APR 08 2019

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

Delaware County

For Prothonotary Use Only:	Time Stamp
Docket No: CV-2019-002924	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:
☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:	Lead Defendant's Name:
Aqua Pennsylvania Inc.	Chester Water Authority
Are money damages requested? ☐ Yes ☒ No	Dollar Amount Requested: (check one) ☐ within arbitration limits ☒ outside arbitration limits
Is this a *Class Action Suit*? ☐ Yes ☒ No	**Is this an *MDJ Appeal*?** ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Joel L. Frank, Esquire

☐ **Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)**

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your ***PRIMARY CASE.*** If you are making more than one type of claim, check the one that you consider most important.

TORT *(do not include Mass Tort)*
- ☐ Intentional
- ☐ Malicious Prosecution
- ☐ Motor Vehicle
- ☐ Nuisance
- ☐ Premises Liability
- ☐ Product Liability *(does not include mass tort)*
- ☐ Slander/Libel/ Defamation
- ☐ Other:

MASS TORT
- ☐ Asbestos
- ☐ Tobacco
- ☐ Toxic Tort - DES
- ☐ Toxic Tort - Implant
- ☐ Toxic Waste
- ☐ Other:

PROFESSIONAL LIABLITY
- ☐ Dental
- ☐ Legal
- ☐ Medical
- ☐ Other Professional:

CONTRACT *(do not include Judgments)*
- ☐ Buyer Plaintiff
- ☐ Debt Collection: Credit Card
- ☐ Debt Collection: Other
- ☐ Employment Dispute: Discrimination
- ☐ Employment Dispute: Other
- ☐ Other:

REAL PROPERTY
- ☐ Ejectment
- ☐ Eminent Domain/Condemnation
- ☐ Ground Rent
- ☐ Landlord/Tenant Dispute
- ☐ Mortgage Foreclosure: Residential
- ☐ Mortgage Foreclosure: Commercial
- ☐ Partition
- ☐ Quiet Title
- ☐ Other:

CIVIL APPEALS
Administrative Agencies
- ☐ Board of Assessment
- ☐ Board of Elections
- ☐ Dept. of Transportation
- ☐ Statutory Appeal: Other
- ☐ Zoning Board
- ☐ Other:

MISCELLANEOUS
- ☐ Common Law/Statutory Arbitration
- ☒ Declaratory Judgment
- ☐ Mandamus
- ☐ Non-Domestic Relations Restraining Order
- ☐ Quo Warranto
- ☐ Replevin
- ☐ Other:

FILED
Updated 1/1/2011
OFFICE OF JUDICIAL SUPPORT
DELAWARE COUNTY, PA

LAMB McERLANE PC
Joel L. Frank, Esquire - #46601
Vincent T. Donohue, Esquire - #81311
John J. Cunningham, IV, Esquire - #70975
Scot R. Withers, Esquire - #84309
24 E. Market Street – Box 565
West Chester, PA 19381-0565

Attorneys for Plaintiff
Aqua Pennsylvania, Inc.

IMPERATRICE, AMARANT & BELL, P.C.
Rocco P. Imperatrice, III, Esquire - #32181
3405 West Chester Pike
Newtown Square, PA 19073

AQUA PENNSYLVANIA, INC. 762 W. Lancaster Avenue Bryn Mawr, PA 19010	:	IN THE COURT OF COMMON PLEAS DELAWARE COUNTY, PENNSYLVANIA
	:	NO.
Plaintiff	:	
v.	:	
CHESTER WATER AUTHORITY 415 Welsh St. Chester, PA 19013	:	CIVIL ACTION FOR DECLARATORY JUDGMENT
And	:	
CITY OF CHESTER 1 East Fourth St. Chester, PA 19013	:	
Defendants	:	

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DELAWARE COUNTY BAR ASSOCIATION

Lawyer Referral Services
335 W. Front Street
Media, PA 19063
1-610-566-6625

/s/ Joel L. Frank
Joel L. Frank
Attorney for Plaintiffs

LAMB McERLANE PC
Joel L. Frank, Esquire - #46601
Vincent T. Donohue, Esquire - #81311
John J. Cunningham, IV, Esquire - #70975
Scot R. Withers, Esquire - #84309
24 E. Market Street – Box 565
West Chester, PA 19381-0565

Attorneys for Plaintiff
Aqua Pennsylvania, Inc.

IMPERATRICE, AMARANT & BELL, P.C.
Rocco P. Imperatrice, III, Esquire - #32181
3405 West Chester Pike
Newtown Square, PA 19073

AQUA PENNSYLVANIA, INC. 762 W. Lancaster Avenue Bryn Mawr, PA 19010	:	IN THE COURT OF COMMON PLEAS DELAWARE COUNTY, PENNSYLVANIA
	:	NO.
Plaintiff	:	
v.	:	
CHESTER WATER AUTHORITY 415 Welsh St. Chester, PA 19013	:	CIVIL ACTION FOR DECLARATORY JUDGMENT
And	:	
CITY OF CHESTER 1 East Fourth St. Chester, PA 19013	:	
Defendants	:	

COMPLAINT

AND NOW comes Plaintiff, Aqua Pennsylvania, Inc. by and through its attorneys, Lamb McErlane PC, and Imperatrice, Amarant & Bell, P.C., and files this Complaint as follows:

A. The Parties

1. Plaintiff, Aqua Pennsylvania, Inc. ("Aqua PA"), is a corporation incorporated in the Commonwealth of Pennsylvania, with its principal office located at 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania, 19010.

