

TRANSFER AGREEMENT

THIS TRANSFER AGREEMENT is made as of the \_\_\_ day of \_\_\_\_\_, 201\_ (this “Agreement”), by and between the ALLEGHENY COUNTY SANITARY AUTHORITY, a municipal authority organized under the Municipality Authorities Act, as amended, 53 Pa. C.S.A. §§ 5601-5623 (“ALCOSAN”) and \_\_\_\_\_, a \_\_\_\_\_ (the “Municipality”)<sup>1</sup>.

WITNESSETH:

WHEREAS, ALCOSAN provides wastewater treatment services to 83 communities in the Commonwealth of Pennsylvania;

WHEREAS, ALCOSAN entered into a Consent Decree with the United States Environmental Protection Agency, the Pennsylvania Department of Environmental Protection and the Allegheny County Health Department which was approved by the United States District Court for the Western District of Pennsylvania on January 23, 2008;

WHEREAS, the Consent Decree requires ALCOSAN to eliminate dry weather discharges and sanitary sewer overflows from its system, reduce combined sewer overflows from its system in accordance with the EPA's combined sewer overflow policy, and build adequate sewer infrastructure to achieve these goals;

WHEREAS, ALCOSAN must prepare a regional long term wet weather control plan (the “Wet Weather Plan”) that identifies remedial controls and activities needed to comply with the Consent Decree requirements;

WHEREAS, Municipality owns certain intermunicipal trunk sewer lines and the associated manholes that connect to such sewer lines (collectively, the “Sewer Lines”) [and wet weather facilities] (the “Facilities” and, together with the Sewer Lines, the “Assets”), as more particularly described and depicted on **Exhibit A**;

WHEREAS, ALCOSAN and Municipality acknowledge that fulfillment of the Wet Weather Plan can be most efficiently undertaken if the Assets are owned and operated by ALCOSAN; and

WHEREAS, Municipality desires to transfer and ALCOSAN desires to acquire the Assets.

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

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<sup>1</sup> In the event that the transfer is between ALCOSAN and a Municipal Authority, this defined term will be changed to “Municipal Authority” throughout.

ARTICLE 1 — DEFINITIONS

1.1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms or words defined in this Article and other terms or words defined in this Agreement, whenever used in this Agreement, shall have the meaning specified in this Article for all purposes of the Agreement, applicable to both the singular and plural forms of any of the terms or words defined in this Agreement.

“Access Rights” shall have the meaning set forth in Section 7.2.

“Action” shall mean and include any actual or threatened claim, action, order, consent order, decree or agreement, suit, arbitration, hearing, inquiry, proceeding, complaint, charge or investigation by or before any local, state or federal court, governmental department, commission, board, agency, authority, tribunal or arbitrator and any appeal from any of the foregoing.

“ACHD” shall mean the Allegheny County Health Department.

“Agreement” shall have the meaning set forth in the preamble.

“ALCOSAN” shall have the meaning set forth in the preamble.

“Assets” shall have the meaning set forth in the recitals.

“Assignment and Assumption Agreement” shall have the meaning set forth in Section 5.2.

“Assumed Liabilities” shall have the meaning set forth in Section 2.4.

“Closing” shall have the meaning set forth in Section 5.1.

“Closing Date” means the date first set forth above.

“Consent Decree” means the judicial settlement of that certain Complaint brought by the United States Department of Justice against ALCOSAN in the United States District Court, the Western District of Pennsylvania, which settlement was entered by same court on January 23, 2008, as may be amended from time to time.

“Consent Order” shall mean that certain [Consent Order] by and between Municipality and [DEP]/[ACHD], dated as of \_\_\_\_\_.

“Damages” shall mean any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and court costs), deficiencies, claims, awards, judgments, settlements, interest, actions, penalties, or fines of any kind whatsoever in law or in equity.

“DEP” shall mean the Pennsylvania Department of Environmental Protection.

“Direct Connections” means any service lateral, from a residential or commercial building that connects directly to the Transferred Assets.

“EPA” shall mean the United States Environmental Protection Agency.

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“Facilities” shall have the meaning set forth in the recitals.

“Governmental Authority” shall mean any federal, state, local, foreign, or other court, board, body, commission, agency, authority or instrumentality, arbitral authority, self-regulatory authority, mediator or tribunal, including regulatory authorities and taxing authorities.

