

STAND ALONE DISPUTE SETTLEMENT AGREEMENT

Between

CITY OF ALLENTOWN

AND

LEHIGH COUNTY AUTHORITY

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”), dated the _____ day of _____ 2020, is made and entered into by and between City of Allentown, a Pennsylvania city of the third class duly organized and existing under the laws of Pennsylvania and the City of Allentown Home Rule Charter (“City”), and the Lehigh County Authority, a Pennsylvania municipal authority organized and existing under the Pennsylvania Municipality Authorities Act (“LCA” or “Authority”), (each individually a “Party”, and collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Parties entered into a certain Water Supply Agreement (the “Water Supply Agreement”), dated as of January 7, 2009; and

WHEREAS, the Parties entered into the Allentown Water and Sewer Utility System Concession and Lease Agreement dated as of May 1, 2013, as amended and supplemented from time to time (collectively, the “Lease”) 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 Parties entered into the Capital Cost Recovery Charges Memorandum of Understanding, dated July 1, 2015 (the CCRC MOU) with respect to Capital Cost Recovery Charges as defined in the Lease (hereinafter “CCRC” or “CCRCs”), , because neither the Lease and the Operating Standards associated incorporated therein contained details on how to procedurally handle CCRCs and the Parties wished to establish, in writing, responsibilities and procedures in regard to the usage, development and application of CCRCs; and

WHEREAS, the Parties wish to ensure that the exceptional quality of drinking water and treated sewage effluent are continuously and safely maintained; and,

WHEREAS, the System serves residents and businesses of the City and surrounding communities and is vital to the stability, growth, and development of the entire service area; and,

WHEREAS, the Parties wish to ensure funding is available for all necessary capital improvements to the System for the full term of the Lease; and,

WHEREAS, the Parties want to ensure that all aspects associated with the operation and maintenance of water and sewer services continue to fully comply with requirements of the Lease, the Operating Standards attached thereto as Schedule 4, and all regulatory requirements; 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, after significant negotiations, and wishing to avoid further litigation with respect to the Disputes, have agreed to settlement terms and conditions for the above-referenced 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 as integral parts of the comprehensive, global settlement between the Parties to terminate their respective claims in the Disputes (the “Integrated Agreements.”)

- Stand-Alone Dispute Settlement Agreement (for the Disputes those 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, the terms of which are intended to be incorporated into an Amended and Restated Lease Agreement but will not be subject to further negotiation by the Parties; 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 as follows:

1. Incorporation of Recitals

The foregoing recitals are incorporated herein and by this reference made a material part of this Agreement.

2. Conditional Nature of this Agreement

This Agreement is intended to memorialize the Parties' pending negotiations regarding the Disputes between the Parties, including those related to the Lease. Because this Agreement, by its terms, proposes amendments to numerous provisions of the Lease, any effect or enforceability of this Agreement is conditional on (i) the execution and delivery by the Parties of an amendment to the Lease (the "Lease Amendment") which, by its terms, is in accord with this Agreement; (ii) the execution and delivery by the Parties of an amendment (the "WSA Amendment") to that Water Supply Agreement dated as of January 7, 2009 (the "Water Supply Agreement"), between the City and LCA; (iii) the execution and delivery by LCA of an amending supplement (the "Supplemental Indenture") to that Trust Indenture dated as of August 1, 2013 (as heretofore amended and supplemented, the "Existing Indenture," and together with the Supplemental Indenture, the "Indenture"), from LCA to Manufacturers and Traders Trust Company, as trustee, pursuant to which the holders of a majority in aggregate principal amount of the Bonds (including any Bonds that may be issued pursuant to such Supplemental Indenture) outstanding under the Indenture consent to the changes to the Lease contemplated hereby and embodied in the Lease Amendment; and (iv) any other amendments, supplements, agreements, instruments, certificates and other documents as may be necessary and appropriate to effectuate the terms of this Agreement.

Accordingly, the Parties enter into this Agreement on a conditional basis. In the event that the conditions above are not satisfied this Agreement shall be deemed null and void ab initio in its entirety and shall be of no force or effect whatsoever and shall be considered a joint statement by the Parties during compromise negotiations about their Disputes, and shall not be referred to or utilized for any purpose whatsoever. Provided, however, that should the conditions above not be satisfied due to a failure to obtain the necessary consent from the holders of a majority in aggregate principal amount of the Bonds outstanding under the Indenture, the Parties agree to continue to negotiate in good faith with regard to the terms of this Agreement or their other agreements in order to secure such consent.

