

AMENDMENT TO WATER SUPPLY AGREEMENT

Dated as of January 7, 2009

Between

CITY OF ALLENTOWN

AND

LEHIGH COUNTY AUTHORITY

THIS AMENDMENT to the Water Supply Agreement (hereinafter “Water Supply Agreement”) is made and entered into this ____ day of _____, 2020, by and between the CITY OF ALLENTOWN , a Home Rule City of the Third Class organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as “the City”) and the LEHIGH COUNTY AUTHORITY, a municipal authority organized and existing under the Municipality Authorities Act of 1945, as amended (Hereinafter referred to as “LCA”).

WITNESSETH:

WHEREAS, the City and LCA entered a certain Water Supply Agreement (the “Water Supply Agreement”), dated as of January 7, 2009 for (a) long-term supply of water from the City's water treatment plant, and (b) an interim supply of water from Schantz Spring; all for use by LCA's commercial, industrial, and residential customers in its Central Lehigh Division via certain facilities owned by LCA; and

WHEREAS, the City and LCA (hereinafter sometimes referred to as the “Parties”) entered into a certain Allentown Water and Sewer Utility System Concession and Lease Agreement (the “Lease ”), dated as of May 1, 2013, pursuant to which the City leased its Water Plant and Distribution System and Sewer Utility System (the “System”) to LCA, as Concessionaire, and granted LCA the right to operate the System in order to provide utility services in accordance with the provisions of the Lease; and

WHEREAS, the City and LCA entered into a certain Memorandum of Understanding with respect to Capital Cost Recovery Charges (hereinafter “CCRC” or “CCRCs”), dated July 1, 2015 (the “CCRC MOU”), because neither the Lease nor the Operating Standards associated therewith contained sufficient details on how to procedurally handle CCRCs under the Lease and the Parties wished to establish, in writing, responsibilities and procedures in regard to the usage, development and application of CCRCs; and

WHEREAS, the City and LCA entered into a certain Memorandum of Understanding with respect to Change of Law as defined in the Lease (hereinafter "Change of Law"), dated January 9, 2017 (the "Change of Law MOU"), which covers up-front costs, operational costs and project costs LCA's suburban customers will be responsible for either as Water Filtration operating costs or capital improvement to include Major Capital Improvements; and

WHEREAS, diverse and distinct disagreements and disputes arose between the City and LCA after the Lease was entered that are in various stages of resolution per the terms of Article 19 of the Lease, and which include those known by the Parties as the Fraudulent Inducement Claim, Monthly Billing Dispute, Roof Project Dispute, Employee Benefits Claim, Employee Sick Leave Dispute, and the Surcharge Dispute, and which include all other current disputes not specified above ("the Disputes"); and

WHEREAS, the Parties specifically intend to memorialize the terms of the settlement of the Disputes by entering into the following Agreements contemporaneously each of which shall be read and construed together integral parts of the comprehensive, global settlement between the Parties to terminate their respective claims in the Disputes (the "Integrated Agreements"):

- A Stand- Alone Dispute Settlement Agreement (for the Disputes not otherwise addressed in the Amendments to the Water Supply Agreement, the Lease and the CCRC MOU;
- Amendment to the Water Supply Agreement;
- Amendment to the Lease; and
- Amendment to the CCRC MOU.

NOW THEREFORE, the Parties hereto, in consideration of the mutual promises and covenants contained herein and intending to be legally bound hereby, mutually agree to amend the Water Supply Agreement as follows:

1. The forgoing recitals are hereby incorporated by reference herein as though more fully set forth at length.

2. The defined term, "O&M Cost" in Section 1 of the Water Supply Agreement shall be deleted in its entirety.

3. The defined term, "Adjusted Rate" in Section 1 of the Water Supply Agreement shall be deleted in its entirety and replaced with:

"Adjusted Rate" means the rate per 1,000 gallons as adjusted in accordance with the provisions of Sections 7(a) of this Agreement, based upon any increase in the: (a) Operating Cost Portion; and (b) the Capital Cost Recovery Portion.

4. The defined term, "Peripheral Cost" in Section 1 of the Water Supply Agreement shall be deleted in its entirety.

5. Section 1 of the Water Supply Agreement shall be amended by adding the following defined term:

"Lease" means the Allentown Water and Sewer Utility System Concession and Lease Agreement entered into between the City and LCA on May 1, 2013 and all subsequent amendments, revisions, and/or supplements thereto.

