

STATUS OF PROPOSED SETTLEMENT

On January 24, 2019, the Board of Directors of the Chester Water Authority unanimously authorized the transmission of a Proposed Settlement Agreement to the City of Chester for their approval. The City is reviewing the Agreement.

The City Council of the City of Chester next meets on February 13, 2019 at 10:00 a.m. in City Council Chambers, Municipal Building, One Fourth Street, Chester, PA 19013. <http://www.chestercity.com/events/>

The Board of Directors of the Chester Water Authority will next meet on February 14, 2019. (Please consult the Authority website for meeting time and location). <http://www.chesterwater.com/>

Copy of the Proposed Settlement Agreement is below.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter, the “Agreement”) is made by and between the Chester Water Authority (the “Authority”), incorporated pursuant to and existing under and governed by the Pennsylvania Municipality Authorities Act, 53 Pa.C.S. Ch. 56 (the “Act”) and the City of Chester, Delaware County, Pennsylvania (the “City”). The Authority and the City are hereinafter collectively referred to as the “Parties;”

WHEREAS, the Authority was originally incorporated on July 6, 1939 as the Chester Municipal Authority and in 1965 changed its name to the Chester Water Authority;

WHEREAS, the Authority, as its mission: provides access to clean and affordable water for all present and future ratepayers, at a reasonable cost; promotes the economic vitality and general welfare of its present and future ratepayers; and satisfies the water needs of its current and future ratepayers through orderly growth, all consistent with its obligations under the laws of the Commonwealth of Pennsylvania;

WHEREAS, when the Authority was formed it provided water services to sixty-seven (67) customers in the south end of the City. Presently the Authority serves more than 200,000 residents and businesses in southern Chester County, Pennsylvania (“Chester County”), western Delaware County, Pennsylvania (“Delaware County”) and the City;

WHEREAS, by letter dated May 8, 2017 Aqua Pennsylvania, Inc. submitted to the Authority an unsolicited purchase offer of three hundred twenty million dollars (\$320,000,000.00) pursuant to Pennsylvania Act 12 of 2016;

WHEREAS, the Authority rejected Aqua’s purchase offer as not in the best interests of its present and future ratepayers;

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WHEREAS, Section 5622 of the Act, (conveyance by authorities to municipalities or school districts of established projects) provides that the incorporating municipality of an authority may seek to acquire the project(s) of an authority by adoption of a resolution or ordinance;

WHEREAS by letter to the Authority dated October 25, 2017 Thaddeus Kirkland, Mayor of the City, threatened that the City might seek to dissolve the Authority, stating that the City could determine that the project of the Authority “is best carried out by another entity, public or private, and can move to reclaim and transfer operation of the Authority’s assets and, subsequently, dissolve the Authority;”

WHEREAS, Act 73 of 2012 amended sections 5610 (Governing Body) and 5612 (Money of Authority) of the Act. Section 5612 was amended to prohibit any money of a municipality authority to be used for purposes outside of the mission of the Authority. The amendments to Section 5610 resulted in equal representation on the Board of the Authority by three members each from the City, Chester County and Delaware County;

WHEREAS, the Authority has asserted that Act 73 of 2012 eliminated the City’s ability to acquire the Authority’s project(s) under 53 P.S. § 5622;

WHEREAS, the Authority has further asserted that the amendments to Section 5612 further eliminated the City’s ability to utilize the assets of the Authority in any manner beyond the Authority’s mission, including specifically, to pay down the City’s debt and/or alleviate its financial distress;

WHEREAS, the recipient of any money of the Authority is accountable to ratepayers under section 5612 of the Act to ensure that the limitations on use of money in 53 Pa.C.S. § 5612(a.1)(1) have been met;

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WHEREAS, the City disagrees with the Authority's position as to the City's ability to acquire the Authority's project(s) and utilize Authority assets as contemplated by Section 5622 (the disagreement between the Authority and the City being herein referred to as the "Dispute");

WHEREAS, the Parties subsequently entered into a Standstill Agreement which served to preserve the status quo during the Standstill Period while the Authority and the City negotiated a definitive resolution of the Dispute;

WHEREAS, the Dispute remains outstanding;

WHEREAS, the City has been in Pennsylvania's Act 47 Financial Recovery Program since 1995 and desires to be released from the provisions thereof.

WHEREAS, the Parties have agreed to resolve the Dispute on the terms set forth herein.