“Illegal Connections” means a Direct Connection to the Transferred Assets that (i) is made without required approval from ACHD or DEP, as applicable or (ii) is prohibited by law, such as any Direct Connection that conveys basement seepage, groundwater, stormwater, or surface water, including sump pump drainage, downspout drainage, foundation drainage, roof drainage, and driveway drainage into a separate sanitary Sewer Line. Illegal Connections as used in this Agreement does not include connections by a Governmental Authority over which the Municipality did not have control or authority including any connections made by the Pennsylvania Department of Transportation, Pennsylvania Turnpike Commission, Allegheny County, or municipal authorities not under the direct control of Municipality. Such connections over which the Municipality did not have control that are within the Municipality’s Knowledge are identified on **Schedule 1.1.1**.

“Known Title Defects” shall have the meaning set forth in Section 3.4.

“Laws” shall mean and include any and all federal, state and local laws, rules, codes, ordinances, regulations, circulars, orders of any court, governmental entities, bodies, authorities or agencies.

“Licenses and Permits” [shall mean all licenses, permits, franchises, authorizations, certificates, registrations, consents, orders, variances, waivers and approvals issued or granted by Governmental Authorities to Municipality, or pursuant to which Municipality operates, that relate specifically to the operation of the Assets.]<sup>2</sup>

“Liens” shall mean and include any and all types or kinds of liens, charges, claims, encumbrances, adverse claims, security interests upon property or claims or demands of any kind whatsoever, arising, in any manner, from or relating to this Agreement, the Transferred Assets or any work, project, services or activities performed under or in connection with the Transferred Assets or related agreements.

[“Municipal Authority” shall have the meaning set forth in the preamble].<sup>3</sup>

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<sup>2</sup> TEXT SUBJECT TO REVISION PENDING OUTCOME OF DISCUSSION WITH DEP CONCERNING PERMIT PROCESS QUESTIONS

<sup>3</sup> In the event that the transfer is between ALCOSAN and a Municipal Authority, this defined term will be substituted for “Municipality” throughout.

“Municipal Feasibility Study” shall mean that certain Feasibility Study Report of Municipality, as submitted to [ACHD]/[DEP] on \_\_\_\_\_, 201\_, as amended from time to time.

“Municipality” shall have the meaning set forth in the preamble.

“Municipality’s Knowledge” means the knowledge and belief of the employees and agents of the Municipality, each exercising due and reasonable care, with the understanding that such persons have examined such sources of information within the Municipality’s possession, custody and control and made such additional investigation as is reasonable under the circumstances in order to verify the truth and accuracy of such representations and warranties.

“Non-Public Title Defects” means all Title Defects other than Public Title Defects.

“Permitted Encumbrance” shall mean, with respect to the Transferred Assets: (i) any Lien, that is being contested, or being caused to be contested, by Municipality as identified in **Schedule 1.1.2**; (ii) any inchoate materialmen's, mechanics', workmen's, repairmen's, employees', carriers', warehousemen's or other like encumbrances arising in the ordinary course of business of the Transferred Assets; (iii) any easement, covenant, condition, right-of-way, servitude, encroachment, reservation or any zoning, building, environmental, health or safety law relating to the development, use or operation of the Transferred Assets (or other similar reservation, right and restriction), or other defects and irregularities in the title to the Transferred Assets that do not materially interfere with the operation, maintenance or repair of the Transferred Assets or the rights and benefits of ALCOSAN under this Agreement or materially impair the value of the Transferred Assets; (iv) the Reserved Powers, (v) any right reserved to or vested in any Governmental Authority (other than Municipality) by any statutory provision or under common law; (vi) any other Lien expressly permitted hereunder; (vii) any grants or leases of oil, gas, coal or mining interests; and (viii) the Access Rights.

“Person” shall mean a natural person, corporation, municipality, governmental entity or authority, general or limited partnership, limited liability company, joint venture, trust, estate, association or any other legal entity or organization.

“Public Title Defects” means all Title Defects relating to (i) any Assets located in the right of way of a state road where access requires a highway occupancy permit from the Pennsylvania Department of Transportation or Pennsylvania Turnpike Commission, (ii) any Assets located in the right of way of an Allegheny County road where access requires right of way permit from the Allegheny County Department of Public Works, (iii) any Assets located in or under “Waters of the Commonwealth,” as defined in the Pennsylvania Clean Streams Law, where access requires a permit or other authorization from DEP,[ or any Assets located within the right of way of a railroad.<sup>4</sup>]

“Regulatory Agencies” shall mean EPA, DEP and ACHD.

“Released Claims” shall have the meaning set forth in Section 8.11.

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<sup>4</sup> Subject to review by ALCOSAN on a case-by-case basis

“Released Parties” shall have the meaning set forth in Section 8.11.

“Releasing Parties” shall have the meaning set forth in Section 8.11.

“Required Consents” shall have the meaning set forth in Section 3.3.

“Reserved Powers” shall mean any powers reserved by Municipality herein or required by Law to be vested in Municipality with respect to the Assets.