2. Defendant, Chester Water Authority ("CWA"), is a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office located at 415 Welsh Street, Chester, Pennsylvania, 19013.

3. Defendant, City of Chester (the "City"), is a third-class city organized under the laws of the Commonwealth of Pennsylvania, with its principal office located at 1 East Fourth Street, Chester, Pennsylvania, 19013.

B. Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to 42 Pa.C.S. § 5301(a)(2)(i) because each of Aqua PA, CWA, and the City is incorporated and organized under the laws of the Commonwealth of Pennsylvania.

5. This Court has jurisdiction over this matter pursuant to 53 Pa.C.S. § 5607(d)(9), which provides that the court of common pleas shall have exclusive jurisdiction to determine questions involving rate or service of a municipal authority.

6. Venue is proper in Delaware County because Pa.R.C.P. 2103(b) provides that an action against a political subdivision may be brought only in the county in which the political subdivision is located. The definition of "political subdivision," as set forth by Pa.R.C.P. 76, includes cities and municipal and local authorities.

7. Venue is proper in Delaware County because CWA's principal office of its "project," as defined by Pennsylvania's Municipality Authorities Act of 1945, 53 Pa.C.S. § 5601

et. seq. (the "MAA"), is located in Delaware County, and Section 5607(d)(9) of the MAA provides that:

> Any person questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety and reasonableness of the authority's services, including extensions thereof, may bring suit against the authority in the court of common pleas of the county where the project is located or, if the project is located in more than one county, in the court of common pleas of the county where the principal office of the project is located.

8. Venue is proper in Delaware County because CWA is located in Delaware County and 53 Pa.C.S. § 5612(a.1)(2) provides that "a ratepayer to an authority shall have a cause of action in the court of common pleas where the authority is located to seek the return of money expended in violation of paragraph (1) from the recipient."

C. Factual Background

I. Background of the Parties

9. Aqua PA is a public utility, which provides water and wastewater services to Pennsylvania residents.

10. Aqua PA is a ratepaying customer of CWA.

11. Aqua PA is regulated by the Pennsylvania Utilities Commission ("PUC") and is bound by the provisions of the Pennsylvania Public Utility Code in its provision and operation of services, including ratemaking.

12. The City incorporated the Chester Municipal Authority on July 6, 1939 as a municipal authority pursuant to the provisions of the MAA "for the purposes of undertaking such projects or projects as are permitted by the Municipality Authorities Act of 1935." A true and correct copy of the Chester Municipal Authority's original Articles of Incorporation is attached as Exhibit "A."

13. On February 23, 1965, the City enacted an ordinance changing the name of the Chester Municipal Authority to Chester Water Authority.

14. CWA originally and for decades provided water services to customers solely in the City of Chester, but since has expanded its service area beyond the City into western Delaware County and southern Chester County, where its water system assets (the "Assets") presently exist.

15. CWA's provision of services and setting of customer rates are not regulated by the PUC or the PUC Code in any manner, and CWA does not fall under the purview of any other legislative or regulatory body that can limit rate setting.

16. CWA's powers and authority are instead set forth and governed by the provisions of the MAA.

17. CWA is governed by a nine-member Board of Directors.

18. Since 2012, the MAA has required that the nine members of CWA's Board of Directors be appointed by the Chester City Council, the Delaware County Commissioners, and the Chester County Board of Commissioners, with each governing body responsible for three appointments.

19. CWA's operating income comes directly from the service revenues it receives from its customers.

II. The City's Threat to Dissolve CWA

20. Since 1995, the City has been in Pennsylvania's Act 47 Financial Recovery Program due to its ongoing state of financial distress, and desires to be released from the provisions thereof.

21. By letter dated May 8, 2017, Aqua PA submitted to CWA an offer to purchase CWA's water utility assets for the approximate sum of $320,000,000 (the "Purchase Offer"), and

requested that the parties agree to a six-week non-binding discussion period during which both parties would be able to weigh and consider the proposal. (See Exhibit "B," a true and correct copy of which is attached hereto).

22. On May 18, 2017, at a public meeting, CWA's Board of Directors unanimously voted to reject the purchase offer outright, and refused to agree to any period of exclusive discussion.

23. Approximately five months later, in a letter to CWA dated October 25, 2017, City Mayor Thaddeus Kirkland informed CWA that the City, as sole incorporator of CWA, had the right to reclaim and transfer operation of the Authority's assets to the City and, subsequently, dissolve the Authority. (See Exhibit "C," a true and correct copy of which is attached hereto).

24. In a letter dated November 3, 2017 (the "November 3 Letter," a true and correct copy of which is attached hereto as Exhibit "D"), CWA responded to the City by asserting that CWA "is no longer an asset of the City, but rather of present and future ratepayers throughout Southeastern Pennsylvania, particularly following the 2012 amendments to the Municipal Authorities Act."

25. Upon information and belief, the "2012 amendments" CWA referred to is Act 73 of 2012 (the "Act 73 Amendments"), which requires the boards of directors of water and sewer municipal authorities providing water or sewer services to residents in multiple counties to include three appointments from each governing body of those counties served.

26. CWA's November 3 Letter continues, "I am concerned, however, that your letter appears to be a prelude, at the behest of other entities, to an attempted unilateral termination of the Authority for purposes of raising cash for the City's general funds in order to pay its debts. **Such**

action would be contrary to controlling law, including the Pennsylvania Constitution . . . ." (*Id.*) (emphasis added).