6. Section 4 (**Long-Term Water Supply**), Paragraph (b) (**Supply**), Subparagraph 2 of the Water Supply Agreement is hereby deleted in its entirety and replaced with the following:

The City is obligated to sell, and LCA is obligated to purchase, 7 million gallons of water per day ("MGD"). In the event that LCA's Central Lehigh Division ("Central Division") total annual water usage (the sum of the water produced by the Central Division's wells and water received from LCA's City Division) falls below 9.35 MGD, the parties' obligation as described above shall be modified to require the City to sell and LCA to purchase the volume of water equal to the Central Division's total annual water usage less 2.35 MGD. LCA's minimum purchase obligation in the event the Central Division's total annual water usage falls below 9.35 MGD shall be determined annually but shall not fall below 5 MGD. Should there be a repair or replacement required for the Water Line or Pump Station, LCA will advise the City and an adjustment shall be made in calculating the minimum purchase obligation. In no case shall LCA's daily water purchase exceed 1.5 times the then current minimum purchase obligation volume as set forth in this paragraph without City consent.

7. Section 4 (**Long-Term Water Supply**), Paragraph (c) (**Term of Long-Term Water Supply**) is hereby deleted in its entirety and replaced with the following:

Term of Long-Term Water Supply. The term of the Long Term Water Supply shall terminate on the date of termination pursuant to the terms of Section 2.1 of the Lease provided, however, in the event the term of the Lease is extended under Section 16.4 (n) of the Lease, as amended, the Long Term Water Supply shall renew automatically at the end of the term and any succeeding terms for a period of five years unless the City or LCA provides written notice of intent to terminate Long Term Water Supply, at least six months before the expiration of the term.

8. Sections 7(a), 7(b), 7(c) and 7(d) (**Payment of Rates**) of the Water Supply Agreement are hereby deleted in their entirety and replaced with the following and Section 7 (e) shall be designated as Section 7 (b):

7 (a) The Adjusted Rate paid for water purchased or obligated to be purchased under the terms of this Agreement will have two components: The Operating Cost Portion and the Capital Cost Recovery Portion as those terms are defined in this Section. The rates shall become effective as set forth herein.

(i) Operating Cost Portion: The Operating Cost Portion of the Adjusted Rate for water purchased (or obligated to be purchased) will be calculated in February each year and applied retroactively to January 1st of that year based on the prior calendar year's actual cost to operate and maintain the Filtration Plant, including Raw Water (as such term is defined in the Lease) intake facilities (hereinafter "Intakes"), and finished water storage. Only the pump facilities, piping with valves, measuring devices, and similar items directly integral to the Intakes, storage facilities, and Filtration Plant to the point of discharge shall be included. Distribution system costs shall not be included in the calculation of the Operating Cost Portion.

The costs included in the Operating Cost Portion calculation will include all costs currently captured in LCA's Filtration Plant operating budget plus annual capital costs that are not recoverable through the Capital Cost Recovery Portion, including those capital costs paid through operating revenues or reserves or annual debt service costs associated with projects that are not recoverable through the Capital Cost Recovery Portion. These capital costs will be those projects identified in LCA's five-year capital plan as falling in the categories of annual projects, studies, general improvements, and indenture report improvements. If LCA changes its budget or capital plan categories such that other categories are used to capture these costs, LCA will advise the City and provide an update of the Attachment noted below to illustrate the calculation of the Operating Cost Portion of the Adjusted Rate. The calculation will also include the total billable water volume from the prior year as reported to the City annually in October for other rate-making purposes (July 1 to June 30, hereinafter "Total Billable Water Volume"). An example of this rate calculation is included in an Attachment entitled "LCA-City WSA – Operating Cost Portion – 2020 Rate Example."

The Operating Cost Portion of the Adjusted Rate shall become effective on October 1, 2020. In the event that this Amendment shall not become effective by October 1, 2020 the provision of this paragraph 8 (i) shall be effective retroactive to October 1, 2020.

