

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:)	
)	
JEFFERSON COUNTY, ALABAMA,)	Case No. 11-05736-TBB9
a political subdivision of the State of)	
Alabama,)	Chapter 9
)	
Debtor.)	

**MOTION FOR APPROVAL PURSUANT TO THE CONFIRMATION ORDER
OF COMPROMISES AND SETTLEMENTS AND RELATED RELIEF
WITH RESPECT TO THE CHAPTER 9 PLAN OF ADJUSTMENT
FOR JEFFERSON COUNTY, ALABAMA**

Jefferson County, Alabama (the “County”) hereby moves (the “Motion”) the Court for entry of an order (the County will propose that such order both grant the Motion and confirm the Plan; accordingly, such order is referred to herein as the “Confirmation Order”) under sections 105(a) and 1123(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 3020(e), 7016, and 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving, among other things, the global compromises and settlements that are encompassed within the *Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated November 6, 2013)* [Docket No. 2182], which made certain modifications to the *Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated July 29, 2013)* [Docket No. 1911] (as it may be further amended, supplemented, or modified from time to time by the County in accordance with the terms thereof and Bankruptcy Code section 942, the “Plan”¹), and waiving any stay of the Confirmation Order. In support of the Motion, the County respectfully states as follows:

¹ All capitalized terms used but not otherwise defined herein have the meanings set forth in the Plan.



BACKGROUND

A. Procedural Posture.

1. On November 9, 2011 (the “Petition Date”), the County filed a voluntary petition for relief under chapter 9 of the Bankruptcy Code.

2. The County is a political subdivision of the State of Alabama.

3. On March 4, 2012, this Court entered the order for relief in the County’s case [Docket No. 778], confirming the County’s eligibility to be a debtor under chapter 9 of the Bankruptcy Code.

4. On February 11, 2013, the County and Depfa Bank PLC (“Depfa”) entered into a *Plan Support Agreement* (as the same may be amended, modified, or supplemented in accordance with its respective terms, the “Depfa PSA”).

5. On May 13, 2013, the County, JPMorgan Chase Bank, N.A. (“JPMorgan”), and Bayerische Landesbank, New York Branch, f/k/a Bayerische Landesbank Girozentralethe (“BLB”) entered into a *Plan Support Agreement* (as the same may be amended, modified, or supplemented in accordance with its respective terms, the “GO PSA”).

6. On June 6, 2013, the County, JPMorgan, and each affiliate of JPMorgan (collectively, the “JPMorgan Parties”) that beneficially owns sewer warrants issued by the County (the “Sewer Warrants”) entered into a *Plan Support Agreement* (as the same may be amended, modified, or supplemented in accordance with its respective terms, the “JPMorgan PSA”).

7. On June 6, 2013, the County, Assured Guaranty Municipal Corp., f/k/a Financial Security Assurance, Inc. (“Assured”), Financial Guaranty Insurance Company (“FGIC”), and Syncora Guarantee Inc., f/k/a XL Capital Assurance Inc. (“Syncora,” and collectively with Assured and FGIC, the “Sewer Warrant Insurers”) entered into a *Plan Support Agreement* (as the

same may be amended, modified, or supplemented in accordance with its respective terms, the “Sewer Warrant Insurer PSA”).

8. On June 6, 2013, the County, JPMorgan, and a group of holders of County Sewer Warrants (the “Supporting Sewer Warrantholders”²) entered into a *Plan Support Agreement* (as the same may be amended, modified, or supplemented in accordance with its respective terms, the “Supporting Sewer Warrantholder PSA”).

9. On June 27, 2013, the County, The Bank of Nova Scotia, The Bank of New York Mellon in its capacity as a liquidity bank with respect to Sewer Warrants, and State Street Bank and Trust Company (collectively, the “Sewer Liquidity Banks”) entered into a *Plan Support Agreement* (as the same may be amended, modified, or supplemented in accordance with its respective terms, the “Sewer Liquidity Banks PSA”).

10. On July 24, 2013, the County and Lehman Brothers Special Financing Inc. (“LBSF,” and LBSF collectively with the JPMorgan Parties, the Sewer Warrant Insurers, the Supporting Sewer Warrantholders, and the Sewer Liquidity Banks, the “Sewer Plan Support Parties”) entered into a *Plan Support Agreement* (as the same may be amended, modified, or supplemented in accordance with its respective terms, the “LBSF PSA,” and collectively with the JPMorgan PSA, the Sewer Warrant Insurer PSA, the Supporting Sewer Warrantholder PSA, and the Sewer Liquidity Banks PSA, the “Sewer PSAs”).

11. On June 27, 2013, the County and National Public Finance Guarantee Corporation (“National”) entered into a *Plan Support Agreement* (as the same may be amended,

² As of the August 6, 2013 record date for voting on the Plan, the Supporting Sewer Warrantholders include Brigade Capital Management, LLC, Citigroup Global Markets Inc., Emerald Eagle Holdings, L.L.C., Emerald Eagle Holdings South, L.L.C., Monarch Cayman Fund Limited, Monarch Alternative Solutions Master Fund Ltd., Monarch Capital Master Partners II LP, Monarch Capital Master Partners II-A LP, Monarch Capital Master Partners LP, Monarch Debt Recovery Master Fund Ltd., Monarch Opportunities Master Fund Ltd., Oakford MF Limited, P Monarch Recovery Ltd., Stone Lion Capital Partners L.P., Claren Road Credit Master Fund, Ltd., Claren Road Credit Opportunities Master Fund, Ltd., Glendon Capital Management L.P., and Red Mountain Holdings LLC.

modified, or supplemented in accordance with its respective terms, the “National PSA,” and collectively with the Sewer PSAs, the Depfa PSA, and the GO PSA, the “Plan Support Agreements”).

12. On June 30, 2013, the County filed the *Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated June 30, 2013)* [Docket No. 1816] and the *Disclosure Statement Regarding Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated June 30, 2013)* [Docket No. 1817].

13. On July 29, 2013, the County filed an amended version of the Plan. On November 6, 2013, the County filed the further amended and current version of the Plan. The Plan incorporates, *inter alia*, the various settlements and compromises contemplated by the Plan Support Agreements and presents a broad resolution of disputes among the County and various constituencies, including each of the parties to the Plan Support Agreements. The compromises and settlements contemplated by the Plan Support Agreements and incorporated into the Plan are essential to consummation of the Plan and approval of such compromises and settlements is an express condition precedent to the occurrence of the Effective Date. *See* Plan § 4.18(a)(vii).

14. On August 8, 2013, the County filed the amended and current version of the *Disclosure Statement Regarding Chapter 9 Plan of Adjustment for Jefferson County, Alabama (Dated July 29, 2013)* [Docket No. 1977] (the “Disclosure Statement”). The Disclosure Statement contains a thorough description of the County, its debt structure, the events leading up to the commencement of the County’s chapter 9 case, and the events and settlements leading up to the filing of the County’s Plan, including detailed information regarding the Plan Support Agreements and the compromises and settlements incorporated into the Plan.

15. On August 7, 2013, the Court entered an order approving the Disclosure Statement [Docket No. 1974] and an order approving certain Plan solicitation procedures and

setting November 12, 2013, as the date for the Confirmation Hearing [Docket No. 1975] (the “Plan Procedures Order”). The Court subsequently entered an order continuing the Confirmation Hearing and extending certain related deadlines. *See* Docket No. 2169.

16. The Plan Procedures Order set October 7, 2013, as the deadline for Creditors entitled to vote to return their ballots regarding acceptances and rejections of the Plan. Although the final voting and election results have not yet been filed with the Court,³ creditor support for the Plan is overwhelming. Of the Creditors entitled to vote on the Plan and inclusive of all of the voting classes, the holders of *over \$3.9 billion* in claims voted to accept the Plan, and the holders of *less than \$18 million* in claims voted to reject the Plan. Without limitation, the Plan’s comprehensive sewer-related compromises and settlements are affirmatively supported by the holders of more than 99% of the aggregate principal amount of the outstanding Sewer Warrants that were voted on the Plan (which also constitutes the support of more than 95% of the aggregate principal amount of *all* outstanding Sewer Warrants). The overwhelming creditor support for the Plan is further demonstrated by the fact that *not one* holder of any of the County’s debt securities or any other legitimate creditor filed an objection to confirmation of the Plan.

17. During the months of October and November 2013, the County engaged in further extensive good faith negotiations with the primary Sewer Plan Support Parties to address the fact that changes in the municipal finance market, consumption patterns, and actual and projected revenues rendered the County potentially unable to raise through the issuance of the New Sewer Warrants (or otherwise) funds sufficient to make the Distributions to the holders of Allowed Class 1-A, Class 1-B, Class 1-C, and Class 1-D Claims required by the July 29 version of the

³ The Plan Procedures Order, as modified on October 31, 2013, provides that the final Plan Ballot Summary and associated certifications by Kurtzman Carson Consultants LLC must be filed on or before November 15, 2013. The information set forth herein is subject to change and shall in all events be superseded by the detailed results set forth in the final Plan Ballot Summary filed with the Court.