III. The Proposed Settlement Agreement Between CWA and the City

27. On or about March 14, 2018, CWA and the City entered into a Mutual Letter of Intent or a "Standstill Agreement" (the "Standstill Agreement," a true and correct copy of which is attached hereto as Exhibit "E"), whereby, *inter alia*, both parties agreed that between March 14, 2018 and December 31, 2018 (the "Standstill Period"), the City would not take any action that would interfere with the operations of CWA, CWA would not invite or accept any offers for the sale of its assets, and both parties would work towards an agreement which would allow the City to independently operate and administer that portion CWA's Assets within the City's geographical boundaries, and to allow the City to pursue funding opportunities that would otherwise be unavailable to the City.

28. In Section 2 of the Standstill Agreement, the parties restate their contrary positions regarding the City's unilateral ability to terminate the Authority's existence and acquire any project of CWA.

29. On January 24, 2019, CWA's Board of Directors held a special public meeting, the public notice (the "Notice," a true and correct copy of which is attached hereto as Exhibit "F"), for which explained that the purpose of the meeting was to consider a 10% "rate increase to avoid a forced sale of the Chester Water Authority."

30. The Notice claimed that "[t]he forced sale of CWA would likely double (probably more) CWA's customers' current water rates" and declared that "the real choice" for ratepayers is a "10% Water Rate Increase vs. Prospect of Doubling of the Water Rates if CWA is sold to a *for profit company*." (*Id.*) (emphasis in original).

31. The Notice contained no description of how a sale could be "forced," nor did it contain any factual basis for the claim that water rates would double if CWA was sold to a for-profit company.

32. At the Special Public Meeting described in the Notice, CWA approved the terms of a proposed "Settlement Agreement and Release" (the "Proposed Settlement Agreement," a true and correct copy of which is attached hereto as Exhibit "G") and authorized its transmission to the City for approval.

33. The Proposed Settlement Agreement includes recital paragraphs framing the parties' positions on the only two issues of dispute being resolved by its terms.

34. In the seventh recital paragraph, the Proposed Settlement Agreement describes the City's position that it enjoys the unilateral power, under MAA § 5622, to transfer CWA's assets to the City and dissolve CWA.

35. In recital paragraphs eight through ten, the Proposed Settlement Agreement describes CWA's position that the Act 73 Amendments, which mandated that the CWA board be populated with three appointees from the City, three appointees from Delaware County, and three appointees from Chester County:

a. "eliminated the City's ability to acquire [CWA's] project(s) under 53 P.S. § 5622," i.e. to dissolve CWA and assume ownership of its assets; and

b. relative to 53 P.S. § 5612, "eliminated the City's ability to utilize the assets of [CWA] in any manner beyond [CWA's] mission, including, specifically, to pay down the City's debt and/or alleviate its financial distress."

36. The Act 73 Amendments effected no change to 53 P.S. § 5622 and therefore had no effect whatsoever on the City's unilateral ability to acquire CWA's assets, which ability has been consistently upheld by the Courts of this Commonwealth.

37. CWA's position on the effect of the Act 73 Amendments to MAA § 5612 is likewise without merit: CWA asserts that those amendments preclude the *City's* ability to utilize the *assets* of CWA.

38. The plain text of MAA § 5612 is such that it only regulates an *authority's* use of that authority's *money*.

39. The Act 73 Amendments have no effect whatsoever on the incorporating municipality's use of assets – including money - formerly owned by an authority, that are now owned by the municipality following the lawful exercise of its powers under MAA § 5622.

40. Consequently, the City's ability to transfer CWA's assets to itself remains clear, undisturbed by the Act 73 Amendments.

41. When and if the City exercises its rights under MAA § 5622, the City's future decisions regarding those assets are entirely unconstrained by the MAA.

42. Despite the fact that the legislature left untouched the City's powers under MAA §5622, CWA agrees in the Proposed Settlement Agreement to make a settlement payment in the amount of $60,285,000.00 (the "Settlement Payment") to the City to settle their legal "dispute."

43. Per the terms of the Proposed Settlement Agreement, CWA agrees to facilitate the Settlement Payment through a bond issuance, subject to CWA increasing its current water rates to its ratepayers "of not more than 10%" (the "Rate Increase").

44. The Proposed Settlement Agreement requires CWA to commence collections at the increased rate "not later than thirty (30) days after the closing on the Bond."

45. Per the terms of the Proposed Settlement Agreement, CWA also agrees to have its Assets transferred into "an express trust for a forty (40) year term," such that those Assets could not be sold for that period of time.

46. On January 24, 2019, the day of the above-referenced special public meeting of the CWA Board, CWA executed a Declaration of Trust titled, "The Chester Water Authority Trust" (the "Declaration of Trust" or the "Trust") with CWA as the Trust's settlor and three sitting CWA board members, including its Chair, as the sole trustees of the Trust.

47. The Trust Instrument contemplates, *inter alia*, the conveyance by CWA of all of CWA's assets[1] to the Trust for a forty (40) year period.

48. On March 1, 2019, CWA filed a Petition (the "Petition") with the Orphans Court of Delaware County seeking: (1) a Final Decree approving the creation of the Trust and the Declaration of Trust; and (2) the transfer of CWA's assets to the Trust.