“Retained Liabilities” shall mean all liabilities other than the Assumed Liabilities and shall include all liabilities of Municipality relating to or, in any manner, arising from Municipality's ownership or operation of the Assets on or prior to the Closing Date including: (i) all liabilities arising out of or relating to services, work or projects performed by or on behalf of Municipality; (ii) all debts, covenants, liabilities and obligations for the payment of sums to bondholders or creditors in connection with general obligation bonds, loans, or other instruments; (iii) all liabilities to any employee of Municipality under any contracts, agreements or plans or benefits or relating to payroll, vacation, sick leave, severance, termination, retention, worker's compensation, unemployment benefits, pension benefits, health care plans or benefits or any other employee plans or benefits of any kind for the Municipality's employees or former employees or both; (iv) all liabilities arising out of or relating to any contracts made or services, work, projects, supplies or materials provided by or on behalf of Municipality; (v) all liabilities arising from or in any manner connected with any breach or alleged breach of or in connection with contracts made by or on behalf of Municipality regarding or relating to the Assets or violation of any applicable Laws by Municipality; (vi) any and all liabilities for any actions, Liens, claims, suits or demands of any kind asserted, brought or filed by any person arising out of or in any manner connected with any acts, omissions or conduct of Municipality or Municipality's operation of the Transferred Assets; (vii) any liability arising out of Illegal Connections, including removal of such Illegal Connections; (viii) any liability arising out of Direct Connections, including liability to property owners for sewer backups; provided, however, that such liabilities for Direct Connections arising primarily out of ALCOSAN's failure to maintain the Transferred Assets shall not be Retained Liabilities.

“Sewer Lines” shall have the meaning set forth in the recitals.

“Title Defects” means (a) any Assets that are not located within the boundary lines of (i) real property owned by the Municipality, or (ii) rights-of-way or easements held by the Municipality, and (b) any Assets for which Municipality does not have the right to access from a public right-of-way for the purposes of inspection, maintenance, repair and replacement. Title Defects shall include all Known Title Defects.

“Transaction Documents” shall have the meaning set forth in Section 5.2.

“Transferred Assets” shall have the meaning set forth in Section 2.1.

“Wet Weather Plan” shall have the meaning set forth in the recitals.

1.2 The word “include” means include, without limitation, and the word “including” means including, but not limited to.

1.3 The words “and” or “or” shall mean and include both the conjunctive and the disjunctive whenever necessary or advisable to give the provision its intended meaning and effect.

## ARTICLE 2 — TRANSFER OF ASSETS

2.1 Transfer of Assets. On the Closing Date, Municipality will transfer, convey, assign and deliver to ALCOSAN all of Municipality's rights, title and interest in the following (the “Transferred Assets”):

- (a) the Assets, subject to the Permitted Encumbrances;
- (b) all real property interests of Municipality primarily used or necessary in the operation of the Assets, including all easements, rights-of-way, access agreements and licenses;
- (c) [all Licenses and Permits owned, held, possessed or entitled in the name of Municipality, or in which Municipality has rights]<sup>5</sup>
- (d) copies of all files, information, books, blueprints, maps, diagrams, ledgers, surveys, reports, instruments, real estate records, engineering information, inspection records, books of account and other management documents, resolutions, rules and regulations, and all other records relating to the Assets, a list of the same is attached hereto and made a part hereof as **Schedule 2.1**; and
- (e) all assignable warranties, indemnities and guarantees, if any, related to or necessary for the operation of the Assets.

2.2 Excluded Assets. Notwithstanding any other provision hereof, the Transferred Assets do not include any assets listed on **Schedule 2.2** (the “Excluded Assets”).

2.3 Consideration. The consideration for the transfer of the Transferred Assets from Municipality to ALCOSAN shall be the assumption of the Assumed Liabilities, the execution and delivery of the other Transaction Documents and the performance of the obligations set forth in this Agreement. The parties acknowledge and agree that the consideration provided for in this Agreement represents fair consideration and reasonable equivalent value for the transfer of the Transferred Assets and the transactions, covenants and agreements set forth in this Agreement, which consideration was agreed upon as the result of arm's length good faith negotiations between the parties and their respective representatives.