(ii) Capital Cost Recovery Portion: The Capital Cost Recovery Portion of the Adjusted Rate will be calculated as follows: LCA will pay a proportionate share of Major Capital Improvements and Changes of Law (as such terms are defined in the Lease) associated with water treatment, Intakes, and storage facilities using methodologies established for the development of the Capital Cost Recovery Charge and Changes of Law charges defined in and included in the Lease and applied to City rate payers. When calculating such charges for the applicable projects, not captured in operating costs (associated with water treatment, Intakes and finished water storage), LCA's annual use of City Division water will be included in the Total Billable Water Volume to calculate the rate applied to all users including LCA. However, LCA shall have the right to pre-pay these project costs or pay in a time period shorter than the Cost Recovery Period, as such term is defined in and specified in the Lease. In the event LCA exercises this right, the Capital Cost Recovery Portion of the Adjusted Rate will be reduced by the amount that LCA has pre-paid. LCA will advise the City of any pre-payment and will provide the then current/ updated adjusted costs and schedule of payments.”

The Capital Cost Portion of the Adjusted Rate shall become effective on January 1, 2021.

9. Except as modified herein, all terms and conditions of the Water Supply Agreement shall remain in full force and effect. Capitalized terms used herein but not defined herein shall have the meanings set forth in the Water Supply Agreement and the Lease.

10. Assignment

Neither the City nor LCA may assign this Agreement without the express prior consent of the other party.

11. Binding Agreement

This Agreement shall be binding of their respective successors and assigns.

12. Integration

The Stand- Alone Dispute Settlement Agreement, the Amendment to the Water Supply Agreement, the Amendment to the Lease and the Amendment to the CCRC MOU (herein above defined collectively as the “Integrated Agreements”) constitute and contain the entire agreement between the Parties. The Parties intent that the Integrated Agreements to be a complete and exclusive statement of the terms of their agreement. The Integrated

Agreements supersede and replace all prior negotiations and proposals, whether written or verbal, between the Parties concerning the subject matter contained herein.

13. Bondholder Consent Required

The Parties acknowledge that the Integrated Agreements are contingent upon obtaining the consent of a majority of the holders of the Bonds, and agree to cooperate in securing such consent (whether through the submission of requests for consent from existing bondholders or through the issuance of refunding bonds by LCA to effectuate such consent). In the event LCA determines in its sole discretion to effectuate such bondholder consent through the issuance of refunding bonds, the City agrees to cooperate with LCA in the issuance of such bonds, and shall execute all instruments, certificates, agreements, and other documents necessary or appropriate in connection with the issuance of the refunding bonds; provided, however, that the City shall not be required to act as guarantor of such bonds or otherwise pledge its full faith, credit and taxing power in connection therewith. The Parties agree that the securing of such consent is a necessary prerequisite to the effectiveness of the Integrated Agreements and the failure to obtain such consent by September 30, 2020 shall result in the Integrated Agreements becoming null and void and of no effect; provided, however that LCA may extend such deadline by up to 60 days by providing notice of such extension to the City no later than September 18, 2020. The effectiveness of each distinct and separate agreement comprising the Integrated Agreements is contingent upon the effectiveness of all other agreements comprising the Integrated Agreements.

14. Modification in Writing

This Agreement shall not be changed, modified or amended except by agreement in writing signed by both Parties pursuant to Section 21.e of the Water Supply Agreement.

15. Documents to Implement

The Parties agree to be bound by this Agreement and agree to execute any and all documents necessary to implement the terms, as agreed.

16. Authorized to Sign

By this Agreement, the Mayor of the City of Allentown and the Chief Executive Officer of LCA are authorized to implement all administrative, financial and operational requirements of this Agreement, subject to existing administrative processes, authorizations and delegated responsibilities.

17. Counterparts

This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but both counterparts together shall constitute a single Agreement

18. Effective Date

The terms and provisions of this Amendment to the Water Supply Agreement shall be effective on the date of the last signature hereto.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the Water Supply Agreement or caused this Amendment to the Water Supply Agreement to be executed by their duly authorized representatives the day and year first above-written.

ATTEST:

THE CITY OF ALLENTOWN:

By: _____ Witness: _____
Name: Ray O'Connell Name: _____
Title: Mayor of the City of Allentown Title: _____
Date: _____

LEHIGH COUNTY AUTHORITY:

By: _____ Witness: _____
Name: Liesel Gross Name: _____
Title: Chief Executive Officer Title: _____
Date: _____