49. On April 1, 2019, the Honorable Spiros E. Angelos issued a Preliminary Decree ordering, inter alia, the scheduling of a hearing on the Petition for April 24, 2019 at 9:00AM.

50. Upon information and belief, the execution of the Declaration of Trust and the submission of the same to the Court for approval are both steps taken in furtherance of the implementation of terms of the Settlement Agreement.

51. The Rate Increase would affect all of CWA's ratepayers uniformly, including the approximately 79% of CWA's customers who live outside of the City and would thus receive no discernible benefit from the Rate Increase required by the Proposed Settlement Agreement.

52. As a result of the implementation of the Proposed Settlement Agreement, CWA's ratepayers, including those outside of the City, would pay the Rate Increase to underwrite a bond

[1] The Trust Instrument allows that certain CWA assets would remain titled in CWA's name if the proposed transfer would cause a breach of an agreement with a third-party or disturb a critical license or permit held by CWA.

issuance, the proceeds of which would fund the Settlement Payment, in order to allow the City to remove itself from the Act 47 program.

53. Upon information and belief, the City is presently considering the Proposed Settlement Agreement and, upon approval, the Settlement Agreement will be submitted to this Court for review and approval.

54. Given the legislature's clear intent not to disturb the City's rights under MAA § 5622, the terms of the Settlement Agreement are commercially unreasonable and patently absurd.

55. Given CWA's baseless position regarding the effects of the Act 73 Amendments, its promise to pay the City over $60 million to the City merely to induce it *not* to exercise rights that exist for the benefit of residents and ratepayers is unsupportable.

56. In the Proposed Settlement Agreement, CWA and the City seek to create an unholy alliance that will permit CWA to survive and the City to exit Act 47 status on terms involving:

a. CWA's payment of $60,285,000 to the City, which the City will use in ways providing no benefit to the 79% of CWA's ratepayers living outside of the City's boundaries;

b. CWA's transfer of its Assets into trust to prevent a sale of those Assets for 40 years; and

c. the issuance of a bond, without which the settlement is impossible, the cost for which will be borne and repaid by the majority of CWA's ratepayers living outside the City's boundaries.

57. If the Settlement Agreement is approved and permitted to be implemented, CWA would be paying the City over $60 million to induce the City to refrain from dissolving CWA and

selling its assets, transferring its Assets to a trust for 40 years to preclude a sale for that entire period, regardless of the clear lack of prudence of such a transaction, while funding all of it largely on the backs of ratepayers, including Aqua PA, who will never derive any benefit from such a settlement.

58. If implemented, the Settlement Agreement would require CWA to make a payment of its funds in violation of MAA § 5612(a)(.1) and would require that CWA set a rate for water service in violation of MAA § 5607(d)(9).

COUNT I- DECLARATORY JUDGMENT

59. Plaintiff incorporates all preceding paragraphs of this Complaint as if set forth in full herein.

60. Section 5607(d)(9) of the MAA provides, in relevant part, that municipal authorities have the power "to fix, alter, charge, and collect rates and other charges in the area served by its facilities at **reasonable and uniform rates** to be determined exclusively by it for **the purpose** of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its facilities and properties. . . . If the service area includes more than one municipality, the revenues from any project shall not be expended directly or indirectly on any other project unless such expenditures are made for the benefit of the entire service area." 53 Pa.C.S. § 5607(d)(9) (emphasis added).

61. CWA's service area includes approximately 33 municipalities located in Chester County and Delaware County.

62. Aqua PA is a ratepayer of CWA and thus contributes to the revenues of CWA.

63. If the terms of the Settlement Agreement were to be implemented, Aqua PA and other ratepayers located outside of the City would be subject to the Rate Increase and would be

forced to subsidize an expenditure that would provide no discernible benefit to any ratepayer or project outside of the City, and thus would not benefit CWA's entire service area.

64. The Rate Increase is not proposed to improve, repair, maintain, or operate CWA's facilities, as required by 53 Pa.C.S. § 5607(d)(9), but would instead, per the express terms of the Proposed Settlement Agreement, be paid over directly to the City and used as a "bail-out" to save the City from its Act 47 woes.

65. Should the entirety of CWA's ratepayers subsidize a $60,285,000 payment through a 10% rate increase without that payment conferring upon them any benefit, that increased rate is neither reasonable nor uniform. The Rate Increase, which will be imposed on all CWA ratepayers, results in an unreasonable and non-uniform rate in violation of Section 5607(d)(9) as it will confer no benefit whatsoever for the ratepayers outside the City's boundaries.

66. "A party seeking a permanent injunction must establish three elements: (1) a clear right to relief; (2) that an injunction is necessary to avoid an injury that cannot be compensated by damages; (3) that a greater injury will result from refusing the injunction." Mazin v. Bureau of Prof'l and Occupational Affairs, 950 A.2d 382, 389 (Pa. Cmwlth. 2008).

67. Aqua PA possesses a clear right to relief as a ratepayer of CWA, as CWA has already approved the Settlement Agreement that would require CWA to implement the Rate Increase in violation of Section 5607(d)(9) of the MAA.

68. The implementation of the Rate Increase in violation of the MAA would constitute irreparable harm, see Pennsylvania Public Utility Comm'n v. Israel, 52 A2d 317, 321 (Pa. 1947) (holding that when the Legislature declares certain conduct to be unlawful, it is tantamount to calling it injurious to the public, and to continue such unlawful conduct constitutes irreparable injury for the purposes of seeking injunctive relief), that could not be compensated by damages.