2.4 Assumed Liabilities. Subject to Section 2.5 and all other terms and conditions in this Agreement, ALCOSAN shall assume, implement, perform and discharge only those duties, liabilities, obligations, and responsibilities (collectively, the “Assumed Liabilities”) of Municipality as they pertain exclusively to the Transferred Assets arising after the Closing Date,

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<sup>5</sup> TEXT SUBJECT TO REVISION PENDING OUTCOME OF DISCUSSION WITH DEP CONCERNING PERMIT PROCESS QUESTIONS

including (in each case only to the extent arising after the Closing Date) (a) all work relating to the operation, inspection and maintenance/repair of the Transferred Assets, including measures relating exclusively to the Transferred Assets in the Municipal Feasibility Study; and

(b) all work relating to the design, installation, operation, inspection and maintenance/repair of any project proposed in the Municipal Feasibility Study for new or upgraded facilities specified to address performance or capacity issues relating to the Transferred Assets; provided, however, that if ALCOSAN obtains approval from the Regulatory Agencies to eliminate the proposed project or defer or implement a modification of the originally proposed project, then ALCOSAN shall not be required to complete such project or shall complete such project as modified. Municipality acknowledges and agrees that following the transfer, ALCOSAN may negotiate with the Regulatory Agencies, for the purpose of complying with its Consent Decree obligations in a cost effective manner and realizing the benefits of regionalization, any project or projects, including the scope and schedule thereof, originally proposed in the Municipal Feasibility Study that relate directly or exclusively to the Transferred Assets, which may result in the elimination, deferral, or modification of the project or projects proposed in the Municipal Feasibility Study. For the avoidance of doubt, this Section 2.4 is not intended to expand any obligations of the Municipality under the Municipal Feasibility Study.

2.5 Retained Liabilities. Municipality shall retain, remain and be solely responsible for the timely and complete payment, performance and discharge of all of the Retained Liabilities.

2.6 Assignment of Permits. [To the extent legally permissible, Municipality hereby assigns and transfers to ALCOSAN, and ALCOSAN accepts, all of Municipality's rights, title and interest in and to the Licenses and Permits. Further, Municipality shall cooperate and work with ALCOSAN to cause reissuance, issuance and, transfer, pre- and post-Closing Date, of the Licenses and Permits.]<sup>6</sup>

### ARTICLE 3 — REPRESENTATIONS AND WARRANTIES BY MUNICIPALITY

Municipality hereby represents and warrants to ALCOSAN, as of the Closing Date, as follows:

3.1 Authorization. Municipality has full power and authority to make, execute, deliver and perform the Transaction Documents.

3.2 Execution. This Agreement has been, and on the Closing Date the other Transaction Documents will be, duly and validly executed and delivered by Municipality and have been or shall be duly authorized by all necessary or advisable governmental and other action all as required by applicable Laws and constitutes (or upon such execution and delivery will constitute) legal, valid and binding obligations of Municipality enforceable against Municipality in accordance with all of the terms and provisions in this Agreement.

3.3 No Conflicts. Other than those consents identified on Schedule 3.3 (the “Required

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<sup>6</sup> THIS SECTION WILL BE REVISED FOLLOWING THE PENDING DISCUSSIONS WITH DEP CONCERNING PERMIT PROCESS QUESTIONS

Consents”), the execution, delivery and performance of this Agreement by Municipality and the consummation by Municipality of the transactions contemplated in this Agreement will not: (a) breach or result in a default (or an event which, with the giving of notice or the passage of time, or both, would constitute a default) or otherwise give any person a basis for accelerated or increased rights or termination or nonperformance under any agreements by which Municipality or the Transferred Assets are bound; (b) result in the violation of any provision of applicable Laws or any of the Licenses and Permits; (c) result in the creation or imposition of any Liens upon any Transferred Assets.

3.4 Title to Property; Encumbrances. Excepting Permitted Encumbrances, Municipality has valid and marketable title to the Transferred Assets free and clear of all liens and other encumbrances. Except as set forth on **Schedule 3.4** (the “Known Title Defects”), to the Municipality’s Knowledge, there are no Title Defects.

3.5 Litigation. Other than as listed on **Schedule 3.5**, there is no suit, action, arbitration, claim, proceeding or investigation pending or threatened against Municipality or any of the Transferred Assets, and there are no facts or circumstances which could reasonably form the basis of any such suit, action, arbitration, claim, proceeding or investigation.

3.6 Licenses and Permits. [**Schedule 3.6** contains a complete and correct list of all Licenses and Permits, all of which have been duly issued and are valid and in good standing with no unsatisfied condition or qualification. Municipality is in compliance with the terms and conditions of, and has performed all obligations under, all such Licenses and Permits. Municipality has not received any notice of non-renewal of any such Licenses and Permits.]<sup>7</sup>

3.7 Compliance with Laws. Except as identified in the Consent Order or on **Schedule 3.7**, the Transferred Assets and the Municipality’s past and present operation thereof are in compliance with all applicable Laws.