LCA-City WSA – Operating Cost Portion – 2020 Rate Example

**LEHIGH COUNTY AUTHORITY
STATEMENTS OF ACTIVITIES - WATER FILTRATION PLAN1
For the Year Ended December 31, 2019**

Operating Expenses:	2019 Actual
Personnel	
Salaries and Wages	1,105,678
Overtime	188,390
Employee Benefits	595,177
Internal Services - Overhead & Support	841,382
Total Personnel	\$ 2,730,627
Purchase of Services	
Internal Services - Lab Costs	274,637
Utilities	1,021,639
Exceptional Strength Analysis	-
Engineering	6,267
General Analyses	-
Maintenance Services	285,686
Fleet Management Services	3,088
Extraordinary Expenditures	-
Industrial Meter Testing	-
Residuals	20,824
Contract Operating Svcs	-
Miscellaneous Services	84,573
Compliance	-
LCA WWTP Treatment/Removals	-
Rental	-
Treatment and Transportation	-
Water Purchases	52
Total Purchase of Services	\$ 1,696,765
Materials & Supplies	
Equipment	30,345
Pump Supplies	2,144
Purification Supplies	260,473
Distribution & Transmission Supplies	-
Fleet Management Supplies	1,469
Fuel & Mileage	5,555
Misc. Materials & Supplies	54,175
Total Materials & Supplies	\$ 354,160
Total Operating Expenses	\$ 4,781,551

Water Treatment Plant, Intakes & Storage - Annual Capital Expenses:	2019 Actual
Annual Projects	266,793
Water System Studies	144
General Improvements	225,070
Indenture Report Improvements	267
Debt Service for non-CCRC Projects	-
Total Annual Capital Expenses: Water Treatment Plant, Intakes & Storage	\$ 492,274

TOTAL OPERATING COST PORTION - 2019 ACTUAL COSTS	\$ 5,273,825
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TOTAL BILLABLE WATER VOLUME (TBWV-LCA) - July 2, 2018-June 30, 2019 (attached)	6,200,962,793
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2020 OPERATING COST PORTION - RATE PER 1000 GALLONS	\$ 0.85048
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Capital Cost Recovery Charge (CCRC)
Total Billable Water Volume (TBWV) Allentown Ratepayer Total Billable Sewer Flow (ARTBSF) Calculation

	<u>Prior Year 12- Month Total: July 1 2018 - June 30,</u>		<u>Volume Billed at</u>	<u>Volume Billed at</u>	<u>Volume Billed at</u>
<u>RETAIL WATER SALES</u>	<u>2019</u>	<u>Volume Billed at 100%</u>	<u>90%</u>	<u>85%</u>	<u>60%</u>
Monthly Accounts	1,078,017,669				
Quarterly Cycle 3-4 (prorated)	679,738,937				
Quarterly Cycle 5-6 (prorated)	619,851,918				
Quarterly Cycle 1-2 (prorated)	642,445,159				
Finalized Accounts	12,843,007				
TOTAL - Metered Retail Sales	3,032,896,690	3,032,896,690	-	-	-
<u>MUNICIPAL BULK SALES</u>	<u>12-Month Total</u>				
Salisbury Township	301,603,908	-	255,500,000	46,103,908	-
South Whitehall Township	287,023,411	-	255,500,000	31,523,411	-
Hanover Township	63,879,000	63,879,000	-	-	-
Bethlehem (discontinued 12/6/13)	-	-	-	-	-
Whitehall Township	1,380,303	1,380,303	-	-	-
Whitehall Township - Emergency	-	-	-	-	-
Bethlehem - Emergency	-	-	-	-	-
Emmaus - Emergency	-	-	-	-	-
NBMA - Emergency	-	-	-	-	-
TOTAL - Municipal Bulk Sales	653,886,622	65,259,303	511,000,000	77,627,319	-
	<u>12-Month Total</u>				
TOTAL VOLUME - TOTAL RETAIL & BULK SALES	3,686,783,312	3,098,155,993	511,000,000	77,627,319	-
TOTAL BILLABLE VOLUME (PRORATED)		3,098,155,993	459,900,000	65,983,221	-
TOTAL BILLABLE WATER VOLUME (TBWV) - EXCLUDES LCA WSA PURCHASE		3,624,039,214			
LCA WSA WATER PURCHASE DURING PRIOR YEAR		2,576,923,579			
GRAND TOTAL BILLABLE WATER VOLUME (TBWV-LCA) - INCLUDES LCA WSA PURCHASE		6,200,962,793			
GRAND TOTAL ALLENTOWN RATEPAYER TOTAL BILLABLE SEWER FLOW (ARTBSF)		3,029,401,705			