69. A challenge to the Rate Increase only after collections at the increased rate have commenced would not provide Aqua PA with an adequate remedy at a law, as the express language of the Settlement Agreement contemplates collection at the increased rate up to "thirty (30) days after the closing on the Bond."

70. If Aqua PA is only permitted to challenge the Rate Increase after the closing on the Bond occurs, the bondholders' interest would then likely be adversely affected by Aqua PA's challenge, requiring a complex reversal of the bond's issuance.

71. Thus, greater injury will result from refusing the injunction because the Rate Increase that will be imposed on all CWA ratepayers would result in an unreasonable and non-uniform rate that would be used as a "bail-out" to save the City from its Act 47 woes.

WHEREFORE, Plaintiff asks this Honorable Court to enter an order declaring the Settlement Agreement and Rate Increase required thereunder prohibited under the terms of Section 5607(d)(9) of the MAA and permanently enjoining CWA and the City from implementing the terms and provisions of the Settlement Agreement, including the Rate Increase as prohibited by the MAA.

COUNT II- DECLARATORY JUDGMENT

72. Plaintiff incorporates all preceding paragraphs of this Complaint as if set forth in full herein.

73. Section 5612(a.1)(1) of the MAA provides, "Money of the authority may not be used for any grant, loan, or other expenditure for any purpose other than a service or project directly related to the mission or purpose of the authority as set forth in the articles of incorporation or in the resolution or ordinance establishing the authority under section 5603 (relating to method of incorporation)."

74. Section 5612(a.1)(2) provides, "A ratepayer to an authority shall have a cause of action in the court of common pleas where the authority is located to seek the return of money expended in violation from the recipient."

75. Section 5612(1.1)(3) sets forth several exceptions to Section 5612(a.1)(1), none of which apply to the Settlement Payment.

76. CWA's Articles of Incorporation describe its purpose as "undertaking such projects or projects as are permitted by the Municipality Authorities Act of 1935."

77. The Settlement Payment would not be used for "undertaking a project permitted by the MAA," but would instead merely be an act of financial aid to the City.

78. The Settlement Payment is an expenditure which violates Section 5612(a.1)(1) of the MAA.

79. Aqua PA possesses a clear right to relief as a ratepayer of CWA, as CWA has already approved the Settlement Agreement that would require CWA to make the Settlement Payment to the City in violation of Section 5612(a.1)(1) of the MAA.

80. Given the City's present financial insolvency and involvement in the Act 47 program, ratepayers of CWA, including Aqua PA, must be permitted to challenge the legality of the Settlement Payment before it is made.

81. If Aqua PA is only permitted to challenge the Settlement Payment after it is made, the subject funds would have to then be extricated from the City; funds which, at that time, would likely already be incorporated into the City's plan to exit the Act 47 Program and dissipated.

82. Failing to enjoin CWA's approval of the Settlement Agreement, and the Rate Increase and Settlement Payment required thereunder, will result in injury to Aqua PA and every other CWA ratepayer arising from CWA's violations of the MAA. See Pennsylvania Public Utility

Comm'n v. Israel, 52 A2d 317, 321 (Pa. 1947) (holding that when the Legislature declares certain conduct to be unlawful, it is tantamount to calling it injurious to the public, and to continue such unlawful conduct constitutes irreparable injury for the purposes of seeking injunctive relief.)

83. Conversely, no injury will result from the granting of the injunction, as ratepayers in the CWA service area would continue to receive water services from CWA at the present rate.

WHEREFORE, Plaintiff asks this Honorable Court to enter an order declaring the Settlement Payment required by Settlement Agreement as prohibited under the terms of Section 5612(a.1)(1) of the MAA and permanently enjoining CWA and the City from implementing the terms and provisions of the Settlement Agreement, specifically the Settlement Payment, as prohibited by the MAA.

Respectfully submitted,

LAMB McERLANE PC

Date: April 3, 2019

By: */s/ Joel L. Frank*

Joel L. Frank
Attorney I.D. No. 46601
Vincent T. Donohue
Attorney I.D. No. 81311
John J. Cunningham, IV
Attorney I.D. No. 70975
Scot R. Withers
Attorney I.D. No. 84309

IMPERATRICE, AMARANT & BELL P.C.
Rocco P. Imperatrice, III
Attorney I.D. No. 32181

Attorneys for Plaintiff

VERIFICATION

I, Christopher P. Luning, verify and affirm that the statements made in the foregoing pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: April 3, 2019

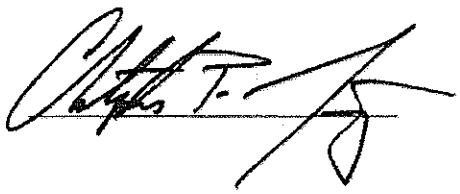

Exhibit A

[redacted]

ARTICLES OF INCORPORATION

[redacted] COMMONWEALTH OF PENNSYLVANIA:-

In compliance with the requirements of the Act of June 28, 1935, P. L. 463, entitled, "MUNICIPALITY AUTHORITIES ACT OF ONE THOUSAND NINE HUNDRED AND THIRTY-FIVE," as amended by the Act of May 20, 1937, P. L. 739, as amended by Act No. 85, approved May 17, 1939, the City of Chester, Delaware County, Pennsylvania, desiring and intending to incorporate an AUTHORITY, does hereby certify

1- The Authority is incorporated for the purpose of undertaking such project or projects as are permitted by the Municipality Authorities Act of 1935, as amended and supplemented or may hereafter be amended and supplemented.