Plan. On November 6, 2013, the County entered into supplements to the JPMorgan PSA, the Sewer Warrant Insurer PSA, the Supporting Sewer Warrantholder PSA, and the Sewer Liquidity Banks PSA.⁴ Through these supplements and the current version of the Plan, the County documented the applicable Sewer Plan Support Parties' agreement to provide the November 2013 Concessions (as defined and described below).

B. Background Of The Settlements and Compromises Related To The Sewer System.⁵

18. Before the Petition Date, the County financed its sewer system (the "Sewer System") by issuing several series of Sewer Warrants as tax-exempt municipal debt under Section 103 of Title 26 of the United States Code, 26 U.S.C. §§ 1, *et seq.* The Sewer Plan Support Parties collectively hold over \$2.66 billion of the approximately \$3.1 billion of currently outstanding principal amount of Sewer Warrants – *i.e.*, more than 85% of the County's outstanding sewer debt.

19. The Plan is structured around, and its effectiveness is expressly conditioned upon approval pursuant to the Confirmation Order of, the series of significant inter-related, multi-party compromises and settlements among the County and various creditors described herein and in the Disclosure Statement, most significant among which are the numerous and complex compromises and settlements among the County and the Sewer Plan Support Parties. As the

⁴ The execution versions of these supplements are attached as exhibits to the *Notice of Plan Modifications and Hearing Thereon* that has been or will be filed by the County.

⁵ Nothing in this Motion shall be construed in any way to limit or alter any of the provisions of the Plan, of the Plan Support Agreements, or of any related documents (collectively, the "Plan Documents"), or to guide in the interpretation of the Plan Documents in any other proceeding. The summaries contained in this Motion are provided merely as a convenience to the Court and parties in interest in evaluating the settlements and compromises at issue. In the event of any inconsistency between the Motion and the Plan Documents, the Plan Documents shall control. Although the County anticipates that the Plan will be confirmed and become effective, if the Plan is not confirmed or if the Effective Date does not occur, the Plan (and the Confirmation Order, if entered) will be null and void and inadmissible as evidence in any proceeding, and nothing contained in the Plan, the Disclosure Statement, or the Confirmation Order (if entered) will (a) be an admission by the County, any of the Plan Support Parties, the Sewer Warrant Trustee, or the School Warrant Trustee with respect to any matter set forth therein, including liability on any Claim or the propriety of any Claim's classification; (b) constitute a waiver, acknowledgment, or release of any Claims against the County or its property, or of any Causes of Action; or (c) prejudice in any manner the rights of any Person in any further proceedings.

evidence at the Confirmation Hearing will establish, the settlements embodied in the Plan were reached with the Sewer Plan Support Parties in good faith, at arms' length, and over an extended period of intense negotiation.

20. Through the settlements and compromises contained in the Plan, the County will be able to address and resolve years of costly and complex litigation (and avoid substantial further litigation) involving the Sewer System and its indebtedness, restructure its indebtedness on viable terms, and emerge from its chapter 9 proceedings. Without limitation, and in each case subject to all terms and conditions of the Plan, such settlements and compromises achieve the following beneficial objectives:

- i) Sewer System creditor concessions of up to approximately \$1.5 billion of bankruptcy claims related to the Sewer System (collectively, the "Sewer Debt Claims"), which will substantially reduce the amount of the County's Sewer System-related indebtedness from approximately \$3.1 billion to approximately \$1.738 billion;
- ii) an increase in sewer rates as part of the settling parties' efforts to facilitate the County's issuance of new sewer warrants (the "New Sewer Warrants") and to ensure that the Sewer System will generate adequate funds to service indebtedness, maintain operations, meet capital needs for the foreseeable future, and preserve and improve services;
- iii) dismissals with prejudice of several adversary proceedings involving the County and other suits, currently stayed or pending in other courts, including without limitation:
 - a) *Charles E. Wilson, et al. v. JPMorgan Chase & Co., et al. (In re Jefferson County, Alabama)*, Adv. Proc. No. 11-00433-TBB (the "Wilson Bankruptcy Action");

- b) *The Bank of New York Mellon, as Indenture Trustee v. Jefferson County, Alabama (In re Jefferson County, Alabama)*, Adv. Proc. No. 12-00016-TBB;
- c) *The Bank of New York Mellon, as Indenture Trustee v. Jefferson County, Alabama (In re Jefferson County, Alabama)*, Adv. Proc. No. 12-00067-TBB;
- d) *Andrew Bennett, et al. v. Jefferson County, Alabama and The Bank of New York Mellon, as Indenture Trustee (In re Jefferson County, Alabama)*, Adv. Proc. No. 12-00120-TBB (the “Bennett Action”);
- e) *Lehman Brothers Special Financing Inc. v. The Bank of New York Mellon, as Indenture Trustee, and Jefferson County, Alabama (In re Jefferson County, Alabama)*, Adv. Proc. No. 12-00149-TBB;
- f) *The Bank of New York Mellon, as Indenture Trustee v. Jefferson County, Alabama, et al. (In re Jefferson County, Alabama)*, Adv. Proc. No. 13-00019-TBB (the “Declaratory Judgment Action”);
- g) *The Bank of New York Mellon as Trustee v. Jefferson County, et al.*, United States District Court for the Northern District of Alabama, Case No. 2:08-cv-1703-RDP;
- h) *The Bank of New York Mellon as Trustee v. Jefferson County, et al.*; Circuit Court of Jefferson County, Alabama, Civil Action No. CV-2009-2318;
- i) *Jefferson County, Alabama v. JPMorgan Chase Bank, N.A., et al.*, Circuit Court of Jefferson County, Alabama, Case No. CV-2009-903641; and
- j) *Wilson, et al. v. JPMorgan Chase & Co., et al.*, Circuit Court of Jefferson County, Alabama, Civil Action No. CV-2008-901907 (together with the Wilson Bankruptcy Action, the “Wilson Action”);
- iv) the resolution and dismissal of no fewer than 19 appeals pending before the United States Court of Appeals for the Eleventh Circuit, including;

- a) *Assured Guaranty Municipal Corp. v. Jefferson County, Alabama*, Appeal No. 12-90010;
- b) *Financial Guaranty Insurance Co. v. Jefferson County, Alabama*, Appeal No. 12-90011;
- c) *The Bank of New York Mellon v. Jefferson County, Alabama*, Appeal No. 12-90012;
- d) *Bank of America v. Jefferson County, Alabama*, Appeal No. 12-90013;
- e) *Jefferson County, Alabama v. The Bank of New York Mellon, et al.*, Appeal No. 12-90014;
- f) *John Young, Jr. v. Jefferson County, Alabama*, Appeal No. 12-90015;
- g) *Syncora Guarantee, Inc. v. Jefferson County, Alabama*, Appeal No. 12-90016;
- h) *Bank of Nova Scotia v. Jefferson County, Alabama*, Appeal No. 12-90017;
- i) *JPMorgan Chase Bank, N.A. v. Jefferson County, Alabama*, Appeal No. 12-90018;
- j) *Assured Guaranty Municipal Corp. v. Jefferson County, Alabama*, Appeal No. 12-13654;
- k) *Financial Guaranty Insurance Co. v. Jefferson County, Alabama*, Appeal No. 12-13656;
- l) *Bank of America, et al. v. Jefferson County, Alabama*, Appeal No. 12-13657;
- m) *The Bank of New York Mellon, et al. v. Jefferson County, Alabama*, Appeal No. 12-13658;
- n) *John Young, Jr. v. Jefferson County, Alabama*, Appeal No. 12-13660;
- o) *Syncora Guarantee, Inc. v. Jefferson County, Alabama*, Appeal No. 12-13661;
- p) *Bank of Nova Scotia, et al. v. Jefferson County, Alabama*, Appeal No. 12-13662;

- q) *JPMorgan Chase Bank, N.A. v. Jefferson County, Alabama*, Appeal No. 12-13663;
- r) *Jefferson County, Alabama v. The Bank of New York Mellon, et al.*, Appeal No. 12-90039; and
- s) *Jefferson County, Alabama v. Bank of Nova Scotia, et al.*, Appeal No. 13-10348; and
- v) a full, final, and complete compromise, settlement, release, and resolution of, among other matters, all disputes and pending or potential litigation (including any appeals) regarding the following:
 - a) the allowability, amount, priority, and treatment of the Sewer Debt Claims;
 - b) the validity and enforceability of the Sewer Warrants;
 - c) the valuation of the Sewer System and of the stream of net sewer revenues pledged under the Sewer Warrant Indenture;
 - d) the appropriate rates that have been or can be charged to users of the Sewer System;
 - e) any Causes of Action or Avoidance Actions that the County has asserted or could potentially assert against the JPMorgan Parties or against other of the Sewer Plan Support Parties, including any subordination claims (including equitable subordination claims and statutory subordination claims) relating to any Sewer Debt Claims held by any of the Sewer Plan Support Parties;
 - f) the Sewer Released Claims that (A) some of the Sewer Plan Support Parties have asserted or (B) the Sewer Plan Support Parties could potentially assert against other Sewer Plan Support Parties, including, in each case, any subordination claims (including equitable subordination claims and statutory subordination

claims) relating to any Sewer Debt Claims held by any of the Sewer Plan Support Parties;

- g) how the Sewer Warrant Trustee has applied revenues of the Sewer System to payment of certain Sewer Debt Claims both before and during the County's case, including any Causes of Action related to the reapplication to principal of any interest payments made on the Sewer Warrants during the case or reallocation of any payments made on the Sewer Warrants both before and during the case among the holders of various series and subseries of Sewer Warrants;
- h) the various issues raised by the Declaratory Judgment Action;
- i) the scope and extent of any liens or other property rights under the Sewer Warrant Indenture;
- j) whether, and the extent to which, the County may recover from Sewer System revenues amounts actually incurred or previously paid by the County on account of professional fees prior to and during the County's case;
- k) the allowance and amount of any Bank Warrant Default Interest Claims;
- l) the priority of the LBSF Periodic Payment Claim, the various issues raised by the LBSF Periodic Payment Claim, and the Sewer Warrant Trustee's treatment of and obligations with respect to that claim;
- m) the various issues raised by the Receivership Actions; and
- n) other historical and potential issues associated with the Sewer System and its financing.