3.8 Inspection; Maintenance/Repair and Source Reduction. Municipality has (i) completed, to ALCOSAN’s satisfaction, the inspection and maintenance/repair program as required by the Consent Order; (ii) implemented the inspection and maintenance plan that was submitted to [DEP]/[ACHD] on \_\_\_\_\_ as it relates exclusively to the Assets.

3.9 AS-IS WHERE-IS. Except as otherwise set forth in this Agreement, the parties agree that Municipality is conveying the Transferred Assets to ALCOSAN in an “as-is, where-is” condition. Except as set forth in this Agreement, neither Municipality nor anyone acting on behalf of Municipality has made any representation or warranty, express or implied, to ALCOSAN with respect to Municipality or the Assets.

#### ARTICLE 4 — REPRESENTATIONS AND WARRANTIES OF ALCOSAN

ALCOSAN hereby represents and warrants to Municipality, as of the Closing Date, as

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<sup>7</sup>THIS SECTION WILL BE REVISED FOLLOWING THE PENDING DISCUSSIONS WITH DEP CONCERNING PERMIT PROCESS QUESTIONS



follows:

4.1 Authorization. ALCOSAN has full power and authority to make, execute, deliver and perform the Transaction Documents.

4.2 Execution. This Agreement has been, and on the Closing Date the other Transaction Documents will be, duly and validly executed and delivered by ALCOSAN and have been or shall be duly authorized by all necessary or advisable governmental and other action all as required by applicable Laws and constitutes (or upon such execution and delivery will constitute) legal, valid and binding obligations of ALCOSAN enforceable against ALCOSAN in accordance with all of the terms and provisions in this Agreement.

4.3 No Conflicts. The execution, delivery and performance of this Agreement by ALCOSAN and the consummation by ALCOSAN of the transactions contemplated in this Agreement will not: (a) breach or result in a default (or an event which, with the giving of notice or the passage of time, or both, would constitute a default) or otherwise give any person a basis for accelerated or increased rights or termination or nonperformance under any agreement by which ALCOSAN or its Transferred Assets are bound or (b) result in the violation of any provision of applicable Laws.

4.4 No Other Representations. Except for the representations and warranties made in this Article 4, Municipality understands and agrees that neither ALCOSAN nor anyone acting on its behalf makes any express or implied representations or warranties with respect to the transactions contemplated by this Agreement.

#### ARTICLE 5 — CLOSING DELIVERABLES

5.1 Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) will take place on the Closing Date at such place as the parties may mutually agree.

5.2 Closing Date Deliverables of Municipality. On the Closing Date, Municipality shall have executed and delivered to ALCOSAN the following documents and instruments, in form and substance reasonably satisfactory to ALCOSAN and its counsel, as are necessary or desirable in order to consummate the transactions contemplated hereby, each dated as of the Closing Date (together with this Agreement, the “Transaction Documents”):

(i) a Bill of Transfer in substantially the form of **Exhibit B**;

(ii) an Assignment and Assumption Agreement in substantially the form of **Exhibit C** (the “Assignment and Assumption Agreement”); and

(iii) deeds, assignments, and/or licenses of all real property interests of the Municipality that are part of the Transferred Assets in recordable form.

5.3 Consents and Approvals. Municipality will have delivered to ALCOSAN each Required Consent as of the Closing Date.

5.4 Closing Date Deliverables of ALCOSAN. ALCOSAN and any other parties thereto

(other than Municipality) will have executed and delivered to Municipality the following documents and instruments, in form and substance reasonably satisfactory to Municipality and its counsel, as are necessary or desirable in order to consummate the transactions contemplated hereby, each dated as of the Closing Date:

- (i) the Assignment and Assumption Agreement; and
- (ii) deeds, easements, rights-of-way or assignments of all real property interests that are part of the Transferred Assets in recordable form.

5.5 [Issuance of WQM II Permits/Transfer Approval for NPDES Permit(s)].<sup>8</sup>

## ARTICLE 6 — INDEMNIFICATION AND RELEASE

### 6.1 Indemnification.

(a) ALCOSAN Indemnification of Municipality. From and after the Closing Date, ALCOSAN shall release, defend, indemnify and hold Municipality harmless from and against any and all Damages arising out of or relating to (i) the Assumed Liabilities, (ii) the failure by ALCOSAN to perform or observe any agreement or condition to be performed or observed by ALCOSAN pursuant to this Agreement, and (iii) any misrepresentation or breach of warranty under Article 4.