2- The Authority shall have an existence of fifty (50) years unless sooner dissolved.

3-(a) The name of the Authority is: "Chester Municipal Authority."

(b) Said Chester Municipal Authority is formed under the Municipality Authorities Act of One Thousand Nine Hundred and Thirty-Five, being the Act of June 28, 1935, P. L. 463, as amended by the Act of May 20, 1937, P. L. 739, as amended by Act No. 85, approved May 17, 1939.

(c) No other Authority organized under the Municipality Authorities Act of One Thousand Nine Hundred and Thirty-five, being the Act of June 28, 1935, P. L. 463, as amended by the Act of May 20, 1937, P. L. 739, as amended by Act No. 85, approved May 17, 1939, or under the Act approved December 27, 1933 (Special Session - 1933, P. L. 114) is in existence in and for the City of Chester.

(d) The name of the incorporating municipality, together with the names and addresses of its municipal authorities, are as follows:-

City of Chester, Delaware County, Pennsylvania

	Name	Address
Mayor:	Clifford R. Peoples	Chester, Pa.
Director of Finance:	Edward D. McLaughlin	Chester, Pa.
Director of Public Safety:	Wm. J. Maxwell	Chester, Pa.

[redacted]

	NAME	ADDRESS
Director of Public Improvements:	John T. Ross	Chester, Pa.
Director of Parks and Public Property:	Wm. P. Lear	Chester, Pa.
City Treasurer:	James Holden	Chester, Pa.
City Controller:	Gordon L. MacDonald	Chester, Pa.
City Clerk:	Benjamin Newsome	Chester, Pa.

(*) The names and addresses and terms of office of the first members of the Board of Chester Municipal Authority are as follows:

NAME	ADDRESS	TERM OF YEARS
Edward D. McLaughlin	#100 Wilkington Ave., Chester, Pa.	5 years
Wm. J. McDowell	#1903 W. 3rd St., Chester, Pa.	4 years
John T. Ross	#1901 Madison St., Chester, Pa.	3 years
Wm. P. Lear	#110 W. 24th St., Chester, Pa.	2 years
Clifford H. Peoples	#515 W. 13th St., Chester, Pa.	1 year

IN WITNESS WHEREOF, these Articles of Incorporation have been duly executed by the Mayor of said City of Chester and the common or corporate seal of said City affixed, duly attested by the City Clerk this 5th day of July 1939.

Clifford H. Peoples
Mayor of the City of Chester

Attest: Benjamin Newsome
City Clerk

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF DELAWARE :

BE IT REMEMBERED that on this 5th day of July 1939, before me, a Notary Public, in and for the County aforesaid, personally appeared Clifford H. Peoples, Mayor, and Benjamin Newsome, City Clerk, of the City of Chester, the incorporating municipality named in the foregoing

Articles of Incorporation, who being severally sworn, did depose and say that they were personally present at the execution of the foregoing Articles of Incorporation and saw the common or corporate seal of the said City of Chester affixed thereto; that the seal affixed thereto is the common or corporate seal of the said City of Chester; that the foregoing Articles of Incorporation were duly signed, sealed and delivered by, and as and for the act and deed of the City of Chester pursuant to an ordinance of City Council of the City of Chester duly enacted the 26 day of June, 1939, and that the names of Clifford H. Peoples, Mayor, and of Benjamin Newsome, as City Clerk, subscribed thereto are in their proper and respective handwritings.

Clifford H. Peoples

Benjamin Newsome

Sworn to and subscribed
before me this 3rd
day of July A. D. 1939

Notary Public

Commission expires
March 10, 1941

APPROVED and filed in the Department of State on the 6th day of JULY, 1939.

Secretary of the Commonwealth

Charter Book No. 405, Page 184.

Exhibit B

Christopher Franklin, President & Chief Executive Officer
O: 610.645.1081 • F: 610.645.1081 • CHFranklin@AquaAmerica.com

May 8, 2017

Cynthia F. Leitzell, Chair
Chester Water Authority
P.O. Box 467
Chester, PA 19016

Re: Proposal for the Acquisition of the Water System Assets of Chester Water Authority

Dear Ms. Leitzell:

As your neighboring water utility immediately to the north and west of your service area, Aqua Pennsylvania ("Aqua") has long respected the Chester Water Authority (the "Authority"), its well-run operations, management team, and employees. In addition, Aqua has enjoyed a partnership with the Authority on regional water issues through our numerous interconnects. We are well aware of the Authority's long history and outstanding reputation in southeast Pennsylvania, and we applaud the regional leaders for having the foresight to secure the water supply, develop the Octoraro Reservoir, and construct the water supply infrastructure during the first half of the last century.

As members of the governing bodies of our respective utilities, we are responsible to constantly search for options that benefit our customers. For the reasons we list below, we believe combining our assets will help improve service to our customers. In this regard, we are pleased to present Aqua's proposal (the "Proposal") for the acquisition of the Water Utility Assets of the Authority (the "Water Utility Assets").

Based upon publicly-available records, Aqua believes the Water Utility Assets of the Authority may be worth **$320,000,000,** in accordance with recently adopted legislation establishing a fair market valuation methodology. This estimate should serve as a starting point for our discussions with the Authority and is subject to our due diligence and final Aqua America Board of Directors and Authority approval. This Proposal has the full support of the Aqua America Board of Directors.