21. The sewer-related compromises and settlements embodied in the Plan have been crafted not only to resolve all the County's pending litigation involving the Sewer System and the Sewer Debt, but also to eliminate internecine litigation between and among the various

parties holding Sewer Debt Claims. Absent the comprehensive resolution provided by the Plan, litigation regarding some or all of the potential sewer-related disputes would continue, likely for several years, and likely would result in numerous appeals. In particular, the global Plan settlements will resolve all Causes of Action asserted on behalf of ratepayers and users of the Sewer System in two pending proceedings – the Wilson Action and the Bennett Action. The settlements and resolutions in the Plan remediate the harm that could give rise to any claim for damages in the Wilson Action or the Bennett Action, and moot the Wilson Action and the Bennett Action and all claims asserted therein by the Sewer System ratepayers (collectively, the “Ratepayer Claims”). Accordingly, the Plan is conditioned on the dismissal of all adversary proceedings, contested matters, or other litigation – including the Wilson Action and the Bennett Action – involving Sewer Released Claims.

22. Among the interrelated components of the global sewer settlement to be effected through the Plan is the Commutation Election available under the Plan and related procedures approved by the Court in the Plan Procedures Order, which effectively provided all holders of insured Sewer Warrants with a choice between retaining their claims, if any, against the applicable Sewer Warrant Insurer and receiving 65 cents under the Plan, or releasing those and other claims in exchange for 80 cents under the Plan.⁶

23. In addition to the substantial creditor concessions embodied in the July 29 version of the Plan, the current version of the Plan reflects the following additional substantial concessions obtained by the County through good faith, arms’ length negotiation in October and November 2013 (collectively, the “November 2013 Concessions”):

⁶ More specifically, those holders of Sewer Warrants that made or were deemed to make the Commutation Election will on the Effective Date unconditionally commute, waive, and forever release, discharge, and forgo (a) any and all Sewer Wrap Payment Rights; (b) any and all Bank Warrant Default Interest Claims; and (c) any and all other Sewer Released Claims against the County, against any of the Sewer Released Parties, or against any of their respective Related Parties.

- The JPMorgan Parties agreed to reduce their cash distributions under the Plan by \$100 million and to provide an additional net present value benefit to the County estimated to be approximately \$140,000,000 based on current market conditions,⁷ which value will be provided as a result of JPMorgan issuing up to \$180,000,000 face amount (i.e., 10% of the par amount of the new warrants) 40-year letter(s) of credit for deposit into one or more debt service reserve funds to be established under the New Sewer Warrant Indenture.
- FGIC and Syncora agreed to further reduce their cash distributions under the Plan by \$26,250,000 in the aggregate, and Assured agreed to provide a municipal bond insurance policy in the amount of \$500 million in connection with the issuance of the Senior Lien Sewer Revenue Current Interest Warrants, Series 2013-A, the Senior Lien Sewer Revenue Capital Appreciation Warrants, Series 2013-B, and the Senior Lien Sewer Revenue Convertible Capital Appreciation Warrants, Series 2013-C, under the indenture for the New Sewer Warrants. The additional concessions of the Sewer Warrant Insurers total \$40 million in the aggregate.
- The Supporting Sewer Warrantholders agreed to reduce the Supporting Sewer Warrantholder Directed Distribution by \$4,000,000 and to eliminate the Put Agreement and the County's related payment of up to more than \$13,000,000 of Put Consideration.
- The Sewer Liquidity Banks agreed to eliminate the Bank Warrant Default Interest Settlement Payments of \$2,764,296.75.

⁷ The actual net present value will be determined at the time of pricing of the New Sewer Warrants.

In the aggregate, the November 2013 Concessions provide potential value of up to \$300 million above and beyond the concessions reflected in the July 29 version of the Plan.⁸

C. Background Of Depfa Compromises.

24. Before the Petition Date, the County financed its public facilities, including school buildings, by issuing several series of school warrants (as defined in the Plan, the “School Warrants” encompass collectively, the Series 2004-A School Warrants, the Series 2005-A School Warrants, and the Series 2005-B School Warrants) as tax-exempt municipal debt under chapter 28 of title 11 of the Alabama Code sections 11-28-1, *et seq.* As of the Petition Date, the aggregate principal amount of School Warrants outstanding was \$814,075,000.

25. On January 1, 2005, the County and Depfa entered into that certain *Standby Warrant Purchase Agreement* (the “Standby School Warrant Purchase Agreement”). In connection with the performance of obligations under the Standby School Warrant Purchase Agreement, Depfa has acquired and presently holds certain Series 2005-B School Warrants with an outstanding balance of \$141,145,000, which Series 2005-B School Warrants were issued under that certain *Trust Indenture* dated as of December 1, 2004 (as subsequently amended or supplemented from time to time, the “School Warrant Indenture”) between the County and U.S. Bank National Association, in its capacity as successor indenture trustee (the “School Warrant Trustee”).

26. Following the Petition Date, Depfa contended that certain prepetition defaults had occurred under the Standby School Warrant Purchase Agreement or the School Warrant Indenture. The County disputed these contentions. Relatedly, the County contended that the rate of interest provided under the Standby School Warrant Purchase Agreement (the “Standby

⁸ Depending on the market and other conditions ultimately prevailing upon the issuance of the New Sewer Warrants on the Effective Date, some portion of the November 2013 Concessions could be recouped through the mechanism contained in Section 4.19 of the Plan for the distribution of Excess Refinancing Proceeds back to the Sewer Plan Support Parties who provided those further concessions.

Rate”) was an improper rate of interest on the Series 2005-B School Warrants under various provisions of the Bankruptcy Code. Depfa disputed these contentions.

27. The County and Depfa engaged in good faith, arms’ length settlement discussions regarding a consensual resolution of the disputes described above, as well as other disputes related to the Standby School Warrant Purchase Agreement and the School Warrant Indenture, and subsequently entered into the Depfa PSA. Without limitation, and in each case subject to all terms and conditions of the Plan, the County’s settlement and compromise with Depfa contained in the Plan achieves the following beneficial objectives:

- i) the County and Depfa agree to compromise on a new rate of interest for the Series 2005-B School Warrants (the “New Bank Rate”), which is lower than the current Standby Rate;
- ii) Certain Events of Default under the Standby School Warrant Purchase Agreement (including cross-defaults) shall be deemed waived and of no further force or effect, without any requirement that the County take any action to cure or otherwise eliminate any such Event of Default; and
- iii) the County agrees to direct any future excess tax proceeds available for mandatory redemptions under the Indenture (the “Future Tax Proceeds”) to be used for mandatory redemption of the Series 2005-B School Warrants held by Depfa.

D. Background Of GO Warrants Compromises.

28. Before the Petition Date, the County issued several series of general obligation warrants (the “GO Warrants”) as tax-exempt municipal debt under chapter 28 of title 11 of the Alabama Code sections 11-28-1, *et seq.* The GO Warrants constitute debts or liabilities against the County created for the erection, repair, furnishing, or maintenance of public buildings, bridges, or roads within the scope and meaning of Section 215 of the Alabama Constitution. As

of the Petition Date, the aggregate principal amount of GO Warrants outstanding was \$200,520,000.

29. On July 19, 2001, the County issued the Series 2001-B GO Warrants as variable rate demand warrants in the aggregate principal amount of \$120,000,000, pursuant to that certain *Trust Indenture* dated as of July 1, 2001 (the “GO Warrant Indenture”), between the County and The Bank of New York, as indenture trustee (together with Wells Fargo Bank, National Association, as successor indenture trustee, the “GO Warrant Trustee”). Liquidity support for the Series 2001-B GO Warrants was provided by that certain *Standby Warrant Purchase Agreement* dated as of July 1, 2001 (the “Standby GO Warrant Purchase Agreement”), among the County, the GO Warrant Trustee, JPMorgan, and BLB.

30. In connection with the issuance of the Series 2001-B GO Warrants, the County also entered into that certain *ISDA Master Agreement* dated as of March 23, 2001 (the “GO Swap Agreement”), between the County and JPMorgan.

