

**BOROUGH OF STEELTON
STEELTON, PENNSYLVANIA**

REQUEST FOR PROPOSALS

**Purchase of
Sewer System Assets**

**Proposal Due Date - on or before 1:00 p.m. Eastern Daylight Savings Time
June 4, 2018**

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I. GENERAL INFORMATION FOR THE PROPOSER

A. Executive Overview

The Borough of Steelton ("Borough" or "Seller") owns and operates a sewer collection and conveyance system ("Sewer System") in and around Steelton, Pennsylvania. The Steelton Borough Authority ("Authority") also owns and operates a water distribution and treatment system ("Water System") in Steelton, Pennsylvania.

Simultaneous with the issuance of this Request for Proposals ("RFP"), the Authority is also issuing a request for proposals for the purchase of its Water System ("Authority RFP"). Proposers are advised that Borough information relating to Borough customer usage of water from the Water System is shared with the Authority for purposes of billing. Likewise, collaboration exists between the Authority and the Borough as to repairs to infrastructure of the Water System and Sewer System found in roadways throughout the customer territory. Such is done to minimize disruption to customers and the traveling public. It is in the best interest of the joint customers of both the Authority and the Borough to coordinate the sales of the Water System and Sewer System assets and evaluate the collective goals of minimizing disruption and rate increases to customers.

To this end, the Borough seeks Proposals in the form outlined in Section V of this RFP and detailed in the attached Proposal Forms 1-7 ("Proposal") for purchase of Seller's Sewer System. Seller may accept or reject a Proposal with no obligation to any person or entity submitting a response to this RFP ("Proposer"). The acceptance of a Proposal from a Proposer does not obligate the Seller to enter into a contract.

Seller will evaluate Proposals in accordance with the criteria and conditions set forth in Sections V and IX of this RFP, including the proposed price consideration set forth in Proposal Forms 7(A) and (B) ("Price Consideration") and the non-price consideration set forth in Proposal Forms 7(A) and (B) ("Non-Price Consideration"). Seller may select a Proposer to execute an Asset Purchase Agreement ("APA") to assume complete ownership and operation of the Seller's Sewer System ("Selected Proposer").

The goals of the Seller are:

1. To receive Proposals from entities which meet the criteria and conditions set forth in Sections V and IX of this RFP and which are prepared to execute an APA to assume complete ownership and operation of the Seller's Sewer System.
2. To ensure long term, viable, and efficient operation of the Sewer System, such that the Sewer System is operated by qualified professionals who will provide safe and reliable service.
3. To continue employment of all Borough employees who are assigned to the Sewer System on the Closing Date.
4. To maximize capital investment in the Seller's Sewer System.

5. To minimize rate increases to customers over the long term.
6. To maximize purchase price to the Seller.
7. To provide assistance to customers who do not have an ability to pay rates for sewer service.
8. To convert sewer customers from quarterly to monthly billing.

II. ASSETS TO BE PURCHASED

A. General

The Selected Proposer shall purchase from the Seller and the Seller shall sell, transfer, assign and deliver to the Selected Proposer, free and clear of all liens except for any expressly permitted liens, all of Seller's rights, titles and interests in and to, all assets, facilities, business, goodwill, properties and rights of the Seller of every kind and description, whether tangible or intangible, personal or mixed, wherever situated, in each case used in, held for use in, or acquired or developed for use in, the Sewer System, or otherwise related to, or arising out of the operation or conduct of the Sewer System (whether or not any such assets have any value for accounting purposes) (the foregoing collectively referred to as the "Acquired Assets" or "Sewer System Assets"), including:

1. All easements and rights of way related to the Acquired Assets;
2. all pumping, collection, and conveyance assets, including but not limited to all pipes, pumping stations, manholes, pipelines, and any billing and collections related assets necessary to run the Sewer System;
3. all contracts, licenses, and leases to which the Seller is a party, including without limitation, all construction contracts, surety bonds, operation and maintenance agreements, management agreements, reserved capacity agreements, architect agreements and consultant agreements, and other items of personal property related to operations of the Sewer System;
4. all personal property and fixed assets, including all equipment and machinery, auxiliary equipment, and plant equipment needed to operate the Sewer System;
5. all prepaid expenses and security deposits related to operation of the Sewer System;
6. all files and records needed to operate and maintain the Sewer System; and
7. all authorizations and permits of or held by the Seller, related to operation and maintenance of the Sewer System (to the extent transferable to the Selected Proposer under applicable law), including all authorizations and permits which are environmental permits issued by the Department of

Environmental Protection ("DEP"), the Environmental Protection Agency ("EPA"), and other operating permits.

B. Real Estate

Notwithstanding any language in this RFP to the contrary, the Acquired Assets or Sewer System Assets shall not include any real property owned by the Borough. Following selection of a Proposer, the successful Proposer and the Borough will enter into a lease of any real property necessary for operation of the Sewer System.

III. SEWER SYSTEM OVERVIEW

A. Employees

The Borough employs four (4) employees who provide service to the Borough's Sewer System. Although all are employed by the Borough, three (3) employees are directly assigned to the Borough's Sewer System and one (1) employee splits time between both the Authority's Water System and the Borough's Sewer System.

All water and sewer employees of the Borough are covered by the "Contract Between Borough of Steelton and American Federation of State County and Municipal Employees (AFSCME) 2017-2019." Other Borough employees not assigned to the Water System or Sewer System are also covered by the same contract.

B. Sewer System

The Borough's Sewer System facilities are designed to serve the area encompassing the Borough and portions of Swatara Township, Dauphin County, Pennsylvania.

The Borough's Sewer System is primarily a separate sanitary sewer system. Only a small portion of the eastern part of the Sewer System is still a combined sewer system, conveying both sanitary and storm flows collected from McKinley Street to R Street. At present, the gravity collection and conveyance lines, excluding service connection laterals, consist of approximately 25 miles of 8 to 24-inch diameter pipe. Also part of the Sewer System are three pumping stations (Felton Street, Hoffer Street and Trewick Street stations), with approximately 4,200 linear feet of 18-inch pressurized force main. The combined sewer facilities contain three (3) regulating chambers at "T" Street, "R" Street, and Felton Street to prevent excessive flows from reaching downstream conveyance and treatment facilities during periods of wet weather. During the original construction of the Sewer System, there were facilities provided within the separate sanitary sewer portion of the system at Conestoga Street and Hoffer Street, as well as the Hoffer Street and Trewick Street pumping station, which allowed for additional flow diversion.

Under an intermunicipal agreement with the City of Harrisburg (now Capital Region Water), wastewater from the Borough is pumped through the force main from the Trewick Street Pumping Station to the Harrisburg Advanced Wastewater Treatment Facility. The Borough presently owns, operates, and maintains the sewer collection and conveyance system, including the pipelines, pumping facilities, and regulating chambers.

The Authority initially financed and constructed the sanitary sewer conveyance system in 1959 through a municipal bond issue and leased the Sewer System to the Borough for operation and maintenance. On February 1, 1980, the Authority defeased the bond issue and gave the Borough full responsibility of ownership, operation, and maintenance of the Sewer System.

The Borough completed a \$1,000,000 upgrade of the Sewer System in 1994, when new pumping and control systems were installed at each of the three pumping stations. Structural modifications were made to the buildings including upgrades to the ventilation systems, thus bringing the facilities up to date with codes and regulations while providing reliable components to enhance the operation of the overall system.

In 1998, the Borough constructed certain improvements to the existing Sewer System, including sewer line replacement and repair and street repaving in connection therewith, dredging the sewer system, and other related projects.

In 2008, the Borough constructed and performed certain improvements to eliminate the regulating chambers within the separate sanitary sewer portion of the system at Conestoga Street and Hoffer Street and the flow diversion at the Hoffer Street and Trewick Street pumping stations.

In 2010, the Borough undertook a \$4,710,000 project to separate the "T" Street combined sewer drainage basin into separate sanitary sewer and storm sewer systems and eliminate the "T" Street regulating structure. This project included sewer line replacement and repair of the existing sewer piping and manholes to convert them into a separate sanitary sewer system and installation of a new storm sewer system. The project was completed in October 2011.

In 2015, the Borough used Community Development Block Grant ("CDBG") Disaster Recovery Grant dollars to fully fund the cleaning and inspection of the Sewer System in the Front Street area. This involved inspecting and cleaning both storm and sanitary sewers along the entirety of Front Street.

In 2016, the Borough conducted spot repairs and replaced manholes on Pine Street and Harrisburg Street. The Borough also installed new grinder pumps in all three of its pumping stations.

In 2017, the Borough lined the sewer main on Mulberry Alley from School Alley to Third Street and replaced the sewer main on Bessemer Street from Columbia to Lancaster Streets.

IV. PROPOSAL SCHEDULE

The Seller intends to follow the schedule below in selecting a purchaser for the Sewer System:

1. Issue RFP for Sale of Sewer System — March 28, 2018.
2. Launch data room available to Proposers that have submitted a signed Confidentiality and Data Room Usage Agreement in the form set forth in Exhibit A ("Confidentiality Agreement") — March 28, 2018.
3. Pre-proposal meeting and tour — weeks of April 2, 2018, or April 9, 2018.

4. Questions and clarifications — March 28, 2018, through May 21, 2018.
5. APAs provided to Potential Proposers that have completed a site tour – May 14, 2018.
6. Comments to APAs due on May 21, 2018.
7. Final date for posting new information, addenda, and answers to questions – May 29, 2018.
8. Proposals due — on or before June 4, 2018, at 1:00 p.m. Eastern Daylight Savings Time.
9. Best and Final Offer (if needed) — on or before June 11, 2018.
10. Joint Borough and Authority Meeting for review of proposal results and any award of contract — Date TBD.
11. File application for approval of the sale with the Pennsylvania Public Utility Commission ("PUC") — June 29, 2018, if needed.
12. Closing occurs on a date within forty-five (45) days after the PUC enters a Final Order approving the sale ("Closing Date"), which Seller anticipates to be no later than forty-five (45) days following the PUC's December 20, 2018, Public Meeting.

V. INFORMATION REQUIRED FROM PROPOSERS AND APPLICABLE CRITERIA

The award of the contract will be based on compliance with and consent to the conditions set forth in Section IX of this RFP, submission of a Proposal in the form set forth below, and the total number of points received pursuant to the Price and Non-Price Consideration detailed in Proposal Form 7(A) or 7(B). Each Proposer must submit two Proposals, one consistent with Proposal Form 7(A), including a 6-year rate stay-out and a one consistent with Proposal Form 7(B), excluding the rate stay-out. In accordance with 62 Pa. C. S. § 513(d), the contents of Proposals will not be publicly disclosed at the time of opening of the Proposals.

Each Proposal shall be in writing and formatted as noted below.¹ Non-compliance with Forms 1-7 will void the Proposal.

¹ Capitalized terms used in the Proposal Forms, if not otherwise defined therein, shall have the meanings set forth in this RFP.

Section 1.0 Executive Summary

Proposal Form 1: Transmittal Letter

Proposal Form 2: Non-Collusion Affidavit

Section 2.0 Project Team and Technical Capability Information

Proposal Form 3: Statement of Ownership – Proposer

Proposal Form 4: Operator Information

Proposal Form 5: Contract and Lobbyist Disclosure

Proposal Form 6: Qualifications

Section 3.0 Price and Non-Price Consideration

Proposal Form 7(A): Price and Non-Price Consideration with Stay-Out

Proposal Form 7(B): Price and Non-Price Consideration without Stay-Out

Seller shall further assign a score for the Price and Non-Price Consideration set forth in Proposal Forms 7(A) and (B) as follows:

Price Consideration (Points Maximum: 70 points)

One of the Seller's goals is to maximize the Price Consideration to be paid for the Acquired Assets. Therefore, the higher the Price Consideration offered by a Proposer in the Proposal, the more points will be awarded, up to a maximum of 70 points.

Non-Price Consideration (Points Maximum 30 points)

1. Proposer offers and explains its plan of capital improvements in the Sewer System during the ten (10) years subsequent to the acquisition.
2. Proposer offers and explains its plan to offer employment to all employees of the Borough who are assigned to the Sewer System as of the Closing Date. Proposer's plan must include, at minimum, the following: (1) Prior to employment, Proposer will issue an appropriate notification to all potential employees explaining the wages and benefits offered; and (2) Proposer agrees to follow all applicable federal labor laws regarding the recognition of a union following an asset purchase sale and negotiate in good faith with any union whom it is required by law to recognize.
3. Proposer offers and explains its plan for a financial assistance program for qualified low-income customers.

4. Proposer offers and explains its plan for implementing monthly billing for all customers of the Sewer System.
5. Proposer offers its plans for any other commitments that would add value for the customers of the Sewer System.
6. Proposer offers and explains its plan to request that the PUC maintain rates at existing levels for a period of at least six (6) years following the Closing Date and to phase-in rates after expiration of the stay out period.²

VI. QUESTIONS AND REQUESTS FOR CLARIFICATION

All questions and requests for clarification concerning this RFP shall be directed via email to Borough Manager Doug Brown, with a copy to Adeolu A. Bakare and Kathy L. Pape ("Seller Contacts"), whose contact information is provided below. **PROPOSERS ARE NOT TO CONTACT MEMBERS OF THE STEELTON BOROUGH COUNCIL OR STEELTON BOROUGH AUTHORITY. ALL QUESTIONS AND REQUESTS FOR CLARIFICATIONS MUST BE RECEIVED NO LATER THAN 1:00 P.M. EASTERN DAYLIGHT SAVINGS TIME ON MAY 21, 2018. No questions shall be accepted after this time.**

Doug Brown
Borough Manager, Borough of Steelton
dbrown@steeltonpa.com

Kathy L. Pape, Esq.
Adeolu A. Bakare, Esq.
McNees Wallace & Nurick LLC
kpape@mcneeslaw.com
abakare@mcneeslaw.com

All questions and clarification requests should be submitted in writing, and Proposers are encouraged to submit such questions and clarification requests in advance of the above deadline. **Seller will post all questions received from Proposers and the responses to a confidential data room. After a potential Proposer submits a signed Confidentiality Agreement, the potential Proposer will receive an email with access information for the data room.**

VII. RFP MODIFICATIONS

In the event that the Seller deems it necessary or advisable to modify or amend this RFP prior to the Proposal due date, the Seller will post an addendum to the data room and the Borough's website: (www.steeltonpa.com/). The Seller will also notify potential Proposers of any addenda; however, the Seller shall not be responsible for any potential Proposer not receiving all addenda.

² Proposal Form 7(A) only. Proposal Form 7(B) does not include a stay-out requirement.

VIII. SUBMISSION INSTRUCTIONS

PROPOSERS SHALL SUBMIT ONE (1) ORIGINAL AND TEN (10) HARD COPIES OF THE PROPOSAL BY HAND DELIVERY OR OVERNIGHT MAIL TO THE BELOW ADDRESS:

Doug Brown
Borough Manager, Borough of Steelton
123 North Front Street
Steelton, PA 17113

PROPOSALS MUST BE RECEIVED BY BOROUGH MANAGER DOUG BROWN NO LATER THAN 1:00 P.M., EASTERN DAYLIGHT SAVINGS TIME ON JUNE 4, 2018.

Proposers shall mark the original copy of the Proposal as the original and include the original signature forms and other original documents. The original and ten additional copies shall be sealed and clearly marked with the legend: "RESPONSE TO BOROUGH OF STEELTON RFP." In accordance with Section XII of this RFP, the contents of the Proposal will not be made public until after the award of a contract.

IX. CONDITIONS

By submitting a Proposal, Proposers acknowledge and agree to the following conditions:

1. The Seller will exercise, in its sole discretion, all rights and conditions with regard to this RFP.
2. All Proposals submitted in response to this RFP shall become the property of the Seller. As such, after the award of a contract, if any, or after the opening and rejection of all Proposals, Proposals submitted to the Seller will become public records subject to public review under applicable law, subject to certain exceptions as described in Section XII of this RFP.
3. As described herein, the Borough believes that the most benefit to the customers of the Water System and the Sewer System and the residents of Steelton will be derived from the sale of both the Water System and Sewer System assets to one Proposer. Therefore, Proposals will be considered solely for both the Water System and the Sewer System.
4. Prior to submitting a Proposal, each Proposer shall participate in a site view of the Water System.
5. The selection of a Proposal by the Seller shall not waive or limit any assumptions of risk, provision of indemnity, or other obligations of the Proposer under an APA, as may be executed between the Proposer and Seller.

6. Proposers and their representatives shall comply with Sections VI and VIII of this RFP with respect to all communications concerning this RFP.
7. Only two Proposals per Proposer, in the forms set forth in Proposal Forms 7(A) and 7(B), shall be considered.
8. Proposers should ensure that the word and numerical purchase prices shown as Price Consideration in Proposal Form 7 match.
9. Seller may amend, modify, or cancel this RFP or add to the requirements contained in this RFP at any time after the issuance of this RFP.
10. This RFP is for comparative review of the information provided in Proposals.
11. Seller may reject any and all Proposals received as a result of this RFP or negotiate separately.
12. Seller may shortlist up to four (4) Proposers for purposes of scheduling pre-Proposal interviews.
13. Seller may not award any contract.
14. Seller may award a contract pursuant to the RFP and execute an APA with an entity meeting the requirements set forth in Section V, herein, consistent with the goals of the Seller.