NOW THEREFORE, for and in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **Release by the Authority.** The Authority, for itself, its members, agents, servants, predecessors, successors, assigns, administrators, employees, affiliates, advisors, consultants, and legal representatives, (the "Authority's Releasers"), does hereby remise, release and forever discharge the City, its members, successors, predecessors, successors, assigns, administrators, employees, affiliates, advisors, consultants and legal representatives, ("City Releasees"), from any and all manner of actions, and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, liabilities, agreements, judgments, claims, and/or demands, of whatsoever kind or nature, whether asserted or unasserted, in law or in equity, known or unknown, foreseen or unforeseen, fixed or contingent, matured or unmatured, direct or

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indirect, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, whether class or individual in nature, that have been or could be asserted by the Authority against the City relating to the Dispute; provided, however, that the foregoing release shall not apply to any claim by the Authority against the City resulting from or arising out of a breach of any of the provisions of this Agreement.

2. **Release By The City.** The City, for itself, its members, agents, servants, predecessors, successors, assigns, administrators, employees, affiliates, advisors, consultants, and legal representatives, (the “City Releasers”), does hereby remise, release and forever discharge the Authority, its members, successors, predecessors, successors, assigns, administrators, employees, affiliates, advisors, consultants and legal representatives, (“Authority Releasees”), from any and all manner of actions, and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, liabilities, agreements, judgments, claims, and/or demands, of whatsoever kind or nature, whether asserted or unasserted, in law or in equity, known or unknown, foreseen or unforeseen, fixed or contingent, matured or unmatured, direct or indirect, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, whether class or individual in nature, that have been or could be asserted by the City against the Authority relating to the Dispute; provided, however, that the foregoing release shall not apply to any claim by the City against the Authority resulting from or arising out of a breach of any of the provisions of this Agreement.

3. **Covenant Not to Sue.**

a. Authority Releasers further covenant not to bring any claim or cause of action of whatsoever kind against any of the City Releasees for any of the claims released in paragraph 1 above before any court, arbitrator, or other tribunal in any jurisdiction, whether as a claim, cross-

claim, counterclaim or otherwise. Any City Releasee may plead this Agreement as a complete bar to any such claim, cause of action or defense brought in derogation of this covenant not to sue.

b. City Releasers further covenant not to bring any claim or cause of action of whatsoever kind against any of the Authority's Releasees for any of the claims released in paragraph 2 above before any court, arbitrator, or other tribunal in any jurisdiction, whether as a claim, cross-claim, counterclaim or otherwise. Any Authority Releasee may plead this Agreement as a complete bar to any such claim, cause of action or defense brought in derogation of this covenant not to sue.

4. **Representations and Warranties.**

a. No prior assignment or transfer: The Parties expressly represent that they have not previously assigned or transferred any claim, cause of action, demand or debt being released herein to any other person or entity.

b. Power to enter into Agreement; Agreement duly authorized: Each of the Parties represent and warrant that they have the full power and lawful authority to execute this Agreement and to consummate and perform the transactions contemplated hereby, and that each of them have duly and validly authorized the execution and delivery of this Agreement (including such other necessary agreements, instruments and documents in connection herewith) and all necessary proceedings.

5. **Settlement Transaction.** As consideration for the execution of this Agreement, the City and the Authority intend to enter the transactions described in Exhibit A. These transactions shall collectively be known as the “Settlement Transaction.” The Parties acknowledge and agree that the City’s willingness to enter this Agreement is expressly premised upon the receipt from the Authority of the amount set forth in Exhibit A, which the City believes will enable it to be released from the provisions of Act 47.

6. **Court Approval and Bond Issuance Required.** This entire Agreement, including specifically the Settlement Transaction detailed herein, is expressly subject to the entry of a final order by a Court of Competent Jurisdiction approving the Settlement Transaction in a manner that is in a form and substance satisfactory to the Authority, the expiration of all appeal periods relating to such Court order, and the issuance of the Bonds per Exhibit A. If, following the conclusion of proceedings seeking approval of the Settlement Agreement, such an order is not received or the Bonds are not issued as set forth in the prior sentence, the provisions of this Settlement Agreement shall be deemed to have no further force or effect.

7. **No Admission.** Neither this Agreement nor the payment of the Settlement Amount, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the payment of the Settlement Amount: (a) is, or may be deemed to be, or may be used as, an admission of, or evidence of, the validity or lack thereof of any claim that was or could have been asserted by the Authority or the City; of, or of any fault, wrongdoing or liability of the Authority or the City; or (b) is, or may be deemed to be, or may be used as, an admission or evidence of any fault or omission of the Authority or the City in any proceeding in any court, administrative agency, arbitration or other tribunal.

8. **Indemnity.** The City agrees to hold harmless, defend, and indemnify the Authority against loss or damage because of any and all claims, demands or actions, under the Act or otherwise, arising from the City's receipt and/or use of monies from the Settlement Transaction.

9. **Authorship.** The Parties agree that this Agreement reflects the joint drafting efforts of the Parties. Each and every provision of this Agreement shall be construed as though both Parties participated equally in the drafting of same, and any rule of construction that a document shall be construed against the drafting party, including without limitation, the doctrine commonly known as contra proferentem, shall not be applicable to this Agreement.