31. In 2008, virtually all outstanding Series 2001-B GO Warrants were tendered by investors and purchased by JPMorgan and BLB, and such Series 2001-B GO Warrants became “Bank Warrants” pursuant to the Standby GO Warrant Purchase Agreement (the “Series 2001-B GO Bank Warrants”).⁹ The Standby GO Warrant Purchase Agreement required the County to redeem the Series 2001-B GO Bank Warrants in six equal semi-annual installments. The County defaulted on its obligation to redeem the Series 2001-B GO Bank Warrants on the accelerated timeframe.

32. As of the Petition Date, the outstanding principal amount of the Series 2001-B GO Warrants was \$105,000,000. Under the Plan, any and all Claims arising from or in

⁹ The County also incurred approximately \$7,900,000 as an asserted “Early Termination Date” termination payment under the GO Swap Agreement.

connection with the Standby GO Warrant Purchase Agreement are classified as “Standby GO Warrant Claims” and any and all Claims arising from or in connection with the Series 2001-B GO Warrants or the GO Warrant Indenture, including all Standby GO Warrant Claims and all GO Warrant Trustee Fee Claims, but excluding any and all Claims arising from or in connection with the GO Swap Agreement (the “GO Swap Agreement Claims”), are classified as “Series 2001-B GO Claims.”

33. Following the Petition Date, the County disputed the entitlements to certain of the claims asserted against the County by the GO Warrant Trustee, JPMorgan, and BLB in relation to the Series 2001-B GO Warrants and the GO Swap Agreement.

34. The County, the GO Warrant Trustee, JPMorgan, and BLB engaged in good faith, arms’ length settlement discussions regarding a consensual resolution of the disputes described above and subsequently entered into the GO PSA. Without limitation, and in each case subject to all terms and conditions of the Plan, the settlements and compromises among the County, the GO Warrant Trustee, JPMorgan, and BLB contained in the Plan achieve the following beneficial objectives:

- i) all Standby GO Warrant Claims and all Series 2001-B GO Claims will be jointly classified in Class 5-A under the Plan and will be allowed on the Plan’s Effective Date;
- ii) with the exception of claims on account of principal and prepetition non-default interest in the aggregate amount of \$105,123,291.67 (consisting of \$52,937,479.17 of BLB claims and \$52,185,812.50 of JPMorgan claims) and the reasonable fees and expenses of the GO Warrant Trustee, the GO Warrant Trustee, BLB, and JPMorgan will waive and release all other asserted claims in Class 5-A, including on account of default rate interest, the BLB and JPMorgan fees and expenses, and postpetition

- interest, which will receive no distribution under the proposed Plan;
- iii) in full, final, and complete settlement, satisfaction, release, and exchange of all Series 2001-B GO Claims, JPMorgan and BLB will receive the following on the Effective Date of the proposed Plan: (1) cash in the amount of \$123,291.67, to be distributed as specified in Exhibit A to the GO PSA; and (2) a Pro Rata Distribution of replacement warrants (the “Replacement 2001-B GO Warrants”), which will be repaid on the terms set forth in the Amended and Restated GO Warrant Indentures;
- iv) on the Effective Date of the Plan, the County shall pay, as consideration for the settlement, waiver, and release of additional prepetition claims under the Standby GO Warrant Purchase Agreement, \$500,000 payable to BLB and \$250,000 payable to JPMorgan; *provided, however*, that (x) 50% of the actual costs incurred by the County’s counsel in preparing a limited offering memorandum with respect to the Replacement 2001-B GO Warrants will be netted against and reduce the amount payable to BLB pursuant to this sentence; and (y) 50% of the actual costs incurred by the County’s counsel in preparing a limited offering memorandum with respect to the Replacement 2001-B GO Warrants will be netted against and reduce the amount payable to JPMorgan pursuant to this sentence; *provided, further*, that the actual costs incurred by the County’s counsel in preparing a limited offering memorandum with respect to the Replacement 2001-B GO Warrants and netted against the amounts payable to BLB and JPMorgan pursuant to this sentence shall not exceed \$50,000 in the aggregate; and
- v) The County and JPMorgan agree to settle and compromise all issues associated with the GO Swap Agreement Claims through the County’s payment of ten dollars (\$10.00) to JPMorgan, in satisfaction of an asserted general obligation claim in the

aggregate amount of \$7,893,762.30, plus interest accrued thereon at the applicable rate as set forth in the GO Swap Agreement.

E. Background Of National Compromises.

35. On March 19, 2003, the County issued the Series 2003-A GO Warrants as fixed rate warrants in the aggregate principal amount of \$94,000,000, pursuant to a resolution of the Jefferson County Commission (the “County Commission”) dated March 6, 2003 (the “GO Resolution 2003-A”). As of the Petition Date, the outstanding principal amount of the Series 2003-A GO Warrants was \$46,185,000. Under the Plan, all claims arising from or in connection with the Series 2003-A GO Warrants are classified in Class 5-B as “Series 2003-A GO Claims.”

36. On August 10, 2004, the County issued the Series 2004-A GO Warrants as fixed rate warrants in the aggregate principal amount of \$51,020,000, pursuant to a resolution of the County Commission dated July 27, 2004 (the “GO Resolution 2004-A” and together with the GO Resolution 2003-A, the “GO Resolutions”). As of the Petition Date, the outstanding principal amount of the Series 2004-A GO Warrants was \$49,335,000. Under the Plan, all claims arising from or in connection with the Series 2004-A GO Warrants are classified in Class 5-C as “Series 2004-A GO Claims.”

37. In connection with the issuance of the Series 2003-A GO Warrants and the Series 2004-A GO Warrants, National issued that certain *Financial Guaranty Insurance Policy* number 40587 and that certain *Financial Guaranty Insurance Policy* number 444671 (together, the “GO Insurance Policies”). Under the Plan, all claims arising from or in connection with the Standby GO Insurance Policies are classified in Class 5-D as “GO Policy Claims.”

38. Following the Petition Date, the County Commission resolved to cease making payments on the Series 2003-A GO Warrants and the Series 2004-A GO Warrants, and all principal and interest payments scheduled to come due during the duration of the case have been

paid by National pursuant to the GO Insurance Policies. With respect to the Series 2003-A GO Warrants and the Series 2004-A GO Warrants, National is anticipated to pay during the case (assuming the Plan Effective Date occurs prior to April 1, 2014), (a) \$5,845,000.00 on account of principal maturing on the Series 2003-A GO Warrants and the Series 2004-A GO Warrants during the County's case; (b) \$503,046.38 on account of interest accruing on the Series 2003-A GO Warrants and the Series 2004-A GO Warrants during the period between October 1, 2011 and the Petition Date; and (c) \$8,562,964.87 on account of interest accruing on the Series 2003-A GO Warrants and the Series 2004-A GO Warrants during the period after the Petition Date.

39. National informally advised the County that absent an agreement between the parties, National intends to oppose confirmation of any plan of adjustment that does not pay in full in cash the GO Policy Claims and otherwise leave unimpaired the Series 2003-A GO Warrants and the 2004-A GO Warrants.

40. The County and National engaged in good faith, arms' length settlement discussions regarding a consensual resolution of the disputes described above and subsequently entered into the National PSA. Without limitation, and in each case subject to all terms and conditions of the Plan, the County's settlement and compromise with National contained in the Plan achieves the following beneficial objectives:

- i) the holders of the Series 2003-A GO Claims and the Series 2004-A GO Claims will retain their legal, equitable, and contractual rights under the GO Resolutions and pursuant to their warrants, provided that any defaults or breaches by the County of either of the GO Resolutions, including any failure of the County to pay amounts due and owing on any of the Series 2003-A GO Warrants or the Series 2004-A GO Warrants when due (collectively, the "GO Events of Default), that occurred prior to or that were continuing on the Effective Date of the Plan shall be deemed waived and

- of no further force or effect;
- ii) the Series 2003-A GO Claims and Series 2004-A GO Claims shall be deemed unimpaired under the Plan and accordingly the holders of such claims will not be solicited for Plan voting;
 - iii) National will receive a full recovery on the principal that National paid to holders of the Series 2003-A GO Warrants and Series 2004-A GO Warrants during the County's case, which recovery is split between a payment of \$2,880,000 on April 1, 2014, and a payment of \$2,965,000 on April 1, 2015;
 - iv) the County will pay National \$503,046.53 on April 1, 2014, to reimburse National for the accrued prepetition interest that National paid under the GO Insurance Policies in April 2012;
 - v) the County will repay approximately \$8.5 million of interest that that National paid to holders of the Series 2003-A GO Warrants and Series 2004-A GO Warrants during the Case in three payments in 2025, 2026, and 2027 – these obligations will be non-interest bearing and are subject to the County's right to prepay such amounts in whole or in part using a 4.90% discount rate;
 - vi) the County will pay \$1.5 million in full settlement of National's fees and expenses claims; and
 - vii) the GO Insurance Policies and the GO Resolutions will remain in effect, subject to all terms and conditions thereof, until the Series 2003-A GO Warrants and the Series 2004-A GO Warrants are paid in full.