We are requesting that we enter into a six-week, non-binding discussion period. During this time, both Aqua and the Authority would fully vet this conceptual proposal, advance the valuation process, perform due diligence, and weigh the implications of a combination on the various constituencies. At the conclusion of this period, a mutual determination would be made as to whether this combination is value-creating for both parties and whether to proceed forward with the transaction.

We believe that a sale to Aqua would provide the following:

- Full value compensation for the Water Utility Assets;
- Aqua's proximity/interconnections with the Authority creates an opportunity to expand Authority access to Aqua's water supplies to address regional challenges;
- A transfer of risk to a best-in-class, regulated utility with deep operating experience and a strong balance sheet;
- Exceptional and proven customer service;
- Infrastructure investment programs to more aggressively replace aging water lines, rehabilitate aging facilities, and increase the reliability of the water supply;
- Continued employment for the Authority staff and management;
- New opportunities for advancement of the Authority staff and management;
- A reliable and sustainable company with which the municipalities can partner on economic development, educational programs, job training and community matters;
- An opportunity for the City of Chester to reduce or eliminate other existing financial obligations, thereby achieving a structurally balanced operating budget; and,
- Financial assistance with the City's efforts to emerge successfully from Act 47 status in a timely manner.

We further expound on these benefits below.

Aqua envisions the principal terms of any proposed relationship would be substantially as follows:

- ***Preliminary Terms, Conditions and Options:*** We recognize there are many factors to consider when evaluating the Proposal. Though all terms and conditions will be finalized upon completion of due diligence and negotiation with the Authority Board, we believe we can offer a variety of flexible frameworks to meet your needs. These include:

    - Cash payment for assets currently associated with the Water Utility Assets. As previously stated, our preliminary assessment indicates the value of the Water Utility Assets could be $320,000,000. After netting out the approximately $70,000,000 in long-term debts associated with the Water Utility Assets as noted in the Authority's December 31, 2015 financial statements, this would result in net proceeds of approximately $250,000,000;

    - Aqua's commitment to a smooth and seamless transition of the Authority's operations, customers and its employees. While Aqua has extensive experience

in these transitions, we recognize the expertise of the Authority and, as such, the transition would be completed in consultation with the Authority management and its employees;

- Aqua's commitment to a capital spending plan to maintain compliance and ensure reliability. Because we recognize the expertise of the Authority and its employees, this plan will be created in consultation with the Authority; and,
- Aqua's commitment to creating an "Aqua – Chester Water Authority tariff" that applies to the Authority's customers. We commit to keeping the Authority's rates below Aqua's state-wide rate for at least a decade. Aqua would further commit to a period of unchanged rates beginning at closing.

- ***Value and Consideration:*** Subject to our confirmatory due diligence, entering into an agreement of sale upon customary terms and conditions, and Aqua America Board of Director's approval, Aqua is prepared to take responsibility for and obtain ownership of the Water Utility Assets used in connection with the provision of water utility service to the residents, businesses, and wholesale customers now served by the Authority, including:
  - All Authority facilities, equipment and land related to the collection, distribution, and treatment of water;
  - Fee parcels or permanent easements, and any and all Authority structures and facilities related to the system;
  - All vehicles, equipment, services, meters, buildings and the associated easements and/or occupancy rights;
  - All customer accounts for the Authority services;
  - All permits, licenses, and other rights to provide such service in the current and anticipated future service territory; and,
  - Future Commonwealth, Federal, and other regulatory compliance costs and liabilities.
- ***No Requirement for a Bidding Process:*** Based on our legal review of the Municipality Authorities Act (53 Pa. C.S.A. Ch. 56), the Authority does not need to run a broad sale or procurement process in order to select a buyer for the Water Utility Assets. Instead, the Authority can make the decision based on a combination of (i) the value received, (ii)

the long-term benefits for the customers, and (iii) the benefits for the customers, employees and management of the Authority.

- *Assurance of a Fair and Appropriate Purchase Price:* To ensure that the purchase price constitutes fair value, we are proposing that the purchase price be determined utilizing the fair market value appraisal methodology outlined in the Public Utility Code (Act 12 of 2016) – Valuation of Acquired Water and Wastewater Systems for Ratemaking Purposes. Under this approach, separate valuation experts are retained by Aqua and the Authority, and Aqua and the Authority perform their respective valuation modeling independently, but concurrently. The ultimate purchase price is then calculated as the average of the two appraisals or as otherwise negotiated. This methodology, now being used throughout Pennsylvania, ensures that the Authority is receiving the appropriate value for the Water Utility Assets.

- *Employee Matters:* We understand and agree that the welfare of employees is of significant concern. We also recognize the level of commitment, professionalism, and knowledge of employees is critical to all stakeholders to ensure success. Aqua is committed to working with the Authority to keep all of the current water system employees and management, addressing any existing labor agreements, and maintaining competitive benefits and other arrangements.

- *Continuing Board Roles:* We envision establishing a compensated, nine-member advisory board to assist Aqua management on matters related to the utility currently operated by the Authority. This advisory board would be in place for a negotiated period of time to solicit local insights, provide continuity, and ensure optimal results for all constituents – customers, employees, and municipal officials.

- *Government Stakeholder Benefits:* The City of Chester and both Chester and Delaware Counties would benefit from this transaction in the following ways:

    - Based on Act 12 of 2016 (referenced above), realization of full value for the Authority's assets;

    - A sale would provide the City and the Counties with a meaningful share of net proceeds allowing each of them to reduce long term financial obligations, reduce or maintain the present level of taxation, or to otherwise invest in the future of the municipality;

- Aqua, a best-in-class operator, would provide additional sources of water, system redundancies, and operational economies of scale;

- Aqua would be a long-term owner and partner, supporting local initiatives and preferences regarding open space and economic development. We already serve municipalities in 32 counties in the Commonwealth and have a longstanding track record of supporting the mission and vision of those local governments;

- Aqua's holdings would provide a new source of property taxes;

- A sale would provide for a transfer of the risks of owning and operating a multi-municipality water system (e.g. contamination, service interruptions, lead services, security, increasing stringency of environmental regulations, etc.) to a regulated utility with deep, local operating experience and a strong balance sheet, and;

- Finally, a sale would allow the City of Chester to emerge from Act 47 status.

- *Partnership with the City of Chester:* We expect that our proposal will be attractive to the City of Chester for the following reasons:

  - The proceeds of the purchase price would help the City emerge from Act 47 status and would provide funding for identified economic development projects;

  - Partner with the City of Chester on economic development;

  - Aqua would continue to operate from the Authority's existing facilities within the City;

  - Aqua would partner with the Mayor's office and local institutions on student education and awareness about utility careers, internships, as well as contributing to vocational and STEM training, as we do in our current service territories; and

  - Aqua is committed to using local contractors for infrastructure projects within the City, where feasible.

- ***Constituent Benefits:*** We expect that our proposal will be attractive to the Authority for a number of reasons:

    - Given our relative proximity of operations and existing interconnections, we are uniquely positioned to reinforce water supply in areas currently served by the Authority. Aqua has rights to source water from the Delaware and Schuylkill Rivers which, when combined with the Authority's Susquehanna River and Octoraro sources supplies, create a water supply portfolio that improves reliability and overall customer service;

    - Along with the expanded portfolio of sources of supply, our best-in-class operations offer enhanced customer service support, with prompt local field response to service inquires, electronic payment options, automated outbound emergency communication alerts by phone, text or e-mail, and a customer assistance program;

    - The acquired system and rates charged to the customers would be regulated by the Pennsylvania Public Utility Commission ("PUC") for economic and service matters and the Pennsylvania Department of Environmental Protection ("DEP") for health and environmental matters, which is consistent with the manner in which Aqua is currently regulated;

    - Customer availability to Aqua PA's Helping Hand Program - a program designed to assist low-income customers with managing monthly payments of their water account;

    - Accelerated infrastructure investment to upgrade water treatment plants and related facilities to ensure compliance with current and future water quality regulations, replacing old pipe lines, improving or replacing as appropriate aged facilities, and ensuring compliance with all regulatory requirements;

    - Continued employment and additional opportunities for advancement of the Authority staff and management. Aqua invests in training and development of our employees to prepare them for potential advancement opportunities anywhere in the Aqua America family of companies. Where possible, we will use local contractors to assist with this work; and,

    - Finally, Aqua is committed to serve as one of the pillars in the communities served by the Authority. As you are aware, Aqua invests hundreds of thousands of dollars and countless hours every year within the communities it serves to

support and sponsor local events, schools, charitable organizations and service organizations. We appreciate the privilege and importance of being the water provider for the communities the Authority currently serves.

- ***Due Diligence Review:*** We are prepared to move quickly and are committed to an efficient and expedited process. We expect to be able to complete our due diligence and negotiate a mutually-agreeable purchase agreement within approximately six weeks. Of course, any information obtained by us as a result thereof will be maintained by us in confidence subject to the terms of a Confidentiality Agreement.

- ***Definitive Purchase Agreement:*** All of the terms and conditions of the proposed transaction would be stated in a purchase agreement, as mutually negotiated, agreed to and executed.

- ***Authorizations and Approvals:*** Following confirmatory due diligence, Aqua America's Board will have to approve the acquisition and the final purchase price.

- ***Regulatory Approvals:*** Aqua has a longstanding history of working with its regulators on the regulatory approval process and has successfully received over 300 approvals on similar transactions over the last 25 years.

- ***Principal Contacts***:

Christopher H. Franklin
President and Chief Executive Officer
Aqua America, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
(O) 610.645.1081
(C) 610.324.3179
chfranklin@aquaamerica.com

Daniel J. Schuller
EVP, Strategy & Corp. Development
Aqua America, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
(O) 610.645.4266
(C) 917.376.2875
djschuller@aquaamerica.com

Marc A. Lucca
President
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
(O) 610.645.1059
(C) 610.883.3295
malucca@aquaamerica.com

This Proposal is intended as an expression of interest. It is not intended to and does not create an obligation to negotiate (in good faith or otherwise). The Proposal should not be considered or deemed a binding offer by Aqua, nor a contract between Aqua and the Authority. A binding commitment shall be created only upon execution and delivery of a definitive asset purchase agreement.

We look forward to meeting with you and the Authority Board in the near future to present our thoughts on how we can best meet the needs of the customers and employees of the Authority, and the constituents of the City of Chester, Chester County, and Delaware County. We will contact you to determine a mutually convenient date for a discussion on this matter.

Sincerely,

Christopher H. Franklin
President and CEO

cc: Paul Andriole
Wendell Butler, