

## **Standstill Agreement between the City of Chester and the Chester Water Authority**

On March 14, 2018, the Chester City Council and the Mayor voted to enter into the attached "Standstill Agreement" and then presented it to the Chester Water Authority Board on March 15, 2018 for their consideration. The Chester Water Authority Board unanimously approved the agreement on March 15, 2018. Attached are:

1. Mutual Letter of Intent Agreement (3 pages) setting forth the terms of the Standstill Agreement and the date on which it expires, December 31, 2018.
2. Resolution of the City of Chester accepting the terms of the Standstill Agreement.

March 14, 2018

The Honorable Thaddeus Kirkland  
Mayor, City of Chester  
City Hall  
1 Fourth Street  
Chester, PA 19013

Cynthia F. Leitzell, CPA  
Chairperson  
Chester Water Authority  
PO Box 467  
Chester, PA 19016

City Council  
City Hall  
1 Fourth Street  
Chester, PA 19013

Re: Mutual Letter of Intent regarding Chester Water Authority ("Letter of Intent")

This Letter of Intent memorializes discussions between representatives of Chester City government and representatives of Chester Water Authority concerning operational issues of the Chester Water Authority and provides the framework to continue those discussions with the mutual goal of entering into a definitive agreement (the "Definitive Agreement") between the City of Chester ("City") and the Chester Water Authority ("Authority") concerning future Authority operations.

1. The Chester Water Authority is organized and operates under the Pennsylvania Municipality Authorities Act, 53 Pa C.S.A. 5601 et. seq., as amended and supplemented to date ("Authorities Act").
2. Third parties have advised the City that since the City's predecessor government was the incorporator of the Chester Water Authority, the City has certain abilities under the Authorities Act at 53 Pa. C.S.A §5619 and 53 Pa. C.S.A. §5622 ("Sections 5619 and 5622") to unilaterally terminate the Authority's existence and/or to unilaterally acquire any project of the Authority. The Authority disagrees that the City can unilaterally terminate the Authority's existence or unilaterally acquire any project of the Authority for several reasons including inter alia, the unanimous passage of the law codified at 53 Pa. C.S.A. §5610(a.1) and §5612(a.1) as well as the July, 2017 Pennsylvania Supreme Court decision in *Pennsylvania Environmental Defense Foundation v. Commonwealth*, No. 10 MAP 2015 (June 20, 2017).
3. The City and the Authority are interested in amicably resolving their respective positions through a negotiated resolution rather than through resolution through contested litigation between them. Therefore, the City and the Authority hereby agree as follows:
  - a. The City and the Authority will negotiate towards a Definitive Agreement starting immediately and continuing until December 31, 2018 unless the parties by mutual written agreement agree to extend this deadline ("Standstill Period").
  - b. The City or its successors or agents will not take any action or attempt to exercise any rights, that the City claims under Section §5619 and/or Section §5622 of the Authorities Act (or any comparable law), or which otherwise interferes with the operations of the Authority during the Standstill Period.

c. The Authority agrees to not invite, accept, consider or agree to any proposal by any third party with regard to the transfer of any assets under the control of or managed by the Authority during the Standstill Period. During the Standstill Period, neither party shall negotiate or contact any third party with regards to the transfer of any assets owned or managed by the Authority without the written authorization of the other party.

d. In exchange for the consideration set forth herein in subparagraphs 3(b) and 3(c), the City and the Authority agree to negotiate in good faith towards a final Definitive Agreement which will contain provisions, inter alia, that:

- i. Allow the customers and assets of the Authority located within the geographical boundaries of the City ("City Division") to be administered and operated independent of the customers and assets in the part of the Authority's service area, outside of the City ("Western Division"). The principal purpose of this division of operations would be to allow the City, in connection with the operations of the City Division, to take advantage of loan, grant, and in-kind assistance opportunities and programs with the federal government, state government and non-profit community-oriented organizations which programs would be otherwise unavailable to the City.
- ii. Encourage increasing management efficiencies as part of this division of Authority operations into a City Division and a Western Division.
- iii. Provide for all necessary party lawyers review and approvals, third party consents or judicial, regulatory or other approvals and conditions precedent to be satisfied before a scheduled closing date.

4. Promptly following the date hereof, the parties will at reasonable times and locations provide to the other access to information in their respective possession, or reasonably available to it, respecting the City Division as may be reasonably requested subject to executed Non-Disclosure Agreements, reasonably requested, negotiated and executed. The City and the Authority shall take appropriate steps to the fullest extent permitted by applicable law, to avoid disclosure of the transactions contemplated hereby to third parties, including but not limited to employees of the City and the Authority other than as may be necessary or appropriate to complete the transactions contemplated hereby or as agreed is required by counsel to the Authority and counsel to the City.

5. This Mutual Letter of Intent Agreement is legally binding on the parties to the extent set forth in this Letter of Intent and is subject to, among other things, negotiation, execution and delivery of a mutually satisfactory Definitive Agreement, due diligence in connection therewith, the respective parties' lawyers review and approvals, required consents and approvals of third parties, and approvals of such transactions and agreements by the

Authority's Board and the City's Council and Mayor's office and the Delaware County Court of Common Pleas. This Letter of Intent is, and the Definitive Agreement will be, further subject to the Authority obtaining financing from third parties, if needed but is otherwise legally binding upon the parties immediately upon the execution hereof and shall survive the termination hereof to the extent set forth herein. The City and the Authority intend, acknowledge and agree that this paragraph, Subparagraphs 3(a) through 3(d); and the Paragraphs numbered 6, 7 and 8 contained herein shall be a legally binding agreement between the City and the Authority and shall be enforceable against the City and the Authority in accordance with their terms and shall survive any termination of this Mutual Letter of Intent.

6. This Letter of Intent is, and the Definitive Agreement shall be, governed by the laws of the Commonwealth of Pennsylvania without regard to whatever laws might otherwise apply under applicable principles of conflicts of choice of laws. The Delaware County Court of Common Pleas shall be the exclusive venue for all action or proceedings related to this Mutual Letter of Intent.

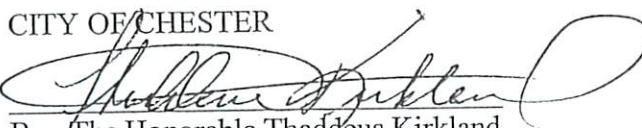
7. Notwithstanding anything herein to the contrary the City and the Authority shall bear the respective fees and expenses (including, without limitation, all legal and accounting fees) relating to their compliance with this Letter of Intent, the transactions contemplated herein, the negotiations leading to same transactions and the preparation made for carrying the same into effect.

8. This Letter of Intent is an agreement to negotiate in good faith. The parties hereby intend, agree and acknowledge that in exchange for the consideration detailed herein, they are obligated to operate and negotiate in good faith as set forth in Paragraphs 3 and 4, and use their best effects to work towards a Definitive Agreement and develop all necessary supporting documentation during the Standstill Period.

9. The City and the Authority intend that this Letter of Intent agreement constitute a valid and legally binding agreement of each of them, enforceable against each of them in accordance with its terms. All necessary action(s) to authorize this Letter of Intent agreement and the consummation and performance of the transactions contemplated hereby has been duly, validly and effectively taken by each of them.

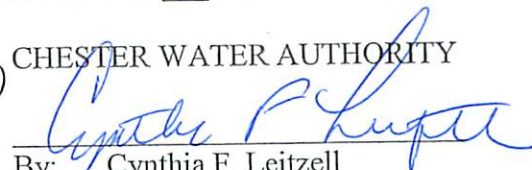
ACCEPTED this 14<sup>th</sup> day of March, 2018:      ACCEPTED this 15<sup>th</sup> day of March, 2018:

CITY OF CHESTER

  
By: The Honorable Thaddeus Kirkland  
Mayor, City of Chester

Attest: Carolee Thompson  
City Clerk, City of Chester

CHESTER WATER AUTHORITY

  
By: Cynthia F. Leitzell  
Chairperson of the Board  
Chester Water Authority

Attest: [Signature]  
Secretary, Board of Directors  
Chester Water Authority

## RESOLUTION

WHEREAS, because the City was the Incorporator of the Chester Water Authority, the City can unilaterally terminate the Authority's existence and/or unilaterally acquire any project of the Authority, and;

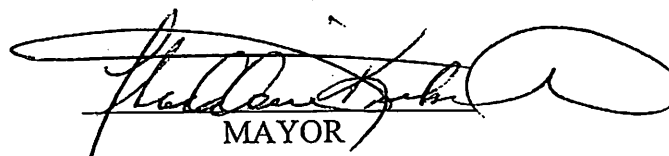
WHEREAS, the Authority has advised the City that it disagrees that the City can unilaterally terminate the Authority's existence or unilaterally acquire any project of the Authority, and;

WHEREAS, the City and the Authority are interested in amicably resolving their respective positions through a negotiated resolution rather than through contested litigation between them.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF CHESTER DOES RESOLVE:**

That the City of Chester hereby authorizes and directs the appropriate City officials to execute the attached three (3) page Mutual Letter of Intent between the City of Chester and Chester Water Authority and in doing so, the City agrees to be legally bound to the terms, conditions, and provisions set forth in the Mutual Letter of Intent. The Mutual Letter of Intent establishes a time period during which the City and the Authority are obligated to negotiate in good faith toward an amicable resolution of their respective positions as more specifically set forth in the three (3) page attachment. The appropriate City officials are authorized to take any actions necessary to carryout the intent and purpose of the Resolution. Any Definitive Agreement (as deferred in the Mutual Letter of Intent) shall require the approval of Council.

WE HEREBY CERTIFY that this Resolution passed Council this 14<sup>th</sup> day of March, A.D. 2018.

  
MAYOR

Attest:   
CITY CLERK