SUMMARY OF RELIEF REQUESTED

41. This Motion seeks approval of the global compromises and settlements that are contained in the Plan (collectively, the "Plan Settlements"). These inter-connected compromises

and settlements are essential to the success of the Plan, as they resolve a myriad of issues between and among the County and various of its Creditors, most notably with respect to numerous complex and interwoven issues concerning the County's Sewer System and its financing. The Plan also cannot be confirmed absent the Plan Settlements, because the approval of the Plan Settlements is an express condition to the occurrence of the Effective Date. *See* Plan § 4.18(a)(vii). The Plan Settlements, individually and particularly collectively, are a fair, equitable, and reasonable settlement of complex and heavily contested issues, further the policies and purposes of chapter 9, and approval of the Plan Settlements is in the best interests of the County, all Creditors, and all other affected Persons.

42. In addition, this Motion seeks approval of (i) certain bar provisions contained in and pursuant to the Plan (the "Bar Provisions"), which will enjoin the further assertion of any Ratepayer Claims against any of the Sewer Released Parties, and each of them; and (ii) certain other provisions contained in and pursuant to the Plan (the "Commutation Provisions"), which will give effect to the Commutation Election and the related presumptions, releases, and injunctions under the Plan. The requested Bar Provisions and Commutation Provisions are crucial to those Plan Settlements stemming from and related to the Sewer PSAs, are essential to the overall structure of the Plan, and are fair, equitable, and reasonable to all parties in interest.

43. This Motion further requests that the Court "order otherwise" under Bankruptcy Rule 3020(e) and waive any stay of the Confirmation Order so that the County can promptly consummate the Plan and avoid the risk of further changes in the financing markets.

44. By this Motion, the County seeks entry of an order (i) approving the Plan Settlements; (ii) approving the Bar Provisions and the Commutation Provisions; (iii) waiving any stay of the Confirmation Order, whether under Bankruptcy Rule 3020(e) or otherwise; and (iv) granting all such other relief as is necessary and proper.

JURISDICTION AND NOTICE

45. The County brings this Motion pursuant to Bankruptcy Code sections 105(a) and 1123(b) and Bankruptcy Rules 3020(e), 7016, and 9019(a). *See also* 11 U.S.C. §§ 103(f) (making section 105(a) applicable in chapter 9 cases) & 901(a) (making section 1123(b) applicable in chapter 9 cases).

46. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334(b). The Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of the County's case and the Motion is proper under 28 U.S.C. §§ 1408 and 1409.

47. The County will serve a copy of this Motion on all parties on the Master Service List, as that term is defined in the *Order Approving Motion to Establish Notice, Service, and Case Management Procedures Pursuant to Sections 102(1)(A) and 105 of the Bankruptcy Code, and Bankruptcy Rule 2002(m)* [Docket No. 89].

LEGAL ARGUMENT

A. Bankruptcy Code Sections 105(a) And 1123(b) And Bankruptcy Rule 9019(a) Allow The Court To Approve The Plan Settlements.

48. Bankruptcy Rule 9019(a) states:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).¹⁰ Similarly, Bankruptcy Code section 1123(b)(3) states that a plan may:

¹⁰ Rule 9019(a)'s reference to "the trustee" means the municipal debtor in a chapter 9 case. *See* Fed. R. Bankr. P. 9001 & 11 U.S.C. § 902(5). As such, bankruptcy courts may appropriately consider and approve settlements that are reached by debtors in chapter 9 cases. *See, e.g., In re Corcoran Hosp. Dist.*, 233 B.R. 449, 453-54 (Bankr. E.D. Cal. 1999); *In re County of Orange*, 1995 Bankr. LEXIS 729, at *16-20 (Bankr. C.D. Cal. May 2, 1995); *see also In re City of Stockton*, 486 B.R. 194, 197 (Bankr. E.D. Cal. 2013) (holding that Rule 9019 applies in chapter 9 cases, but only if the debtor consents to have the court consider approval of a settlement).

[P]rovide for – (A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or (B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest.”

11 U.S.C. §1123(b)(3); *see also id.* § 901(a) (making section 1123(b) applicable in chapter 9 cases). Bankruptcy Code section 105(a) provides in relevant part that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); *see also id.* § 103(f) (making section 105(a) applicable in chapter 9 cases).

49. Bankruptcy Rule 9019 empowers bankruptcy courts to approve settlements that are fair and equitable. *In re Tarrant*, 349 B.R. 870, 893 (Bankr. N.D. Ala. 2006); *see also, e.g., Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *Fischer v. Pereira (In re 47-49 Charles St.)*, 209 B.R. 618, 620 (S.D.N.Y. 1997); *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994). A decision to accept or reject a proposed compromise or settlement falls within the Court’s sound discretion. *See Tarrant*, 349 B.R. at 893.

50. Just as Bankruptcy Rule 9019 permits the approval of settlements during the course of a debtor’s case, Bankruptcy Code section 1123(b)(3) permits a debtor to settle or adjust any claims as part of a plan. *In re BBL Grp.*, 205 B.R. 625, 633 (Bankr. N.D. Ala. 1996). Courts have consistently recognized that plan settlements under section 1123(b)(3) should be evaluated under the same ‘fair and equitable’ standard applicable to Bankruptcy Rule 9019 settlements. *See, e.g., In re Cello Energy, LLC*, 2012 Bankr. LEXIS 1533, at *27-28 (Bankr. S.D. Ala. Apr. 10, 2012); *Resolution Trust Corp. v. Best Prods. Co. (In re Best Prods. Co.)*, 177 B.R. 791, 794 n.4 (S.D.N.Y. 1995) (“Irrespective of whether a claim is settled as part of a plan pursuant to section 1123(b)(3)(A) of the Bankruptcy Code or pursuant to a separate motion under

Bankruptcy Rule 9019, the standards applied by the Bankruptcy Court for approval are the same.”); *In re Aleris Int'l, Inc.*, 2010 Bankr. LEXIS 2997, at *60 (Bankr. D. Del. May 3, 2010).

51. When considering a proposed settlement, a court should exercise its discretion “in light of the general public policy favoring settlements.” *In re Hibbard Brown & Co.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998). After all, “[t]he federal courts have a well-established policy of encouraging settlement to promote judicial economy and limit the waste of judicial resources.” *Russian Standard Vodka (USA), Inc. v. Allied Domecq Spirits & Wine USA, Inc.*, 523 F. Supp. 2d 376, 384 (S.D.N.Y. 2007); *see also, e.g., U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 27-28 (1994) (discussing the general utility of settlement vis-à-vis judicial economy).

52. The force of this established federal policy is particularly acute in the bankruptcy context – one in which there are limited resources available to bear the expenses and burdens associated with litigating sharply contested claims. Accordingly, in approving a proposed settlement, the Court need not conduct an exhaustive investigation of the claims and issues sought to be compromised. Rather, it is sufficient that the Court conclude the proposed compromise does not fall beneath the “lowest point in the range of reasonableness.” *See, e.g., Martin v. Pahiakos (In re Martin)*, 490 F.3d 1272, 1275-76 (11th Cir. 2007); *In re Aloha Racing Found., Inc.*, 257 B.R. 83, 88 & 93 (Bankr. N.D. Ala. 2000).

53. Application of this test does not require the Court to determine whether the settlement presented is the best one that could possibly be achieved. *See, e.g., Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) (Sotomayor, J.) (stating that “in assessing the fairness of the settlement, a judge does not have to be convinced that the settlement is the best possible compromise or that the parties have maximized their recovery”); *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004) (“[T]he court does not have to be convinced that the settlement is the best possible compromise.”). Instead, this Court need only “canvass” the issues

to determine whether the proposed settlement falls “below the lowest point in the zone of reasonableness.” *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert. denied sub nom. Benson v. Newman*, 409 U.S. 1039 (1972); *see also, e.g., Nellis*, 165 B.R. at 123 (“Although a judge must consider the fairness of the settlement to the estate and its creditors, the judge is not required to assess the minutia of each and every claim. The bankruptcy judge does not have to decide the numerous questions of law and fact raised by appellants. The court need only canvass the settlement to determine whether it is within the acceptable range of reasonableness.” (citations and quotation marks omitted)).

54. In deciding whether a particular settlement falls within the “range of reasonableness,” courts in the Eleventh Circuit consider the following factors: “(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.” *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544, 1549 (11th Cir. 1990) (quoting *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986)); *see also Arden v. Motel Partners (In re Arden)*, 176 F.3d 1226, 1228 (9th Cir. 1999) (applying the same test in the context of section 1123(b)(3)). Courts consider these factors to determine “the fairness, reasonableness and adequacy of a proposed settlement agreement.” *In re A & C Props.*, 784 F.2d at 1381.

55. “It is well established that compromises are favored in bankruptcy.” *In re Lee Way Holding Co.*, 120 B.R. 881, 891 (Bankr. S.D. Ohio 1990). In fact, courts generally accord great deference to the recommendations of an estate representative when considering negotiated agreements. *See, e.g., Official Comm. of Unsecured Creditors v. James Talcott, Inc. (In re Int’l Distrib. Ctrs., Inc.)*, 103 B.R. 420, 423 (S.D.N.Y. 1989). Such deference is particularly

appropriate in the chapter 9 context where a debtor can choose whether to approach the court with a proposed settlement. *See In re City of Stockton*, 486 B.R. at 197 (“Rule 9019 applies in chapter 9 cases only if the debtor elects to ‘consent’ per § 904 to have the court consider approval of a compromise.”). In any event, for the reasons detailed below, the Plan Settlements fall well within the range of reasonableness and meet the standards for approval under Bankruptcy Code sections 105(a) and 1123(b) and Bankruptcy Rule 9019(a).