3. Release from Liability, Waiver of Claims, and Withdrawal of the Disputes

Upon satisfaction of the conditions set forth in Section 2 above, and elsewhere in this Agreement, the Parties release one another from liability and thereby waive any right to all issues and claims included in and a part of the Disputes. Upon execution of the Integrated Agreements, the Disputes will be withdrawn by the Parties in their entirety unless otherwise specifically addressed in this Agreement. This Agreement shall be considered as having fully satisfied all Disputes and all claims in the Disputes, and by executing the Integrated Agreements, both Parties intend to fully release one another from all Disputes and all claims in the Disputes. Neither Party shall initiate future disputes or claims related to the matters described in the Disputes.

4. Claims for Employee Health Benefits

To ensure employee benefits are provided with no disruption, LCA and the City agree to the following:

- a.) The Parties will exchange confidential memoranda detailing specific employee information that is pertinent to this term of the Agreement to provide additional documentation for future administration of benefits. LCA's Human Resources Manager and Chief Executive Officer are designated as officials responsible and authorized to complete these administrative memoranda on LCA's behalf. The City's Director of Human Resources and Managing Director are designated as officials responsible and authorized to complete these administrative memoranda on the City's behalf.
- b.) LCA will not be liable for any retiree health care costs the City incurred prior to 2021 related to those employees who officially retired from the City rather than porting and taking their pension benefits to LCA.
- c.) Independent City and LCA calculations have been made and the Parties agree that an acceptable estimate of the valuation of future costs for the remaining liability for retiree health care for those employees who officially retired from the City rather than porting their retirement benefits to LCA is \$2,444,948. This figure excludes any employees who, as of the date of this Agreement, have left LCA employment prior to becoming eligible to retire from LCA, which is an eligibility requirement for benefits.
- d.) Both Parties recognize that the foregoing calculations were based on estimated figures and assumptions regarding employee utilization of City benefits through age 65 and estimated future premium increases. The Parties further understand that these assumptions may not be reflected in actual future costs and agree the final figure of \$2,444,948 will not be contested in the future.
- e.) City and LCA agree to share the cost of this estimated future liability. To achieve this cost sharing, LCA will pay to the City a sum of \$306,000 annually in calendar years 2021 through 2024 for a total payment of \$1,224,000. This payment will be made through equal payments of \$153,000 that will be added to each semi-annual component of the Annual City Payment LCA makes under the Lease to the City for these years. This cost will not be escalated by inflation.
- f.) This agreement is considered final and all other employees who transferred to LCA through the Lease transition who did not retire from the City, but who ported their retirement benefit from the City to LCA, shall not be eligible for retiree health benefits from the City. LCA's retiree health care offered to these employees will follow the

terms of any then-current LCA collective bargaining agreements and/or LCA employee policies in effect at the time of the employee's retirement.

5. Unreimbursed Sick Leave

LCA assumes 100% of the liability for the 55,189 hours of accumulated sick leave benefit that was held by Union employees and which transferred to LCA on the Closing Date of the Lease.

6. Roof Replacement Project Reimbursement

LCA will begin billing for the annual CCRC of the Roof Replacement Project in January 2021. The calculation of the CCRC for the Roof Replacement Project was previously reviewed, but the CCRC has not been applied due to the outstanding Dispute which is hereby resolved. The agreed upon amount of the annual CCRC for the Roof Replacement Project is \$78,807, which LCA will collect as a CCRC for a 30-year Capital Recovery Period beginning in the calendar year 2021 and ending in 2050.

7. Waiver of Approval of CCRC

City waives its right to withhold approval of any proposed Capital Cost Recovery Charge (CCRC) that includes for any Reporting Year during the Cost Recovery Period a CCRC that is greater than 200% of the CCRC for any other Reporting Year under Section 7.1(f) of the Concession Lease Agreement. The waiver granted hereby is continuing and shall apply to each and every request for a proposed CCRC by LCA submitted after the date of this Agreement. The City shall not revoke the waiver granted by this Section 7 for the term of the Lease.

8. Assignment

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

9. Binding Agreement

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

10. No Admission of Liability

Nothing contained herein shall be construed as an admission by the Parties of any liability of any kind, all such liability being expressly denied.

11. Confidentiality; Right to Know Law

The Parties acknowledge that this Agreement is subject to the Pennsylvania Right to Know Law, 65 P.S. §67.101 et seq. (the “RTKL”). The Parties agree to cooperate in responding to any request under the RTKL that is received by either Party for records or information related to this Agreement. Except as required by the RTKL or other applicable law, the Parties agree that they will not directly or indirectly disclose, publish, make available to, or use for their own benefit or the benefit of any person or entity for any reason or purpose whatsoever, any “Confidential Information” of the City or LCA. For purposes of this Agreement, “Confidential Information” means and includes information, proposals, drafts and other details shared by the Parties during the negotiation of the terms of this Agreement. Confidential Information does not include information that is publicly known other than by any means in violation of this Agreement or any other duty owed to the Parties.

12. Non-Disparagement

The Parties agree that, unless required to do so by legal process, they will not make any disparaging statements or representations related to the matters described in the Disputes, either directly or indirectly, whether orally or in writing, by word or gesture, to any person whatsoever, about the other Party or his/her/its affiliates, directors, officers, employees, attorneys, agents, or representatives. For purposes of this paragraph, a disparaging statement or representation is any communication which, if publicized to another, would cause or tend to cause the recipient of the communication to question the business condition, integrity, competence, or good character of the Party about whom the communication is made.

13. 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 intend 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.

14. 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 City shall be reimbursed for any direct cost the City incurs for cooperating it incurs. 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.

15. Ratification

Except as specifically amended in the Integrated Agreements all terms and conditions of the Lease, the Operating Standards, the Water Supply Agreement, and any other agreements between the Parties shall remain in full force and effect, are hereby ratified and confirmed, and shall govern the terms of this Agreement.

16. Modification in Writing

This Agreement shall not be changed, modified or amended except by agreement in writing signed by both Parties.

17. 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.

18. Headings and Interpretation

The Parties acknowledge that the headings provided in this Agreement are provided solely for the convenience of the reader, in order to assist the Parties in reading and understanding the Agreement. The headings provided are not intended to, and shall not be construed as, affecting the interpretation of the terms of this Agreement. This Agreement shall be interpreted and enforced according to its plain and ordinary meaning. Capitalized terms used but not defined herein have such meanings given them in the Lease. The Parties have been represented by counsel and this Agreement shall not be construed against any party on the basis of authorship.

19. Severability

In the event that any provision of this Agreement shall be held to be void, voidable, or unenforceable, the remaining portions hereof shall remain in full force and effect.

20. Attorneys' Fees and Costs

Each Party hereto shall bear its own attorneys' fees and costs in relation to this Agreement and any actions arising out of or relating to this Agreement, except as otherwise set forth in this Agreement.

21. Assignment and Authority

The Parties further represent and warrant to each other that no claims being released by this Agreement have been assigned to any third party, that the Parties have the power and authority to release the claims as provided herein, and that the person or parties executing this Agreement have power and authority to do so.

22. Review

Each of the Parties represents and warrants that it has had the opportunity to fully review the provisions of this Agreement with their respective counsel. This Agreement shall not be construed against the drafter of this Agreement but shall be interpreted as if jointly drafted by each and every Party. Each Party is signing and entering into this Agreement of its own free will to obtain the benefits of this Agreement.

23. Governing Law

This Agreement shall be construed in accordance with and be governed by the laws of the Commonwealth of Pennsylvania, County of Lehigh.

24. Authority 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.

25. 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

26. Effective Date

The terms and provisions of this Stand- Alone Dispute Settlement Agreement shall be effective on the date of the last signature hereto.

IN WITNESS THEREOF, the Parties **INTENDING TO BE LEGALLY BOUND** will execute all necessary documents to implement the terms as agreed. By this agreement, the Mayor of Allentown and the LCA Chief Executive Officer shall be authorized to implement all administrative, financial and operational requirements of this agreement, subject to existing administrative processes and delegated responsibilities. In addition, the Mayor of Allentown and the LCA Chief Executive Officer shall be authorized to execute a Lease Amendment, WSA Amendment, and any other documents that may be required to be amended to reflect the terms of this Agreement and take such actions upon which the effect and enforcement of this Agreement are conditional.

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Signatures Appear on the Next Page

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: _____