X. POTENTIAL BEST-AND-FINAL OFFER ("BAFO") FOR PRICE AND NON-PRICE CONSIDERATION

Each Proposer's Proposal Forms 7(A) and (B) should represent its best offer for the Price and Non-Price Consideration. However, if the Price Consideration set forth in Proposal Form 7(A) or (B) of one or more of the Proposers' offers received by such deadline (other than the offer setting forth the highest amount of Price Consideration) is within 10% of the amount of the Price Consideration in such highest offer and such Proposer also received at least 90 total points (pursuant to Section V herein), Seller may allow the Proposer whose offer sets forth the highest amount of Price Consideration and any Proposer(s) whose offer is within 10% of such highest amount of Price Consideration (the "Selected Proposers") to increase the Price Consideration by submitting a BAFO proposal form to be provided by Seller at that time. Seller may evaluate any BAFO Proposals under the criteria set forth in Section V of this RFP, including the points scored for both Price and Non-Price Consideration.

If necessary, Seller may provide further instructions to all Selected Proposers for submitting a BAFO proposal form; however, the timing for submission of such proposal forms will be at the complete discretion of Seller and may be less than a week from June 4, 2018. You should not assume that you will be given the opportunity to increase the amount of the Price Consideration or modify the Non-Price Consideration under any other circumstances.

XI. APPROVAL AND SIGNING

Seller may select for final contract execution that Proposal which meets all requirements and conditions set forth in Proposal Form 7(A) or (B) and in Sections V and IX of this RFP and provides the highest number of total points for the Price and Non-Price Consideration set forth in Section V of this RFP. After selection of a Proposal and approval by the Borough, the Selected Proposer and Seller shall proceed to execution of an APA. Execution of an APA will be subject to final approval and authorization by the Borough.

XII. CONFIDENTIALITY AND DISCLOSURE TO THIRD PARTIES

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

Proposers are advised, however, that following award of a contract or the opening and rejection of all Proposals, such submissions may be subject to public disclosure unless they are otherwise exempt from disclosure under another provision of the RTK Law. Records and information submitted by Proposers that constitute "trade secrets" or "confidential proprietary information" as defined in the RTK Law are exempt from disclosure under Section 708(b)(11), 65 P.S. § 67.708(b)(11). "Confidential proprietary information" includes commercial and financial information which is privileged or confidential to the submitting party and the disclosure of which would cause substantial harm to the competitive position of the person who submitted the information. Proposers are advised that if they believe any information being submitted in response to this RFP constitutes or references trade secret or confidential proprietary information, they should clearly label any such information with a prominent label of either: "TRADE SECRET" or "CONFIDENTIAL PROPRIETARY INFORMATION." Any such claims may be subject to review pursuant to the procedures set forth in the RTK Law. If the Seller, the Pennsylvania Office of Open Records, or a court determines that such information does not qualify as a trade secret or confidential proprietary information, such information may be subject to public disclosure.

EXHIBIT A
CONFIDENTIALITY AND DATA ROOM USAGE AGREEMENT

This Confidentiality and Data Room Usage Agreement ("Confidentiality Agreement") is made and entered into effective _____, 2018 by and between the Borough of Steelton, Steelton, Pennsylvania (the "Disclosing Party" or "Borough") and _____ (the "Receiving Party").

WHEREAS, the Receiving Party is contemplating acquiring the assets and operations of the Borough's sewer system (the "Sewer System")

WHEREAS, in connection with the review of the business, plans, and practices of the Sewer System in contemplation of a potential purchase of said facilities and in preparation of the Receiving Party's submittal in response to the Request for Proposal for Purchase of Sewer System dated March 28, 2018 (the "Authorized Purpose"), the Disclosing Party, subject to the terms, conditions, and covenants in this Confidentiality Agreement, will disclose to the Receiving Party certain sensitive and confidential information about the business, plans and practices of the Sewer System, but will not disclose such information but for this Confidentiality Agreement.

WHEREAS, the Disclosing Party will be disclosing such information through a secure virtual data room (the "Data Site"). The Data Site will contain system information, which may include, but is not limited to, user statistics, financial data, statistical data, and equipment records. The Receiving Party agrees that information in the Data Site shall be subject to this Confidentiality Agreement.

NOW THEREFORE, for the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual promises and covenants recited hereinafter, the parties agree as follows:

1. **Confidential Information.** The term "Confidential Information" shall include, but not be limited to, trade secrets, strategies, and financial, marketing, merchandising, operating, performance, cost and business information, business development plans, engineering reports, system maps, inter-municipal agreements, employee information, vendor information, and other information concerning the actual or anticipated business assets, liabilities, income, operations, products, performance, or services of the Disclosing Party or its Affiliates (defined below), regardless of the media (including, without limitation, notes, analyses, compilations, studies, interpretations, or other materials prepared by the Receiving Party) and regardless of whether such information was disclosed before, on, or after the effective date of this Confidentiality Agreement. The term "Confidential Information" does not include information that (a) is or becomes generally available to the public other than as a result of (i) wrongful disclosure by the Receiving Party, its Affiliates, or its employees, officers, directors, shareholders, principals, agents, advisors, contractors, subcontractors, or representative, or by any person in such capacity as any of its Affiliates (collectively, "Agents"), or (ii) a wrongful disclosure by any other person under a duty to keep such information confidential; (b) was actually known by the Receiving Party prior to disclosure hereunder as evidenced by the Receiving Party's tangible records; or (c) is developed or discovered by the Receiving Party independently and solely without the use of any Confidential Information disclosed hereunder. As used herein, "Affiliate" shall mean, as to any individual,

partnership, joint venture, corporation, limited liability company, trust, estate, or other entity or organization (a "Person"), any person controlled by, controlling, or under common control with such Person, and, in the case of a Person who is an individual, a member of the family of such individual consisting of a spouse, sibling, in-law, lineal descendant, or ancestor (including by adoption), and the spouses of any such individuals. For purposes of this definition, "control" (including the terms "controlling," "controlled by," and "under common control with") of a Person means the possession, directly or indirectly, along or in concert with others, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract, or otherwise. A Person shall be presumed to control any partnership of which such Person is a general partner.

2. **Restricted Use of Confidential Information.** Subject to the restrictions contained in this Confidentiality Agreement, Confidential Information may be used by the Receiving Party solely for the performance of the Authorized Purpose. Confidential Information will be held by the Receiving Party in the strictest confidence at all times and will not be disclosed or used by the Receiving Party or its Agents for any purpose other than the Authorized Purpose. The Receiving Party may disclose Confidential Information to those of its Agents who need to receive such Confidential Information for the Authorized Purpose, but only after the Receiving Party has informed them of the confidential nature of the Confidential Information and has directed them to treat such Confidential Information confidentially in accordance with the terms of this Confidentiality Agreement. If the Receiving Party or any of its Agents receives notice of it being, or attempting to be, legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil or criminal investigative demand, or other similar process) to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with immediate prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. Neither the Receiving Party nor any of its Agents shall oppose any action (and shall, if and to the extent required by the Disclosing Party, cooperate with, assist, and join with the Disclosing Party, at the Disclosing Party's expense, any reasonable action) by the Disclosing Party to obtain an appropriate protective order or other reliable assurance that the confidential treatment will be accorded the Confidential Information. If a protective order or other remedy is not obtained and the Receiving Party is ultimately legally compelled to disclose Confidential Information, then the Receiving Party agrees to disclose only such Confidential Information as is necessary to comply narrowly with the actions compelling such disclosure.

3. **Reproduction of Confidential Information.** Confidential Information made available to the Receiving Party may not be copied or reproduced without the Disclosing Party's prior written consent except for when the print or download capability has been enabled. Any copies of the Confidential Information made by or for the benefit of the Receiving Party are, and shall become, the proprietary property of the Disclosing Party. All such copies must include all applicable notices of copyright and any other proprietary rights, notices, or legends contained in the Confidential Information, if any, and shall be marked to indicate their confidential nature.

4. **Ownership of Confidential Information.** The Disclosing Party is and shall continue to be the exclusive owner of all rights, title, and interest in, and of all patents, copyrights, trade secrets, trademarks, and proprietary rights in and to, any Confidential Information made available to the Receiving Party hereunder, including, without limitation, all additions, enhancements, modifications, and derivative works of the Confidential Information. Nothing in

this Confidentiality Agreement shall be construed to convey to the Receiving Party a license to use, sell, exploit, copy, or further develop the Confidential Information beyond the limited rights and privileges set forth in this Confidentiality Agreement.

5. **Return of Confidential Information.** Upon request of the Disclosing Party, the Receiving Party shall promptly deliver to the Disclosing Party all Confidential Information, including any copies, compilations, and extracts thereof, in the Receiving Party's possession or in the possession of its Agents, without retaining any copies thereof including any electronic, magnetic, or digital medium) or certify in writing to the destruction thereof. Notwithstanding the return of the Confidential Information, the Receiving Party will continue to be bound by the terms and conditions of this Confidentiality Agreement.

6. **Disclaimer of Representations and Warranties.** The Receiving Party understands, acknowledges, and agrees that neither the Disclosing Party nor any of its Agents has made or will make, and specifically disclaims, any representation or warranty, expressed or implied, as to the accuracy or completeness of Confidential Information. The Receiving Party agrees that neither the Disclosing Party nor any of its Agents shall have any liability to the Receiving Party or any of its Agents relating to or resulting from the use of the Confidential Information. Only those representations or warranties that are made in a final definitive agreement regarding the transactions contemplated hereby, when, as, and if executed, and subject to such limitation and restrictions as may be specified therein, will have any legal effect.

7. **Covenants.**

(a) The Receiving Party agrees and covenants to the Disclosing Party that neither the Receiving Party nor any of its Agents will, directly or indirectly, solicit, induce, or attempt to induce any employee of the Disclosing Party (provided, however, that the foregoing sentence shall not apply to any employee responding to a general advertisement of employment) or any independent contractor (including, without limitation, any vendor or supplier providing products or services to or on behalf of the Disclosing Party or any of its Affiliates), to terminate their employment or their business relationship with the Disclosing Party.

(b) The Receiving Party agrees and covenants to the Disclosing Party that neither the Receiving Party nor any of its Agents will, directly or indirectly, disclose to any person (except as provided in Section 2 above) any of the following without the prior written consent of the Disclosing Party: (i) that Confidential Information has been or will be provided to the Receiving Party, (ii) that discussion or negotiations are taking place regarding the Authorized Purpose, and (iii) any terms, conditions, or other aspect related to the Authorized Purpose.

(c) The Receiving Party agrees and covenants to the Disclosing Party that neither the Receiving Party nor any of its Agents will, directly or indirectly, contact any Borough of Steelton or Steelton Borough Authority personnel in any manner or conduct any inspections, tours, or other on-site activities without the prior written consent of the Disclosing Party.

(d) The covenants set forth in this Section 7 shall continue for the duration of this Confidentiality Agreement and shall survive the expiration or termination of this Confidentiality Agreement, the execution of a definitive agreement, or the failure to consummate

the transaction contemplated hereby for a period of 24 months from the date of the last to occur of such actions.

8. **Remedies for Breach.** The Receiving Party acknowledges and agrees that disclosure of any Confidential Information or breach of any covenant set forth in this Confidentiality Agreement above will result in irreparable harm to the Disclosing Party for which there is no adequate remedy at law. Accordingly, in the event of a breach or threatened breach of the provisions of this Confidentiality Agreement by the Receiving Party or any of its Agents, in addition to any other remedy that the Disclosing Party may have at law or in equity, the Disclosing Party shall be entitled to injunctive or similar relief to enforce specifically such provision, without posting bond or other security.

9. **Amendments, Assignment, and Entire Confidentiality Agreement.** The Confidentiality Agreement may not be modified, amended, or supplanted except by an agreement in writing signed by the Disclosing Party. This Confidentiality Agreement and the rights and obligations hereunder shall not be assignable by the Receiving Party without the express written consent of the Disclosing Party. The Disclosing Party may assign all of its rights, powers, and privileges under this Confidentiality Agreement (including, without limitation, the right to enforce all of the terms of this Confidentiality Agreement) to any person who enters into any transaction contemplated by this Confidentiality Agreement. Subject to the restriction against transfer or assignment as herein set forth, the provisions of this Confidentiality Agreement shall inure to the benefit of, and shall be binding on, the heirs, assigns, successors, personal representatives, estates, and legatees of the parties and shall constitute the entire agreement between the parties hereto with respect to the transactions contemplated hereby and shall supersede all prior or contemporaneous negotiations, understanding, and agreements. There are no representations, agreements, arrangements, or understanding, oral or written, between or among the parties hereto relating to the subject matter of this Confidentiality Agreement that are not fully expressed herein.

10. **Court Costs and Attorneys' Fees.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Confidentiality Agreement, the Disclosing Party shall be entitled to recover costs of court and reasonable attorneys' fees from the Receiving Party, which fees shall be in addition to any other relief that may be awarded, and which fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose.

11. **Further Assurances.** Each party hereto, without further consideration, shall, at the reasonable request of any other party hereto after the execution of this Confidentiality Agreement, execute and deliver any instruments or document and take such other actions, as such other party may reasonably request to more effectively consummate the transactions contemplated by this Confidentiality Agreement.

12. **GOVERNING LAW. THIS CONFIDENTIALITY AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, DAUPHIN COUNTY, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS RULES OR CHOICE OF LAWS RULES THEREOF. ALL PARTIES CONSENT TO EXCLUSIVE JURISDICTION OF THE**

COMMONWEALTH OF PENNSYLVANIA FOR ALL DISPUTES ARISING UNDER AND RELATED TO THIS MATTER.

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

14. **Notices.** Any notice required or permitted under the terms of this Confidentiality Agreement shall be in writing and shall be addressed to the party to whom notice is intended, as the case may be, at the address stated below, and delivery shall be deemed to have been made upon the earlier to occur of actual receipt of such notice by the intended recipient thereof, whether delivered by hand or otherwise, or thirty-six (36) hours after the deposit in the United States Mail, properly addressed to the intended recipient as set forth below such party's signature, postage prepaid, certified mail, return receipt required. Either party hereto may change the address for notification by giving written notice of such change to the other party at least five (5) days prior to the effective date of such change.

15. **Signatures.** This Confidentiality Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Facsimile signatures shall be acceptable as originals. Each party represents and warrants to the other party that the undersigned is duly authorized and empowered to execute this Confidentiality Agreement and bind such party (and by execution such party is bound) to the terms, agreements, obligations, and covenants set forth in this Confidentiality Agreement.

16. **Survival.** Except for the covenants subject to the specific time period limitation set forth in Section 7 above, all of the agreements, obligations, covenants, terms, and remedies set forth in this Confidentiality Agreement shall survive the termination, expiration, or cancellation of this Confidentiality Agreement, the Authorized Purpose, or the transactions contemplated hereby and thereby, and shall also survive the execution of a definitive agreement between the parties hereto or their respective Affiliates. Except as they pertain to Confidential Information specifically regarding the Facility, all of the agreements, obligations, covenants, terms, and remedies set forth in this Confidentiality Agreement shall also survive the consummation of the transactions contemplated by a definitive agreement between the parties hereto or their respective Affiliates. All obligations, covenants, and agreements of the Receiving Party and their Agents shall be joint and several.

17. **Waiver.** The failure of any party to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Confidentiality Agreement shall not be construed as a waiver or a relinquishment of any right or claim granted or arising hereunder

or of the future performance of any such term, covenant, or condition, and such failure shall in no way affect the validity of this Confidentiality Agreement or the rights and obligations of the parties hereto. No waiver of any provision or condition of this Confidentiality Agreement shall be valid unless executed in writing and signed by the party to be bound thereby, and then only to the extent specified in such waiver. No waiver of any provision or condition of this Confidentiality Agreement shall be construed as a waiver of any other provision or condition of this Confidentiality Agreement, and no present waiver of any provision or condition of the Confidentiality Agreement shall be construed as a future waiver of such provision or condition.

IN WITNESS HEREOF, each of the parties has caused this Confidentiality Agreement to be duly executed to be effective as of the day and year first written above.

DISCLOSING PARTY

The Borough of Steelton, Pennsylvania

By: _____

Title: _____

RECEIVING PARTY

By: _____

Print Name: _____

Title: _____

Organization:

Email Address:

Telephone Number: _____

**Proposal Form 1
Transmittal Letter**

{to be prepared on Proposer's Letterhead}

[Date], 2018

Borough of Steelton

Doug Brown
Borough Manager, Borough of Steelton
123 North Front Street
Steelton, PA 17113

Attn: Mr. Brown

Re: Response to the Borough of Steelton's (the "Seller's") Request for Proposals for Purchase of Sewer System Assets

Dear Seller:

The entity written on the signature page hereto (the "**Proposer**") hereby submits this Transmittal Letter and the attached Proposal (together, this "**Proposal**") in response to the Request for Proposals ("**RFP**") issued by the Seller on March 28, 2018, as it may be amended from time to time.

If selected as the buyer, the undersigned Proposer hereby agrees to execute an asset purchase agreement (the "**APA**") for the identified sewer facilities owned by the Seller.

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

1. ***RFP and Appendices Acknowledgement.*** The Proposer acknowledges receipt of the RFP and the following Appendices to the RFP:

Exhibit A: Confidentiality and Data Room Usage Agreement

- Proposal Form 1: Transmittal Letter
- Proposal Form 2: Non-Collusion Affidavit
- Proposal Form 3: Statement of Ownership – Proposer
- Proposal Form 4: Operator Information
- Proposal Form 5: Contract and Lobbyist Disclosure
- Proposal Form 6: Qualifications
- Proposal Form 7(A): Price and Non-Price Consideration with Stay-Out
- Proposal Form 7(B): Price and Non-Price Consideration without Stay-Out

2. ***Due Authorization.*** The submission of this Proposal has been duly authorized by, and is, in all respects, binding, upon the Proposer.
3. ***Completeness; Warranty as to Proposal Information.*** The Proposer has submitted all required Appendices to the RFP, and such Appendices are a part of, and are hereby incorporated into, this Proposal. All information and statements contained in the Proposal are current, true, correct, and complete, and are made with full knowledge and consent that the Seller will rely on such information and statements in determining which Proposals are responsive and responsible in ultimately selecting the Proposal deemed most advantageous to the Seller and in executing an APA.
4. ***Identity of Buyer and Operator.*** The buyer under an APA will be the operator of the Sewer System.
5. ***Final Agreements.*** The Proposer agrees to enter into an APA with the Seller for this asset purchase.
6. ***Proposal Effective Period.*** This Proposal and offer shall remain in effect and irrevocable until 5:00 p.m. Eastern Standard Time on December 31, 2018, unless extended to 5:00 p.m. Eastern Standard Time on January 31, 2019, by Seller or unless further extended by mutual consent of both Seller and the Proposer (the "Termination Time"). In the event that the Proposal due date is delayed beyond June 4, 2018, the Termination Time will be extended for the same such period. If Seller does not give written notice to the Proposer that Seller is prepared to enter into an APA on or prior to the Termination Time, this offer and the terms of this Proposal shall terminate at the Termination Time.
7. ***Price Consideration.*** The Price Consideration that Proposer would pay pursuant to an APA will be the total set forth in Proposal Form 7(A) or (B).
8. ***Non-Price Consideration.*** The Non-Price Consideration that Proposer would commit to pursuant to an APA will be set forth in Proposal Form 7(A) or (B).
9. ***Proposer understands and commits to the conditions detailed in Section IX of the RFP, herein.***
10. ***Debarment.*** Neither the Proposer nor any Agent (as such term is defined in the Confidentiality Agreement) is currently suspended, debarred, or prohibited from doing business with any governmental entity.
11. ***No Litigation.*** There is no action, suit, or proceeding, at law or in equity, before any court or similar governmental entity, against the Proposer, wherein an unfavorable decision, ruling or finding would have a materially adverse effect on the ability of the Proposer to perform its obligations under an APA or the purchase contemplated thereby, or which, in any way, would have a materially adverse effect on the validity or enforceability of the obligations proposed to be undertaken by the Proposer, or any agreement or instrument entered into by the Proposer in connection with the purchase contemplated thereby.

12. ***Certain Representations.*** The Proposer represents and warrants that: (i) Proposer has full power and authority to make this offer and submit this Proposal; (ii) Proposer will have full power and authority to execute and deliver an APA pursuant to the terms hereof; (iii) such actions do not and will not violate the terms of any of the Proposer's organizational documents or any agreement binding upon it or the terms of any applicable law; (iv) no further consent to this Proposal or to the execution of an APA pursuant to the terms hereof is required to be obtained from any other person, entity, or governmental entity; and (v) this offer and Proposal constitute, and an APA, if and when executed pursuant to the terms thereof, will constitute, duly authorized, valid, and legally binding obligations of the Proposer enforceable in accordance with their respective terms, except as may be limited by bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or transfers, or other laws affecting creditor's rights generally, and subject to general principles of equity (regardless of whether in law or in equity).
13. ***Material Changes.*** The Proposer will disclose all material changes from the information provided in this Proposal, up to and including the Closing Date (as defined in Section IV of the RFP, herein).
14. ***Principal Contact.*** The principal contact person of the Proposer who will serve as the interface between the Seller and the Proposer for all communications is:

FULL NAME: _____

TITLE: _____

ADDRESS: _____

PHONE: _____

FAX: _____

EMAIL: _____

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

Submitted by:

PROPOSER:

(full legal name with applicable entity suffix)

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

By: _____

Print Name: _____

Print Title: _____

Date: _____

[Signature Page to Transmittal Letter]

**Proposal Form 2
Non-Collusion Affidavit**

STATE OF _____)

COUNTY OF _____)

I, [INSERT DESIGNATED SIGNATORY NAME], a resident of _____ MUNICIPALITY OR OTHER JURISDICTION], in the State of [INSERT STATE], of full age, being duly sworn according to law, on my oath depose and say that:

- (1) I am the [INSERT TITLE] of [INSERT PROPOSER NAME], organized under the laws of the state of [INSERT STATE NAME], the Proposer making the Proposal in response to this RFP issued by the Borough, as amended, and that I executed said Proposal with full authority to do so;
- (2) The pricing information set forth in this Proposal has been arrived at independently without collusion, fraud, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such pricing information with any other Proposer or with any competitor;
- (3) Unless otherwise required by law, the pricing information which has been quoted in this Proposal has not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer, directly or indirectly, to any other Proposer or to any competitor prior to execution of the APA; and
- (4) No attempt has been made or will be made by the Proposer to induce any other person or entity to submit or not to submit a Proposal for the purpose of restricting competition.

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

Name of Proposer

Name of Designated Signatory

Signature

Title

(Notary Public)

State/Commonwealth of _____

County of _____

On this ____ day of _____, 2018, before me appeared [DESIGNATED SIGNATORY], who is [INSERT TITLE] of [INSERT PROPOSER], a [INSERT STATE AND ENTITY TYPE], personally known to me to be the person described in and who executed this Non-Collusion Affidavit and acknowledged that she/he signed the same freely and voluntarily for the uses and purposes therein described.

In witness thereof, I have hereunto set my hand and affixed my official seal the day and year last written above.

Notary Public in and for the State/Commonwealth of

(seal)

(Name printed)

Residing at _____

Commission Number _____

**Proposal Form 3
Statement of Ownership – Proposer**

Name of Proposer: _____

Business Address: _____

Legal Form of Proposer: _____

State of Incorporation of Organization: _____

If not organized in Pennsylvania, is Proposer authorized to do business in Pennsylvania? [] Yes [] No

List Names and Titles of All Principal Officers and Directors:

Significant Equity Owners of the Proposer:

List the names, business addresses, and percentage ownership interests of all Persons (individuals or entities) who own, directly or indirectly, 10% or more of the capital stock, units, partnership, or membership interests, or other equity interests or securities of the Proposer (including options, warrants, and other rights to acquire such equity interests) (the "Significant Equity Owners"). If none, please state "NONE." If one or more such Significant Equity Owner(s) of Proposer is an entity, then list the names and addresses of all Significant Equity Owners of such entity; if none, please state "None." This disclosure shall be continued until names and addresses of every Significant Equity Owners exceeding the ten percent ownership criteria of each entity listed has been identified. Additional pages may be attached.

<i>Name</i>	<i>Address</i>	<i>% Interest</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Proposal Form 4
Operator Information**

If the Proposer is not the operator, the Proposer must clearly identify the entity or entities that will serve as the operator under an APA. For the proposed operator, please provide the following information.

- 1. Name & Address of Proposed Operator:**

- 2. Operator's Primary Representative:**

- 3. Operator Experience (if not previously provided in response to the RFP):³**

- 4. Operator's References (if not previously provided in response to the RFP):**

- 5. Material Change:** Any change in condition (financial or otherwise), development, occurrence, or circumstance that could be materially adverse to the operator that has arisen after the date of the RFP and which would have been responsive to the RFP if such change, development, occurrence, or circumstance had arisen prior to the Proposer's response to the RFP.

³ Please provide all operator license information relevant to operation of the Sewer System, including name of employee, contractor, or other agent who holds the license, license classification, and license number.

Proposal Form 5
Contract and Lobbyist Disclosure

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

Name of Person or Entity

Disclosure and Description of Arrangement

Name of Proposer:

Name of Designated Signatory:

Signature

Title:

Proposal Form 6
Qualifications

1. Proposer shall demonstrate in writing its history of legal, financial, and regulatory compliance with regard to sewer operations.
2. Proposer shall, also, disclose all citations, violations, consent agreements, fines, penalties and the like that it has received or been a party to within the last ten (10) years relating to its ownership and/or operation of sewer systems in Pennsylvania.
3. Proposer shall demonstrate its ability to deliver safe and reliable sewer service for the benefit of customers.
4. Proposer shall provide its two (2) most recent audited annual financial statements.

Proposal Form 7(A)
Price and Non-Price Consideration With Stay-Out

PRICE CONSIDERATION: 70 POINTS MAXIMUM

The amount of the Price Consideration that the undersigned Proposer offers to pay for the Sewer System Assets defined in the Request for Proposals issued by the Borough of Steelton on March 28, 2018, is US\$ _____ [in numbers], _____ [in words] United States Dollars.

NON-PRICE CONSIDERATION: 30 POINTS MAXIMUM

The undersigned Proposer offers the following non-price consideration:

1. Proposer offers and explains its plan of capital improvements in the Sewer System during the ten (10) years subsequent to the acquisition.
2. Proposer offers and explains its plan to offer employment to all employees of the Borough who are assigned to the Sewer System as of the Closing Date. Proposer's plan must include, at minimum, the following: (1) Prior to employment, Proposer will issue an appropriate notification to all potential employees explaining the wages and benefits offered; and (2) Proposer agrees to follow all applicable federal labor laws regarding the recognition of a union following an asset purchase sale and negotiate in good faith with any union whom it is required by law to recognize.
3. Proposer offers and explains its plan for a financial assistance program for qualified low-income customers.
4. Proposer offers and explains its plan for implementing monthly billing for all customers of the Sewer System.
5. Proposer offers its plans for any other commitments that would add value for the customers of the Sewer System.
6. Proposer offers and explains its plan to request that the PUC maintain rates at existing levels for a period of at least six (6) years following the Closing Date and to phase-in rates after expiration of the stay out period.

PROPOSER:

(full legal name with applicable entity suffix)

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

By: _____

Print Name: _____

Print Title: _____

Proposal Form 7(B)
Price and Non-Price Consideration Without Stay-Out

PRICE CONSIDERATION: 70 POINTS MAXIMUM

The amount of the Price Consideration that the undersigned Proposer offers to pay for the Sewer System Assets defined in the Request for Proposals issued by the Borough of Steelton on March 28, 2018, is US\$ _____ [in numbers], _____ [in words] United States Dollars.

NON-PRICE CONSIDERATION: 30 POINTS MAXIMUM

The undersigned Proposer offers the following non-price consideration:

1. Proposer offers and explains its plan of capital improvements in the Sewer System during the ten (10) years subsequent to the acquisition.
2. Proposer offers and explains its plan to offer employment to all employees of the Borough who are assigned to the Sewer System as of the Closing Date. Proposer's plan must include, at minimum, the following: (1) Prior to employment, Proposer will issue an appropriate notification to all potential employees explaining the wages and benefits offered; and (2) Proposer agrees to follow all applicable federal labor laws regarding the recognition of a union following an asset purchase sale and negotiate in good faith with any union whom it is required by law to recognize.
3. Proposer offers and explains its plan for a financial assistance program for qualified low-income customers.
4. Proposer offers and explains its plan for implementing monthly billing for all customers of the Sewer System.
5. Proposer offers its plans for any other commitments that would add value for the customers of the Sewer System.

PROPOSER:

(full legal name with applicable entity suffix)

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

By: _____

Print Name: _____

Print Title: _____