meet NPDES permit requirement or other DEP requirements related to the Treatment Plant; and

(j) all other costs and expenses not of a capital nature, determined by York to be O&M Expenses and reasonably incurred and properly attributable, to the operation, maintenance and/or repair of the Treatment Plant, from time to time.

Such amount shall be reduced by any Federal or Commonwealth grants, reimbursements, subsidies or other payments to York designated by law or regulation for such purposes (excluding grants for capital upgrades or expansions), revenues received by York from the treatment of septage, sludge and leachate or similar substances, and the sale of nutrient or other credits.

O&M Expenses shall not include a general allocation of costs, expenses, overhead and other expense items of York or its assignees, designees, successors, vendors or concession holders but shall be limited to those expenses and costs that are directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors, but may include reasonable and supportable overhead expenses incurred by York.

Written records and accounts of all such costs and expenses shall be prepared and maintained by York and shall be available to each Party upon request. York shall maintain an accurate system of accounts and records with respect to all such O&M Expenses which shall be audited annually by a Certified Public Accountant. A copy of the audit shall be provided to the Municipality within thirty (30) days of its completion. Such accounts and records may be inspected and copied at reasonable times by the Municipality and its agents and representatives. Subsidies received by York attributable to the operation of the Treatment Plant shall be reimbursed to the Municipality proportionate to its respective Pro Rata Share of Actual Flow to the Treatment Plant.

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## ARTICLE VI

### Wastewater Quality and Pretreatment Restrictions

*Section 6.01. Uniform Standards.* York has adopted and may amend from time to time uniform Wastewater quality standards applicable to the York Wastewater Collection System, which are intended to comply with the requirements of EPA, DEP, and all other regulatory authorities.

*Section 6.02. Compelling Compliance with Standards.* The Municipality shall enact or cause to be enacted an ordinance or ordinances or adopt a resolution or resolutions, as applicable, and the Municipality will cause such ordinance or ordinances or resolution or resolutions, as applicable, to remain in full force and effect at all times, prohibiting and providing adequate penalties for the discharge into the Municipality's Wastewater Collection Systems of anything violating the above-mentioned Wastewater quality standards of York, and shall enforce the provisions thereof. Such ordinance or ordinances shall also prohibit and/or regulate, as applicable, the discharge into the Municipality's Wastewater Collection Systems by industries of prohibited Extra Strength Wastes, as prescribed in the applicable industrial pretreatment regulations adopted and amended by York from time to time. The Municipality shall not permit any discharge into the Municipality's Wastewater Collection Systems except in the manner and in accordance with the provisions of said ordinance or ordinances. After adoption or amendment of an ordinance, resolution or regulation pertaining to Wastewater, the Party adopting or amending the same shall provide a copy to the other Party to this Agreement.

The Parties shall not discharge any Extra Strength Wastes to the Treatment Plant.

*Section 6.03. Reimbursement for Damages from Improper Discharge.* The Parties shall pay the Costs of any damage to the Treatment Plant and fines or penalties resulting from discharge of improper Wastewater from the Municipality's Wastewater Collection System in violation of quality standards and restrictions, and shall indemnify and hold harmless the other with respect thereto. York shall pay or cause to be paid the Costs of any damage to the Treatment Plant resulting from discharge of improper Wastewater from the York Wastewater Collection System or from any customer (including other bulk users) of York (except the Municipality or other Connected Municipalities) in violation of the above-mentioned quality standards and restrictions, and shall indemnify and hold harmless the Municipality with respect thereto.

*Section 6.04. Sampling Manholes.* Promptly upon request by York, the Municipality, as applicable, shall require the installation of a manhole at the point of discharge from the property of any user who has the potential to discharge into the Municipality's Wastewater Collection Systems any wastes other than Domestic Wastes. Said manhole shall meet York's requirements with

respect to type, size, location and construction, so that sampling and/or metering will be facilitated. York may at any time sample the Wastewater in such manholes.

Section 6.05. Disconnection of Property. The Parties shall prohibit and prevent any Person from discharging Wastewater whose quantity or quality may have a deleterious effect on the Treatment Plant or receiving stream. When requested by York, the Municipality shall prohibit such unlawful discharge from the property to the extent permitted by law..

Section 6.06. Pipe Connection Required. The Parties each shall, to the extent possible, prohibit and prevent by ordinance the discharge of any substance into its respective Wastewater collection system, other than by and through a permanent direct pipe connection. The ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, unauthorized discharges from tank trucks or similar sources into the Municipality's Wastewater Collection Systems, York Interceptors or the York Wastewater Collection System shall be prohibited.

Section 6.07. Prohibition of Septage Discharge. The Parties each shall prohibit and prevent by ordinance the discharge of septic tank or grease trap wastes into its respective Wastewater collection system including the contents of septic tanks of existing establishments when they first connect to its respective Wastewater collection system.

Section 6.08. Implementation of Industrial Pretreatment Program. If York is required by DEP or EPA to implement an Industrial Pretreatment Program (the "IPP"), York may accept primary responsibility from time to time to implement, administer and enforce the IPP, including (but not limited to) conducting and updating Industrial User surveys, and performing inspections and sampling. The Municipality agrees to empower York to act as its agent with respect to the IPP. The Municipality shall reasonably cooperate with any enforcement action taken by York against the Municipality's Industrial Users, and shall take such action in the exercise of its own rights and police powers as may be reasonably requested by York to ensure compliance with York's IPP. The administrative costs of the Pretreatment Program will be paid by York (which costs are passed on to pre-treatment customers) and shall not be part of the O&M charges to the Municipality.

Section 6.09. Surcharge to Industrial Users. York may charge Industrial Users (which also includes landfills) an extra monthly strength surcharge (to be used to reduce O&M Expense) based on deviations over and above the strength considered normal for domestic Wastewater. To the extent reasonably possible, the Municipality agrees to assist in the collection of any surcharge due from an Industrial User in the Municipality's service area not paid within 90 days. Such surcharges shall be imposed and calculated in accordance with York's ordinances and regulations requiring the surcharges.

Section 6.10. Municipal Maintenance Waste Acceptance. York at its Treatment Plant shall accept wastes collected by the Connected Municipality as part of its routine O&M program to

maintain its collection system and facilities. Such wastes may include, but not be limited to, wastes collected during line flushing and wet well cleaning activities. No additional costs shall be charge to the Connected Municipality for acceptance of these wastes by York. The connected municipality shall be responsible for transportation of the wastes to the treatment plant.

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## ARTICLE VII

### Governmental Grants and Subsidies

*Section 7.01. Applications.* York may, at its sole discretion, make applications to the Commonwealth and to the United States, and their appropriate agencies, for any available grants, subsidies or other payments and for all permits and approvals in respect of the construction, operation and/or maintenance of the Treatment Plant, which amounts shall be applied in accordance with the terms and conditions of such grants or, if no allocation is mandated, to reduce the amounts payable by York and the Municipality on a proportional basis or as otherwise agreed, in accordance with the terms hereof. York shall be under no obligation to seek or provide funding for acquisition or construction of the Municipality's Wastewater Collection Systems, unless agreed to by York in writing.

*Section 7.02. Compliance with Law and Conditions for Grants.* The Parties hereto will take all such actions, within their legal powers, as may be required to comply with all applicable laws, regulations and permits applicable to their respective Wastewater collection systems and with agreements relating to applicable United States and Commonwealth grants and subsidies.

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## ARTICLE VIII

### Connections to Wastewater Collections Systems; Sewer Rentals and Charges

*Section 8.01. Imposition of Sewer Rates.* The Parties covenant that they will impose sewer rates or charges upon owners of improved property that shall be connected to the Municipality's Wastewater Collection System and York Wastewater Collection System for use thereof. The Parties also covenant to thereafter maintain such ordinances or resolutions or subsequent ordinances or resolutions, as applicable, imposing such sewer rates or charges in full force and effect continuously during the term hereof.

*Section 8.02. Enforcement of Sewer Rates.* The Municipality covenants to continue to enforce or to cause to be enforced sewer rates or charges in effect at any particular time and to collect or cause to be collected all amounts becoming due. If any amounts becoming due thereunder shall not be paid, in accordance with provisions thereof at the time in effect, the Municipality covenants to take or cause to be taken all reasonable steps to collect the rates.

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## ARTICLE IX

### Special Requirements

*Section 9.01. Module Approval.* Module approval shall not grant any right to make any connection to the Municipality's Wastewater Collection Systems or York's Wastewater Collection System if the new connection would cause York or the Municipality to be in Allocated Capacity Default or if York or the Municipality, at the time of the module application, is in Allocated Capacity Default. York reserves the right to review and approve module applications in accordance with its obligations under the Sewage Facilities Act (Act 537). Furthermore, if DEP requires connections to be limited then, to the extent required by DEP, York and the Municipality agree not to approve new sewer modules and/or forward such modules to York until the limit on connections is no longer in place or within the guidelines of the regulations.

*Section 9.02. Building Permits.* York and the Municipality will not issue any building permits that include connections, or permit any connections for development which do not have a previously approved sewer module or adequate hydraulic capacity, during any limit of connections imposed by DEP, except as permitted by DEP.

*Section 9.03. Connection Accounting.* As part of the annual wasteload management report (Chapter 94 Report) process, the Municipality shall provide an accounting to York, in form and content as required by York, as to existing and planned sewer connections, so as to assist York in complying with DEP's requirements.

*Section 9.04. Payment Default.* All payments required under this Agreement shall be due thirty (30) days after the date of the invoice or written demand, except for the capital contribution discussed in Section 4.04 which is due in thirty (30) days from the date of written demand, and if not paid within such period then a late charge of one (1%) percent shall be due together with, at the rate of three (3%) percent per annum, simple interest, until the amount due, including interest and penalty, is paid.

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## ARTICLE X

### Miscellaneous

*Section 10.01. Insurance; Repairs and Construction.* York will insure, or cause to be insured the Treatment Plant. Insurance, other than self-insurance, shall be with a responsible company or companies authorized and qualified to do business under laws of the Commonwealth, against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in the Commonwealth

and as shall be reviewed and approved, at least annually, by the Consulting Engineers or other insurance advisor. Such insurance policies shall be non assessable. Immediately upon the occurrence of any loss or damage to any part of the Treatment Plant which is covered by insurance, York will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by the Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the costs of such repair, replacement or reconstruction unless York determines that it is unwise to make such repair, replacement or reconstruction and shall agree upon other disposition of said insurance proceeds. In the event it becomes necessary to make any extraordinary repairs or replacements at the Treatment Plant because of damage or destruction and there are insufficient funds available from the insurance proceeds to pay the costs thereof, the Parties agree to pay their pro rata share of the additional costs in the same proportion as their Pro Rata Share of Allocated Capacity to the Treatment Plant. The Municipality agrees to share the cost of public liability insurance based upon the lowest bona-fide quote provided that the proportionate share of such cost being shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.01 hereof. The cost of the public liability insurance shall be shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof. In the event there is a judgment against York related to the Treatment Plant, which judgment is greater than the policy limits of the quoted policy, and if York has purchased a public liability policy and the judgment is greater than the policy limits, then York, the Municipality and the Connected Municipalities shall share the cost of the judgment in excess of the policy limits in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof.

*Section 10.02. Mediation.* Upon the written request of a Party, any dispute or claim in law or equity arising out of this Agreement shall be submitted to neutral, non-binding mediation prior to the commencement of arbitration, litigation, or any other proceeding before a trier of fact. The Parties agree to act in good faith to participate in mediation and to identify a mutually acceptable mediator. If they are unable to agree upon a mediator, the Parties may, after twenty (20) days have elapsed from the date of the written request for mediation, petition the Court of Common Pleas of York County to appoint a mediator. The Parties shall share equally in the costs for mediation services. If the dispute or claim is resolved through mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution to the dispute or claim in accordance with the remaining terms of this Agreement and other rights and remedies afforded by law.

Upon a Party's request for mediation, the Parties to the dispute shall have twenty (20) days to select a mediator. If the Parties cannot agree on a mediator within twenty (20) days and the mediator must be selected as set forth above, the Parties in dispute shall petition the Court of

Common Pleas of York County for the appointment of a mediator within ten (10) days of the expiration of initial twenty (20) day time period. After the selection of the mediator, the Parties shall submit to mediation for a period up to forty-five (45) days. If the dispute or claim is not resolved by the forty-fifth (45<sup>th</sup>) day after the selection of the mediator then the mediator shall provide written notice to the Parties reflecting the same and the Parties may seek alternative forms of resolution as stated above.

Section 10.03. Inspection. The Parties, as applicable, shall provide each other, from time to time, all information relevant to the proper administration of their responsibilities under this Agreement, or in respect to the interpretation hereof, as and in such form and detail as may be reasonably requested and each shall, at all reasonable times and from time to time, permit the examination and inspection of their respective records and physical facilities relevant to the subject matter of this Agreement.

Section 10.04. Force Majeure. Notwithstanding any other provision of this Agreement, no Party shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, unforeseeable breakdown of the Treatment Plant and/or their respective Wastewater collection systems, or other event beyond its reasonable control. The Party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with Costs to be shared, if applicable, to the extent provided elsewhere herein.

Section 10.05. Indemnity. Each Party agrees to indemnify, defend and save harmless the other Party against all costs, losses or damage, including payment of reasonable attorneys fees, on account of any injury to persons or property occurring in the performance of this Agreement due to its negligence or the negligence of its agents or employees; provided, however, that no Party waives any rights or immunities arising out of any applicable governmental immunity laws and statutes.

Notwithstanding the foregoing and to the extent such liability is not caused by the intentional or wilfull conduct of York, in the event of a general breakdown of the jointly used York Interceptors or the Treatment Plant so as to force the temporary cessation of sewer service contemplated hereunder, York shall not be liable to the Municipality or their sewer service customers for any damage sustained while such facilitates are out of service, and the Municipality shall indemnify and hold harmless York from any claims of its users in such event.

Section 10.07. Severability. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 10.08. Headings. The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

Section 10.09. Waiver. The failure of a Party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

Section 10.10. Assignment. This Agreement (including, without limitation, any rights under or interest in this agreement) may be assigned in whole or in part by York without the consent of the Municipality. The provisions of this Section shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the Parties. The Parties also agree that York may enter into concession, lease or other similar agreement or arrangement without the consent of the Municipality and that any obligations of the Municipality under this Agreement shall continue under such concession, lease, or other agreement. York shall provide notice concerning the identity and qualifications of potential assignees in advance of any assignment, unless otherwise prohibited by law or contractual obligation of confidentiality.

Section 10.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.12. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

Section 10.13. Supersedes Prior Agreements. This Agreement supersedes and repeals any prior agreements, contracts, and understandings, written or oral, by or between the Parties hereto with respect to the subject matter contained herein.

Section 10.14. Modification. This Agreement may be modified or amended in a writing signed by all the Parties hereto. Material pricing terms should not be modified unless 2/3 of the Connected Municipalities agree, it being the intention of the parties that the material pricing terms of this Agreement are to be uniform across the wholesale customers.

Section 10.15. Pennsylvania Law. This Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth.

Section 10.16. Recording. This Agreement may be recorded by either Party hereto.

Section 10.17. Interpretation. The Parties agree this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against York.

Section 10.18. No Unintended Third-Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall



have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 10.19. Breach. In the event of a breach of this Agreement by either Party, the non-breaching Party reserves/retains all of its rights in law and in equity (including, but not limited to, damages, injunctive relief and specific performance) to remedy such breach. Specifically, if the Municipality disconnects the Municipality's Wastewater Collection Systems such that it no longer utilizes the York System's wastewater treatment capacity during the initial term set forth in Section 3.02 or any subsequent renewal period, the Municipality shall remain liable under this Agreement for a lump sum payment to York in an amount equal to its pro-rata share of any outstanding capital expenses or Debt Service Charges as calculated pursuant to Sections 4.04 and 4.05 of this Agreement at the time of disconnection from the York System.

Section 10.20. Transportation Fund. Upon execution of this Agreement, all such Municipality funds held by York in the Transportation Fund or any other similar fund created under Prior Agreements shall be immediately returned to the Municipality. The Municipality shall share in the costs of all repairs or capital improvements to York Interceptors on the basis of each Party's Pro Rata Share of Attributed Flow through the facility to be repaired or replaced.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

ATTEST:

TOWNSHIP OF SPRING GARDEN,  
York County, Pennsylvania

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

CITY OF YORK

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors

**INTERMUNICIPAL AGREEMENT**

**THIS INTERMUNICIPAL AGREEMENT**, made this \_\_\_ day of \_\_\_\_\_, 2016, by and among:

**CITY OF YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “York”); and

**TOWNSHIP OF WEST MANCHESTER**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “Municipality”).

**WITNESSETH**

**WHEREAS**, York owns or leases, operates and maintains the York System for rendering Wastewater collection, transmission, treatment and disposal service in and for York and certain Connected Municipalities, including the Municipality; and

**WHEREAS**, the Municipality owns, operates and maintains the Municipality’s Wastewater Collection Systems for rendering Wastewater collection and transmission service in and for certain portions of the Municipality; and

**WHEREAS**, York and the Municipality previously entered into a series of Prior Agreements that established the Municipality’s right to collect Wastewater in the Municipality’s Wastewater Collection Systems and connect its respective systems to the York System for the purpose of utilizing the York System’s wastewater treatment capacity, subject to the terms and conditions established therein; and

**WHEREAS**, pursuant to the Prior Agreements among York and the Municipality, the Municipality has been permitted to connect to the York System for the purpose of transmitting and treating Wastewater from the Municipality; and

**WHEREAS**, the Parties now desire to rescind all of the Prior Agreements in their entireties and subject themselves to the terms and conditions contained herein for the continued provision of services by York; and

**WHEREAS**, the Municipality desires to contract with York for the continued provision of Wastewater transportation, treatment and disposal services by York to the Municipality, pursuant to the terms and conditions contained herein; and

**WHEREAS**, York agrees to accept, receive, transport, treat and dispose of Wastewater from the Municipality pursuant to the terms and conditions contained herein; and

**NOW, THEREFORE**, the Parties hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has

proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

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## ARTICLE I

### Definitions

Section 1.01. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified whenever they are used or referred to herein, unless a different meaning clearly appears from the context:

- A. *“Agreement”* shall mean this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as “hereto”, “hereby”, “herein”, “hereof”, “hereunder” or other descriptive words or phrases having similar import;
- B. *“Allocated Capacity”* shall mean the amount of hydraulic capacity that a Party has reserved in the Treatment Plant pursuant to Exhibit A or Article IV hereunder;
- C. *“Allocated Capacity Default”* shall mean a discharge of Wastewater into the York System by a Party that exceeds the peak hydraulic flow rate of:
  - 1. A peaking factor multiplied by such Allocated Capacity for any hour within a 24 hour period, which peaking factor shall be established in accordance with Section 4.01 hereof; or
  - 2. 100% of the Allocated Capacity based upon the Municipality’s total flow for a three consecutive month period, divided by the number of days in that three month period;
- D. *“Attributed Flow”* shall mean the sewage flow attributed to the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow.
- E. *“Bonds”* shall mean the notes, bonds or other debt obligations previously or subsequently authorized and issued by the York City Sewer Authority or York or York’s assignee or designee, the proceeds of which would be applied for the purposes of financing Costs relating to the Treatment Plant, or notes, bonds or other debt obligations issued by the York City Sewer Authority or York or York’s assignee or designee to refund the same, where the proceeds of such bonds, notes or debt are or will be applied in part to pay Costs attributable to the Municipality, and where no Capital Contribution has been tendered by the Municipality, as applicable, to cover the full amount of its appropriate share of such Costs;
- F. *“Capacity”* shall mean the ability of the Treatment Plant to receive and effectively treat a specified load;

- G. *“Capital Contribution”* shall mean the tendering by the Municipality, as applicable, of a lump sum certain amount calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant;
- H. *“Certified Public Accountant”* shall mean a Person, who shall be Independent, appointed by the governing body of York, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the Commonwealth;
- I. *“Commonwealth”* shall mean the Commonwealth of Pennsylvania;
- J. *“Connected Municipalities”* shall mean all of the suburban communities near York, excluding the Municipality, that convey Wastewater to the Treatment Plant pursuant to separate agreements, which specifically include the Borough of North York, the Borough of West York, the Township of Spring Garden, the Township of Springettsbury, the Township of West Manchester, and the Township of York;
- K. *“Connected Municipalities Meeting”* shall mean the quarterly meeting of the Municipality, the Connected Municipalities, and York pursuant to Section 2.04;
- L. *“Connection”* shall mean the connection of a structure that generates or could generate hydraulic or organic loads to a sewer system;
- M. *“Consulting Engineers”* shall mean a Person who shall be appointed by the governing body of York, qualified to pass upon engineering questions relating to Wastewater collection, transmission, treatment and/or disposal systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth and the individual assigned to York shall be a professional engineer duly registered under laws of the Commonwealth;
- N. *“Costs,” “Costs of Acquisition,” or “Costs of Construction,”* as to the Treatment Plant shall mean and include all capital costs related to acquiring or constructing any portion of the Treatment Plant, and future betterments thereto, but not pertaining to any part of the York Wastewater Collection System or the Municipality’s Wastewater Collection Systems, unless specified otherwise, and shall include, but not be limited to, the following:
1. Obligations incurred and payments made or required to be made by York to workmen and laborers or to contractors, subcontractors, builders, and suppliers;
  2. Interest on Bonds during the acquisition or construction period with respect to any particular series of Bonds, less interest income earned from the investment of the proceeds derived from the Bonds during such period;
  3. Administrative expenses of York during the period of any acquisition or construction, including the financing thereof;

4. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the Treatment Plant; amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;
5. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable by York for carrying out purposes of York relating to the Treatment Plant, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Treatment Plant and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;
6. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental regulatory authority related to construction of any part of the Treatment Plant, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;
7. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations thereof, the preparation of Act 537 plans or updates, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction and the financing thereof;
8. Expenses of audits, initial compensation of a trustee or paying agent with respect to Bonds of any series; fees and expenses, if any, of a trustee, or paying agent relating to a construction fund, if any; financing costs, fees and expenses, including compensation and expenses of a financial advisor or underwriter, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses, including costs arising out of any amendments hereto; advertising expenses; premiums for insurance or contracts of suretyships insuring bondholders against the risk of nonpayment of the principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by York in connection with financing acquisition or construction and issuing Bonds;

9. Other costs, charges and expenses incident to completion of any improvements, alterations, extensions or additions to the Treatment Plant;
10. Reimbursement to York for advances made by it for any of the above items, including any interest paid or required to be paid by York with respect to any such advances, or for any other costs incurred by York or for work done by York with respect to the Treatment Plant;
11. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;
12. Any sums required to reimburse York or to pay or retire any indebtedness incurred by York, including payment of interim obligations of York, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and
13. Interest on and issuing costs of any Bonds issued in anticipation of receipt of Federal or Commonwealth grants or loan funds applied to pay such costs, less any interest income earned from the investment of the proceeds derived from the Bonds.

Such “Costs”, “Costs of Acquisition,” or “Costs of Construction” incurred in connection with the Treatment Plant, shall be reduced by any and all grants, reimbursements, subsidies or other payments designated by law, regulation, contract or agreement to be applied to payment of all or any portion of such items (except payments required under this Agreement);

- O. “DEP” shall mean the Department of Environmental Protection of the Commonwealth or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- P. “Debt Service Charge” shall mean the amounts due to York from the Municipality calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs, including principal and interest, of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant funded through Bonds issued by or on behalf of York.
- Q. “Domestic Wastes” shall mean the normal water-borne wastes from a Dwelling Unit such as wastes from kitchens, water closets, lavatories, and laundry facilities;
- R. “Dwelling Unit” shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by one family or other group of Persons living together or by a Person living alone;
- S. “Effective Date” shall mean the date the Parties hereto have executed this Agreement and have adopted this agreement pursuant to the applicable rules of their respective governing bodies;

- T. “EPA” shall mean the United States Environmental Protection Agency or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- U. “*Extra Strength Wastes*” shall mean all non-Domestic Wastes which exceed the pollutants, loadings, or waste characteristic limits contained in the pertinent pretreatment ordinance;
- V. “*Fiscal Year*” shall mean the period commencing on January 1 of each year and ending on December 31 of the same year;
- W. “GPD” shall mean gallons of Wastewater discharged during a 24 hour period from midnight to midnight;
- X. “*Hydraulic Overload*” shall mean the condition that occurs when the monthly average flow entering the Treatment Plant exceeds the hydraulic design capacity for 3 consecutive months out of the preceding 12 months or when the flow in a portion of the York System exceeds its hydraulic carrying capacity;
- Y. “*Independent*” shall mean, with respect to the Certified Public Accountant, a Person who is Independent in fact and who is not a member of the governing body, officer or employee of a Party hereto, or any elected or appointed official or employee of a Party hereto, or that is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body, officer or employee of a Party hereto, or an elected or appointed official or employee of a Party hereto; provided, however, that the fact that such Person is retained regularly by a Party hereto shall not make such Person an employee within the meaning of this definition;
- Z. “*Industrial User*” shall mean any Non-Residential Connection discharging sewage and wastes other than normal water carried domestic sewage and wastes, directly or indirectly, to the York System;
- AA. “*Interceptor*” shall mean that pipe, pump, facility, lift or other physical installation necessary for the conveyance of Wastewater from a Point of Connection to the Treatment Plant;
- BB. “*IPP*” shall have the meaning given that term in Section 6.08 hereof;
- CC. “*Monthly Average Flow*” shall mean the total flow at the Treatment Plant during a calendar month divided by the number of days in that month;
- DD. “*Municipality*” shall mean the Township of West Manchester, located in York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania;
- EE. “*Municipality’s Wastewater Collection Systems*” shall refer to the Municipality’s Wastewater collection and transportation system facilities presently existing or hereafter to be acquired, constructed, owned and operated by the Municipality to provide Wastewater collection and transportation services to certain portions of the

- Municipality, together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof;
- FF. *“Non-Residential Connection”* shall mean any building, structure, room, group of rooms, establishment or facility, other than a Dwelling Unit, discharging sewage and wastes, including industrial wastes, directly or indirectly, to the York System;
- GG. *“O&M”* shall mean Operating and Maintenance;
- HH. *“O&M Charge”* shall mean the charges payable by the Municipality to York hereunder calculated pursuant to Section 5.01 hereof;
- II. *“O&M Expenses”* shall have the meaning described in Section 5.02 hereof;
- JJ. *“Organic Design Capacity”* shall mean the highest daily organic load at which the Treatment Plant can effectively treat the incoming Wastewater at the predetermined limitations contained in York’s NPDES permit;
- KK. *“Organic Overload”* shall mean the condition that occurs when the average daily influent organic load at the Treatment Plant exceeds the organic design capacity upon which the permit and Treatment Plant design are based;
- LL. *“Party”* shall mean any party to this Agreement individually;
- MM. *“Parties”* shall mean York and the Municipality;
- NN. *“Person”* or *“Persons”* shall mean an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipal corporation, a municipality, a municipal authority or any other group or legal entity;
- OO. *“Point of Connection”* shall mean point or points at which York receives and accepts Wastewater from the Municipality as shown on Exhibit B, which is incorporated herein by reference hereto, and as may be amended from time to time;
- PP. *“Prior Agreements”* shall mean all previous agreements entered into by the Parties hereto pertaining to the provision of Wastewater transportation, treatment and disposal services by York, specifically including: (i) the Agreement dated December 9, 1976 between York and the Municipality, and any and all supplements or amendments thereto;
- QQ. *“Pro Rata Share of Attributed Flow”* shall be calculated by dividing the attributable sewage flow from the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow, by the total metered flow discharged to the Treatment Plant;
- RR. *“Rental Period”* shall have the meaning given that term in Section 4.08(f) hereof;
- SS. *“Sanitary Wastewater”* shall mean all Domestic Wastes and water-borne wastes of similar character from similar facilities in offices, hotels, stores, restaurants, hospitals, schools, other commercial establishments, and industrial establishments;
- TT. *“Treatment Plant”* shall mean the existing Wastewater treatment and disposal facilities, the outfall sewer and all other facilities related to treatment and disposal of Wastewater, together with any additions, improvements, enlargements and/or



- modifications thereto and/or replacements thereof, heretofore or hereafter acquired or constructed by York, and that York deems appropriate and necessary to provide treatment and disposal of Wastewater under applicable laws of the Commonwealth;
- UU. “*Wastewater*” includes Sanitary Wastewater and/or Extra Strength Wastes, together with any ground, surface or storm water as may be present;
- VV. “*York*” shall mean the City of York, York County, Pennsylvania, a municipal corporation (a Third Class City) of the Commonwealth or its assigns, designees, successors, vendors, or concession holders;
- WW. “*York Interceptors*” shall mean the Interceptors owned York carrying the Municipality’s and York’s Wastewater flow from the Points of Connection to the Treatment Plant, but excluding any of the Municipality’s Interceptors upstream from their connection with a York Interceptor;
- XX. “*York System*” shall mean the York Wastewater Collection System, the York Interceptors and the Treatment Plant; and
- YY. “*York Wastewater Collection System*” shall mean the Wastewater collection and transportation system facilities, excluding the York Interceptors, presently existing or hereafter to be acquired, constructed, owned and operated by York to provide Wastewater collection and transportation services to certain portions of York and other bulk service customers (but not the Municipality), together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof; excluding, however, any facilities included in the definition of “Treatment Plant” and “York Interceptors”.

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## ARTICLE II

### Construction and Operation of the Treatment Plant and other Conditions

Section 2.01. *Construction and Operation of Treatment Plant.* York City Sewer Authority or its successor shall own the Treatment Plant and be the Treatment Plant permittee. York shall operate the Treatment Plant continuously, and shall pay or cause to be paid the O&M Expenses of the Treatment Plant.

Section 2.01(a). *Wastewater Collection System Costs and Operation.* The Municipality shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the Municipality’s Wastewater Collection Systems. Similarly, York shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the York Wastewater Collection System and York Interceptors, except as otherwise provided herein. The Municipality’s Wastewater Collection Systems shall each be designed, constructed, operated and maintained in a manner that will not cause them to be in violation of this Agreement and that will not cause

York to be in violation of any law or regulation of any governmental authority having jurisdiction over the Treatment Plant.

*Section 2.01(b). Operation Requirement.* Each Party shall operate and maintain its respective Wastewater collection system in a good and sound operating condition.

*Section 2.02. Connection of the Municipality's Wastewater Collection Systems and Limitations.* The Municipality shall maintain continuously during the term hereof proper connection of the Municipality's Wastewater Collection Systems to the York Interceptors, at such Points of Connection as described in Exhibit B, attached hereto. Future additional points of connection by the Municipality shall be agreed upon by the Municipality and York, and the terms and conditions applicable to such future connections shall be set forth in a separate written agreement between the Parties, which shall constitute an amendment and supplement to this Agreement.

The Municipality shall deliver to the Point of Connection all Wastewater originating within the service area described in the Act 537 Plan for the Municipality, as applicable and as amended from time to time, as being tributary to the York Interceptors and Treatment Plant and not intended for treatment by on-lot septic systems.

*Section 2.03. Cooperation; Sharing of Information.* The Parties each agree to the extent possible and economically practicable (except as otherwise required under this Agreement), to cooperate and share pertinent information with each other in facilitating the construction, maintenance and/or operation of their Wastewater collection systems, and York will provide the Municipality with any pertinent information regarding Costs, quantities of discharge, capacity or other matters relating to the Treatment Plant reasonably deemed necessary or desirable as determined by the Municipality, provided however, that in the event securing such information involves costs which would not normally be incurred as a cost of owning or operating and maintaining the Treatment Plant, the Municipality shall pay or provide for the payment of such costs. Each Party shall not be financially or otherwise responsible for the Wastewater collection system of the other Party, and the Municipality shall not be financially or otherwise responsible for the Treatment Plant except to the extent of charges required to be paid by the Municipality to York hereunder, and the performance of all terms and conditions of this Agreement. This paragraph shall not limit the obligations of the Parties set forth in the Special Requirements Article of this Agreement (Article IX).

At least forty-five (45) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, York shall submit to Municipality all material and information in its possession necessary for Municipality to submit to City the annual report referenced below. At least thirty (30) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, the

Municipality shall submit to York an annual report providing all material and information required from it by York and DEP to complete its annual wasteload management report.

*Section 2.04. Connected Municipalities Meeting.* It is agreed that the Connected Municipalities Meeting currently utilized by the Municipality, the Connected Municipalities, and York shall continue on a quarterly basis as set forth herein. The Connected Municipalities Meeting shall continue in its current form and pursuant to its current procedures, but at any time may establish its own procedures. The Connected Municipalities Meeting is intended to provide an opportunity for periodic discussion, review, and recommendations of all matters relating to this Agreement and the provision of Wastewater treatment services. Upon reasonable notice, the Municipality, any Connected Municipality, or York may call a Connected Municipality Meeting. The Connected Municipalities Meeting shall continue for the Term of Agreement set forth herein, including any extensions or renewals thereof.

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### ARTICLE III

#### Bulk Service Customer; Term of Agreement

*Section 3.01. Municipality Constitutes a Bulk Service Customer of York.* York agrees to operate and maintain in good working order and in compliance with all applicable laws, regulations and permits continuously during the term hereof the York Interceptors and the Treatment Plant, and any enlargements, additions, improvements and modifications thereto as determined solely by York, and to provide the Municipality, as a bulk service customer, Wastewater treatment, transportation, and disposal services in the Treatment Plant throughout the term hereof, as provided for herein.

*Section 3.02. Term of Agreement.* Subject to the covenants and conditions set forth herein, the term of this Agreement shall be thirty (30) years unless earlier terminated by mutual written consent of all the Parties hereto. This Agreement shall automatically renew on a year-to-year basis upon the expiration of the initial thirty (30) year term. This Agreement may be reviewed every five (5) years by the Parties, which shall report to their respective governing bodies on the sufficiency of this Agreement or any recommendations for amendments and modifications hereof.

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### ARTICLE IV

#### Allocation of Capacity in the Treatment Plant; Measurement of Flow; Capital Contribution; Updating of Treatment Plant; Additions to Treatment Plant Required by York and Calculation of Debt Service

Section 4.01. Acceptance of Flows from the Municipality. During the term hereof, the Municipality shall have the contractual right to discharge Wastewater into the York Interceptors subject to the following limitations:

Average Daily Flow (ADF):	3,378,800 Gallons/Day as a monthly average
Peak Daily Flow (PDF):	13,515,200 Gallons/Day
Peaking Factor	4.0 PDF/ADF

The Municipality covenants and agrees that it will not discharge Wastewater into the York Interceptors in a manner that constitutes an Allocated Capacity Default, as set forth herein, except as may be allowed by York hereunder.

Section 4.02. Measurement of Flow. The quantity of Wastewater discharged by the Municipality shall be determined by meter readings of the Wastewater flow meters or Wastewater flow measuring devices at the Point of Connection. The quantity of Wastewater discharged by York shall be determined by the flow measured by the Treatment Plant headworks meter, minus the quantity of Wastewater discharged by the Municipality and the Connected Municipalities.

Section 4.02(a). Flow Meters. York shall provide and install a Wastewater flow metering station at the Municipality's Point of Connection and the Treatment Plant headworks that will achieve the maximum practicable accuracy. Costs associated with the provision and installation of the Wastewater flow metering and sampling stations shall constitute O&M Expenses. The metering station shall be equipped with a flow reading system that will collect and transmit meter readings for download and a display that will allow the rate and total to be read in standard engineering units.

Section 4.02(b). Maintenance of the Flow Meter. York shall maintain the above referenced flow meter to accurately monitor flow conveyed across municipal boundaries. The flow meter shall be capable of recording flow measurements in one-minute intervals and averaging flows over the hour and day. The meter shall record and totalize all data. The record shall include at least flows at hourly and daily intervals. York shall maintain the flow meter in good working order. The flow meter shall be inspected, tested, and certified for accuracy at reasonable intervals, but no less than ninety (90) days. Calibration certification shall be done by a reputable company normally engaged in the business of meter calibration. York shall forward such inspection results, testing results, and certificates of calibration to the Municipality upon request.

In the event of a defective or inoperative flow meter, York shall have the right to take such steps as are required to repair or replace the flow meter, and the costs associated with any such maintenance, repair or replacement work shall constitute O&M expenses if costs are incurred.

Section 4.02(c). Monitoring Flow Meters. York shall have access at any and all times to the flow meters. The flow meters shall be monitored by York, which shall be

responsible for collection of data therefrom. In addition, the Municipality shall have a right of access to such records.

Section 4.02(d). Unmetered Flows. Any point of connection of the Municipality to the York System that reaches 70,000 GPD shall require the installation of a flow meter by York within nine (9) months of reaching 70,000 GPD at a mutually agreed upon location.

Section 4.02(e). Missing Flow Data. In the event reliable flow data is unavailable, due to malfunction in a flow meter, or in the recording device for said meter, York shall estimate flows for any such period as the flows for the same period in the preceding year or for the period immediately preceding the malfunction depending on which of these periods had a rainfall amount closest to that of the period of malfunction. York may use other pertinent data, such as water consumption data, in developing an estimate for the missing data. In the event of any dispute between the Parties concerning the reasonableness or accuracy of estimated flows, the dispute shall be resolved pursuant to Section 10.02.

The quantity of Wastewater discharged by the Municipality into the Treatment Plant shall be the sum of the flow measured at the applicable meters or devices at the Point of Connection for the Municipality as set forth on Exhibit B plus any unmetered or estimated flow (which may be amended from time to time as any additional connection points are permitted by York). The flow attributable to the Municipality shall be reduced by the metered flow plus any unmetered or estimated flow from any York customer providing flow into the Municipality's line prior to the Municipality's connection point with the York System.

It is understood that technology changes may permit metering changes that are more accurate. York reserves the exclusive right to determine metering changes and shall share information on any metering changes with the Municipality as it may request.

Section 4.03. Exclusive Service Provider for Designated Areas. The Municipality covenants and agrees that York, during the term hereof, shall be the sole and exclusive agency providing Wastewater transportation, treatment and disposal services for the portion of the Municipality and properties located in the drainage area contemplated to be served by the York System and Treatment Plant (which drainage area is shown on Exhibit C attached hereto), pursuant the terms and conditions herein. Further, the Municipality covenants and agrees not to construct or operate, or permit the construction or operation of, any sewage transportation or treatment facilities in competition with York.

The provisions of this Section 4.03, however, shall not prejudice the Municipality with respect to its rights to use the existing sewage treatment facilities not owned by York that are presently utilized by the Municipality; nor shall such covenants of exclusivity and non-competition be construed now, or during the term hereof, to the prejudice of the Municipality should any governmental agency of the Commonwealth or United States, specifically including DEP and the EPA, order the construction of a treatment facility or re-routing of flows to another

facility, a change in treatment flows or require the sharing of new treatment facilities with a municipality.

Section 4.04. Expansions or Upgrades of Treatment Plant. The Municipality shall be required to contribute to and share in the Costs of any other capital expansions or upgrades, improvements, modifications, extraordinary repairs or replacements not considered an O&M Expense, and other projects deemed by York to be of a capital nature and undertaken by York with respect to the Treatment Plant (“Capital Costs”). Any capital expansion, upgrade, improvement, modification, extraordinary repair or replacement in excess of Three Million (\$3,000,000) Dollars shall be approved by a majority of all Connected Municipalities unless such upgrade, improvement, modification, extraordinary repair or replacement has been order to be constructed by a governmental agency of the Commonwealth or United States, specifically including DEP and the EPA. York shall not separate any contracts or projects to intentionally avoid the Three Million (\$3,000,000) Dollar limitation provided herein.If York should undertake such an upgrade or modification of the Treatment Plant, which undertaking results in Costs, Costs of Acquisition or Costs of Construction to be incurred by York, then the Municipality shall pay a pro rata share of such Costs in the same proportion as its respective Allocated Capacity as costs are incurred by York for such upgrading or improvements. The Municipality shall have the right to inspect the record of all purchases and expenses involved in the construction. York shall provide to Municipality on an annual basis a five (5) year projection of expected capital improvements.

Section 4.05. Calculation of Debt Service Charge (Contingent upon Issuance of Bonds for the Municipality). For prior or subsequent Bonds issued to finance Capital Costs at the request of or for the benefit of the Connected Municipalities or, if applicable, other parties using the Treatment Plant, pursuant to Section 4.04, the payment of the Debt Service Charge shall commence upon issuance of the Bonds, or at such other time as may be required to assure the timely payment of debt service due on the Bonds. Such debt service charge shall be calculated in a manner consistent with the coverage and other covenants with respect to the Bonds and the calculation of the Capital Contribution hereunder, *i.e.*, the principal and interest attributable to the Capital Costs, together with financing costs, multiplied by a factor equal to the percentage that the Municipality’s capacity increase in the Treatment Plant bears to the total increased capacity of the Treatment Plant (for example if the Municipality has additional capacity of 10% of the total increased capacity and is thus responsible for paying 10% of the capital cost of the project, the Municipality shall pay 10% of any debt service charge if it elects to use Bonds to pay for its share of the capital costs). Accelerated payments made by or on behalf of York on any Bonds shall not release the Municipality of its obligation to pay the debt service charge for any Capital Costs and any Capital Contribution funded pursuant to this section during the period such Bonds would have been outstanding but for accelerated payment. An amortization schedule of all outstanding Bonds as of the date of this Agreement is attached hereto as Exhibit D, and the Parties agree that such schedule shall be updated from time to time upon the issuance of additional Bonds.

Section 4.06. Hydraulic Overload. In the event of Hydraulic Overload the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.07. Organic Overload. In the event of Organic Overload, the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.08. Allocated Capacity Planning. If at any time York or the Municipality's Monthly Average Flow exceeds 90% of York or the Municipality's Allocated Capacity, York or the Municipality shall, in addition to any action required as a result of any default, begin planning for the acquisition of additional capacity either by purchasing available capacity or by notifying the other of its need for additional capacity. York or the Municipality may, as an alternative to the purchase of additional capacity, submit a plan to reduce its Monthly Average Flow to comply with this Agreement. If a Party notifies the other of its need for additional capacity, the Party shall submit its plan for the acquisition of additional capacity or its plan to reduce its Monthly Average Flow to York for review and comment within 90 days of the discharge that triggered the planning. If the Municipality and York cannot agree on the plan for purchasing additional capacity or to reduce Monthly Average Flow, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereunder.

Section 4.08(a). Redistribution of Allocated Capacity.

(1) In the event any Connected Municipality or York requires additional Allocated Capacity, it shall have the option, in accordance with the following terms and procedures, to reserve additional Allocated Capacity in the Treatment Plant. In order to obtain additional Allocated Capacity, there must be in existence at the time unused treatment capacity that has been allocated to another Connected Municipality or York but which such other Connected Municipality or York is not in need of at the time and is willing to surrender.

(2) York agrees that in the event any Connected Municipality consents to a reduction of Allocated Capacity, the Allocated Capacity surrendered shall be offered to any of the Connected Municipalities and York in the discretion of the selling Connected Municipality, at the price agreed to by the selling Connected Municipality. The selling Connected Municipality must give notice, only to the other Connected Municipalities and York, of intent to sell part of its Allocated Capacity to another Connected Municipality even though it need not be offered to all other Connected Municipalities. If the Connected Municipality to whom such Allocated Capacity is offered does not wish to accept such additional Allocated Capacity, the Allocated Capacity so offered may be made available to the remaining Connected Municipalities on a pro-rata basis.

(3) Any Connected Municipality or York surrendering all or any portion of its Allocated Capacity shall be reimbursed in accordance with a mutual agreement reached with the Party purchasing such Allocated Capacity. If no Connected Municipality or York desires to purchase Allocated Capacity, then the Connected Municipality offering to sell its Allocated Capacity shall continue to be liable for all payments with respect to such reserved capacity.

(4) Where any Connected Municipality or Party acquires an interest in Allocated Capacity in the Treatment Plant, such Connected Municipality or Party must thereafter pay to York the acquiring Party's proportional share of all Costs, Capital Contributions, O&M Charges, and all other liabilities contained in this Agreement. Such acquiring Party shall be bound by the terms of this Agreement, as it may from time to time be amended.

Section 4.08(b). Defaults. Allocated Capacity Defaults shall not be permitted; however, if such a Default occurs it shall be addressed as provided for herein.

Section 4.08(c). Municipality Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by the Municipality, York shall notify the Municipality of said Default in writing, including data, if available. The Municipality shall, within sixty (60) days of said notice, acknowledge said notice and advise York of any discrepancies with such notice of default and the corrective action to be taken in the form of a remedial action plan. York shall review any discrepancies and within thirty (30) days provide a response. If the Municipality and York cannot agree on whether an Allocated Capacity Default has occurred, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In the event the Municipality submits to York a remedial action plan, York shall review the proposed remedial action plan and provide comments on the proposed remedial action within thirty (30) days of the plan being submitted. Upon approval of the proposed remedial action plan by York, the Municipality shall implement the approved corrective action within ninety (90) days of receipt of approval from York, or such longer period that may be reasonably granted by York for design, approval, construction and implementation of such corrective actions. If the Municipality and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, York may limit new connections until the conditions that cause the Municipality to be in Allocated Capacity Default or Allocated Nutrient Capacity Default are abated. If DEP or EPA requires connections to be limited then the Municipality agrees not to approve new sewer modules and/or forward such modules to York until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan, remedial action plan, or limit of connections will be fully complied with by the Municipality, and York shall be entitled to injunctive relief without the requirement of a bond and the Municipality will reimburse York's reasonable attorney fees and costs in the event of such enforcement action.

Section 4.08(d). York Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by York, York shall notify the Connected Municipalities of said Default in writing. York shall, within sixty (60) days of said notice, advise the Connected Municipalities of the corrective action to be taken. The Connected Municipalities shall review the proposed remedial action plan and provide comments on the proposed remedial action, or their approval of the the same, within thirty (30)



days of the plan being submitted. Upon approval of the proposed remedial action plan by the Connected Municipalities, York shall implement the approved corrective action within ninety (90) days of receipt of approval from the Connected Municipalities, or such longer period that may be reasonably required for design, approval, construction and implementation of such corrective actions. If the Connected Municipalities and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, if ordered by DEP or EPA, York shall limit connections so as to limit or eliminate discharges which cause York to be in Allocated Capacity Default. If DEP or EPA requires connections to be limited then York agrees not to approve new sewer modules until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan or limit of connections will be fully complied with by York, and Connected Municipalities shall be entitled to injunctive relief without the requirement of a bond and York will reimburse the Municipality's reasonable attorney fees and costs in the event of such enforcement action.

*Section 4.08(e). Default Surcharges.* Notwithstanding any contrary provisions contained herein and in addition to all other remedies provided for herein, where the Municipality exceeds its Peak Daily Flow for more than two (2) consecutive days or more in any thirty (30) day period, it shall pay York a \$1,000.00 per day surcharge.

Additionally, where the Municipality exceeds its annual Allocated Capacity in any fiscal year, it shall pay York a surcharge based on the amount of the increased cost of treatment specifically allocated and attributable to the Municipality's Allocated Capacity Default, plus a fifteen (15%) percent penalty on the value thereof.

Any surcharge penalties received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Capacity.

*Section 4.08(f). Allocated Capacity Defaults Triggering Rental Requirement.* In the event that the Municipality or York discharges Wastewater that results in an Allocated Capacity Default due to the Peak Daily Flow, established in accordance with Section 4.01 hereof, for three days or more in any one calendar week (Monday through Sunday) or three consecutive days, then the Municipality shall rent capacity from York for a one month period (the "Rental Period"), beginning on the day in which the Default was triggered.

In the event that the Municipality discharges Wastewater that results in an Allocated Capacity Default due to Average Daily Flow Allocated Capacity based upon the Municipality's total flow for a three consecutive month period, divided by the number of days in that three month period, at any time, then the Municipality shall rent capacity from York for a three month period (also the "Rental Period"), beginning on the day in which the Default was triggered.

If the Municipality is renting capacity in accordance with this section and has no additional Allocated Capacity Defaults (Default of solely the Allocated Capacity and not including the rental capacity) during the Rental Period, the Municipality is not required to continue to rent capacity after the expiration of the Rental Period. If the Municipality renting capacity does have an additional Allocated Capacity Default during the Rental Period, then York shall determine whether the Municipality must continue to rent capacity, purchase additional capacity (if available) or to take other corrective action. If the Parties cannot agree on whether to require a party to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof.

The amount of capacity rented shall be the amount of GPD that placed the Municipality in Default. The charge for such rental shall be the rate which York would charge its residential retail customers for the amount of capacity being rented, less the O&M charges allocated to such residential rate. This rental charge shall be in addition to the O&M charge that the Municipality must pay for the capacity that is being rented.

*Section 4.08(g). Special Charge.* If the Municipality discharges Wastewater at a flow rate that results in an Allocated Capacity Default and fails to, within ninety (90) days of the Default, make the necessary arrangement to eliminate or rent or purchase sufficient capacity to eliminate the Default, then the defaulting Municipality shall pay York for the amount of the excess usage an amount equal to double what the quarterly charge otherwise would have been on such excess usage for the calendar quarter in which the Default occurred.

Any Special Charge received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Flow or Nutrients.

*Section 4.08(h). Other Actions of York.* If the Municipality is in Allocated Capacity Default and the Parties cannot agree on whether to require the defaulting Municipality to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. Furthermore, if the United States, the Commonwealth, or any agency thereof promulgates a new statute, law, or regulation imposing more restrictive monitoring, discharge, or treatment requirements, York reserves the right to impose more restrictive requirements upon the Municipality to ensure compliance with the statute, law, or regulation.

*Section 4.08(i). State of Emergency.* If a state of emergency is declared by authorities of the Commonwealth of Pennsylvania or the United States of America for an area including York and/or the Municipality, York and the Municipality shall not be subject to the Default provisions of this Section during the time in which the emergency is in effect.

Section 4.08(j). Hydraulic Overload Planning. If at any time the total Average Daily Flow for the Treatment Plant exceeds 90% of such Capacity, the Parties shall meet and discuss planning to avoid any hydraulic overload or default within the York Interceptors and Treatment Plant.

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## ARTICLE V

### O&M Charges and Expenses

Section 5.01. O&M Charge. The Municipality shall pay to York an O&M Charge equivalent to the total O&M Expenses of the Treatment Plant multiplied by the Municipality's Pro Rata Share of Attributed Flow in the Treatment Plant. The O&M Expenses are those costs associated with operating and maintaining the Treatment Plant, and providing the Municipality and York's third party customers with Wastewater treatment and disposal services hereunder, and are set forth in greater detail in Section 5.02 hereof. The O&M Charge shall be payable to York or its designee quarterly in arrears. The method of charging for O&M Expenses as set forth in Article V shall begin upon the Effective Date of this Agreement. For example, if the Municipality's Pro Rata Share of Attributed Flow to the Treatment Plant is fifteen (15%) percent of the total, then the Municipality shall pay fifteen (15%) percent of the Total O&M Expenses.

Section 5.02. O&M Expenses. O&M Expenses shall include the total of all of the following items, each such item being determined for the Fiscal Year or portion thereof under consideration, of all the expenses and costs directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors.

O&M Expenses include:

- (a) power, chemicals, fuel, materials, and supplies;
- (b) costs of storing, hauling, dumping and disposal of residue or sludge from the Treatment Plant, including composting; and other costs determined by York to be costs;
- (c) actual salaries and wages of administrative, operation or maintenance personnel of York directly engaged in operating and maintaining the Treatment Plant, together with the social security and unemployment taxes, workmen's compensation, insurance premiums, health and accident insurance premiums and pension benefits (but not payments related to any unfunded pension liability), vocational training or any other benefits or costs applicable to the personnel, prorating such items in accordance with such employee's time actually spent on matters pertaining to the treatment or disposal of Wastewater compared to work spent on other matters;

(d) equipment and tools used or employed for the operation and maintenance of the Treatment Plant;

(e) costs of routine maintenance and repairs (including replacements), and costs of any work done under any contract with respect to the Treatment Plant (excluding capital upgrades or expansions);

(f) fees and expenses of the Consulting Engineers;

(g) premiums for property, boiler and machinery and comprehensive crime insurance and vehicle insurance;

(h) legal expenses;

(i) all expenses involved in purchasing nutrient or other credits, if any, required to meet NPDES permit requirement or other DEP requirements related to the Treatment Plant; and

(j) all other costs and expenses not of a capital nature, determined by York to be O&M Expenses and reasonably incurred and properly attributable, to the operation, maintenance and/or repair of the Treatment Plant, from time to time.

Such amount shall be reduced by any Federal or Commonwealth grants, reimbursements, subsidies or other payments to York designated by law or regulation for such purposes (excluding grants for capital upgrades or expansions), revenues received by York from the treatment of septage, sludge and leachate or similar substances, and the sale of nutrient or other credits.

O&M Expenses shall not include a general allocation of costs, expenses, overhead and other expense items of York or its assignees, designees, successors, vendors or concession holders but shall be limited to those expenses and costs that are directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors, but may include reasonable and supportable overhead expenses incurred by York.

Written records and accounts of all such costs and expenses shall be prepared and maintained by York and shall be available to each Party upon request. York shall maintain an accurate system of accounts and records with respect to all such O&M Expenses which shall be audited annually by a Certified Public Accountant. A copy of the audit shall be provided to the Municipality within thirty (30) days of its completion. Such accounts and records may be inspected and copied at reasonable times by the Municipality and its agents and representatives. Subsidies received by York attributable to the operation of the Treatment Plant shall be reimbursed to the Municipality proportionate to its respective Pro Rata Share of Actual Flow to the Treatment Plant.

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## ARTICLE VI

### Wastewater Quality and Pretreatment Restrictions

*Section 6.01. Uniform Standards.* York has adopted and may amend from time to time uniform Wastewater quality standards applicable to the York Wastewater Collection System, which are intended to comply with the requirements of EPA, DEP, and all other regulatory authorities.

*Section 6.02. Compelling Compliance with Standards.* The Municipality shall enact or cause to be enacted an ordinance or ordinances or adopt a resolution or resolutions, as applicable, and the Municipality will cause such ordinance or ordinances or resolution or resolutions, as applicable, to remain in full force and effect at all times, prohibiting and providing adequate penalties for the discharge into the Municipality's Wastewater Collection Systems of anything violating the above-mentioned Wastewater quality standards of York, and shall enforce the provisions thereof. Such ordinance or ordinances shall also prohibit and/or regulate, as applicable, the discharge into the Municipality's Wastewater Collection Systems by industries of prohibited Extra Strength Wastes, as prescribed in the applicable industrial pretreatment regulations adopted and amended by York from time to time. The Municipality shall not permit any discharge into the Municipality's Wastewater Collection Systems except in the manner and in accordance with the provisions of said ordinance or ordinances. After adoption or amendment of an ordinance, resolution or regulation pertaining to Wastewater, the Party adopting or amending the same shall provide a copy to the other Party to this Agreement.

The Parties shall not discharge any Extra Strength Wastes to the Treatment Plant.

*Section 6.03. Reimbursement for Damages from Improper Discharge.* The Parties shall pay the Costs of any damage to the Treatment Plant and fines or penalties resulting from discharge of improper Wastewater from the Municipality's Wastewater Collection System in violation of quality standards and restrictions, and shall indemnify and hold harmless the other with respect thereto. York shall pay or cause to be paid the Costs of any damage to the Treatment Plant resulting from discharge of improper Wastewater from the York Wastewater Collection System or from any customer (including other bulk users) of York (except the Municipality or other Connected Municipalities) in violation of the above-mentioned quality standards and restrictions, and shall indemnify and hold harmless the Municipality with respect thereto.

*Section 6.04. Sampling Manholes.* Promptly upon request by York, the Municipality, as applicable, shall require the installation of a manhole at the point of discharge from the property of any user who has the potential to discharge into the Municipality's Wastewater Collection Systems any wastes other than Domestic Wastes. Said manhole shall meet York's requirements with

respect to type, size, location and construction, so that sampling and/or metering will be facilitated. York may at any time sample the Wastewater in such manholes.

Section 6.05. Disconnection of Property. The Parties shall prohibit and prevent any Person from discharging Wastewater whose quantity or quality may have a deleterious effect on the Treatment Plant or receiving stream. When requested by York, the Municipality shall prohibit such unlawful discharge from the property to the extent permitted by law..

Section 6.06. Pipe Connection Required. The Parties each shall, to the extent possible, prohibit and prevent by ordinance the discharge of any substance into its respective Wastewater collection system, other than by and through a permanent direct pipe connection. The ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, unauthorized discharges from tank trucks or similar sources into the Municipality's Wastewater Collection Systems, York Interceptors or the York Wastewater Collection System shall be prohibited.

Section 6.07. Prohibition of Septage Discharge. The Parties each shall prohibit and prevent by ordinance the discharge of septic tank or grease trap wastes into its respective Wastewater collection system including the contents of septic tanks of existing establishments when they first connect to its respective Wastewater collection system.

Section 6.08. Implementation of Industrial Pretreatment Program. If York is required by DEP or EPA to implement an Industrial Pretreatment Program (the "IPP"), York may accept primary responsibility from time to time to implement, administer and enforce the IPP, including (but not limited to) conducting and updating Industrial User surveys, and performing inspections and sampling. The Municipality agrees to empower York to act as its agent with respect to the IPP. The Municipality shall reasonably cooperate with any enforcement action taken by York against the Municipality's Industrial Users, and shall take such action in the exercise of its own rights and police powers as may be reasonably requested by York to ensure compliance with York's IPP. The administrative costs of the Pretreatment Program will be paid by York (which costs are passed on to pre-treatment customers) and shall not be part of the O&M charges to the Municipality.

Section 6.09. Surcharge to Industrial Users. York may charge Industrial Users (which also includes landfills) an extra monthly strength surcharge (to be used to reduce O&M Expense) based on deviations over and above the strength considered normal for domestic Wastewater. To the extent reasonably possible, the Municipality agrees to assist in the collection of any surcharge due from an Industrial User in the Municipality's service area not paid within 90 days. Such surcharges shall be imposed and calculated in accordance with York's ordinances and regulations requiring the surcharges.

Section 6.10. Municipal Maintenance Waste Acceptance. York at its Treatment Plant shall accept wastes collected by the Connected Municipality as part of its routine O&M program to

maintain its collection system and facilities. Such wastes may include, but not be limited to, wastes collected during line flushing and wet well cleaning activities. No additional costs shall be charge to the Connected Municipality for acceptance of these wastes by York. The connected municipality shall be responsible for transportation of the wastes to the treatment plant.

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## ARTICLE VII

### Governmental Grants and Subsidies

*Section 7.01. Applications.* York may, at its sole discretion, make applications to the Commonwealth and to the United States, and their appropriate agencies, for any available grants, subsidies or other payments and for all permits and approvals in respect of the construction, operation and/or maintenance of the Treatment Plant, which amounts shall be applied in accordance with the terms and conditions of such grants or, if no allocation is mandated, to reduce the amounts payable by York and the Municipality on a proportional basis or as otherwise agreed, in accordance with the terms hereof. York shall be under no obligation to seek or provide funding for acquisition or construction of the Municipality's Wastewater Collection Systems, unless agreed to by York in writing.

*Section 7.02. Compliance with Law and Conditions for Grants.* The Parties hereto will take all such actions, within their legal powers, as may be required to comply with all applicable laws, regulations and permits applicable to their respective Wastewater collection systems and with agreements relating to applicable United States and Commonwealth grants and subsidies.

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## ARTICLE VIII

### Connections to Wastewater Collections Systems; Sewer Rentals and Charges

*Section 8.01. Imposition of Sewer Rates.* The Parties covenant that they will impose sewer rates or charges upon owners of improved property that shall be connected to the Municipality's Wastewater Collection System and York Wastewater Collection System for use thereof. The Parties also covenant to thereafter maintain such ordinances or resolutions or subsequent ordinances or resolutions, as applicable, imposing such sewer rates or charges in full force and effect continuously during the term hereof.

*Section 8.02. Enforcement of Sewer Rates.* The Municipality covenants to continue to enforce or to cause to be enforced sewer rates or charges in effect at any particular time and to collect or cause to be collected all amounts becoming due. If any amounts becoming due thereunder shall not be paid, in accordance with provisions thereof at the time in effect, the Municipality covenants to take or cause to be taken all reasonable steps to collect the rates.

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## ARTICLE IX

### Special Requirements

*Section 9.01. Module Approval.* Module approval shall not grant any right to make any connection to the Municipality's Wastewater Collection Systems or York's Wastewater Collection System if the new connection would cause York or the Municipality to be in Allocated Capacity Default or if York or the Municipality, at the time of the module application, is in Allocated Capacity Default. York reserves the right to review and approve module applications in accordance with its obligations under the Sewage Facilities Act (Act 537). Furthermore, if DEP requires connections to be limited then, to the extent required by DEP, York and the Municipality agree not to approve new sewer modules and/or forward such modules to York until the limit on connections is no longer in place or within the guidelines of the regulations.

*Section 9.02. Building Permits.* York and the Municipality will not issue any building permits that include connections, or permit any connections for development which do not have a previously approved sewer module or adequate hydraulic capacity, during any limit of connections imposed by DEP, except as permitted by DEP.

*Section 9.03. Connection Accounting.* As part of the annual wasteload management report (Chapter 94 Report) process, the Municipality shall provide an accounting to York, in form and content as required by York, as to existing and planned sewer connections, so as to assist York in complying with DEP's requirements.

*Section 9.04. Payment Default.* All payments required under this Agreement shall be due thirty (30) days after the date of the invoice or written demand, except for the capital contribution discussed in Section 4.04 which is due in thirty (30) days from the date of written demand, and if not paid within such period then a late charge of one (1%) percent shall be due together with, at the rate of three (3%) percent per annum, simple interest, until the amount due, including interest and penalty, is paid.

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## ARTICLE X

### Miscellaneous

*Section 10.01. Insurance; Repairs and Construction.* York will insure, or cause to be insured the Treatment Plant. Insurance, other than self-insurance, shall be with a responsible company or companies authorized and qualified to do business under laws of the Commonwealth, against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in the Commonwealth



and as shall be reviewed and approved, at least annually, by the Consulting Engineers or other insurance advisor. Such insurance policies shall be non assessable. Immediately upon the occurrence of any loss or damage to any part of the Treatment Plant which is covered by insurance, York will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by the Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the costs of such repair, replacement or reconstruction unless York determines that it is unwise to make such repair, replacement or reconstruction and shall agree upon other disposition of said insurance proceeds. In the event it becomes necessary to make any extraordinary repairs or replacements at the Treatment Plant because of damage or destruction and there are insufficient funds available from the insurance proceeds to pay the costs thereof, the Parties agree to pay their pro rata share of the additional costs in the same proportion as their Pro Rata Share of Allocated Capacity to the Treatment Plant. The Municipality agrees to share the cost of public liability insurance based upon the lowest bona-fide quote provided that the proportionate share of such cost being shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.01 hereof. The cost of the public liability insurance shall be shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof. In the event there is a judgment against York related to the Treatment Plant, which judgment is greater than the policy limits of the quoted policy, and if York has purchased a public liability policy and the judgment is greater than the policy limits, then York, the Municipality and the Connected Municipalities shall share the cost of the judgment in excess of the policy limits in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof.

*Section 10.02. Mediation.* Upon the written request of a Party, any dispute or claim in law or equity arising out of this Agreement shall be submitted to neutral, non-binding mediation prior to the commencement of arbitration, litigation, or any other proceeding before a trier of fact. The Parties agree to act in good faith to participate in mediation and to identify a mutually acceptable mediator. If they are unable to agree upon a mediator, the Parties may, after twenty (20) days have elapsed from the date of the written request for mediation, petition the Court of Common Pleas of York County to appoint a mediator. The Parties shall share equally in the costs for mediation services. If the dispute or claim is resolved through mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution to the dispute or claim in accordance with the remaining terms of this Agreement and other rights and remedies afforded by law.

Upon a Party's request for mediation, the Parties to the dispute shall have twenty (20) days to select a mediator. If the Parties cannot agree on a mediator within twenty (20) days and the mediator must be selected as set forth above, the Parties in dispute shall petition the Court of

Common Pleas of York County for the appointment of a mediator within ten (10) days of the expiration of initial twenty (20) day time period. After the selection of the mediator, the Parties shall submit to mediation for a period up to forty-five (45) days. If the dispute or claim is not resolved by the forty-fifth (45<sup>th</sup>) day after the selection of the mediator then the mediator shall provide written notice to the Parties reflecting the same and the Parties may seek alternative forms of resolution as stated above.

Section 10.03. Inspection. The Parties, as applicable, shall provide each other, from time to time, all information relevant to the proper administration of their responsibilities under this Agreement, or in respect to the interpretation hereof, as and in such form and detail as may be reasonably requested and each shall, at all reasonable times and from time to time, permit the examination and inspection of their respective records and physical facilities relevant to the subject matter of this Agreement.

Section 10.04. Force Majeure. Notwithstanding any other provision of this Agreement, no Party shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, unforeseeable breakdown of the Treatment Plant and/or their respective Wastewater collection systems, or other event beyond its reasonable control. The Party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with Costs to be shared, if applicable, to the extent provided elsewhere herein.

Section 10.05. Indemnity. Each Party agrees to indemnify, defend and save harmless the other Party against all costs, losses or damage, including payment of reasonable attorneys fees, on account of any injury to persons or property occurring in the performance of this Agreement due to its negligence or the negligence of its agents or employees; provided, however, that no Party waives any rights or immunities arising out of any applicable governmental immunity laws and statutes.

Notwithstanding the foregoing and to the extent such liability is not caused by the intentional or wilfull conduct of York, in the event of a general breakdown of the jointly used York Interceptors or the Treatment Plant so as to force the temporary cessation of sewer service contemplated hereunder, York shall not be liable to the Municipality or their sewer service customers for any damage sustained while such facilitates are out of service, and the Municipality shall indemnify and hold harmless York from any claims of its users in such event.

Section 10.07. Severability. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 10.08. Headings. The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

Section 10.09. Waiver. The failure of a Party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

Section 10.10. Assignment. This Agreement (including, without limitation, any rights under or interest in this agreement) may be assigned in whole or in part by York without the consent of the Municipality. The provisions of this Section shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the Parties. The Parties also agree that York may enter into concession, lease or other similar agreement or arrangement without the consent of the Municipality and that any obligations of the Municipality under this Agreement shall continue under such concession, lease, or other agreement. York shall provide notice concerning the identity and qualifications of potential assignees in advance of any assignment, unless otherwise prohibited by law or contractual obligation of confidentiality.

Section 10.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.12. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

Section 10.13. Supersedes Prior Agreements. This Agreement supersedes and repeals any prior agreements, contracts, and understandings, written or oral, by or between the Parties hereto with respect to the subject matter contained herein.

Section 10.14. Modification. This Agreement may be modified or amended in a writing signed by all the Parties hereto. Material pricing terms should not be modified unless 2/3 of the Connected Municipalities agree, it being the intention of the parties that the material pricing terms of this Agreement are to be uniform across the wholesale customers.

Section 10.15. Pennsylvania Law. This Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth.

Section 10.16. Recording. This Agreement may be recorded by either Party hereto.

Section 10.17. Interpretation. The Parties agree this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against York.

Section 10.18. No Unintended Third-Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall

have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 10.19. Breach. In the event of a breach of this Agreement by either Party, the non-breaching Party reserves/retains all of its rights in law and in equity (including, but not limited to, damages, injunctive relief and specific performance) to remedy such breach. Specifically, if the Municipality disconnects the Municipality's Wastewater Collection Systems such that it no longer utilizes the York System's wastewater treatment capacity during the initial term set forth in Section 3.02 or any subsequent renewal period, the Municipality shall remain liable under this Agreement for a lump sum payment to York in an amount equal to its pro-rata share of any outstanding capital expenses or Debt Service Charges as calculated pursuant to Sections 4.04 and 4.05 of this Agreement at the time of disconnection from the York System.

Section 10.20. Transportation Fund. Upon execution of this Agreement, all such Municipality funds held by York in the Transportation Fund or any other similar fund created under Prior Agreements shall be immediately returned to the Municipality. The Municipality shall share in the costs of all repairs or capital improvements to York Interceptors on the basis of each Party's Pro Rata Share of Attributed Flow through the facility to be repaired or replaced.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

ATTEST:

TOWNSHIP OF WEST MANCHESTER,  
York County, Pennsylvania

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

CITY OF YORK

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors

**INTERMUNICIPAL AGREEMENT**

**THIS INTERMUNICIPAL AGREEMENT**, made this \_\_\_ day of \_\_\_\_\_, 2016, by and among:

**CITY OF YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “York”); and

**BOROUGH OF WEST YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “Municipality”).

**WITNESSETH**

**WHEREAS**, York owns or leases, operates and maintains the York System for rendering Wastewater collection, transmission, treatment and disposal service in and for York and certain Connected Municipalities, including the Municipality; and

**WHEREAS**, the Municipality owns, operates and maintains the Municipality’s Wastewater Collection Systems for rendering Wastewater collection and transmission service in and for certain portions of the Municipality; and

**WHEREAS**, York and the Municipality previously entered into a series of Prior Agreements that established the Municipality’s right to collect Wastewater in the Municipality’s Wastewater Collection Systems and connect its respective systems to the York System for the purpose of utilizing the York System’s wastewater treatment capacity, subject to the terms and conditions established therein; and

**WHEREAS**, pursuant to the Prior Agreements among York and the Municipality, the Municipality has been permitted to connect to the York System for the purpose of transmitting and treating Wastewater from the Municipality; and

**WHEREAS**, the Parties now desire to rescind all of the Prior Agreements in their entireties and subject themselves to the terms and conditions contained herein for the continued provision of services by York; and

**WHEREAS**, the Municipality desires to contract with York for the continued provision of Wastewater transportation, treatment and disposal services by York to the Municipality, pursuant to the terms and conditions contained herein; and

**WHEREAS**, York agrees to accept, receive, transport, treat and dispose of Wastewater from the Municipality pursuant to the terms and conditions contained herein; and

**NOW, THEREFORE**, the Parties hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has

proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

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## ARTICLE I

### Definitions

Section 1.01. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified whenever they are used or referred to herein, unless a different meaning clearly appears from the context:

- A. *“Agreement”* shall mean this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as “hereto”, “hereby”, “herein”, “hereof”, “hereunder” or other descriptive words or phrases having similar import;
- B. *“Allocated Capacity”* shall mean the amount of hydraulic capacity that a Party has reserved in the Treatment Plant pursuant to Exhibit A or Article IV hereunder;
- C. *“Allocated Capacity Default”* shall mean a discharge of Wastewater into the York System by a Party that exceeds the peak hydraulic flow rate of:
  - 1. A peaking factor multiplied by such Allocated Capacity for any hour within a 24 hour period, which peaking factor shall be established in accordance with Section 4.01 hereof; or
  - 2. 100% of the Allocated Capacity based upon the Municipality’s total flow for a three consecutive month period, divided by the number of days in that three month period;
- D. *“Attributed Flow”* shall mean the sewage flow attributed to the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow.
- E. *“Bonds”* shall mean the notes, bonds or other debt obligations previously or subsequently authorized and issued by the York City Sewer Authority or York or York’s assignee or designee, the proceeds of which would be applied for the purposes of financing Costs relating to the Treatment Plant, or notes, bonds or other debt obligations issued by the York City Sewer Authority or York or York’s assignee or designee to refund the same, where the proceeds of such bonds, notes or debt are or will be applied in part to pay Costs attributable to the Municipality, and where no Capital Contribution has been tendered by the Municipality, as applicable, to cover the full amount of its appropriate share of such Costs;
- F. *“Capacity”* shall mean the ability of the Treatment Plant to receive and effectively treat a specified load;

- G. *“Capital Contribution”* shall mean the tendering by the Municipality, as applicable, of a lump sum certain amount calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant;
- H. *“Certified Public Accountant”* shall mean a Person, who shall be Independent, appointed by the governing body of York, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the Commonwealth;
- I. *“Commonwealth”* shall mean the Commonwealth of Pennsylvania;
- J. *“Connected Municipalities”* shall mean all of the suburban communities near York, excluding the Municipality, that convey Wastewater to the Treatment Plant pursuant to separate agreements, which specifically include the Borough of North York, the Borough of West York, the Township of Spring Garden, the Township of Springettsbury, the Township of West Manchester, and the Township of York;
- K. *“Connected Municipalities Meeting”* shall mean the quarterly meeting of the Municipality, the Connected Municipalities, and York pursuant to Section 2.04;
- L. *“Connection”* shall mean the connection of a structure that generates or could generate hydraulic or organic loads to a sewer system;
- M. *“Consulting Engineers”* shall mean a Person who shall be appointed by the governing body of York, qualified to pass upon engineering questions relating to Wastewater collection, transmission, treatment and/or disposal systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth and the individual assigned to York shall be a professional engineer duly registered under laws of the Commonwealth;
- N. *“Costs,” “Costs of Acquisition,” or “Costs of Construction,”* as to the Treatment Plant shall mean and include all capital costs related to acquiring or constructing any portion of the Treatment Plant, and future betterments thereto, but not pertaining to any part of the York Wastewater Collection System or the Municipality’s Wastewater Collection Systems, unless specified otherwise, and shall include, but not be limited to, the following:
1. Obligations incurred and payments made or required to be made by York to workmen and laborers or to contractors, subcontractors, builders, and suppliers;
  2. Interest on Bonds during the acquisition or construction period with respect to any particular series of Bonds, less interest income earned from the investment of the proceeds derived from the Bonds during such period;
  3. Administrative expenses of York during the period of any acquisition or construction, including the financing thereof;

4. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the Treatment Plant; amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;
5. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable by York for carrying out purposes of York relating to the Treatment Plant, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Treatment Plant and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;
6. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental regulatory authority related to construction of any part of the Treatment Plant, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;
7. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations thereof, the preparation of Act 537 plans or updates, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction and the financing thereof;
8. Expenses of audits, initial compensation of a trustee or paying agent with respect to Bonds of any series; fees and expenses, if any, of a trustee, or paying agent relating to a construction fund, if any; financing costs, fees and expenses, including compensation and expenses of a financial advisor or underwriter, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses, including costs arising out of any amendments hereto; advertising expenses; premiums for insurance or contracts of suretyships insuring bondholders against the risk of nonpayment of the principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by York in connection with financing acquisition or construction and issuing Bonds;



9. Other costs, charges and expenses incident to completion of any improvements, alterations, extensions or additions to the Treatment Plant;
10. Reimbursement to York for advances made by it for any of the above items, including any interest paid or required to be paid by York with respect to any such advances, or for any other costs incurred by York or for work done by York with respect to the Treatment Plant;
11. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;
12. Any sums required to reimburse York or to pay or retire any indebtedness incurred by York, including payment of interim obligations of York, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and
13. Interest on and issuing costs of any Bonds issued in anticipation of receipt of Federal or Commonwealth grants or loan funds applied to pay such costs, less any interest income earned from the investment of the proceeds derived from the Bonds.

Such “Costs”, “Costs of Acquisition,” or “Costs of Construction” incurred in connection with the Treatment Plant, shall be reduced by any and all grants, reimbursements, subsidies or other payments designated by law, regulation, contract or agreement to be applied to payment of all or any portion of such items (except payments required under this Agreement);

- O. “DEP” shall mean the Department of Environmental Protection of the Commonwealth or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- P. “Debt Service Charge” shall mean the amounts due to York from the Municipality calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs, including principal and interest, of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant funded through Bonds issued by or on behalf of York.
- Q. “Domestic Wastes” shall mean the normal water-borne wastes from a Dwelling Unit such as wastes from kitchens, water closets, lavatories, and laundry facilities;
- R. “Dwelling Unit” shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by one family or other group of Persons living together or by a Person living alone;
- S. “Effective Date” shall mean the date the Parties hereto have executed this Agreement and have adopted this agreement pursuant to the applicable rules of their respective governing bodies;

- T. “EPA” shall mean the United States Environmental Protection Agency or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- U. “*Extra Strength Wastes*” shall mean all non-Domestic Wastes which exceed the pollutants, loadings, or waste characteristic limits contained in the pertinent pretreatment ordinance;
- V. “*Fiscal Year*” shall mean the period commencing on January 1 of each year and ending on December 31 of the same year;
- W. “GPD” shall mean gallons of Wastewater discharged during a 24 hour period from midnight to midnight;
- X. “*Hydraulic Overload*” shall mean the condition that occurs when the monthly average flow entering the Treatment Plant exceeds the hydraulic design capacity for 3 consecutive months out of the preceding 12 months or when the flow in a portion of the York System exceeds its hydraulic carrying capacity;
- Y. “*Independent*” shall mean, with respect to the Certified Public Accountant, a Person who is Independent in fact and who is not a member of the governing body, officer or employee of a Party hereto, or any elected or appointed official or employee of a Party hereto, or that is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body, officer or employee of a Party hereto, or an elected or appointed official or employee of a Party hereto; provided, however, that the fact that such Person is retained regularly by a Party hereto shall not make such Person an employee within the meaning of this definition;
- Z. “*Industrial User*” shall mean any Non-Residential Connection discharging sewage and wastes other than normal water carried domestic sewage and wastes, directly or indirectly, to the York System;
- AA. “*Interceptor*” shall mean that pipe, pump, facility, lift or other physical installation necessary for the conveyance of Wastewater from a Point of Connection to the Treatment Plant;
- BB. “*IPP*” shall have the meaning given that term in Section 6.08 hereof;
- CC. “*Monthly Average Flow*” shall mean the total flow at the Treatment Plant during a calendar month divided by the number of days in that month;
- DD. “*Municipality*” shall mean the Borough of West York, located in York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania;
- EE. “*Municipality’s Wastewater Collection Systems*” shall refer to the Municipality’s Wastewater collection and transportation system facilities presently existing or hereafter to be acquired, constructed, owned and operated by the Municipality to provide Wastewater collection and transportation services to certain portions of the

- Municipality, together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof;
- FF. *“Non-Residential Connection”* shall mean any building, structure, room, group of rooms, establishment or facility, other than a Dwelling Unit, discharging sewage and wastes, including industrial wastes, directly or indirectly, to the York System;
- GG. *“O&M”* shall mean Operating and Maintenance;
- HH. *“O&M Charge”* shall mean the charges payable by the Municipality to York hereunder calculated pursuant to Section 5.01 hereof;
- II. *“O&M Expenses”* shall have the meaning described in Section 5.02 hereof;
- JJ. *“Organic Design Capacity”* shall mean the highest daily organic load at which the Treatment Plant can effectively treat the incoming Wastewater at the predetermined limitations contained in York’s NPDES permit;
- KK. *“Organic Overload”* shall mean the condition that occurs when the average daily influent organic load at the Treatment Plant exceeds the organic design capacity upon which the permit and Treatment Plant design are based;
- LL. *“Party”* shall mean any party to this Agreement individually;
- MM. *“Parties”* shall mean York and the Municipality;
- NN. *“Person”* or *“Persons”* shall mean an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipal corporation, a municipality, a municipal authority or any other group or legal entity;
- OO. *“Point of Connection”* shall mean point or points at which York receives and accepts Wastewater from the Municipality as shown on Exhibit B, which is incorporated herein by reference hereto, and as may be amended from time to time;
- PP. *“Prior Agreements”* shall mean all previous agreements entered into by the Parties hereto pertaining to the provision of Wastewater transportation, treatment and disposal services by York, specifically including: (i) the Agreement dated December 9, 1976 between York and the Municipality, and any and all supplements or amendments thereto;
- QQ. *“Pro Rata Share of Attributed Flow”* shall be calculated by dividing the attributable sewage flow from the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow, by the total metered flow discharged to the Treatment Plant;
- RR. *“Rental Period”* shall have the meaning given that term in Section 4.08(f) hereof;
- SS. *“Sanitary Wastewater”* shall mean all Domestic Wastes and water-borne wastes of similar character from similar facilities in offices, hotels, stores, restaurants, hospitals, schools, other commercial establishments, and industrial establishments;
- TT. *“Treatment Plant”* shall mean the existing Wastewater treatment and disposal facilities, the outfall sewer and all other facilities related to treatment and disposal of Wastewater, together with any additions, improvements, enlargements and/or

- modifications thereto and/or replacements thereof, heretofore or hereafter acquired or constructed by York, and that York deems appropriate and necessary to provide treatment and disposal of Wastewater under applicable laws of the Commonwealth;
- UU. “*Wastewater*” includes Sanitary Wastewater and/or Extra Strength Wastes, together with any ground, surface or storm water as may be present;
- VV. “*York*” shall mean the City of York, York County, Pennsylvania, a municipal corporation (a Third Class City) of the Commonwealth or its assigns, designees, successors, vendors, or concession holders;
- WW. “*York Interceptors*” shall mean the Interceptors owned York carrying the Municipality’s and York’s Wastewater flow from the Points of Connection to the Treatment Plant, but excluding any of the Municipality’s Interceptors upstream from their connection with a York Interceptor;
- XX. “*York System*” shall mean the York Wastewater Collection System, the York Interceptors and the Treatment Plant; and
- YY. “*York Wastewater Collection System*” shall mean the Wastewater collection and transportation system facilities, excluding the York Interceptors, presently existing or hereafter to be acquired, constructed, owned and operated by York to provide Wastewater collection and transportation services to certain portions of York and other bulk service customers (but not the Municipality), together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof; excluding, however, any facilities included in the definition of “Treatment Plant” and “York Interceptors”.

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## ARTICLE II

### Construction and Operation of the Treatment Plant and other Conditions

Section 2.01. *Construction and Operation of Treatment Plant.* York City Sewer Authority or its successor shall own the Treatment Plant and be the Treatment Plant permittee. York shall operate the Treatment Plant continuously, and shall pay or cause to be paid the O&M Expenses of the Treatment Plant.

Section 2.01(a). *Wastewater Collection System Costs and Operation.* The Municipality shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the Municipality’s Wastewater Collection Systems. Similarly, York shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the York Wastewater Collection System and York Interceptors, except as otherwise provided herein. The Municipality’s Wastewater Collection Systems shall each be designed, constructed, operated and maintained in a manner that will not cause them to be in violation of this Agreement and that will not cause

York to be in violation of any law or regulation of any governmental authority having jurisdiction over the Treatment Plant.

*Section 2.01(b). Operation Requirement.* Each Party shall operate and maintain its respective Wastewater collection system in a good and sound operating condition.

*Section 2.02. Connection of the Municipality's Wastewater Collection Systems and Limitations.* The Municipality shall maintain continuously during the term hereof proper connection of the Municipality's Wastewater Collection Systems to the York Interceptors, at such Points of Connection as described in Exhibit B, attached hereto. Future additional points of connection by the Municipality shall be agreed upon by the Municipality and York, and the terms and conditions applicable to such future connections shall be set forth in a separate written agreement between the Parties, which shall constitute an amendment and supplement to this Agreement.

The Municipality shall deliver to the Point of Connection all Wastewater originating within the service area described in the Act 537 Plan for the Municipality, as applicable and as amended from time to time, as being tributary to the York Interceptors and Treatment Plant and not intended for treatment by on-lot septic systems.

*Section 2.03. Cooperation; Sharing of Information.* The Parties each agree to the extent possible and economically practicable (except as otherwise required under this Agreement), to cooperate and share pertinent information with each other in facilitating the construction, maintenance and/or operation of their Wastewater collection systems, and York will provide the Municipality with any pertinent information regarding Costs, quantities of discharge, capacity or other matters relating to the Treatment Plant reasonably deemed necessary or desirable as determined by the Municipality, provided however, that in the event securing such information involves costs which would not normally be incurred as a cost of owning or operating and maintaining the Treatment Plant, the Municipality shall pay or provide for the payment of such costs. Each Party shall not be financially or otherwise responsible for the Wastewater collection system of the other Party, and the Municipality shall not be financially or otherwise responsible for the Treatment Plant except to the extent of charges required to be paid by the Municipality to York hereunder, and the performance of all terms and conditions of this Agreement. This paragraph shall not limit the obligations of the Parties set forth in the Special Requirements Article of this Agreement (Article IX).

At least forty-five (45) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, York shall submit to Municipality all material and information in its possession necessary for Municipality to submit to City the annual report referenced below. At least thirty (30) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, the

Municipality shall submit to York an annual report providing all material and information required from it by York and DEP to complete its annual wasteload management report.

*Section 2.04. Connected Municipalities Meeting.* It is agreed that the Connected Municipalities Meeting currently utilized by the Municipality, the Connected Municipalities, and York shall continue on a quarterly basis as set forth herein. The Connected Municipalities Meeting shall continue in its current form and pursuant to its current procedures, but at any time may establish its own procedures. The Connected Municipalities Meeting is intended to provide an opportunity for periodic discussion, review, and recommendations of all matters relating to this Agreement and the provision of Wastewater treatment services. Upon reasonable notice, the Municipality, any Connected Municipality, or York may call a Connected Municipality Meeting. The Connected Municipalities Meeting shall continue for the Term of Agreement set forth herein, including any extensions or renewals thereof.

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### ARTICLE III

#### Bulk Service Customer; Term of Agreement

*Section 3.01. Municipality Constitutes a Bulk Service Customer of York.* York agrees to operate and maintain in good working order and in compliance with all applicable laws, regulations and permits continuously during the term hereof the York Interceptors and the Treatment Plant, and any enlargements, additions, improvements and modifications thereto as determined solely by York, and to provide the Municipality, as a bulk service customer, Wastewater treatment, transportation, and disposal services in the Treatment Plant throughout the term hereof, as provided for herein.

*Section 3.02. Term of Agreement.* Subject to the covenants and conditions set forth herein, the term of this Agreement shall be thirty (30) years unless earlier terminated by mutual written consent of all the Parties hereto. This Agreement shall automatically renew on a year-to-year basis upon the expiration of the initial thirty (30) year term. This Agreement may be reviewed every five (5) years by the Parties, which shall report to their respective governing bodies on the sufficiency of this Agreement or any recommendations for amendments and modifications hereof.

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### ARTICLE IV

#### Allocation of Capacity in the Treatment Plant; Measurement of Flow; Capital Contribution; Updating of Treatment Plant; Additions to Treatment Plant Required by York and Calculation of Debt Service

Section 4.01. Acceptance of Flows from the Municipality. During the term hereof, the Municipality shall have the contractual right to discharge Wastewater into the York Interceptors subject to the following limitations:

Average Daily Flow (ADF):	1,200,500 Gallons/Day as a monthly average
Peak Daily Flow (PDF):	4,802,000 Gallons/Day
Peaking Factor	4.0 PDF/ADF

The Municipality covenants and agrees that it will not discharge Wastewater into the York Interceptors in a manner that constitutes an Allocated Capacity Default, as set forth herein, except as may be allowed by York hereunder.

Section 4.02. Measurement of Flow. The quantity of Wastewater discharged by the Municipality shall be determined by meter readings of the Wastewater flow meters or Wastewater flow measuring devices at the Point of Connection. The quantity of Wastewater discharged by York shall be determined by the flow measured by the Treatment Plant headworks meter, minus the quantity of Wastewater discharged by the Municipality and the Connected Municipalities.

Section 4.02(a). Flow Meters. York shall provide and install a Wastewater flow metering station at the Municipality's Point of Connection and the Treatment Plant headworks that will achieve the maximum practicable accuracy. Costs associated with the provision and installation of the Wastewater flow metering and sampling stations shall constitute O&M Expenses. The metering station shall be equipped with a flow reading system that will collect and transmit meter readings for download and a display that will allow the rate and total to be read in standard engineering units.

Section 4.02(b). Maintenance of the Flow Meter. York shall maintain the above referenced flow meter to accurately monitor flow conveyed across municipal boundaries. The flow meter shall be capable of recording flow measurements in one-minute intervals and averaging flows over the hour and day. The meter shall record and totalize all data. The record shall include at least flows at hourly and daily intervals. York shall maintain the flow meter in good working order. The flow meter shall be inspected, tested, and certified for accuracy at reasonable intervals, but no less than ninety (90) days. Calibration certification shall be done by a reputable company normally engaged in the business of meter calibration. York shall forward such inspection results, testing results, and certificates of calibration to the Municipality upon request.

In the event of a defective or inoperative flow meter, York shall have the right to take such steps as are required to repair or replace the flow meter, and the costs associated with any such maintenance, repair or replacement work shall constitute O&M expenses if costs are incurred.

Section 4.02(c). Monitoring Flow Meters. York shall have access at any and all times to the flow meters. The flow meters shall be monitored by York, which shall be

responsible for collection of data therefrom. In addition, the Municipality shall have a right of access to such records.

*Section 4.02(d). Unmetered Flows.* Any point of connection of the Municipality to the York System that reaches 70,000 GPD shall require the installation of a flow meter by York within nine (9) months of reaching 70,000 GPD at a mutually agreed upon location.

*Section 4.02(e). Missing Flow Data.* In the event reliable flow data is unavailable, due to malfunction in a flow meter, or in the recording device for said meter, York shall estimate flows for any such period as the flows for the same period in the preceding year or for the period immediately preceding the malfunction depending on which of these periods had a rainfall amount closest to that of the period of malfunction. York may use other pertinent data, such as water consumption data, in developing an estimate for the missing data. In the event of any dispute between the Parties concerning the reasonableness or accuracy of estimated flows, the dispute shall be resolved pursuant to Section 10.02.

The quantity of Wastewater discharged by the Municipality into the Treatment Plant shall be the sum of the flow measured at the applicable meters or devices at the Point of Connection for the Municipality as set forth on Exhibit B plus any unmetered or estimated flow (which may be amended from time to time as any additional connection points are permitted by York). The flow attributable to the Municipality shall be reduced by the metered flow plus any unmetered or estimated flow from any York customer providing flow into the Municipality's line prior to the Municipality's connection point with the York System.

It is understood that technology changes may permit metering changes that are more accurate. York reserves the exclusive right to determine metering changes and shall share information on any metering changes with the Municipality as it may request.

*Section 4.03. Exclusive Service Provider for Designated Areas.* The Municipality covenants and agrees that York, during the term hereof, shall be the sole and exclusive agency providing Wastewater transportation, treatment and disposal services for the portion of the Municipality and properties located in the drainage area contemplated to be served by the York System and Treatment Plant (which drainage area is shown on Exhibit C attached hereto), pursuant the terms and conditions herein. Further, the Municipality covenants and agrees not to construct or operate, or permit the construction or operation of, any sewage transportation or treatment facilities in competition with York.

The provisions of this Section 4.03, however, shall not prejudice the Municipality with respect to its rights to use the existing sewage treatment facilities not owned by York that are presently utilized by the Municipality; nor shall such covenants of exclusivity and non-competition be construed now, or during the term hereof, to the prejudice of the Municipality should any governmental agency of the Commonwealth or United States, specifically including DEP and the EPA, order the construction of a treatment facility or re-routing of flows to another



facility, a change in treatment flows or require the sharing of new treatment facilities with a municipality.

Section 4.04. Expansions or Upgrades of Treatment Plant. The Municipality shall be required to contribute to and share in the Costs of any other capital expansions or upgrades, improvements, modifications, extraordinary repairs or replacements not considered an O&M Expense, and other projects deemed by York to be of a capital nature and undertaken by York with respect to the Treatment Plant (“Capital Costs”). Any capital expansion, upgrade, improvement, modification, extraordinary repair or replacement in excess of Three Million (\$3,000,000) Dollars shall be approved by a majority of all Connected Municipalities unless such upgrade, improvement, modification, extraordinary repair or replacement has been order to be constructed by a governmental agency of the Commonwealth or United States, specifically including DEP and the EPA. York shall not separate any contracts or projects to intentionally avoid the Three Million (\$3,000,000) Dollar limitation provided herein.If York should undertake such an upgrade or modification of the Treatment Plant, which undertaking results in Costs, Costs of Acquisition or Costs of Construction to be incurred by York, then the Municipality shall pay a pro rata share of such Costs in the same proportion as its respective Allocated Capacity as costs are incurred by York for such upgrading or improvements. The Municipality shall have the right to inspect the record of all purchases and expenses involved in the construction. York shall provide to Municipality on an annual basis a five (5) year projection of expected capital improvements.

Section 4.05. Calculation of Debt Service Charge (Contingent upon Issuance of Bonds for the Municipality). For prior or subsequent Bonds issued to finance Capital Costs at the request of or for the benefit of the Connected Municipalities or, if applicable, other parties using the Treatment Plant, pursuant to Section 4.04, the payment of the Debt Service Charge shall commence upon issuance of the Bonds, or at such other time as may be required to assure the timely payment of debt service due on the Bonds. Such debt service charge shall be calculated in a manner consistent with the coverage and other covenants with respect to the Bonds and the calculation of the Capital Contribution hereunder, *i.e.*, the principal and interest attributable to the Capital Costs, together with financing costs, multiplied by a factor equal to the percentage that the Municipality’s capacity increase in the Treatment Plant bears to the total increased capacity of the Treatment Plant (for example if the Municipality has additional capacity of 10% of the total increased capacity and is thus responsible for paying 10% of the capital cost of the project, the Municipality shall pay 10% of any debt service charge if it elects to use Bonds to pay for its share of the capital costs). Accelerated payments made by or on behalf of York on any Bonds shall not release the Municipality of its obligation to pay the debt service charge for any Capital Costs and any Capital Contribution funded pursuant to this section during the period such Bonds would have been outstanding but for accelerated payment. An amortization schedule of all outstanding Bonds as of the date of this Agreement is attached hereto as Exhibit D, and the Parties agree that such schedule shall be updated from time to time upon the issuance of additional Bonds.

Section 4.06. Hydraulic Overload. In the event of Hydraulic Overload the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.07. Organic Overload. In the event of Organic Overload, the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.08. Allocated Capacity Planning. If at any time York or the Municipality's Monthly Average Flow exceeds 90% of York or the Municipality's Allocated Capacity, York or the Municipality shall, in addition to any action required as a result of any default, begin planning for the acquisition of additional capacity either by purchasing available capacity or by notifying the other of its need for additional capacity. York or the Municipality may, as an alternative to the purchase of additional capacity, submit a plan to reduce its Monthly Average Flow to comply with this Agreement. If a Party notifies the other of its need for additional capacity, the Party shall submit its plan for the acquisition of additional capacity or its plan to reduce its Monthly Average Flow to York for review and comment within 90 days of the discharge that triggered the planning. If the Municipality and York cannot agree on the plan for purchasing additional capacity or to reduce Monthly Average Flow, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereunder.

Section 4.08(a). Redistribution of Allocated Capacity.

(1) In the event any Connected Municipality or York requires additional Allocated Capacity, it shall have the option, in accordance with the following terms and procedures, to reserve additional Allocated Capacity in the Treatment Plant. In order to obtain additional Allocated Capacity, there must be in existence at the time unused treatment capacity that has been allocated to another Connected Municipality or York but which such other Connected Municipality or York is not in need of at the time and is willing to surrender.

(2) York agrees that in the event any Connected Municipality consents to a reduction of Allocated Capacity, the Allocated Capacity surrendered shall be offered to any of the Connected Municipalities and York in the discretion of the selling Connected Municipality, at the price agreed to by the selling Connected Municipality. The selling Connected Municipality must give notice, only to the other Connected Municipalities and York, of intent to sell part of its Allocated Capacity to another Connected Municipality even though it need not be offered to all other Connected Municipalities. If the Connected Municipality to whom such Allocated Capacity is offered does not wish to accept such additional Allocated Capacity, the Allocated Capacity so offered may be made available to the remaining Connected Municipalities on a pro-rata basis.

(3) Any Connected Municipality or York surrendering all or any portion of its Allocated Capacity shall be reimbursed in accordance with a mutual agreement reached with the Party purchasing such Allocated Capacity. If no Connected Municipality or York desires to purchase Allocated Capacity, then the Connected Municipality offering to sell its Allocated Capacity shall continue to be liable for all payments with respect to such reserved capacity.

(4) Where any Connected Municipality or Party acquires an interest in Allocated Capacity in the Treatment Plant, such Connected Municipality or Party must thereafter pay to York the acquiring Party's proportional share of all Costs, Capital Contributions, O&M Charges, and all other liabilities contained in this Agreement. Such acquiring Party shall be bound by the terms of this Agreement, as it may from time to time be amended.

Section 4.08(b). Defaults. Allocated Capacity Defaults shall not be permitted; however, if such a Default occurs it shall be addressed as provided for herein.

Section 4.08(c). Municipality Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by the Municipality, York shall notify the Municipality of said Default in writing, including data, if available. The Municipality shall, within sixty (60) days of said notice, acknowledge said notice and advise York of any discrepancies with such notice of default and the corrective action to be taken in the form of a remedial action plan. York shall review any discrepancies and within thirty (30) days provide a response. If the Municipality and York cannot agree on whether an Allocated Capacity Default has occurred, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In the event the Municipality submits to York a remedial action plan, York shall review the proposed remedial action plan and provide comments on the proposed remedial action within thirty (30) days of the plan being submitted. Upon approval of the proposed remedial action plan by York, the Municipality shall implement the approved corrective action within ninety (90) days of receipt of approval from York, or such longer period that may be reasonably granted by York for design, approval, construction and implementation of such corrective actions. If the Municipality and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, York may limit new connections until the conditions that cause the Municipality to be in Allocated Capacity Default or Allocated Nutrient Capacity Default are abated. If DEP or EPA requires connections to be limited then the Municipality agrees not to approve new sewer modules and/or forward such modules to York until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan, remedial action plan, or limit of connections will be fully complied with by the Municipality, and York shall be entitled to injunctive relief without the requirement of a bond and the Municipality will reimburse York's reasonable attorney fees and costs in the event of such enforcement action.

Section 4.08(d). York Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by York, York shall notify the Connected Municipalities of said Default in writing. York shall, within sixty (60) days of said notice, advise the Connected Municipalities of the corrective action to be taken. The Connected Municipalities shall review the proposed remedial action plan and provide comments on the proposed remedial action, or their approval of the the same, within thirty (30)

days of the plan being submitted. Upon approval of the proposed remedial action plan by the Connected Municipalities, York shall implement the approved corrective action within ninety (90) days of receipt of approval from the Connected Municipalities, or such longer period that may be reasonably required for design, approval, construction and implementation of such corrective actions. If the Connected Municipalities and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, if ordered by DEP or EPA, York shall limit connections so as to limit or eliminate discharges which cause York to be in Allocated Capacity Default. If DEP or EPA requires connections to be limited then York agrees not to approve new sewer modules until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan or limit of connections will be fully complied with by York, and Connected Municipalities shall be entitled to injunctive relief without the requirement of a bond and York will reimburse the Municipality's reasonable attorney fees and costs in the event of such enforcement action.

*Section 4.08(e). Default Surcharges.* Notwithstanding any contrary provisions contained herein and in addition to all other remedies provided for herein, where the Municipality exceeds its Peak Daily Flow for more than two (2) consecutive days or more in any thirty (30) day period, it shall pay York a \$1,000.00 per day surcharge.

Additionally, where the Municipality exceeds its annual Allocated Capacity in any fiscal year, it shall pay York a surcharge based on the amount of the increased cost of treatment specifically allocated and attributable to the Municipality's Allocated Capacity Default, plus a fifteen (15%) percent penalty on the value thereof.

Any surcharge penalties received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Capacity.

*Section 4.08(f). Allocated Capacity Defaults Triggering Rental Requirement.* In the event that the Municipality or York discharges Wastewater that results in an Allocated Capacity Default due to the Peak Daily Flow, established in accordance with Section 4.01 hereof, for three days or more in any one calendar week (Monday through Sunday) or three consecutive days, then the Municipality shall rent capacity from York for a one month period (the "Rental Period"), beginning on the day in which the Default was triggered.

In the event that the Municipality discharges Wastewater that results in an Allocated Capacity Default due to Average Daily Flow Allocated Capacity based upon the Municipality's total flow for a three consecutive month period, divided by the number of days in that three month period, at any time, then the Municipality shall rent capacity from York for a three month period (also the "Rental Period"), beginning on the day in which the Default was triggered.

If the Municipality is renting capacity in accordance with this section and has no additional Allocated Capacity Defaults (Default of solely the Allocated Capacity and not including the rental capacity) during the Rental Period, the Municipality is not required to continue to rent capacity after the expiration of the Rental Period. If the Municipality renting capacity does have an additional Allocated Capacity Default during the Rental Period, then York shall determine whether the Municipality must continue to rent capacity, purchase additional capacity (if available) or to take other corrective action. If the Parties cannot agree on whether to require a party to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof.

The amount of capacity rented shall be the amount of GPD that placed the Municipality in Default. The charge for such rental shall be the rate which York would charge its residential retail customers for the amount of capacity being rented, less the O&M charges allocated to such residential rate. This rental charge shall be in addition to the O&M charge that the Municipality must pay for the capacity that is being rented.

*Section 4.08(g). Special Charge.* If the Municipality discharges Wastewater at a flow rate that results in an Allocated Capacity Default and fails to, within ninety (90) days of the Default, make the necessary arrangement to eliminate or rent or purchase sufficient capacity to eliminate the Default, then the defaulting Municipality shall pay York for the amount of the excess usage an amount equal to double what the quarterly charge otherwise would have been on such excess usage for the calendar quarter in which the Default occurred.

Any Special Charge received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Flow or Nutrients.

*Section 4.08(h). Other Actions of York.* If the Municipality is in Allocated Capacity Default and the Parties cannot agree on whether to require the defaulting Municipality to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. Furthermore, if the United States, the Commonwealth, or any agency thereof promulgates a new statute, law, or regulation imposing more restrictive monitoring, discharge, or treatment requirements, York reserves the right to impose more restrictive requirements upon the Municipality to ensure compliance with the statute, law, or regulation.

*Section 4.08(i). State of Emergency.* If a state of emergency is declared by authorities of the Commonwealth of Pennsylvania or the United States of America for an area including York and/or the Municipality, York and the Municipality shall not be subject to the Default provisions of this Section during the time in which the emergency is in effect.

Section 4.08(j). Hydraulic Overload Planning. If at any time the total Average Daily Flow for the Treatment Plant exceeds 90% of such Capacity, the Parties shall meet and discuss planning to avoid any hydraulic overload or default within the York Interceptors and Treatment Plant.

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## ARTICLE V

### O&M Charges and Expenses

Section 5.01. O&M Charge. The Municipality shall pay to York an O&M Charge equivalent to the total O&M Expenses of the Treatment Plant multiplied by the Municipality's Pro Rata Share of Attributed Flow in the Treatment Plant. The O&M Expenses are those costs associated with operating and maintaining the Treatment Plant, and providing the Municipality and York's third party customers with Wastewater treatment and disposal services hereunder, and are set forth in greater detail in Section 5.02 hereof. The O&M Charge shall be payable to York or its designee quarterly in arrears. The method of charging for O&M Expenses as set forth in Article V shall begin upon the Effective Date of this Agreement. For example, if the Municipality's Pro Rata Share of Attributed Flow to the Treatment Plant is fifteen (15%) percent of the total, then the Municipality shall pay fifteen (15%) percent of the Total O&M Expenses.

Section 5.02. O&M Expenses. O&M Expenses shall include the total of all of the following items, each such item being determined for the Fiscal Year or portion thereof under consideration, of all the expenses and costs directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors.

O&M Expenses include:

- (a) power, chemicals, fuel, materials, and supplies;
- (b) costs of storing, hauling, dumping and disposal of residue or sludge from the Treatment Plant, including composting; and other costs determined by York to be costs;
- (c) actual salaries and wages of administrative, operation or maintenance personnel of York directly engaged in operating and maintaining the Treatment Plant, together with the social security and unemployment taxes, workmen's compensation, insurance premiums, health and accident insurance premiums and pension benefits (but not payments related to any unfunded pension liability), vocational training or any other benefits or costs applicable to the personnel, prorating such items in accordance with such employee's time actually spent on matters pertaining to the treatment or disposal of Wastewater compared to work spent on other matters;

(d) equipment and tools used or employed for the operation and maintenance of the Treatment Plant;

(e) costs of routine maintenance and repairs (including replacements), and costs of any work done under any contract with respect to the Treatment Plant (excluding capital upgrades or expansions);

(f) fees and expenses of the Consulting Engineers;

(g) premiums for property, boiler and machinery and comprehensive crime insurance and vehicle insurance;

(h) legal expenses;

(i) all expenses involved in purchasing nutrient or other credits, if any, required to meet NPDES permit requirement or other DEP requirements related to the Treatment Plant; and

(j) all other costs and expenses not of a capital nature, determined by York to be O&M Expenses and reasonably incurred and properly attributable, to the operation, maintenance and/or repair of the Treatment Plant, from time to time.

Such amount shall be reduced by any Federal or Commonwealth grants, reimbursements, subsidies or other payments to York designated by law or regulation for such purposes (excluding grants for capital upgrades or expansions), revenues received by York from the treatment of septage, sludge and leachate or similar substances, and the sale of nutrient or other credits.

O&M Expenses shall not include a general allocation of costs, expenses, overhead and other expense items of York or its assignees, designees, successors, vendors or concession holders but shall be limited to those expenses and costs that are directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors, but may include reasonable and supportable overhead expenses incurred by York.

Written records and accounts of all such costs and expenses shall be prepared and maintained by York and shall be available to each Party upon request. York shall maintain an accurate system of accounts and records with respect to all such O&M Expenses which shall be audited annually by a Certified Public Accountant. A copy of the audit shall be provided to the Municipality within thirty (30) days of its completion. Such accounts and records may be inspected and copied at reasonable times by the Municipality and its agents and representatives. Subsidies received by York attributable to the operation of the Treatment Plant shall be reimbursed to the Municipality proportionate to its respective Pro Rata Share of Actual Flow to the Treatment Plant.

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## ARTICLE VI

### Wastewater Quality and Pretreatment Restrictions

*Section 6.01. Uniform Standards.* York has adopted and may amend from time to time uniform Wastewater quality standards applicable to the York Wastewater Collection System, which are intended to comply with the requirements of EPA, DEP, and all other regulatory authorities.

*Section 6.02. Compelling Compliance with Standards.* The Municipality shall enact or cause to be enacted an ordinance or ordinances or adopt a resolution or resolutions, as applicable, and the Municipality will cause such ordinance or ordinances or resolution or resolutions, as applicable, to remain in full force and effect at all times, prohibiting and providing adequate penalties for the discharge into the Municipality's Wastewater Collection Systems of anything violating the above-mentioned Wastewater quality standards of York, and shall enforce the provisions thereof. Such ordinance or ordinances shall also prohibit and/or regulate, as applicable, the discharge into the Municipality's Wastewater Collection Systems by industries of prohibited Extra Strength Wastes, as prescribed in the applicable industrial pretreatment regulations adopted and amended by York from time to time. The Municipality shall not permit any discharge into the Municipality's Wastewater Collection Systems except in the manner and in accordance with the provisions of said ordinance or ordinances. After adoption or amendment of an ordinance, resolution or regulation pertaining to Wastewater, the Party adopting or amending the same shall provide a copy to the other Party to this Agreement.

The Parties shall not discharge any Extra Strength Wastes to the Treatment Plant.

*Section 6.03. Reimbursement for Damages from Improper Discharge.* The Parties shall pay the Costs of any damage to the Treatment Plant and fines or penalties resulting from discharge of improper Wastewater from the Municipality's Wastewater Collection System in violation of quality standards and restrictions, and shall indemnify and hold harmless the other with respect thereto. York shall pay or cause to be paid the Costs of any damage to the Treatment Plant resulting from discharge of improper Wastewater from the York Wastewater Collection System or from any customer (including other bulk users) of York (except the Municipality or other Connected Municipalities) in violation of the above-mentioned quality standards and restrictions, and shall indemnify and hold harmless the Municipality with respect thereto.

*Section 6.04. Sampling Manholes.* Promptly upon request by York, the Municipality, as applicable, shall require the installation of a manhole at the point of discharge from the property of any user who has the potential to discharge into the Municipality's Wastewater Collection Systems any wastes other than Domestic Wastes. Said manhole shall meet York's requirements with



respect to type, size, location and construction, so that sampling and/or metering will be facilitated. York may at any time sample the Wastewater in such manholes.

Section 6.05. Disconnection of Property. The Parties shall prohibit and prevent any Person from discharging Wastewater whose quantity or quality may have a deleterious effect on the Treatment Plant or receiving stream. When requested by York, the Municipality shall prohibit such unlawful discharge from the property to the extent permitted by law..

Section 6.06. Pipe Connection Required. The Parties each shall, to the extent possible, prohibit and prevent by ordinance the discharge of any substance into its respective Wastewater collection system, other than by and through a permanent direct pipe connection. The ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, unauthorized discharges from tank trucks or similar sources into the Municipality's Wastewater Collection Systems, York Interceptors or the York Wastewater Collection System shall be prohibited.

Section 6.07. Prohibition of Septage Discharge. The Parties each shall prohibit and prevent by ordinance the discharge of septic tank or grease trap wastes into its respective Wastewater collection system including the contents of septic tanks of existing establishments when they first connect to its respective Wastewater collection system.

Section 6.08. Implementation of Industrial Pretreatment Program. If York is required by DEP or EPA to implement an Industrial Pretreatment Program (the "IPP"), York may accept primary responsibility from time to time to implement, administer and enforce the IPP, including (but not limited to) conducting and updating Industrial User surveys, and performing inspections and sampling. The Municipality agrees to empower York to act as its agent with respect to the IPP. The Municipality shall reasonably cooperate with any enforcement action taken by York against the Municipality's Industrial Users, and shall take such action in the exercise of its own rights and police powers as may be reasonably requested by York to ensure compliance with York's IPP. The administrative costs of the Pretreatment Program will be paid by York (which costs are passed on to pre-treatment customers) and shall not be part of the O&M charges to the Municipality.

Section 6.09. Surcharge to Industrial Users. York may charge Industrial Users (which also includes landfills) an extra monthly strength surcharge (to be used to reduce O&M Expense) based on deviations over and above the strength considered normal for domestic Wastewater. To the extent reasonably possible, the Municipality agrees to assist in the collection of any surcharge due from an Industrial User in the Municipality's service area not paid within 90 days. Such surcharges shall be imposed and calculated in accordance with York's ordinances and regulations requiring the surcharges.

Section 6.10. Municipal Maintenance Waste Acceptance. York at its Treatment Plant shall accept wastes collected by the Connected Municipality as part of its routine O&M program to

maintain its collection system and facilities. Such wastes may include, but not be limited to, wastes collected during line flushing and wet well cleaning activities. No additional costs shall be charge to the Connected Municipality for acceptance of these wastes by York. The connected municipality shall be responsible for transportation of the wastes to the treatment plant.

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## ARTICLE VII

### Governmental Grants and Subsidies

*Section 7.01. Applications.* York may, at its sole discretion, make applications to the Commonwealth and to the United States, and their appropriate agencies, for any available grants, subsidies or other payments and for all permits and approvals in respect of the construction, operation and/or maintenance of the Treatment Plant, which amounts shall be applied in accordance with the terms and conditions of such grants or, if no allocation is mandated, to reduce the amounts payable by York and the Municipality on a proportional basis or as otherwise agreed, in accordance with the terms hereof. York shall be under no obligation to seek or provide funding for acquisition or construction of the Municipality's Wastewater Collection Systems, unless agreed to by York in writing.

*Section 7.02. Compliance with Law and Conditions for Grants.* The Parties hereto will take all such actions, within their legal powers, as may be required to comply with all applicable laws, regulations and permits applicable to their respective Wastewater collection systems and with agreements relating to applicable United States and Commonwealth grants and subsidies.

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## ARTICLE VIII

### Connections to Wastewater Collections Systems; Sewer Rentals and Charges

*Section 8.01. Imposition of Sewer Rates.* The Parties covenant that they will impose sewer rates or charges upon owners of improved property that shall be connected to the Municipality's Wastewater Collection System and York Wastewater Collection System for use thereof. The Parties also covenant to thereafter maintain such ordinances or resolutions or subsequent ordinances or resolutions, as applicable, imposing such sewer rates or charges in full force and effect continuously during the term hereof.

*Section 8.02. Enforcement of Sewer Rates.* The Municipality covenants to continue to enforce or to cause to be enforced sewer rates or charges in effect at any particular time and to collect or cause to be collected all amounts becoming due. If any amounts becoming due thereunder shall not be paid, in accordance with provisions thereof at the time in effect, the Municipality covenants to take or cause to be taken all reasonable steps to collect the rates.

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## ARTICLE IX

### Special Requirements

*Section 9.01. Module Approval.* Module approval shall not grant any right to make any connection to the Municipality's Wastewater Collection Systems or York's Wastewater Collection System if the new connection would cause York or the Municipality to be in Allocated Capacity Default or if York or the Municipality, at the time of the module application, is in Allocated Capacity Default. York reserves the right to review and approve module applications in accordance with its obligations under the Sewage Facilities Act (Act 537). Furthermore, if DEP requires connections to be limited then, to the extent required by DEP, York and the Municipality agree not to approve new sewer modules and/or forward such modules to York until the limit on connections is no longer in place or within the guidelines of the regulations.

*Section 9.02. Building Permits.* York and the Municipality will not issue any building permits that include connections, or permit any connections for development which do not have a previously approved sewer module or adequate hydraulic capacity, during any limit of connections imposed by DEP, except as permitted by DEP.

*Section 9.03. Connection Accounting.* As part of the annual wasteload management report (Chapter 94 Report) process, the Municipality shall provide an accounting to York, in form and content as required by York, as to existing and planned sewer connections, so as to assist York in complying with DEP's requirements.

*Section 9.04. Payment Default.* All payments required under this Agreement shall be due thirty (30) days after the date of the invoice or written demand, except for the capital contribution discussed in Section 4.04 which is due in thirty (30) days from the date of written demand, and if not paid within such period then a late charge of one (1%) percent shall be due together with, at the rate of three (3%) percent per annum, simple interest, until the amount due, including interest and penalty, is paid.

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## ARTICLE X

### Miscellaneous

*Section 10.01. Insurance; Repairs and Construction.* York will insure, or cause to be insured the Treatment Plant. Insurance, other than self-insurance, shall be with a responsible company or companies authorized and qualified to do business under laws of the Commonwealth, against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in the Commonwealth

and as shall be reviewed and approved, at least annually, by the Consulting Engineers or other insurance advisor. Such insurance policies shall be non assessable. Immediately upon the occurrence of any loss or damage to any part of the Treatment Plant which is covered by insurance, York will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by the Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the costs of such repair, replacement or reconstruction unless York determines that it is unwise to make such repair, replacement or reconstruction and shall agree upon other disposition of said insurance proceeds. In the event it becomes necessary to make any extraordinary repairs or replacements at the Treatment Plant because of damage or destruction and there are insufficient funds available from the insurance proceeds to pay the costs thereof, the Parties agree to pay their pro rata share of the additional costs in the same proportion as their Pro Rata Share of Allocated Capacity to the Treatment Plant. The Municipality agrees to share the cost of public liability insurance based upon the lowest bona-fide quote provided that the proportionate share of such cost being shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.01 hereof. The cost of the public liability insurance shall be shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof. In the event there is a judgment against York related to the Treatment Plant, which judgment is greater than the policy limits of the quoted policy, and if York has purchased a public liability policy and the judgment is greater than the policy limits, then York, the Municipality and the Connected Municipalities shall share the cost of the judgment in excess of the policy limits in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof.

*Section 10.02. Mediation.* Upon the written request of a Party, any dispute or claim in law or equity arising out of this Agreement shall be submitted to neutral, non-binding mediation prior to the commencement of arbitration, litigation, or any other proceeding before a trier of fact. The Parties agree to act in good faith to participate in mediation and to identify a mutually acceptable mediator. If they are unable to agree upon a mediator, the Parties may, after twenty (20) days have elapsed from the date of the written request for mediation, petition the Court of Common Pleas of York County to appoint a mediator. The Parties shall share equally in the costs for mediation services. If the dispute or claim is resolved through mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution to the dispute or claim in accordance with the remaining terms of this Agreement and other rights and remedies afforded by law.

Upon a Party's request for mediation, the Parties to the dispute shall have twenty (20) days to select a mediator. If the Parties cannot agree on a mediator within twenty (20) days and the mediator must be selected as set forth above, the Parties in dispute shall petition the Court of

Common Pleas of York County for the appointment of a mediator within ten (10) days of the expiration of initial twenty (20) day time period. After the selection of the mediator, the Parties shall submit to mediation for a period up to forty-five (45) days. If the dispute or claim is not resolved by the forty-fifth (45<sup>th</sup>) day after the selection of the mediator then the mediator shall provide written notice to the Parties reflecting the same and the Parties may seek alternative forms of resolution as stated above.

*Section 10.03. Inspection.* The Parties, as applicable, shall provide each other, from time to time, all information relevant to the proper administration of their responsibilities under this Agreement, or in respect to the interpretation hereof, as and in such form and detail as may be reasonably requested and each shall, at all reasonable times and from time to time, permit the examination and inspection of their respective records and physical facilities relevant to the subject matter of this Agreement.

*Section 10.04. Force Majeure.* Notwithstanding any other provision of this Agreement, no Party shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, unforeseeable breakdown of the Treatment Plant and/or their respective Wastewater collection systems, or other event beyond its reasonable control. The Party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with Costs to be shared, if applicable, to the extent provided elsewhere herein.

*Section 10.05. Indemnity.* Each Party agrees to indemnify, defend and save harmless the other Party against all costs, losses or damage, including payment of reasonable attorneys fees, on account of any injury to persons or property occurring in the performance of this Agreement due to its negligence or the negligence of its agents or employees; provided, however, that no Party waives any rights or immunities arising out of any applicable governmental immunity laws and statutes.

Notwithstanding the foregoing and to the extent such liability is not caused by the intentional or wilfull conduct of York, in the event of a general breakdown of the jointly used York Interceptors or the Treatment Plant so as to force the temporary cessation of sewer service contemplated hereunder, York shall not be liable to the Municipality or their sewer service customers for any damage sustained while such facilitates are out of service, and the Municipality shall indemnify and hold harmless York from any claims of its users in such event.

*Section 10.07. Severability.* Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

*Section 10.08. Headings.* The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

Section 10.09. Waiver. The failure of a Party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

Section 10.10. Assignment. This Agreement (including, without limitation, any rights under or interest in this agreement) may be assigned in whole or in part by York without the consent of the Municipality. The provisions of this Section shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the Parties. The Parties also agree that York may enter into concession, lease or other similar agreement or arrangement without the consent of the Municipality and that any obligations of the Municipality under this Agreement shall continue under such concession, lease, or other agreement. York shall provide notice concerning the identity and qualifications of potential assignees in advance of any assignment, unless otherwise prohibited by law or contractual obligation of confidentiality.

Section 10.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.12. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

Section 10.13. Supersedes Prior Agreements. This Agreement supersedes and repeals any prior agreements, contracts, and understandings, written or oral, by or between the Parties hereto with respect to the subject matter contained herein.

Section 10.14. Modification. This Agreement may be modified or amended in a writing signed by all the Parties hereto. Material pricing terms should not be modified unless 2/3 of the Connected Municipalities agree, it being the intention of the parties that the material pricing terms of this Agreement are to be uniform across the wholesale customers.

Section 10.15. Pennsylvania Law. This Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth.

Section 10.16. Recording. This Agreement may be recorded by either Party hereto.

Section 10.17. Interpretation. The Parties agree this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against York.

Section 10.18. No Unintended Third-Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall

have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 10.19. Breach. In the event of a breach of this Agreement by either Party, the non-breaching Party reserves/retains all of its rights in law and in equity (including, but not limited to, damages, injunctive relief and specific performance) to remedy such breach. Specifically, if the Municipality disconnects the Municipality's Wastewater Collection Systems such that it no longer utilizes the York System's wastewater treatment capacity during the initial term set forth in Section 3.02 or any subsequent renewal period, the Municipality shall remain liable under this Agreement for a lump sum payment to York in an amount equal to its pro-rata share of any outstanding capital expenses or Debt Service Charges as calculated pursuant to Sections 4.04 and 4.05 of this Agreement at the time of disconnection from the York System.

Section 10.20. Transportation Fund. Upon execution of this Agreement, all such Municipality funds held by York in the Transportation Fund or any other similar fund created under Prior Agreements shall be immediately returned to the Municipality. The Municipality shall share in the costs of all repairs or capital improvements to York Interceptors on the basis of each Party's Pro Rata Share of Attributed Flow through the facility to be repaired or replaced.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

ATTEST:

BOROUGH OF WEST YORK,  
York County, Pennsylvania

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Council President, Borough Council

ATTEST:

CITY OF YORK

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors

**INTERMUNICIPAL AGREEMENT**

**THIS INTERMUNICIPAL AGREEMENT**, made this \_\_\_ day of \_\_\_\_\_, 2016, by and among:

**CITY OF YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “York”); and

**TOWNSHIP OF YORK**, York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (hereinafter “Municipality”).

**WITNESSETH**

**WHEREAS**, York owns or leases, operates and maintains the York System for rendering Wastewater collection, transmission, treatment and disposal service in and for York and certain Connected Municipalities, including the Municipality; and

**WHEREAS**, the Municipality owns, operates and maintains the Municipality’s Wastewater Collection Systems for rendering Wastewater collection and transmission service in and for certain portions of the Municipality; and

**WHEREAS**, York and the Municipality previously entered into a series of Prior Agreements that established the Municipality’s right to collect Wastewater in the Municipality’s Wastewater Collection Systems and connect its respective systems to the York System for the purpose of utilizing the York System’s wastewater treatment capacity, subject to the terms and conditions established therein; and

**WHEREAS**, pursuant to the Prior Agreements among York and the Municipality, the Municipality has been permitted to connect to the York System for the purpose of transmitting and treating Wastewater from the Municipality; and

**WHEREAS**, the Parties now desire to rescind all of the Prior Agreements in their entireties and subject themselves to the terms and conditions contained herein for the continued provision of services by York; and

**WHEREAS**, the Municipality desires to contract with York for the continued provision of Wastewater transportation, treatment and disposal services by York to the Municipality, pursuant to the terms and conditions contained herein; and

**WHEREAS**, York agrees to accept, receive, transport, treat and dispose of Wastewater from the Municipality pursuant to the terms and conditions contained herein; and

**NOW, THEREFORE**, the Parties hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has



proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

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## ARTICLE I

### Definitions

Section 1.01. The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified whenever they are used or referred to herein, unless a different meaning clearly appears from the context:

- A. *“Agreement”* shall mean this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as “hereto”, “hereby”, “herein”, “hereof”, “hereunder” or other descriptive words or phrases having similar import;
- B. *“Allocated Capacity”* shall mean the amount of hydraulic capacity that a Party has reserved in the Treatment Plant pursuant to Exhibit A or Article IV hereunder;
- C. *“Allocated Capacity Default”* shall mean a discharge of Wastewater into the York System by a Party that exceeds the peak hydraulic flow rate of:
  - 1. A peaking factor multiplied by such Allocated Capacity for any hour within a 24 hour period, which peaking factor shall be established in accordance with Section 4.01 hereof; or
  - 2. 100% of the Allocated Capacity based upon the Municipality’s total flow for a three consecutive month period, divided by the number of days in that three month period;
- D. *“Attributed Flow”* shall mean the sewage flow attributed to the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow.
- E. *“Bonds”* shall mean the notes, bonds or other debt obligations previously or subsequently authorized and issued by the York City Sewer Authority or York or York’s assignee or designee, the proceeds of which would be applied for the purposes of financing Costs relating to the Treatment Plant, or notes, bonds or other debt obligations issued by the York City Sewer Authority or York or York’s assignee or designee to refund the same, where the proceeds of such bonds, notes or debt are or will be applied in part to pay Costs attributable to the Municipality, and where no Capital Contribution has been tendered by the Municipality, as applicable, to cover the full amount of its appropriate share of such Costs;
- F. *“Capacity”* shall mean the ability of the Treatment Plant to receive and effectively treat a specified load;

- G. *“Capital Contribution”* shall mean the tendering by the Municipality, as applicable, of a lump sum certain amount calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant;
- H. *“Certified Public Accountant”* shall mean a Person, who shall be Independent, appointed by the governing body of York, actively engaged in the business of public accounting and duly certified as a Certified Public Accountant under the authority of laws of the Commonwealth;
- I. *“Commonwealth”* shall mean the Commonwealth of Pennsylvania;
- J. *“Connected Municipalities”* shall mean all of the suburban communities near York, excluding the Municipality, that convey Wastewater to the Treatment Plant pursuant to separate agreements, which specifically include the Borough of North York, the Borough of West York, the Township of Spring Garden, the Township of Springettsbury, the Township of West Manchester, and the Township of York;
- K. *“Connected Municipalities Meeting”* shall mean the quarterly meeting of the Municipality, the Connected Municipalities, and York pursuant to Section 2.04;
- L. *“Connection”* shall mean the connection of a structure that generates or could generate hydraulic or organic loads to a sewer system;
- M. *“Consulting Engineers”* shall mean a Person who shall be appointed by the governing body of York, qualified to pass upon engineering questions relating to Wastewater collection, transmission, treatment and/or disposal systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth and the individual assigned to York shall be a professional engineer duly registered under laws of the Commonwealth;
- N. *“Costs,” “Costs of Acquisition,”* or *“Costs of Construction,”* as to the Treatment Plant shall mean and include all capital costs related to acquiring or constructing any portion of the Treatment Plant, and future betterments thereto, but not pertaining to any part of the York Wastewater Collection System or the Municipality’s Wastewater Collection Systems, unless specified otherwise, and shall include, but not be limited to, the following:
1. Obligations incurred and payments made or required to be made by York to workmen and laborers or to contractors, subcontractors, builders, and suppliers;
  2. Interest on Bonds during the acquisition or construction period with respect to any particular series of Bonds, less interest income earned from the investment of the proceeds derived from the Bonds during such period;
  3. Administrative expenses of York during the period of any acquisition or construction, including the financing thereof;

4. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the Treatment Plant; amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;
5. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable by York for carrying out purposes of York relating to the Treatment Plant, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Treatment Plant and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, engineering fees, legal fees, costs of abstracts of title, title insurance, title opinions, surveys and reports;
6. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental regulatory authority related to construction of any part of the Treatment Plant, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;
7. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations thereof, the preparation of Act 537 plans or updates, supervision of acquisition or construction, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction and the financing thereof;
8. Expenses of audits, initial compensation of a trustee or paying agent with respect to Bonds of any series; fees and expenses, if any, of a trustee, or paying agent relating to a construction fund, if any; financing costs, fees and expenses, including compensation and expenses of a financial advisor or underwriter, if any; costs of preparing, printing and issuing Bonds; legal costs, fees and expenses, including costs arising out of any amendments hereto; advertising expenses; premiums for insurance or contracts of suretyships insuring bondholders against the risk of nonpayment of the principal of, interest on or premium with respect to any particular Bond or Bonds; and all other costs incurred by York in connection with financing acquisition or construction and issuing Bonds;

9. Other costs, charges and expenses incident to completion of any improvements, alterations, extensions or additions to the Treatment Plant;
10. Reimbursement to York for advances made by it for any of the above items, including any interest paid or required to be paid by York with respect to any such advances, or for any other costs incurred by York or for work done by York with respect to the Treatment Plant;
11. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction;
12. Any sums required to reimburse York or to pay or retire any indebtedness incurred by York, including payment of interim obligations of York, for expenditures made for any of the above items or for any other costs properly chargeable as costs of acquisition or construction; and
13. Interest on and issuing costs of any Bonds issued in anticipation of receipt of Federal or Commonwealth grants or loan funds applied to pay such costs, less any interest income earned from the investment of the proceeds derived from the Bonds.

Such “Costs”, “Costs of Acquisition,” or “Costs of Construction” incurred in connection with the Treatment Plant, shall be reduced by any and all grants, reimbursements, subsidies or other payments designated by law, regulation, contract or agreement to be applied to payment of all or any portion of such items (except payments required under this Agreement);

- O. “DEP” shall mean the Department of Environmental Protection of the Commonwealth or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- P. “Debt Service Charge” shall mean the amounts due to York from the Municipality calculated under the terms hereof, for the payment of all or a portion of the Municipality’s prorated share of the Costs, including principal and interest, of the Treatment Plant, or future capital alterations, capital additions, or capital improvements to the Treatment Plant funded through Bonds issued by or on behalf of York.
- Q. “Domestic Wastes” shall mean the normal water-borne wastes from a Dwelling Unit such as wastes from kitchens, water closets, lavatories, and laundry facilities;
- R. “Dwelling Unit” shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by one family or other group of Persons living together or by a Person living alone;
- S. “Effective Date” shall mean the date the Parties hereto have executed this Agreement and have adopted this agreement pursuant to the applicable rules of their respective governing bodies;

- T. “EPA” shall mean the United States Environmental Protection Agency or any successor departments or agencies having statutory responsibility with respect to regulation and permitting of facilities for collection, transportation, treatment and ultimate disposal of Wastewater;
- U. “*Extra Strength Wastes*” shall mean all non-Domestic Wastes which exceed the pollutants, loadings, or waste characteristic limits contained in the pertinent pretreatment ordinance;
- V. “*Fiscal Year*” shall mean the period commencing on January 1 of each year and ending on December 31 of the same year;
- W. “GPD” shall mean gallons of Wastewater discharged during a 24 hour period from midnight to midnight;
- X. “*Hydraulic Overload*” shall mean the condition that occurs when the monthly average flow entering the Treatment Plant exceeds the hydraulic design capacity for 3 consecutive months out of the preceding 12 months or when the flow in a portion of the York System exceeds its hydraulic carrying capacity;
- Y. “*Independent*” shall mean, with respect to the Certified Public Accountant, a Person who is Independent in fact and who is not a member of the governing body, officer or employee of a Party hereto, or any elected or appointed official or employee of a Party hereto, or that is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the governing body, officer or employee of a Party hereto, or an elected or appointed official or employee of a Party hereto; provided, however, that the fact that such Person is retained regularly by a Party hereto shall not make such Person an employee within the meaning of this definition;
- Z. “*Industrial User*” shall mean any Non-Residential Connection discharging sewage and wastes other than normal water carried domestic sewage and wastes, directly or indirectly, to the York System;
- AA. “*Interceptor*” shall mean that pipe, pump, facility, lift or other physical installation necessary for the conveyance of Wastewater from a Point of Connection to the Treatment Plant;
- BB. “*IPP*” shall have the meaning given that term in Section 6.08 hereof;
- CC. “*Monthly Average Flow*” shall mean the total flow at the Treatment Plant during a calendar month divided by the number of days in that month;
- DD. “*Municipality*” shall mean the Township of York, located in York County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania;
- EE. “*Municipality’s Wastewater Collection Systems*” shall refer to the Municipality’s Wastewater collection and transportation system facilities presently existing or hereafter to be acquired, constructed, owned and operated by the Municipality to provide Wastewater collection and transportation services to certain portions of the

- Municipality, together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof;
- FF. *“Non-Residential Connection”* shall mean any building, structure, room, group of rooms, establishment or facility, other than a Dwelling Unit, discharging sewage and wastes, including industrial wastes, directly or indirectly, to the York System;
- GG. *“O&M”* shall mean Operating and Maintenance;
- HH. *“O&M Charge”* shall mean the charges payable by the Municipality to York hereunder calculated pursuant to Section 5.01 hereof;
- II. *“O&M Expenses”* shall have the meaning described in Section 5.02 hereof;
- JJ. *“Organic Design Capacity”* shall mean the highest daily organic load at which the Treatment Plant can effectively treat the incoming Wastewater at the predetermined limitations contained in York’s NPDES permit;
- KK. *“Organic Overload”* shall mean the condition that occurs when the average daily influent organic load at the Treatment Plant exceeds the organic design capacity upon which the permit and Treatment Plant design are based;
- LL. *“Party”* shall mean any party to this Agreement individually;
- MM. *“Parties”* shall mean York and the Municipality;
- NN. *“Person”* or *“Persons”* shall mean an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipal corporation, a municipality, a municipal authority or any other group or legal entity;
- OO. *“Point of Connection”* shall mean point or points at which York receives and accepts Wastewater from the Municipality as shown on Exhibit B, which is incorporated herein by reference hereto, and as may be amended from time to time;
- PP. *“Prior Agreements”* shall mean all previous agreements entered into by the Parties hereto pertaining to the provision of Wastewater transportation, treatment and disposal services by York, specifically including: (i) the Agreement dated December 9, 1976 between York and the Municipality, and any and all supplements or amendments thereto;
- QQ. *“Pro Rata Share of Attributed Flow”* shall be calculated by dividing the attributable sewage flow from the Municipality, as determined from the readings of the metering devices installed pursuant to Article IV of this Agreement plus or minus unmetered or other estimated flow, by the total metered flow discharged to the Treatment Plant;
- RR. *“Rental Period”* shall have the meaning given that term in Section 4.08(f) hereof;
- SS. *“Sanitary Wastewater”* shall mean all Domestic Wastes and water-borne wastes of similar character from similar facilities in offices, hotels, stores, restaurants, hospitals, schools, other commercial establishments, and industrial establishments;
- TT. *“Treatment Plant”* shall mean the existing Wastewater treatment and disposal facilities, the outfall sewer and all other facilities related to treatment and disposal of Wastewater, together with any additions, improvements, enlargements and/or

- modifications thereto and/or replacements thereof, heretofore or hereafter acquired or constructed by York, and that York deems appropriate and necessary to provide treatment and disposal of Wastewater under applicable laws of the Commonwealth;
- UU. “*Wastewater*” includes Sanitary Wastewater and/or Extra Strength Wastes, together with any ground, surface or storm water as may be present;
- VV. “*York*” shall mean the City of York, York County, Pennsylvania, a municipal corporation (a Third Class City) of the Commonwealth or its assigns, designees, successors, vendors, or concession holders;
- WW. “*York Interceptors*” shall mean the Interceptors owned York carrying the Municipality’s and York’s Wastewater flow from the Points of Connection to the Treatment Plant, but excluding any of the Municipality’s Interceptors upstream from their connection with a York Interceptor;
- XX. “*York System*” shall mean the York Wastewater Collection System, the York Interceptors and the Treatment Plant; and
- YY. “*York Wastewater Collection System*” shall mean the Wastewater collection and transportation system facilities, excluding the York Interceptors, presently existing or hereafter to be acquired, constructed, owned and operated by York to provide Wastewater collection and transportation services to certain portions of York and other bulk service customers (but not the Municipality), together with all appurtenant facilities and properties that have been acquired or hereafter shall be acquired in connection therewith and extensions thereof; excluding, however, any facilities included in the definition of “Treatment Plant” and “York Interceptors”.

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## ARTICLE II

### Construction and Operation of the Treatment Plant and other Conditions

Section 2.01. *Construction and Operation of Treatment Plant.* York City Sewer Authority or its successor shall own the Treatment Plant and be the Treatment Plant permittee. York shall operate the Treatment Plant continuously, and shall pay or cause to be paid the O&M Expenses of the Treatment Plant.

Section 2.01(a). *Wastewater Collection System Costs and Operation.* The Municipality shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the Municipality’s Wastewater Collection Systems. Similarly, York shall pay all capital costs and expenses related to the acquisition, construction, operation and maintenance of the York Wastewater Collection System and York Interceptors, except as otherwise provided herein. The Municipality’s Wastewater Collection Systems shall each be designed, constructed, operated and maintained in a manner that will not cause them to be in violation of this Agreement and that will not cause

York to be in violation of any law or regulation of any governmental authority having jurisdiction over the Treatment Plant.

*Section 2.01(b). Operation Requirement.* Each Party shall operate and maintain its respective Wastewater collection system in a good and sound operating condition.

*Section 2.02. Connection of the Municipality's Wastewater Collection Systems and Limitations.* The Municipality shall maintain continuously during the term hereof proper connection of the Municipality's Wastewater Collection Systems to the York Interceptors, at such Points of Connection as described in Exhibit B, attached hereto. Future additional points of connection by the Municipality shall be agreed upon by the Municipality and York, and the terms and conditions applicable to such future connections shall be set forth in a separate written agreement between the Parties, which shall constitute an amendment and supplement to this Agreement.

The Municipality shall deliver to the Point of Connection all Wastewater originating within the service area described in the Act 537 Plan for the Municipality, as applicable and as amended from time to time, as being tributary to the York Interceptors and Treatment Plant and not intended for treatment by on-lot septic systems.

*Section 2.03. Cooperation; Sharing of Information.* The Parties each agree to the extent possible and economically practicable (except as otherwise required under this Agreement), to cooperate and share pertinent information with each other in facilitating the construction, maintenance and/or operation of their Wastewater collection systems, and York will provide the Municipality with any pertinent information regarding Costs, quantities of discharge, capacity or other matters relating to the Treatment Plant reasonably deemed necessary or desirable as determined by the Municipality, provided however, that in the event securing such information involves costs which would not normally be incurred as a cost of owning or operating and maintaining the Treatment Plant, the Municipality shall pay or provide for the payment of such costs. Each Party shall not be financially or otherwise responsible for the Wastewater collection system of the other Party, and the Municipality shall not be financially or otherwise responsible for the Treatment Plant except to the extent of charges required to be paid by the Municipality to York hereunder, and the performance of all terms and conditions of this Agreement. This paragraph shall not limit the obligations of the Parties set forth in the Special Requirements Article of this Agreement (Article IX).

At least forty-five (45) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, York shall submit to Municipality all material and information in its possession necessary for Municipality to submit to City the annual report referenced below. At least thirty (30) calendar days prior to the date York's annual wasteload management report (Chapter 94 Report) is due for submittal to DEP, the



Municipality shall submit to York an annual report providing all material and information required from it by York and DEP to complete its annual wasteload management report.

*Section 2.04. Connected Municipalities Meeting.* It is agreed that the Connected Municipalities Meeting currently utilized by the Municipality, the Connected Municipalities, and York shall continue on a quarterly basis as set forth herein. The Connected Municipalities Meeting shall continue in its current form and pursuant to its current procedures, but at any time may establish its own procedures. The Connected Municipalities Meeting is intended to provide an opportunity for periodic discussion, review, and recommendations of all matters relating to this Agreement and the provision of Wastewater treatment services. Upon reasonable notice, the Municipality, any Connected Municipality, or York may call a Connected Municipality Meeting. The Connected Municipalities Meeting shall continue for the Term of Agreement set forth herein, including any extensions or renewals thereof.

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### ARTICLE III

#### Bulk Service Customer; Term of Agreement

*Section 3.01. Municipality Constitutes a Bulk Service Customer of York.* York agrees to operate and maintain in good working order and in compliance with all applicable laws, regulations and permits continuously during the term hereof the York Interceptors and the Treatment Plant, and any enlargements, additions, improvements and modifications thereto as determined solely by York, and to provide the Municipality, as a bulk service customer, Wastewater treatment, transportation, and disposal services in the Treatment Plant throughout the term hereof, as provided for herein.

*Section 3.02. Term of Agreement.* Subject to the covenants and conditions set forth herein, the term of this Agreement shall be thirty (30) years unless earlier terminated by mutual written consent of all the Parties hereto. This Agreement shall automatically renew on a year-to-year basis upon the expiration of the initial thirty (30) year term. This Agreement may be reviewed every five (5) years by the Parties, which shall report to their respective governing bodies on the sufficiency of this Agreement or any recommendations for amendments and modifications hereof.

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### ARTICLE IV

#### Allocation of Capacity in the Treatment Plant; Measurement of Flow; Capital Contribution; Updating of Treatment Plant; Additions to Treatment Plant Required by York and Calculation of Debt Service

Section 4.01. Acceptance of Flows from the Municipality. During the term hereof, the Municipality shall have the contractual right to discharge Wastewater into the York Interceptors subject to the following limitations:

Average Daily Flow (ADF):	3,363,000 Gallons/Day as a monthly average
Peak Daily Flow (PDF):	13,452,000 Gallons/Day
Peaking Factor	4.0 PDF/ADF

The Municipality covenants and agrees that it will not discharge Wastewater into the York Interceptors in a manner that constitutes an Allocated Capacity Default, as set forth herein, except as may be allowed by York hereunder.

Section 4.02. Measurement of Flow. The quantity of Wastewater discharged by the Municipality shall be determined by meter readings of the Wastewater flow meters or Wastewater flow measuring devices at the Point of Connection. The quantity of Wastewater discharged by York shall be determined by the flow measured by the Treatment Plant headworks meter, minus the quantity of Wastewater discharged by the Municipality and the Connected Municipalities.

Section 4.02(a). Flow Meters. York shall provide and install a Wastewater flow metering station at the Municipality's Point of Connection and the Treatment Plant headworks that will achieve the maximum practicable accuracy. Costs associated with the provision and installation of the Wastewater flow metering and sampling stations shall constitute O&M Expenses. The metering station shall be equipped with a flow reading system that will collect and transmit meter readings for download and a display that will allow the rate and total to be read in standard engineering units.

Section 4.02(b). Maintenance of the Flow Meter. York shall maintain the above referenced flow meter to accurately monitor flow conveyed across municipal boundaries. The flow meter shall be capable of recording flow measurements in one-minute intervals and averaging flows over the hour and day. The meter shall record and totalize all data. The record shall include at least flows at hourly and daily intervals. York shall maintain the flow meter in good working order. The flow meter shall be inspected, tested, and certified for accuracy at reasonable intervals, but no less than ninety (90) days. Calibration certification shall be done by a reputable company normally engaged in the business of meter calibration. York shall forward such inspection results, testing results, and certificates of calibration to the Municipality upon request.

In the event of a defective or inoperative flow meter, York shall have the right to take such steps as are required to repair or replace the flow meter, and the costs associated with any such maintenance, repair or replacement work shall constitute O&M expenses if costs are incurred.

Section 4.02(c). Monitoring Flow Meters. York shall have access at any and all times to the flow meters. The flow meters shall be monitored by York, which shall be

responsible for collection of data therefrom. In addition, the Municipality shall have a right of access to such records.

Section 4.02(d). Unmetered Flows. Any point of connection of the Municipality to the York System that reaches 70,000 GPD shall require the installation of a flow meter by York within nine (9) months of reaching 70,000 GPD at a mutually agreed upon location.

Section 4.02(e). Missing Flow Data. In the event reliable flow data is unavailable, due to malfunction in a flow meter, or in the recording device for said meter, York shall estimate flows for any such period as the flows for the same period in the preceding year or for the period immediately preceding the malfunction depending on which of these periods had a rainfall amount closest to that of the period of malfunction. York may use other pertinent data, such as water consumption data, in developing an estimate for the missing data. In the event of any dispute between the Parties concerning the reasonableness or accuracy of estimated flows, the dispute shall be resolved pursuant to Section 10.02.

The quantity of Wastewater discharged by the Municipality into the Treatment Plant shall be the sum of the flow measured at the applicable meters or devices at the Point of Connection for the Municipality as set forth on Exhibit B plus any unmetered or estimated flow (which may be amended from time to time as any additional connection points are permitted by York). The flow attributable to the Municipality shall be reduced by the metered flow plus any unmetered or estimated flow from any York customer providing flow into the Municipality's line prior to the Municipality's connection point with the York System.

It is understood that technology changes may permit metering changes that are more accurate. York reserves the exclusive right to determine metering changes and shall share information on any metering changes with the Municipality as it may request.

Section 4.03. Exclusive Service Provider for Designated Areas. The Municipality covenants and agrees that York, during the term hereof, shall be the sole and exclusive agency providing Wastewater transportation, treatment and disposal services for the portion of the Municipality and properties located in the drainage area contemplated to be served by the York System and Treatment Plant (which drainage area is shown on Exhibit C attached hereto), pursuant the terms and conditions herein. Further, the Municipality covenants and agrees not to construct or operate, or permit the construction or operation of, any sewage transportation or treatment facilities in competition with York.

The provisions of this Section 4.03, however, shall not prejudice the Municipality with respect to its rights to use the existing sewage treatment facilities not owned by York that are presently utilized by the Municipality; nor shall such covenants of exclusivity and non-competition be construed now, or during the term hereof, to the prejudice of the Municipality should any governmental agency of the Commonwealth or United States, specifically including DEP and the EPA, order the construction of a treatment facility or re-routing of flows to another

facility, a change in treatment flows or require the sharing of new treatment facilities with a municipality.

*Section 4.04. Expansions or Upgrades of Treatment Plant.* The Municipality shall be required to contribute to and share in the Costs of any other capital expansions or upgrades, improvements, modifications, extraordinary repairs or replacements not considered an O&M Expense, and other projects deemed by York to be of a capital nature and undertaken by York with respect to the Treatment Plant (“Capital Costs”). Any capital expansion, upgrade, improvement, modification, extraordinary repair or replacement in excess of Three Million (\$3,000,000) Dollars shall be approved by a majority of all Connected Municipalities unless such upgrade, improvement, modification, extraordinary repair or replacement has been ordered to be constructed by a governmental agency of the Commonwealth or United States, specifically including DEP and the EPA. York shall not separate any contracts or projects to intentionally avoid the Three Million (\$3,000,000) Dollar limitation provided herein. If York should undertake such an upgrade or modification of the Treatment Plant, which undertaking results in Costs, Costs of Acquisition or Costs of Construction to be incurred by York, then the Municipality shall pay a pro rata share of such Costs in the same proportion as its respective Allocated Capacity as costs are incurred by York for such upgrading or improvements. The Municipality shall have the right to inspect the record of all purchases and expenses involved in the construction. York shall provide to Municipality on an annual basis a five (5) year projection of expected capital improvements.

*Section 4.05. Calculation of Debt Service Charge (Contingent upon Issuance of Bonds for the Municipality).* For prior or subsequent Bonds issued to finance Capital Costs at the request of or for the benefit of the Connected Municipalities or, if applicable, other parties using the Treatment Plant, pursuant to Section 4.04, the payment of the Debt Service Charge shall commence upon issuance of the Bonds, or at such other time as may be required to assure the timely payment of debt service due on the Bonds. Such debt service charge shall be calculated in a manner consistent with the coverage and other covenants with respect to the Bonds and the calculation of the Capital Contribution hereunder, *i.e.*, the principal and interest attributable to the Capital Costs, together with financing costs, multiplied by a factor equal to the percentage that the Municipality’s capacity increase in the Treatment Plant bears to the total increased capacity of the Treatment Plant (for example if the Municipality has additional capacity of 10% of the total increased capacity and is thus responsible for paying 10% of the capital cost of the project, the Municipality shall pay 10% of any debt service charge if it elects to use Bonds to pay for its share of the capital costs). Accelerated payments made by or on behalf of York on any Bonds shall not release the Municipality of its obligation to pay the debt service charge for any Capital Costs and any Capital Contribution funded pursuant to this section during the period such Bonds would have been outstanding but for accelerated payment. An amortization schedule of all outstanding Bonds as of the date of this Agreement is attached hereto as Exhibit D, and the Parties agree that such schedule shall be updated from time to time upon the issuance of additional Bonds.

*Section 4.06. Hydraulic Overload.* In the event of Hydraulic Overload the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.07. Organic Overload. In the event of Organic Overload, the Parties shall fully comply with any corrective action issued by DEP or EPA to York. York shall promptly provide notice to the Connected Municipalities when any corrective action issued by DEP or EPA is lifted.

Section 4.08. Allocated Capacity Planning. If at any time York or the Municipality's Monthly Average Flow exceeds 90% of York or the Municipality's Allocated Capacity, York or the Municipality shall, in addition to any action required as a result of any default, begin planning for the acquisition of additional capacity either by purchasing available capacity or by notifying the other of its need for additional capacity. York or the Municipality may, as an alternative to the purchase of additional capacity, submit a plan to reduce its Monthly Average Flow to comply with this Agreement. If a Party notifies the other of its need for additional capacity, the Party shall submit its plan for the acquisition of additional capacity or its plan to reduce its Monthly Average Flow to York for review and comment within 90 days of the discharge that triggered the planning. If the Municipality and York cannot agree on the plan for purchasing additional capacity or to reduce Monthly Average Flow, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereunder.

Section 4.08(a). Redistribution of Allocated Capacity.

(1) In the event any Connected Municipality or York requires additional Allocated Capacity, it shall have the option, in accordance with the following terms and procedures, to reserve additional Allocated Capacity in the Treatment Plant. In order to obtain additional Allocated Capacity, there must be in existence at the time unused treatment capacity that has been allocated to another Connected Municipality or York but which such other Connected Municipality or York is not in need of at the time and is willing to surrender.

(2) York agrees that in the event any Connected Municipality consents to a reduction of Allocated Capacity, the Allocated Capacity surrendered shall be offered to any of the Connected Municipalities and York in the discretion of the selling Connected Municipality, at the price agreed to by the selling Connected Municipality. The selling Connected Municipality must give notice, only to the other Connected Municipalities and York, of intent to sell part of its Allocated Capacity to another Connected Municipality even though it need not be offered to all other Connected Municipalities. If the Connected Municipality to whom such Allocated Capacity is offered does not wish to accept such additional Allocated Capacity, the Allocated Capacity so offered may be made available to the remaining Connected Municipalities on a pro-rata basis.

(3) Any Connected Municipality or York surrendering all or any portion of its Allocated Capacity shall be reimbursed in accordance with a mutual agreement reached with the Party purchasing such Allocated Capacity. If no Connected Municipality or York desires to purchase Allocated Capacity, then the Connected Municipality offering to sell its Allocated Capacity shall continue to be liable for all payments with respect to such reserved capacity.

(4) Where any Connected Municipality or Party acquires an interest in Allocated Capacity in the Treatment Plant, such Connected Municipality or Party must thereafter pay to York the acquiring Party's proportional share of all Costs, Capital Contributions, O&M Charges, and all other liabilities contained in this Agreement. Such acquiring Party shall be bound by the terms of this Agreement, as it may from time to time be amended.

Section 4.08(b). Defaults. Allocated Capacity Defaults shall not be permitted; however, if such a Default occurs it shall be addressed as provided for herein.

Section 4.08(c). Municipality Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by the Municipality, York shall notify the Municipality of said Default in writing, including data, if available. The Municipality shall, within sixty (60) days of said notice, acknowledge said notice and advise York of any discrepancies with such notice of default and the corrective action to be taken in the form of a remedial action plan. York shall review any discrepancies and within thirty (30) days provide a response. If the Municipality and York cannot agree on whether an Allocated Capacity Default has occurred, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In the event the Municipality submits to York a remedial action plan, York shall review the proposed remedial action plan and provide comments on the proposed remedial action within thirty (30) days of the plan being submitted. Upon approval of the proposed remedial action plan by York, the Municipality shall implement the approved corrective action within ninety (90) days of receipt of approval from York, or such longer period that may be reasonably granted by York for design, approval, construction and implementation of such corrective actions. If the Municipality and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, York may limit new connections until the conditions that cause the Municipality to be in Allocated Capacity Default or Allocated Nutrient Capacity Default are abated. If DEP or EPA requires connections to be limited then the Municipality agrees not to approve new sewer modules and/or forward such modules to York until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan, remedial action plan, or limit of connections will be fully complied with by the Municipality, and York shall be entitled to injunctive relief without the requirement of a bond and the Municipality will reimburse York's reasonable attorney fees and costs in the event of such enforcement action.

Section 4.08(d). York Allocated Capacity Default and Organic Capacity Default Notification and Remediation Procedure. In the event of an Allocated Capacity Default by York, York shall notify the Connected Municipalities of said Default in writing. York shall, within sixty (60) days of said notice, advise the Connected Municipalities of the corrective action to be taken. The Connected Municipalities shall review the proposed remedial action plan and provide comments on the proposed remedial action, or their approval of the the same, within thirty (30)

days of the plan being submitted. Upon approval of the proposed remedial action plan by the Connected Municipalities, York shall implement the approved corrective action within ninety (90) days of receipt of approval from the Connected Municipalities, or such longer period that may be reasonably required for design, approval, construction and implementation of such corrective actions. If the Connected Municipalities and York cannot agree on the necessary corrective action plan or deadline for implementation, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. In addition, if ordered by DEP or EPA, York shall limit connections so as to limit or eliminate discharges which cause York to be in Allocated Capacity Default. If DEP or EPA requires connections to be limited then York agrees not to approve new sewer modules until such time as the circumstances leading to the Default have been resolved, as determined by DEP or EPA. Any approved corrective action plan or limit of connections will be fully complied with by York, and Connected Municipalities shall be entitled to injunctive relief without the requirement of a bond and York will reimburse the Municipality's reasonable attorney fees and costs in the event of such enforcement action.

*Section 4.08(e). Default Surcharges.* Notwithstanding any contrary provisions contained herein and in addition to all other remedies provided for herein, where the Municipality exceeds its Peak Daily Flow for more than two (2) consecutive days or more in any thirty (30) day period, it shall pay York a \$1,000.00 per day surcharge.

Additionally, where the Municipality exceeds its annual Allocated Capacity in any fiscal year, it shall pay York a surcharge based on the amount of the increased cost of treatment specifically allocated and attributable to the Municipality's Allocated Capacity Default, plus a fifteen (15%) percent penalty on the value thereof.

Any surcharge penalties received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Capacity.

*Section 4.08(f). Allocated Capacity Defaults Triggering Rental Requirement.* In the event that the Municipality or York discharges Wastewater that results in an Allocated Capacity Default due to the Peak Daily Flow, established in accordance with Section 4.01 hereof, for three days or more in any one calendar week (Monday through Sunday) or three consecutive days, then the Municipality shall rent capacity from York for a one month period (the "Rental Period"), beginning on the day in which the Default was triggered.

In the event that the Municipality discharges Wastewater that results in an Allocated Capacity Default due to Average Daily Flow Allocated Capacity based upon the Municipality's total flow for a three consecutive month period, divided by the number of days in that three month period, at any time, then the Municipality shall rent capacity from York for a three month period (also the "Rental Period"), beginning on the day in which the Default was triggered.

If the Municipality is renting capacity in accordance with this section and has no additional Allocated Capacity Defaults (Default of solely the Allocated Capacity and not including the rental capacity) during the Rental Period, the Municipality is not required to continue to rent capacity after the expiration of the Rental Period. If the Municipality renting capacity does have an additional Allocated Capacity Default during the Rental Period, then York shall determine whether the Municipality must continue to rent capacity, purchase additional capacity (if available) or to take other corrective action. If the Parties cannot agree on whether to require a party to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof.

The amount of capacity rented shall be the amount of GPD that placed the Municipality in Default. The charge for such rental shall be the rate which York would charge its residential retail customers for the amount of capacity being rented, less the O&M charges allocated to such residential rate. This rental charge shall be in addition to the O&M charge that the Municipality must pay for the capacity that is being rented.

*Section 4.08(g). Special Charge.* If the Municipality discharges Wastewater at a flow rate that results in an Allocated Capacity Default and fails to, within ninety (90) days of the Default, make the necessary arrangement to eliminate or rent or purchase sufficient capacity to eliminate the Default, then the defaulting Municipality shall pay York for the amount of the excess usage an amount equal to double what the quarterly charge otherwise would have been on such excess usage for the calendar quarter in which the Default occurred.

Any Special Charge received by York shall offset O&M Charges of the non-defaulting Connected Municipalities and York based upon their respective Pro Rata Share of Attributed Flow or Nutrients.

*Section 4.08(h). Other Actions of York.* If the Municipality is in Allocated Capacity Default and the Parties cannot agree on whether to require the defaulting Municipality to rent capacity, purchase additional capacity, or take other corrective action, then York and the Municipality agree to submit to non-binding mediation in accordance with Section 10.02 hereof. Furthermore, if the United States, the Commonwealth, or any agency thereof promulgates a new statute, law, or regulation imposing more restrictive monitoring, discharge, or treatment requirements, York reserves the right to impose more restrictive requirements upon the Municipality to ensure compliance with the statute, law, or regulation.

*Section 4.08(i). State of Emergency.* If a state of emergency is declared by authorities of the Commonwealth of Pennsylvania or the United States of America for an area including York and/or the Municipality, York and the Municipality shall not be subject to the Default provisions of this Section during the time in which the emergency is in effect.



Section 4.08(j). Hydraulic Overload Planning. If at any time the total Average Daily Flow for the Treatment Plant exceeds 90% of such Capacity, the Parties shall meet and discuss planning to avoid any hydraulic overload or default within the York Interceptors and Treatment Plant.

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## ARTICLE V

### O&M Charges and Expenses

Section 5.01. O&M Charge. The Municipality shall pay to York an O&M Charge equivalent to the total O&M Expenses of the Treatment Plant multiplied by the Municipality's Pro Rata Share of Attributed Flow in the Treatment Plant. The O&M Expenses are those costs associated with operating and maintaining the Treatment Plant, and providing the Municipality and York's third party customers with Wastewater treatment and disposal services hereunder, and are set forth in greater detail in Section 5.02 hereof. The O&M Charge shall be payable to York or its designee quarterly in arrears. The method of charging for O&M Expenses as set forth in Article V shall begin upon the Effective Date of this Agreement. For example, if the Municipality's Pro Rata Share of Attributed Flow to the Treatment Plant is fifteen (15%) percent of the total, then the Municipality shall pay fifteen (15%) percent of the Total O&M Expenses.

Section 5.02. O&M Expenses. O&M Expenses shall include the total of all of the following items, each such item being determined for the Fiscal Year or portion thereof under consideration, of all the expenses and costs directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors.

O&M Expenses include:

- (a) power, chemicals, fuel, materials, and supplies;
- (b) costs of storing, hauling, dumping and disposal of residue or sludge from the Treatment Plant, including composting; and other costs determined by York to be costs;
- (c) actual salaries and wages of administrative, operation or maintenance personnel of York directly engaged in operating and maintaining the Treatment Plant, together with the social security and unemployment taxes, workmen's compensation, insurance premiums, health and accident insurance premiums and pension benefits (but not payments related to any unfunded pension liability), vocational training or any other benefits or costs applicable to the personnel, prorating such items in accordance with such employee's time actually spent on matters pertaining to the treatment or disposal of Wastewater compared to work spent on other matters;

(d) equipment and tools used or employed for the operation and maintenance of the Treatment Plant;

(e) costs of routine maintenance and repairs (including replacements), and costs of any work done under any contract with respect to the Treatment Plant (excluding capital upgrades or expansions);

(f) fees and expenses of the Consulting Engineers;

(g) premiums for property, boiler and machinery and comprehensive crime insurance and vehicle insurance;

(h) legal expenses;

(i) all expenses involved in purchasing nutrient or other credits, if any, required to meet NPDES permit requirement or other DEP requirements related to the Treatment Plant; and

(j) all other costs and expenses not of a capital nature, determined by York to be O&M Expenses and reasonably incurred and properly attributable, to the operation, maintenance and/or repair of the Treatment Plant, from time to time.

Such amount shall be reduced by any Federal or Commonwealth grants, reimbursements, subsidies or other payments to York designated by law or regulation for such purposes (excluding grants for capital upgrades or expansions), revenues received by York from the treatment of septage, sludge and leachate or similar substances, and the sale of nutrient or other credits.

O&M Expenses shall not include a general allocation of costs, expenses, overhead and other expense items of York or its assignees, designees, successors, vendors or concession holders but shall be limited to those expenses and costs that are directly incurred by York for the administration, operation, maintenance and repair of the Treatment Plant and necessary for rendering Wastewater treatment and disposal services to the Municipality and other contributors, but may include reasonable and supportable overhead expenses incurred by York.

Written records and accounts of all such costs and expenses shall be prepared and maintained by York and shall be available to each Party upon request. York shall maintain an accurate system of accounts and records with respect to all such O&M Expenses which shall be audited annually by a Certified Public Accountant. A copy of the audit shall be provided to the Municipality within thirty (30) days of its completion. Such accounts and records may be inspected and copied at reasonable times by the Municipality and its agents and representatives. Subsidies received by York attributable to the operation of the Treatment Plant shall be reimbursed to the Municipality proportionate to its respective Pro Rata Share of Actual Flow to the Treatment Plant.

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## ARTICLE VI

### Wastewater Quality and Pretreatment Restrictions

*Section 6.01. Uniform Standards.* York has adopted and may amend from time to time uniform Wastewater quality standards applicable to the York Wastewater Collection System, which are intended to comply with the requirements of EPA, DEP, and all other regulatory authorities.

*Section 6.02. Compelling Compliance with Standards.* The Municipality shall enact or cause to be enacted an ordinance or ordinances or adopt a resolution or resolutions, as applicable, and the Municipality will cause such ordinance or ordinances or resolution or resolutions, as applicable, to remain in full force and effect at all times, prohibiting and providing adequate penalties for the discharge into the Municipality's Wastewater Collection Systems of anything violating the above-mentioned Wastewater quality standards of York, and shall enforce the provisions thereof. Such ordinance or ordinances shall also prohibit and/or regulate, as applicable, the discharge into the Municipality's Wastewater Collection Systems by industries of prohibited Extra Strength Wastes, as prescribed in the applicable industrial pretreatment regulations adopted and amended by York from time to time. The Municipality shall not permit any discharge into the Municipality's Wastewater Collection Systems except in the manner and in accordance with the provisions of said ordinance or ordinances. After adoption or amendment of an ordinance, resolution or regulation pertaining to Wastewater, the Party adopting or amending the same shall provide a copy to the other Party to this Agreement.

The Parties shall not discharge any Extra Strength Wastes to the Treatment Plant.

*Section 6.03. Reimbursement for Damages from Improper Discharge.* The Parties shall pay the Costs of any damage to the Treatment Plant and fines or penalties resulting from discharge of improper Wastewater from the Municipality's Wastewater Collection System in violation of quality standards and restrictions, and shall indemnify and hold harmless the other with respect thereto. York shall pay or cause to be paid the Costs of any damage to the Treatment Plant resulting from discharge of improper Wastewater from the York Wastewater Collection System or from any customer (including other bulk users) of York (except the Municipality or other Connected Municipalities) in violation of the above-mentioned quality standards and restrictions, and shall indemnify and hold harmless the Municipality with respect thereto.

*Section 6.04. Sampling Manholes.* Promptly upon request by York, the Municipality, as applicable, shall require the installation of a manhole at the point of discharge from the property of any user who has the potential to discharge into the Municipality's Wastewater Collection Systems any wastes other than Domestic Wastes. Said manhole shall meet York's requirements with

respect to type, size, location and construction, so that sampling and/or metering will be facilitated. York may at any time sample the Wastewater in such manholes.

Section 6.05. Disconnection of Property. The Parties shall prohibit and prevent any Person from discharging Wastewater whose quantity or quality may have a deleterious effect on the Treatment Plant or receiving stream. When requested by York, the Municipality shall prohibit such unlawful discharge from the property to the extent permitted by law..

Section 6.06. Pipe Connection Required. The Parties each shall, to the extent possible, prohibit and prevent by ordinance the discharge of any substance into its respective Wastewater collection system, other than by and through a permanent direct pipe connection. The ordinance shall provide for fines in the maximum amount permitted by law. Accordingly, unauthorized discharges from tank trucks or similar sources into the Municipality's Wastewater Collection Systems, York Interceptors or the York Wastewater Collection System shall be prohibited.

Section 6.07. Prohibition of Septage Discharge. The Parties each shall prohibit and prevent by ordinance the discharge of septic tank or grease trap wastes into its respective Wastewater collection system including the contents of septic tanks of existing establishments when they first connect to its respective Wastewater collection system.

Section 6.08. Implementation of Industrial Pretreatment Program. If York is required by DEP or EPA to implement an Industrial Pretreatment Program (the "IPP"), York may accept primary responsibility from time to time to implement, administer and enforce the IPP, including (but not limited to) conducting and updating Industrial User surveys, and performing inspections and sampling. The Municipality agrees to empower York to act as its agent with respect to the IPP. The Municipality shall reasonably cooperate with any enforcement action taken by York against the Municipality's Industrial Users, and shall take such action in the exercise of its own rights and police powers as may be reasonably requested by York to ensure compliance with York's IPP. The administrative costs of the Pretreatment Program will be paid by York (which costs are passed on to pre-treatment customers) and shall not be part of the O&M charges to the Municipality.

Section 6.09. Surcharge to Industrial Users. York may charge Industrial Users (which also includes landfills) an extra monthly strength surcharge (to be used to reduce O&M Expense) based on deviations over and above the strength considered normal for domestic Wastewater. To the extent reasonably possible, the Municipality agrees to assist in the collection of any surcharge due from an Industrial User in the Municipality's service area not paid within 90 days. Such surcharges shall be imposed and calculated in accordance with York's ordinances and regulations requiring the surcharges.

Section 6.10. Municipal Maintenance Waste Acceptance. York at its Treatment Plant shall accept wastes collected by the Connected Municipality as part of its routine O&M program to

maintain its collection system and facilities. Such wastes may include, but not be limited to, wastes collected during line flushing and wet well cleaning activities. No additional costs shall be charge to the Connected Municipality for acceptance of these wastes by York. The connected municipality shall be responsible for transportation of the wastes to the treatment plant.

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## ARTICLE VII

### Governmental Grants and Subsidies

*Section 7.01. Applications.* York may, at its sole discretion, make applications to the Commonwealth and to the United States, and their appropriate agencies, for any available grants, subsidies or other payments and for all permits and approvals in respect of the construction, operation and/or maintenance of the Treatment Plant, which amounts shall be applied in accordance with the terms and conditions of such grants or, if no allocation is mandated, to reduce the amounts payable by York and the Municipality on a proportional basis or as otherwise agreed, in accordance with the terms hereof. York shall be under no obligation to seek or provide funding for acquisition or construction of the Municipality's Wastewater Collection Systems, unless agreed to by York in writing.

*Section 7.02. Compliance with Law and Conditions for Grants.* The Parties hereto will take all such actions, within their legal powers, as may be required to comply with all applicable laws, regulations and permits applicable to their respective Wastewater collection systems and with agreements relating to applicable United States and Commonwealth grants and subsidies.

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## ARTICLE VIII

### Connections to Wastewater Collections Systems; Sewer Rentals and Charges

*Section 8.01. Imposition of Sewer Rates.* The Parties covenant that they will impose sewer rates or charges upon owners of improved property that shall be connected to the Municipality's Wastewater Collection System and York Wastewater Collection System for use thereof. The Parties also covenant to thereafter maintain such ordinances or resolutions or subsequent ordinances or resolutions, as applicable, imposing such sewer rates or charges in full force and effect continuously during the term hereof.

*Section 8.02. Enforcement of Sewer Rates.* The Municipality covenants to continue to enforce or to cause to be enforced sewer rates or charges in effect at any particular time and to collect or cause to be collected all amounts becoming due. If any amounts becoming due thereunder shall not be paid, in accordance with provisions thereof at the time in effect, the Municipality covenants to take or cause to be taken all reasonable steps to collect the rates.

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## ARTICLE IX

### Special Requirements

*Section 9.01. Module Approval.* Module approval shall not grant any right to make any connection to the Municipality's Wastewater Collection Systems or York's Wastewater Collection System if the new connection would cause York or the Municipality to be in Allocated Capacity Default or if York or the Municipality, at the time of the module application, is in Allocated Capacity Default. York reserves the right to review and approve module applications in accordance with its obligations under the Sewage Facilities Act (Act 537). Furthermore, if DEP requires connections to be limited then, to the extent required by DEP, York and the Municipality agree not to approve new sewer modules and/or forward such modules to York until the limit on connections is no longer in place or within the guidelines of the regulations.

*Section 9.02. Building Permits.* York and the Municipality will not issue any building permits that include connections, or permit any connections for development which do not have a previously approved sewer module or adequate hydraulic capacity, during any limit of connections imposed by DEP, except as permitted by DEP.

*Section 9.03. Connection Accounting.* As part of the annual wasteload management report (Chapter 94 Report) process, the Municipality shall provide an accounting to York, in form and content as required by York, as to existing and planned sewer connections, so as to assist York in complying with DEP's requirements.

*Section 9.04. Payment Default.* All payments required under this Agreement shall be due thirty (30) days after the date of the invoice or written demand, except for the capital contribution discussed in Section 4.04 which is due in thirty (30) days from the date of written demand, and if not paid within such period then a late charge of one (1%) percent shall be due together with, at the rate of three (3%) percent per annum, simple interest, until the amount due, including interest and penalty, is paid.

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## ARTICLE X

### Miscellaneous

*Section 10.01. Insurance; Repairs and Construction.* York will insure, or cause to be insured the Treatment Plant. Insurance, other than self-insurance, shall be with a responsible company or companies authorized and qualified to do business under laws of the Commonwealth, against loss or damage by fire and such other risks (including public liability) and casualties and in such amounts as are usually carried on like properties in the Commonwealth

and as shall be reviewed and approved, at least annually, by the Consulting Engineers or other insurance advisor. Such insurance policies shall be non assessable. Immediately upon the occurrence of any loss or damage to any part of the Treatment Plant which is covered by insurance, York will commence and promptly complete, or cause to be so commenced and promptly completed, the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by the Consulting Engineers and shall collect and apply, or cause to be applied, the proceeds of such insurance to the costs of such repair, replacement or reconstruction unless York determines that it is unwise to make such repair, replacement or reconstruction and shall agree upon other disposition of said insurance proceeds. In the event it becomes necessary to make any extraordinary repairs or replacements at the Treatment Plant because of damage or destruction and there are insufficient funds available from the insurance proceeds to pay the costs thereof, the Parties agree to pay their pro rata share of the additional costs in the same proportion as their Pro Rata Share of Allocated Capacity to the Treatment Plant. The Municipality agrees to share the cost of public liability insurance based upon the lowest bona-fide quote provided that the proportionate share of such cost being shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.01 hereof. The cost of the public liability insurance shall be shared in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof. In the event there is a judgment against York related to the Treatment Plant, which judgment is greater than the policy limits of the quoted policy, and if York has purchased a public liability policy and the judgment is greater than the policy limits, then York, the Municipality and the Connected Municipalities shall share the cost of the judgment in excess of the policy limits in the same manner as O&M Expenses, which are calculated in accordance with Section 5.02 hereof.

*Section 10.02. Mediation.* Upon the written request of a Party, any dispute or claim in law or equity arising out of this Agreement shall be submitted to neutral, non-binding mediation prior to the commencement of arbitration, litigation, or any other proceeding before a trier of fact. The Parties agree to act in good faith to participate in mediation and to identify a mutually acceptable mediator. If they are unable to agree upon a mediator, the Parties may, after twenty (20) days have elapsed from the date of the written request for mediation, petition the Court of Common Pleas of York County to appoint a mediator. The Parties shall share equally in the costs for mediation services. If the dispute or claim is resolved through mediation, the resolution will be documented by a written agreement executed by the Parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the Parties reflecting the same, and the Parties may then proceed to seek an alternative form of resolution to the dispute or claim in accordance with the remaining terms of this Agreement and other rights and remedies afforded by law.

Upon a Party's request for mediation, the Parties to the dispute shall have twenty (20) days to select a mediator. If the Parties cannot agree on a mediator within twenty (20) days and the mediator must be selected as set forth above, the Parties in dispute shall petition the Court of

Common Pleas of York County for the appointment of a mediator within ten (10) days of the expiration of initial twenty (20) day time period. After the selection of the mediator, the Parties shall submit to mediation for a period up to forty-five (45) days. If the dispute or claim is not resolved by the forty-fifth (45<sup>th</sup>) day after the selection of the mediator then the mediator shall provide written notice to the Parties reflecting the same and the Parties may seek alternative forms of resolution as stated above.

Section 10.03. Inspection. The Parties, as applicable, shall provide each other, from time to time, all information relevant to the proper administration of their responsibilities under this Agreement, or in respect to the interpretation hereof, as and in such form and detail as may be reasonably requested and each shall, at all reasonable times and from time to time, permit the examination and inspection of their respective records and physical facilities relevant to the subject matter of this Agreement.

Section 10.04. Force Majeure. Notwithstanding any other provision of this Agreement, no Party shall be responsible in damages to the other for any failure to comply with this Agreement resulting from an act of God or riot, sabotage, public calamity, flood, strike, unforeseeable breakdown of the Treatment Plant and/or their respective Wastewater collection systems, or other event beyond its reasonable control. The Party having the responsibility for the facilities so affected, however, shall proceed promptly to remedy the consequences of such event, with Costs to be shared, if applicable, to the extent provided elsewhere herein.

Section 10.05. Indemnity. Each Party agrees to indemnify, defend and save harmless the other Party against all costs, losses or damage, including payment of reasonable attorneys fees, on account of any injury to persons or property occurring in the performance of this Agreement due to its negligence or the negligence of its agents or employees; provided, however, that no Party waives any rights or immunities arising out of any applicable governmental immunity laws and statutes.

Notwithstanding the foregoing and to the extent such liability is not caused by the intentional or wilfull conduct of York, in the event of a general breakdown of the jointly used York Interceptors or the Treatment Plant so as to force the temporary cessation of sewer service contemplated hereunder, York shall not be liable to the Municipality or their sewer service customers for any damage sustained while such facilitates are out of service, and the Municipality shall indemnify and hold harmless York from any claims of its users in such event.

Section 10.07. Severability. Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 10.08. Headings. The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.



Section 10.09. Waiver. The failure of a Party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

Section 10.10. Assignment. This Agreement (including, without limitation, any rights under or interest in this agreement) may be assigned in whole or in part by York without the consent of the Municipality. The provisions of this Section shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the Parties. The Parties also agree that York may enter into concession, lease or other similar agreement or arrangement without the consent of the Municipality and that any obligations of the Municipality under this Agreement shall continue under such concession, lease, or other agreement. York shall provide notice concerning the identity and qualifications of potential assignees in advance of any assignment, unless otherwise prohibited by law or contractual obligation of confidentiality.

Section 10.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.12. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

Section 10.13. Supersedes Prior Agreements. This Agreement supersedes and repeals any prior agreements, contracts, and understandings, written or oral, by or between the Parties hereto with respect to the subject matter contained herein.

Section 10.14. Modification. This Agreement may be modified or amended in a writing signed by all the Parties hereto. Material pricing terms should not be modified unless 2/3 of the Connected Municipalities agree, it being the intention of the parties that the material pricing terms of this Agreement are to be uniform across the wholesale customers.

Section 10.15. Pennsylvania Law. This Agreement shall be construed according to, be subject to and be governed by the laws of the Commonwealth.

Section 10.16. Recording. This Agreement may be recorded by either Party hereto.

Section 10.17. Interpretation. The Parties agree this Agreement is the result of negotiation by the Parties, each of whom was represented by counsel, and thus, this Agreement shall not be construed against York.

Section 10.18. No Unintended Third-Party Beneficiaries. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns, and is made solely and specifically for their benefit. No other person shall

have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 10.19. Breach. In the event of a breach of this Agreement by either Party, the non-breaching Party reserves/retains all of its rights in law and in equity (including, but not limited to, damages, injunctive relief and specific performance) to remedy such breach. Specifically, if the Municipality disconnects the Municipality's Wastewater Collection Systems such that it no longer utilizes the York System's wastewater treatment capacity during the initial term set forth in Section 3.02 or any subsequent renewal period, the Municipality shall remain liable under this Agreement for a lump sum payment to York in an amount equal to its pro-rata share of any outstanding capital expenses or Debt Service Charges as calculated pursuant to Sections 4.04 and 4.05 of this Agreement at the time of disconnection from the York System.

Section 10.20. Transportation Fund. Upon execution of this Agreement, all such Municipality funds held by York in the Transportation Fund or any other similar fund created under Prior Agreements shall be immediately returned to the Municipality. The Municipality shall share in the costs of all repairs or capital improvements to York Interceptors on the basis of each Party's Pro Rata Share of Attributed Flow through the facility to be repaired or replaced.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers and their respective seals to be hereunto affixed.

ATTEST:

TOWNSHIP OF YORK,  
York County, Pennsylvania

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
President, Board of Commissioners

ATTEST:

CITY OF YORK

\_\_\_\_\_  
Secretary  
(SEAL)

By: \_\_\_\_\_  
Chairman, Board of Supervisors