B. The Plan Settlements Avoid Complex, Costly, And Uncertain Litigation.

56. The Plan Settlements are fair, equitable, and reasonable in light of, among other things, the risks associated with the possible failure of even a single one of the numerous and interrelated Plan Settlements, which could lead to the failure of the current proposed Plan. As such, the Plan Settlements should be approved by this Court pursuant to Bankruptcy Rule 9019(a) and Bankruptcy Code section 1123(b) for several reasons.

57. The Plan Settlements resolve many highly complex and uncertain issues that could take years and millions of dollars to litigate to finality. The comprehensive and final resolution of these issues under the Plan provides for a fair and equitable result and greater distributions to the Creditors, a substantial reduction of the Sewer System related debt, and also offers the County and its Sewer System a “fresh start” from a history plagued by actual and potential litigations.

58. *First*, and as described in more detail in the County’s Disclosure Statement, the Plan Settlements related to the Sewer System resolve several hotly contested claims relating to the control of, and the rates for, the Sewer System. The issues resolved by the Plan Settlements related to the Sewer System include:

- i) A determination that the County retains control over the operation and ratemaking of the Sewer System. Absent the Plan Settlements, the County would be mired in

- litigation over control of the Sewer System, which could drag on for years into the future, at a significant cost for the County.
- ii) Settlement over the amount that the County must repay with respect to the Sewer Warrants. Absent the Plan Settlements, the County, the Sewer Plan Support Parties, and the Sewer Warrant Trustee would be caught up in complex litigation (including likely appeals in multiple appellate courts) on several issues of first impression. The Plan Settlements avoid such risky and time-consuming litigation and all costs associated with it.
 - iii) Avoidance of disputes over the proper sewer rates and increases thereof, which are currently set by the County. Without the Plan Settlements, the County's attempts to regulate the cost of sewer service could be challenged by various parties, which would result in protracted litigation and additional costs for the County.
 - iv) Settlement of disputes about whether the County can (1) use a portion of the Sewer System gross revenue to pay for necessary capital improvements to the Sewer System (including professional fees incurred during the course of its chapter 9 case) and (2) hold all revenues from the Sewer System in an interest-bearing account during this chapter 9 proceeding or must remit such payments to the Sewer Warrant Trustee monthly. These issues are the subject of litigation that has been currently stayed by agreement between the County and Sewer Plan Support Parties. However, absent approval of the Plan Settlements, the litigation would likely continue and prove costly and time-consuming for the County.
 - v) Determination of the relative rights and priorities among the different sewer creditors. Absent the Plan Settlements, the County might be forced to litigate with various sewer creditors over complex and unprecedented issues of claim priority, insurance,

and allocation, and even if the County did not pursue such litigation, it is likely that numerous inter-creditor disputes would remain. Resolving such litigation and disputes would be time-consuming, costly, and contentious, and would ultimately delay or inhibit distributions to some or all holders of debt claims with respect to the Sewer System, perhaps for several years.

- vi) Settlement over the allegedly improper actions of the JPMorgan Parties. In the absence of the Plan Settlements, the County would pursue claims for damages and might pursue other relief against the JPMorgan Parties, including equitable subordination or disallowance of their claims. Litigation over these issues would be fact-intensive and would require significant discovery and potentially a full trial. The process of litigation, including at the trial level, would be complex and protracted, likely take months or even several years to complete, and it is likely that there would be subsequent appeals following any ruling, with the ultimate outcome uncertain.

These disputes concern virtually every aspect of the Sewer System's operations and financing. There is little or no controlling authority on many of these issues and the risks of litigation are high for all parties. The Plan Settlements avoid the need for such litigation and settle the disputes among the parties in a fully consensual, efficient, arms' length, and beneficial manner for the County.

59. **Second**, the Plan Settlements related to Depfa obviate the need for litigation over the claims related to the Series 2005-B School Warrants and the Standby School Warrant Claims held by Depfa. Absent the Plan Settlements, the County and Depfa could engage in litigation related to the Standby Rate and a cramdown treatment of Depfa under a plan. This litigation could be complex and costly for the County and might complicate the plan process.

60. **Third**, the Plan Settlements related to the GO Warrants resolve issues related to the Class 5-A claims under the Plan. The treatment of these claims under the Plan eliminates the need for litigation regarding the allowance of asserted claims on account of default rate interest, the fees and expenses of BLB and JPMorgan, and postpetition interest. This treatment further eliminates the need for litigation regarding the restructuring of the Series 2001-B GO Claims and the interest rate payable on that restructured debt. If the Plan Settlements related to the GO Warrants are not approved, the County not only faces lengthy and complex litigation – likely including extended discovery and appeals of any decisions – but also the prospect of a failure of key parts of the Plan.

61. **Fourth**, the Plan Settlements related to National secure a settlement and compromise of numerous potential claim allowance and priority disputes between National and the County. The Plan Settlements also ensure that the GO Insurance Policies and GO Resolutions will remain in effect after the County’s emergence from chapter 9. Thus, the Plan Settlements simultaneously prevent potential costly litigation with the holders of the Series 2003-A GO Warrants and the Series 2004-A GO Warrants, and at the same time secure National’s support for the County’s Plan.

62. Taken together, the Plan Settlements fully, finally, and completely resolve numerous of the most complex issues associated with the County’s chapter 9 case. The existing lawsuits that have been stayed pursuant to various of the Plan Support Agreements and the potential new litigation that would likely arise if the Plan Settlements are not approved implicate many unique and unresolved issues of state and federal law requiring the interpretation of the Bankruptcy Code, the Bankruptcy Rules, the Alabama Constitution, local acts of the Alabama Legislature, and the Alabama Code. Absent the Plan Settlements, the County and its Creditors face the possibility of extended litigation and appeals before different courts, with multiple

parties pressing arguments of first impression that are multifaceted both substantively and procedurally.

63. If forced to litigate, the County would mount a vigorous defense to all of the claims described above. Although the County believes its litigation positions would ultimately prevail, the County also is mindful of the uncertainty inherent in any litigation and especially in distinct but intertwined litigations such as the ones looming if the Plan Settlements are not approved and the Plan is not confirmed. Apart from this uncertainty about the ultimate results lie the burdens associated with numerous rounds of discovery and the process of pursuing the litigations to finality. The County and its Creditors would incur meaningful costs associated with discovery, further motion practice, and trials, requiring resources to be marshaled by the County's officers, employees, attorneys, and other professionals. Moreover, regardless of the outcomes on the merits, it is possible that any of the parties involved would appeal, leading to lengthy briefing and further delays in several courts. The Plan Settlements eliminate the need for those additional costs and uncertainty. Given the benefits of the proposed Plan Settlements, a resolution of these matters on the terms and conditions set forth in the Plan is preferable to continued litigation and crucial to the success of the Plan.

C. The Plan Settlements Are Reasonable, Fair, And Equitable To All Parties And To The Creditors In This Chapter 9 Case.

64. Apart from the delay, uncertainty, and likely substantial cost associated with any litigation, there are other pragmatic factors that further support the consensual compromises and settlements provided by the Plan Settlements. The Plan Settlements consensually resolve numerous issues that have been central to the County's chapter 9 case and are the cornerstone of the Plan. The comprehensive, full, and final resolution of these issues under the Plan provides for a fair, reasonable, and equitable result and greater distributions to the County's Creditors, and

offers the County and its Sewer System a “fresh start” from a history plagued by actual and potential litigation. On the contrary, any attempt to confirm a plan without the Plan Settlements likely would result in significant confirmation objections and a highly contested confirmation hearing, significant delay in obtaining confirmation of a plan of adjustment, erosion of distributions to the County’s Creditors (of a potentially material amount), and uncertainty as to the County’s future economic condition. The detrimental effects to the County and its Creditors of further delay in confirmation and consummation of a plan of adjustment could be significant.

65. If approved, the Plan Settlements will be binding on the County and on all persons who have asserted or could assert any potential Causes of Action or Avoidance Actions for or on behalf of the County in any fashion, including derivatively or directly, and on all Creditors concerning the Sewer Released Claims and the GO Released Claims compromised and settled under the Plan, including in any pending or potential litigation (including any appeals) before any court or agency. This sweeping scope of the Plan Settlements resolves issues concerning not only the parties to the agreements, but also all other Creditors in this case. The Plan Settlements effect a clean, comprehensive, and global resolution of various complex issues that could otherwise continue to plague the County and its Creditors for years to come.

66. In addition, the Plan Settlements allow the County to advance the progress of this chapter 9 case to its final stage – confirmation of the Plan. It is inconceivable that the Plan can go forward in its current form absent the approval of the Plan Settlements. Therefore, the global concessions and agreements under the Plan directly further the administration of this case, which is an interest of utmost federal concern. *See, e.g., Kowal v. Malkemus (In re Thompson)*, 965 F.2d 1136, 1145 (1st Cir. 1992) (noting “the important policy favoring efficient bankruptcy administration”); *Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94, 98 (3d Cir. 1988) (emphasizing how “issues central to the progress of the bankruptcy petition, those likely to affect

the distribution of the debtor's assets, or the relationship among the creditors, should be resolved quickly” (citation and quotation marks omitted)).

67. Furthermore, the Plan is the product of arms’ length negotiations among many sophisticated parties and their counsel, and there can be no allegation of collusion or other unfair dealings regarding this process. Each term of the Plan and the related documents, including the Plan Support Agreements, was reached through lengthy negotiations in which all sides were incentivized to protect their rights and maximize the benefits received in any agreement. The County determined, in the exercise of its reasonable business and governmental judgment, that the Plan and the attendant Plan Settlements were extremely favorable to the County under the circumstances.

68. Simply put, the Plan Settlements fall well within the “range of reasonableness” required for approval of settlements in the context of a bankruptcy case. The Plan Settlements fully and fairly resolve multiple complex litigations and, thereby, avoid the need for additional time-consuming, costly, and contentious litigation over numerous unprecedented legal issues. In addition, as indicated by the overwhelming support for the Plan by Creditors entitled to vote, the Plan Settlements are in the best interests of the County, all Creditors, and all other affected Persons.

69. Although the Plan Settlements contained in the July 29, 2013 version of the Plan would be within the range of reasonable results if the issues were litigated, fall above the lowest point in the range of reasonableness, and satisfy the standards for approval under Bankruptcy Code sections 105(a) and 1123(b), Bankruptcy Rule 9019(a), and other applicable law, certain of the Sewer Plan Support Parties agreed to make the November 2013 Concessions, which provide further value of up to \$300 million in the aggregate (subject to potential recoupment of any excess concessions through the payment of Excess Refinancing Proceeds under Section 4.19 of

the Plan) as part of the final version of the Plan. These additional concessions were made as a result of further intensive good faith, arms' length negotiations among the County and the affected Sewer Plan Support Parties. The November 2013 Concessions are material, significant, and remove any possible doubt about the fairness of the Plan and the Plan Settlements, the scope and depth of concessions made by the Sewer Plan Support Parties, and the ready satisfaction of the standards for approval of the Plan Settlements, including under Bankruptcy Code sections 105(a) and 1123(b), Bankruptcy Rule 9019(a), and other applicable law.

70. In sum, the Plan Settlements are a fair, reasonable, and equitable resolution of the numerous complex issues that have been at the center of this chapter 9 proceeding. The Plan Settlements provide myriad benefits to the County, at a justifiable cost. They should be approved in their entirety, as they are crucial to the confirmation of the Plan and the successful resolution of this case.

D. Bankruptcy Code Section 105(a) And Bankruptcy Rule 7016 Allow The Court To Approve The Bar Provisions, Which Are Fair And Equitable.

71. Section 6.3 of the Plan, titled "Releases and Injunctions," contains the Bar Provisions, which are essential to the Plan Settlements and the overall structure of the Plan. In particular, Section 6.3(a) of the Plan provides for the following releases and injunctions with respect to the Sewer Released Claims:

From and after the Effective Date, the County, any Person seeking to exercise the rights of the County (including in respect of the County's Causes of Action purportedly asserted in the Bennett Action and the Wilson Action), all Persons holding any Sewer Released Claims that are waived and released pursuant to this Section 6.3(a), and all Persons acting or purporting to act on behalf of any Persons holding any Sewer Released Claims that are waived and released pursuant to this Section 6.3(a), are permanently and completely enjoined from commencing or continuing any action, directly or indirectly and in any manner, to assert, pursue, litigate, or otherwise seek any recovery on or on account of such Sewer Released Claims.

Plan § 6.3(a). These Bar Provisions would prevent non-settling parties from asserting Ratepayer Claims against the Sewer Released Parties and finally resolve the Bennett Action and the Wilson Action.¹¹

72. This Court has the jurisdiction and power to approve bar orders in aid of settlement. *See Munford v. Munford (In re Munford, Inc.)*, 97 F.3d 449, 454 (11th Cir. 1996). That authority comes from Bankruptcy Code section 105(a), which provides that the bankruptcy court can enter “any order” necessary or appropriate to carry out the provisions of the Bankruptcy Code, and from Rule 16 of the Federal Rules of Civil Procedure (applicable to the County’s chapter 9 case by virtue of Bankruptcy Rule 7016), which “authorizes the use of special procedures to assist the parties in reaching a settlement.” *Id.* at 455. Bar provisions against non-settling third parties are justifiable because “(i) public policy favors settlements; (ii) the cost of litigation can be burdensome to a bankruptcy estate, and (iii) bar orders play an integral role in facilitating settlements.” *In re Adler*, 2010 Bankr. LEXIS 3001 (Bankr. S.D. Fla. Sept. 16, 2010) (internal citations omitted).

73. In determining whether to bar non-settling parties from further litigation pursuant to a settlement, “the court must make a reasoned determination that the bar order is fair and equitable” and must consider “the interrelatedness of the claims that the bar order precludes, the likelihood of nonsettling defendants to prevail on the barred claim, the complexity of the litigation, and the likelihood of depletion of the resources of the settling defendants.” *In re*

¹¹ The County intends to insert parallel language in its proposed Confirmation Order. In particular, the Confirmation Order will provide that “[f]rom and after the Effective Date, this Confirmation Order constitutes a bar order pursuant to Bankruptcy Code section 105(a), Rule 16 of the Federal Rules of Civil Procedure, and Bankruptcy Rule 7016 barring and enjoining any and all Persons from commencing or continuing any action, directly or indirectly and in any manner, to assert, pursue, litigate, or otherwise seek any recovery on or on account of any Sewer Released Claims or Ratepayer Claims (including any further prosecution of the portion of the Wilson Action pending in state court).” The County reserves all rights to amend this language and nothing in this Motion shall be construed to limit or alter any of the provisions of the proposed Confirmation Order that the County ultimately submits.

Munford, Inc., 97 F.3d at 455; *see also In re Evaluation Solutions, LLC*, 2013 Bankr. LEXIS 2633, at *15-17 (Bankr. M.D. Fla. June 27, 2013) (approving a bar order as part of a settlement with the estate); *Apps v. Morrison (In re Superior Homes & Invs., LLC)*, 2013 U.S. App. LEXIS 11860 (11th Cir. June 10, 2013) (affirming same); *In re Palm Beach Fin. Ptnrs., L.P.*, 2010 Bankr. LEXIS 5638, at *19-20 (Bankr. S.D. Fla. Oct. 21, 2010) (approving a bar order as part of a settlement and noting such order “shall be interpreted as broadly as possible so as to effectuate the purposes stated in the Plan and [confirmation order]”).

74. In the present case, approving the requested Bar Provisions, which would prevent non-settling parties from asserting Ratepayer Claims against the Sewer Released Parties under the Plan, is fair and equitable, as well as a key condition of the Plan Settlements. The final resolution of the Ratepayer Claims has a direct nexus with the adjustment of the County’s debt in this chapter 9 case because such resolution is integrally related to the County’s comprehensive compromise and settlement with the Sewer Plan Support Parties, who have conditioned the Plan Settlements related to the Sewer System on being released from all Sewer Released Claims (including the Ratepayer Claims) under the Plan. Further prosecution of Ratepayer Claims by any person negatively would affect the County and this chapter 9 case. In fact, without the Bar Provisions applicable to the Ratepayer Claims, the County will not be able to effectuate the Plan Settlements, obtain a complete resolution of the issues addressed by the Plan, achieve confirmation of the Plan, or emerge from chapter 9 on the advantageous terms provided in the Plan. Such concerns have persuaded courts in similar situations to approve bar orders in order to effect a settlement crucial to a debtor. *See In re Adler*, 2010 Bankr. LEXIS 3001, at *18-20 (approving a bar order pursuant to a settlement after determining, *inter alia*, that without the bar order, the settling parties would not have entered into the settlement); *In re Evaluation Solutions, LLC*, 2013 Bankr. LEXIS 2633, at *16 (approving a bar order that is a “critical element” of the

settlement and noting that absent the bar order, the parties will engage in “protracted and costly litigation”).

75. In addition to the importance of the Bar Provisions to the overall Plan Settlements with the Sewer Plan Support Parties, the Ratepayer Claims are sufficiently mature, and the issues related to the Ratepayer Claims are sufficiently defined and concrete, to permit effective decision-making by the Court. The likelihood of any person other than the County prevailing on or recovering on the Ratepayer Claims in the Wilson Action and the Bennett Action is remote. Among other deficiencies,¹² (a) the County either owns or can otherwise resolve all potential Causes of Action that could be asserted by or on behalf of the County relating to the Sewer Warrant Indenture and related documents, with respect to the validity of the Sewer Warrants, any payments made in connection with the Sewer Warrants, and the aggregate debt associated with the Sewer System; (b) Sewer System ratepayers and users are not third party beneficiaries of the Sewer Warrant Indenture or other related documents concerning the issuance of the Sewer Warrants or any swap, financing, or other transaction relating to the Sewer System; (c) County voter or Sewer System ratepayer approval was not required for the issuance of the Sewer Warrants under applicable Alabama law; (d) Sewer System ratepayers and users do not have a property interest in any particular level of Sewer System rates; (e) no class has heretofore been certified, or could be certified as a matter of law, to pursue the Ratepayer Claims at issue in the Bennett Action and the Wilson Action due to, among other things, the failure of such putative classes to satisfy the elements of commonality and typicality required under Federal Rule of Civil Procedure 23; and (f) the complaints in the Bennett Action and the Wilson Action fail to articulate cognizable or redressable claims for damages as a matter of law. For all of these

¹² The County’s position on these issues is summarized here, but will be developed more fully in the County’s consolidated reply to the confirmation objections filed by the plaintiffs in the Wilson Action and the Bennett Action, which consolidated reply is due on November 13, 2013.

reasons, it is highly unlikely that the non-settling parties would be successful in either the Wilson Action or the Bennett Action, and this weighs heavily in favor of approving the proposed Bar Provisions. *See In re Evaluation Solutions, LLC*, 2013 Bankr. LEXIS 2633, at *15 (concluding that the high unlikelihood of these parties succeeding in the action in dispute was “[t]he most significant factor at issue” in approving a settlement-related bar order). And at any rate, further litigation of the Ratepayer Claims would be complex, difficult, time-consuming, expensive, risky, uncertain and could unnecessarily deplete the resources of the County and the other Sewer Released Parties.

76. Finally, federal policy strongly favors pretrial settlement of all types of litigation, especially to avoid adding the burden of litigation costs to the financial instability of debtors under the Bankruptcy Code and to facilitate the successful restructuring of such debtors’ affairs through the bankruptcy process. Bar provisions play an integral role in facilitating such settlements. *See U.S. Oil & Gas v. Wolfson*, 967 F.2d 489, 493 (11th Cir. 1992). As described above, absent approval of the Plan Settlements, the Plan itself, and the related Bar Provisions, the County and its Creditors would likely be mired in costly, complex, and uncertain litigation for years to come. For all of these reasons, the Court should approve the Bar Provisions, thereby barring and enjoining any and all persons from commencing or continuing any action, directly or indirectly and in any manner, to assert, pursue, litigate, or otherwise seek any recovery on or on account of any Ratepayer Claims from and after the Effective Date of the Plan.

E. The Commutation Provisions Under Section 6.3(a) Of The Plan Are Appropriate And Necessary And Should Be Approved.

77. In addition to limiting the prosecution of any Ratepayer Claims from and after the Effective Date of the Plan, Section 6.3(a) of the Plan states that:

Under the Plan and as of the Effective Date, all Persons who voted to accept the Plan or who made or are deemed to have made the Commutation Election will be conclusively deemed to have irrevocably and unconditionally, fully, finally, and forever waived and released and discharged on their own behalf, and on behalf of any Person claiming through them, all Sewer Released Parties and their respective Related Parties from any and all Sewer Released Claims.

....

From and after the Effective Date, the Sewer Warrant Trustee, any holders of Sewer Warrants, or any other Person are permanently and completely enjoined from pursuing any right of payment under (i) any of the Sewer DSRF Policies, which will be cancelled and of no further force or effect pursuant to Section 4.7; or (ii) any of the Sewer Wrap Policies with respect to any Sewer Warrant holder that made or was deemed to have made the Commutation Election, which Sewer Wrap Policies will be cancelled and of no further force or effect pursuant to Section 4.7; *provided, however*, that such injunction shall not enjoin any holders of Sewer Warrants that did not make or were deemed not to make the Commutation Election, or, if applicable, the Sewer Warrant Trustee on their behalf, from pursuing any Sewer Wrap Payment Rights.

Plan § 6.3(a).

78. The Commutation Provisions of Section 6.3(a) are necessary to give effect to the Commutation Election and related presumptions under the Plan, which are a material component of the global settlement under the Plan and the Sewer Warrant Insurers' participation in that settlement. Holders of Sewer Warrants that affirmatively made the Commutation Election made a voluntary choice to release, waive, and forgo, among other rights (*see* note 6, *supra*), any claims against the applicable Sewer Warrant Insurer in exchange for additional consideration under the Plan. Holders of Sewer Warrants that were deemed to make the Commutation Election were so deemed based on what rational holders of the Sewer Warrants would likely choose to do given the materially larger distribution from the County under the Plan and in view of the economic circumstances of each of the Sewer Warrant Insurers (including, for example, the fact that FGIC was in a New York state rehabilitation proceeding) and the potential costs and delay attendant to asserting or potentially litigating claims under the applicable Sewer Wrap Policies.

In addition, the deemed Commutation Election by holders of Sewer Warrants who did not return any Ballot is appropriate and consensual because such holders were given adequate notice of and had the opportunity not to make the Commutation Election by properly marking and timely returning their Ballots indicating that such holders do not want to make the Commutation Election. *See, e.g., In re Indianapolis Downs, LLC*, 486 B.R. 286, 304-06 (Bankr. D. Del. 2013); *In re Calpine Corp.*, 2007 Bankr. LEXIS 4390, at *26 (Bankr. S.D.N.Y. Dec. 19, 2007); *In re Conseco, Inc.*, 301 B.R. 525, 528 (Bankr. N.D. Ill. 2003). The Commutation Provisions are thus appropriate and necessary to give effect to the Plan Settlements. As such, they should also be approved in the Confirmation Order.

F. The Court Should Exercise Its Discretion By Waiving Any Stay Of The Confirmation Order Under Bankruptcy Rule 3020(e).

79. Bankruptcy Rule 3020(e) provides that “[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, *unless the court orders otherwise.*” Fed. R. Bankr. P. 3020(e) (emphasis added). Under Rule 3020(e), the Court may exercise its discretion to waive any stay so that the Plan may be implemented immediately. *See* Notes of Advisory Committee on 1999 amendments to Fed. R. Bankr. P. 3020. Such an exercise of discretion is appropriate when “good cause” exists for the waiver, including when creditor support for a plan is overwhelming or when a need for plan financing or other circumstances create an exigency. *See, e.g., In re HSH Del. GP LLC*, 2011 Bankr. LEXIS 1876, at *34 (Bankr. D. Del. Jan. 18, 2011) (finding cause exists to waive stay based on debtors’ “showing of substantial cost and harm that would result if the Plan is not consummated as soon as practicable after entry of the Confirmation Order”); *In re Oldco M Corp.*, 2010 Bankr. LEXIS 2372, at *30 (Bankr. S.D.N.Y. Feb. 23, 2010) (waiving any stay in light of minimal creditor objection and need for prompt plan distributions); *In re Pisces Energy, LLC*, 2009 Bankr. LEXIS 4709, at *21

(Bankr. S.D. Tex. Dec. 21, 2009) (waiving stay based on conclusion that “the Plan represents a fair and equitable compromise by and among the most significant parties-in-interest to the Bankruptcy Cases and should be consummated as expeditiously as possible”); *In re Southpark Cmty. Hosp., LLC*, 2007 Bankr. LEXIS 3137, at *18 (Bankr. W.D. La. Sept. 13, 2007) (abrogating stay because “ it is in the best interests of the estate and the creditors of the estate that the transactions provided for within the Plan be implemented immediately”).

80. In this case, all of the Creditors that voted on the Plan have overwhelmingly and resoundingly accepted the Plan. Moreover, as will be detailed at the Confirmation Hearing, the County’s ability to consummate the Plan turns on quickly accessing the capital markets through the issuance of New Sewer Warrants pursuant to the Plan. The history of this very case demonstrates that sharp changes in municipal financing markets may occur quickly and have adverse consequences to the Plan and the interlinked Plan Settlements within the Plan. Accordingly, it is of paramount importance to the County that the Plan be consummated as promptly as possible after the Confirmation Order is entered. This presents ample cause for this Court to exercise its discretion and “order otherwise” by waiving any stay under Bankruptcy Rule 3020(e).

CONCLUSION

81. Based on the foregoing, the County respectfully submits that the Motion should be granted pursuant to the Confirmation Order.

82. The County files this Motion without prejudice to or waiver of its rights pursuant to Bankruptcy Code section 904, and nothing herein is intended as or shall be deemed to constitute the County’s consent to this Court’s interference with (a) any of the political or governmental powers of the County, (b) any of the property or revenues of the County, or (c) the County’s use or enjoyment of any income-producing property.

WHEREFORE, PREMISES CONSIDERED, the County respectfully requests that the Court, pursuant to Bankruptcy Code sections 105(a) and 1123(b) and Bankruptcy Rules 3020(e), 7016, and 9019(a):

- A. Grant the relief sought herein and approve the Plan Settlements, the Bar Provisions, and the Commutation Provisions pursuant to the Confirmation Order;
- B. For good cause shown, order otherwise and provide that the Confirmation Order shall not be subject to any stay; and
- C. Provide such other, further or different relief as may be just and proper.

Respectfully submitted this 6th day of November, 2013.

/s/ J. Patrick Darby

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