10. **Cooperation/Future Acts.** At any time and from time to time, the Parties agree and covenant to take any and all steps necessary to accomplish the Settlement Transaction and further shall refrain from performing any action that will inhibit or impair the accomplishment of the terms of the Settlement Transaction detailed herein. This includes, without limitation, participating in court proceedings and/or taking any other step necessary to effect the terms of and allow the Parties to consummate the Settlement Transaction.

11. **Entire Agreement.** This Agreement, including Exhibit A, constitutes the entire agreement and understanding between the Parties and may be amended only in writing signed by the Parties. Except as expressly provided herein, this Agreement supersedes all prior oral or written understandings and agreements of the Parties. Further without limiting the foregoing, the Parties agree that no Party is relying on any representation, warranties, or fact that is not included in the terms of this Agreement. Except as specifically set forth in this Agreement, there are no representations, warranties or inducements, whether oral, written, expressed or implied, in any way affecting or conditioning in any manner this Agreement.

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12. **Execution.** The Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same Agreement. Photographic (including Adobe Acrobat formatted or other .pdf documents) and/or facsimile copies of such signed counterparts may be used in lieu of the originals for any purpose.

13. **Voluntary Agreement.** This Agreement has in all respects been voluntarily and knowingly executed by the Parties, and each of them acknowledges that it has reviewed this Agreement and has had the opportunity to have the terms used herein and consequences thereof explained by its respective counsel prior to executing this Agreement.

14. **Modification.** The Agreement may be amended or modified only by a written instrument signed by or on behalf of the Parties.

15. **Choice of Law, Jurisdiction and Venue.** The Parties agree that any suit, action or proceeding brought by any party arising out of or relating to any provision of this Agreement, or for damages for a breach of any provision of this Agreement, shall be commenced and maintained exclusively in the Court of Common Pleas of Delaware County, Pennsylvania (“Court”). The Parties hereto irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in the Court, and irrevocably and unconditionally waive any claim that such suit, action or proceeding, has been brought in an inconvenient forum.

16. **Recitals.** The Parties agree that the recitals (the “Whereas” clauses) provide **background** information only and do not create any enforceable right or obligation under this Agreement.

17. The Settlement Agreement shall be effective upon execution of both Parties hereto.

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ACCEPTED this __ day of _____, 2019:

ACCEPTED this __ day of _____, 2019:

CITY OF CHESTER

CHESTER WATER AUTHORITY

By: The Honorable Thaddeus Kirkland
Mayor, City of Chester

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

By: _____
For the City of Chester, On behalf and
with Authorization of Chester City Council

Attest: _____
City Clerk, City of Chester

Attest: _____
Secretary, Board of Directors
Chester Water Authority

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EXHIBIT A

Upon the occurrence of; (1) the acceptance of the Settlement Agreement through all required final unappealable official action by Chester City Council and, (2); the filing by the Authority of any Court action that it deems necessary to approve the transactions and actions contemplated by this Settlement Agreement and the subsequent receipt of a final unappealable Order(s), in a form and substance satisfactory to the Authority, by a Court of Competent Jurisdiction regarding the relief requested in those filings, the Parties agree to do the following:

- Authority facilitates settlement payment of \$60,285,000.00 (the “Settlement Payment”) to City through a bond issuance subject to at least the conditions and parameters below, among others deemed appropriate by Authority’s bond counsel and/or financial advisors.
 - The Authority shall have implemented an increase to its current water rates on all of its ratepayers of not more than 10%. Collections at the increased rate shall commence not later than thirty (30) days after the closing on the Bond;
 - The Bonds shall not have an interest rate that exceeds 6.00%;
 - The Bonds shall not be sold at an aggregate purchase price less than 98.50% of principal, less original issue discount, if any, plus original issue premium, if any, plus accrued interest, if any;

- The issuance of the Bonds shall not require a water rate increase of more than ten percent (10%) to ratepayers of the Authority.
 - The Bonds shall not have a final maturity date of more than thirty (30) years from the date of issuance thereof; and
 - The Bonds shall contain any additional requirements imposed by the Bond Underwriters, Bond Trustees or Rating Agencies so long as they are consistent with the terms above.
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- The City shall not in any way, directly or indirectly, contest or challenge any action taken by the Authority to protect and preserve its assets, and to benefit its ratepayers in accordance with the Authority's duties as trustee under Pennsylvania law, by transferring Authority assets into an express trust for a forty (40) year term.
 - Nothing shall obligate the Authority to issue the bonds in the event that litigation remains pending which involves a challenge to the rate increase referenced above.
 - Further details of the Settlement Transaction consistent with the items above to be documented and approved by Authority's board, counsel and financial advisors.