(b) Municipality Indemnification of ALCOSAN. From and after the Closing Date, Municipality shall release, defend, indemnify and hold ALCOSAN harmless from and against any and all Damages arising out of or relating to (i) the Retained Liabilities, (ii) the Excluded Assets, (iii) the failure by Municipality to perform or observe any agreement or condition to be performed or observed by Municipality pursuant to this Agreement, (iv) any misrepresentation or breach of warranty under Article 3, (v) the Non-Public Title Defects, and (vi) the Public Title Defects.<sup>9</sup> Notwithstanding the foregoing, Municipality shall not be obligated to indemnify

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<sup>8</sup> THIS SECTION WILL BE INSERTED FOLLOWING THE PENDING DISCUSSIONS WITH DEP CONCERNING PERMIT PROCESS QUESTIONS

<sup>9</sup> Due to the fact that some municipalities will be able to provide complete real estate records and others will be unable to present any documentation at all with respect to easements, rights-of-way and other documents granting a municipality the right to access its Transferred Assets, a one-size-fits-all indemnification provision relating to Title Defects appears to be impractical. We believe that this provision should be best addressed on a case-by-case basis. If a municipality can present evidence that there are no Title Defects, such municipality should only be obligated to indemnify ALCOSAN for any material misrepresentations in its records (which would be listed on a schedule). However, in the event that a municipality is unable to provide such evidence for the entirety of their Transferred Assets, such municipality will either (a) endeavor to obtain legal access to the undocumented portion of its Transferred Assets prior to the transfer or (b) negotiate an appropriate indemnification provision with ALCOSAN.

ALCOSAN pursuant to Section 6.1(b)(vi) for permit fees or other fees charged by a Governmental Authority or railroad in the ordinary course of operation and maintenance of the Transferred Assets except to the extent such Damages arose because the Transferred Assets were located within the subject real property without the right to do so.

## ARTICLE 7 — COVENANTS

### 7.1 Responsibility for Closing Costs.

(a) In connection with the conveyance of the Transferred Assets to ALCOSAN, ALCOSAN shall pay or cause to be paid (i) counsel fees of ALCOSAN and any other consultants, brokers, or other advisors retained by ALCOSAN, (ii) the cost of any due diligence investigations performed by ALCOSAN with respect to the Assets, (iii) all survey costs, (iv) all costs of recordation in connection with the [deeds/recordable instruments], (v) Fifty percent (50%) of all realty transfer tax, if any, in connection with the [deeds/recordable instruments] and (vi) all other costs and expenses of ALCOSAN in connection with the transactions contemplated by this Agreement.

(b) In connection with the conveyance of the Transferred Assets to ALCOSAN, Municipality shall pay or cause to be paid (i) counsel fees of Municipality and any other consultants, brokers, or other advisors working with or providing assistance to Municipality, (ii) all costs of preparation of the [deeds/recordable instruments], (iii) Fifty percent (50%) of all realty transfer tax, if any, in connection with the [deeds/recordable instruments] and (iv) all other costs and expenses of Municipality in connection with the transactions contemplated by this Agreement.

7.2 Access Rights. [To the extent that ALCOSAN needs to access, maintain, repair or replace, any of the Transferred Assets located within property or rights-of-way owned by Municipality, Municipality shall not charge ALCOSAN any permit or other fees relating to such access, maintenance, repair and replacement, unless ALCOSAN damages the property owned or benefiting Municipality. Any license or other right granted by the Municipality to ALCOSAN with respect to the Transferred Assets shall include the same restrictions on the Municipality's ability to charge fees to ALCOSAN.]<sup>10</sup>

7.3 Minimum Controls. From and after the Closing, Municipality shall comply with the "Nine Minimum Controls" under the CSO NPDES Permit, or with the "Minimum Control Measures" under the MS4 NPDES Permit, as applicable.

7.4 Permit Transfer. Municipality and ALCOSAN acknowledge and agree that Municipality and ALCOSAN will cooperate to apply for and pursue the transfer of the \_\_\_\_\_ permit(s) relating to all Transferred Assets from Municipality to ALCOSAN. [Municipality shall execute all documents required by all applicable Regulatory Agencies to effect the appointment of ALCOSAN as operator under such permit(s).] Municipality hereby authorizes ALCOSAN to commence operations as operator under such permit(s), and ALCOSAN acknowledges and

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<sup>10</sup> THE SPECIFIC PROTOCOLS RELATING TO ACCESS RIGHTS AND RESPONSIBILITIES TO BE ESTABLISHED BY THE MUNICIPAL PARTY AND ALCOSAN.

agrees that it shall indemnify Municipality from and against all Damages incurred or suffered as a result of ALCOSAN’s acts or omissions under or with respect to such permit(s); provided, however, that such indemnification shall apply only if Municipality provided a copy of such permit(s) to ALCOSAN or otherwise provided written notice to ALCOSAN of all of Municipality’s obligations under such permit(s) prior to the date hereof.

ARTICLE 8 — MISCELLANEOUS

8.1 Notices. Any notice required or desired to be given to a person under the provisions in this Agreement shall be in writing and either personally delivered or delivered by sending the notice by certified mail, return receipt requested, postage prepaid, or a reliable and reputable overnight courier service, charges prepaid, to the address set forth below. Notice pursuant to this paragraph shall be conclusively deemed to have been given to the person entitled thereto, upon the earlier of actual receipt or the second business day after deposit in the United States mail or the next business day after timely deposit with an overnight courier service for delivery to that person.

Notices are to be addressed as follows:

To ALCOSAN:

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

To Municipality:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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With a copy to:

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

With a copy to:

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

Whenever any notice or other communication is required to be given pursuant to the provisions of this Agreement, a waiver thereof, in writing, signed by the person entitled to such notice, whether before or after the time stated therein, shall be deemed to be delivery of notice for the purposes of this Agreement.

8.2 Effect of Waiver or Consent. No course of dealing, custom or conduct nor any delay or failure on the part of Municipality or ALCOSAN to exercise any right, power or remedy shall be or be deemed a waiver or release of such right, power or remedy or otherwise prejudice or impair the rights, powers, benefits or remedies of Municipality or ALCOSAN. No waiver or release by Municipality or ALCOSAN shall be valid or binding unless given in a writing signed by Municipality or ALCOSAN to be charged with the waiver or release. A waiver or consent, express or implied, to or of any breach or default by any party in the performance by that party of any of its/his duties or obligations with respect to this Agreement is not a consent or waiver to or of any other breach or default in the performance by that party or any other party of the same or

any other duties or obligations of that party or any other party with respect to this Agreement. Failure on the part of a party to declare any party in default or breach with respect to this Agreement, irrespective of how long that failure continues, does not constitute a waiver or release by that party of its rights with respect to that default or breach until the period of the applicable statute of limitations has expired.

8.3 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. If executed in multiple counterparts, this Agreement shall become binding when any counterpart or counterparts, individually or taken together, bear the signatures of all of the parties. This Agreement, to the extent signed and delivered by means of facsimile machine or other electronic transmission (including .pdf), shall be treated in all manner and respects and for all purposes as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. Neither party shall raise the use of facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of facsimile machine or other electronic transmission as a defense to the formation or enforceability of the Agreement and each party forever waives any such defense.

8.4 Amendments and Binding Effect. All amendments to this Agreement must be in writing, signed by Municipality and ALCOSAN and shall take effect immediately. Oral agreements to amend or change this Agreement, or any part thereof, shall not be valid or binding and Municipality and ALCOSAN, for themselves and their successors, fully and forever waive and release any and all rights to make, assert or claim that this Agreement has been amended by an oral agreement. This Agreement and all provisions herein shall be binding upon and inure to the benefit of Municipality and ALCOSAN and their respective successors; provided that neither party may assign or transfer any of its rights or interests under this Agreement without first obtaining the prior written consent of the other party which consent will not be unreasonably withheld, delayed or conditioned.

8.5 Governing Law. This Agreement and the rights and duties of Municipality and ALCOSAN shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

8.6 Severability. If any provision in this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable to any extent as to any person or circumstance under any present or future Laws, such findings shall not render that provision invalid or unenforceable as to any other persons or circumstances.

8.7 Interpretation and Construction. In no event shall any construction, interpretation, enforcement, presumption or inference, in favor of or against Municipality, ALCOSAN or any person be made as a consequence of the identity of the draftsman of this Agreement. Municipality and ALCOSAN covenant and agree that this Agreement shall be construed and interpreted in a neutral manner and in interpreting this Agreement, there shall be no presumption or inference, by operation of law or otherwise, that any provision or part of this Agreement shall be more strictly construed against any person for any reason whatsoever. In interpreting this

Agreement, the use of any gender shall include all genders; the singular shall include the plural and the plural the singular and words used in the past or present tense shall include the future whenever necessary or advisable to produce the intended meaning or effect unless the application of the foregoing would result in a construction inconsistent with the manifest intent or objectives of the Agreement. All references to annexes, schedules or exhibits are to annexes, schedules or exhibits attached hereto, each of which is incorporated herein and made a part hereof for all purposes. The paragraph headings in this Agreement are for convenience only they do not form a part of this Agreement and shall not affect or be used in its construction or interpretation. The provisions in this Agreement, in all circumstances, shall always control and supersede any course of conduct, dealing, performance, custom or usage inconsistent or in conflict with any of the provisions in this Agreement.

8.8 Further Actions. Municipality and ALCOSAN agree that each party shall cooperate fully and act in good faith with the other party and shall comply fully with all provisions and applicable Laws relating to the preparation and maintenance of complete and accurate records. If, at any time after the Closing Date, any further action is necessary or desirable to carry out the intent or any of the purposes or objectives of this Agreement, including the issuance, transfer or amendment of WQM II or NPDES permits, Municipality and ALCOSAN shall take or cause to be taken all such necessary, advisable or convenient action and execute, acknowledge, deliver and file all necessary, desirable or convenient documentation. Municipality and ALCOSAN further agree to participate in collaborative discussions to establish and implement flow reduction measures, including flow targets, which are mutually acceptable.

8.9 Conflict Resolution.<sup>11</sup>

[Intentionally Blank]

8.10 Survival of Representations and Warranties. All representations, warranties, covenants and agreements of the parties contained in this Agreement and in any other agreements, documents or certificates executed or delivered by the Parties pursuant to this Agreement, including the Transaction Documents, or in connection with the transactions contemplated by this Agreement will survive the execution, delivery and performance of this Agreement and the Closing. Notwithstanding the foregoing, Municipality's indemnification obligations pursuant to Section 6.1(b)(v) and 6.1(b)(vi) (relating to Title Defects) shall expire upon [full compliance by ALCOSAN with the Consent Decree]<sup>12</sup> as determined by EPA and DEP.

8.11 Release. Municipality, and anyone claiming by, under or through it (collectively, the "Releasing Parties"), hereby absolutely, unconditionally and irrevocably releases and forever

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<sup>11</sup> THE INCLUSION OF A CONFLICT RESOLUTION PROCESS TO BE AT THE OPTION OF THE MUNICIPALITY OR MUNICIPAL AUTHORITY WITH PROVISIOS TO BE AGREED UPON BY THE PARTIES

<sup>12</sup> ESTABLISHMENT OF THE EXPIRATION POINT OF THE TITLE DEFECTS INDEMNITY TO BE MADE MORE PRECISE UPON FINALIZATON OF THE COMPLIANCE SCHEDULE MILESTONES IN THE REVISED CONSENT DECREE.

discharges ALCOSAN, and its past, present or future directors, officers, managers, employees, agents, attorneys, financial and other advisors and representatives (collectively, the “Released Parties”) from and absolutely, unconditionally and irrevocably forever waives all claims, actions, causes of action, suits, debts, liabilities, obligations, sums of money, controversies, Damages, judgments and demands arising out of, relating to or in any way connected to any increase in ALCOSAN's system-wide rates to account exclusively for the Assumed Liabilities hereunder and ALCOSAN's assumption of liabilities in connection with ALCOSAN's acquisition of Transferred Assets from various municipalities and municipal authorities in Allegheny County (the “Released Claims”); provided, however, that Released Claims shall not include (and the Releasing Parties shall retain all rights with respect to ALCOSAN for) any obligations of ALCOSAN arising out Section 6.1(a) of this Agreement.

8.12 Modification of Outstanding Agreements. Notwithstanding anything to the contrary herein, except for the agreements listed on **Schedule 8.12**, nothing in this Agreement is intended to amend, modify or supersede any existing agreement by and between the parties hereto and all such agreements shall remain in full force and effect following the Closing Date.

[Signature Page Follows]

IN WITNESS WHEREOF, ALCOSAN and Municipality, by their duly authorized representatives, have signed and sealed this Agreement effective as of the date first set forth above.

**MUNICIPALITY:**

[\_\_\_\_\_]

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

Name:

Title:

**ALCOSAN:**

ALLEGHENY COUNTY SANITARY  
AUTHORITY

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

Name:

Title:





**EXHIBITS**

**Exhibit A**

[Map(s) Depicting Assets (Recitals)]

**Exhibit B**

[Bill of Transfer (§5.2(i))]

**Exhibit C**

[Assignment and Assumption Agreement]

**SCHEDULES**

**Schedule 1.1.1**

[Known Exceptions to “Illegal Connections”]

**Schedule 1.1.2**

[Contested Liens]

**Schedule 2.1**

[Records of Municipality]

**Schedule 2.2**

[Excluded Assets]

1. All equipment, materials, goods, merchandise, appliances, tools or supplies which have been acquired for the purpose of consumption or use in the operation and maintenance of the Assets.
2. All right, title, license and interest in and to Municipality's sewage system revenue source(s).
3. All above ground facilities other than manholes that connect directly to the Assets.

**Schedule 3.3**

[Required Consents]

**Schedule 3.4**

[Known Title Defects]

**Schedule 3.5**

[Litigation]

**SCHEDULES (cont.)**

**Schedule 3.6**

[Licenses and Permits]

**Schedule 3.7**

[Compliance with Laws]

**Schedule 8.12**

[Amended, Modified or Superseded Agreements]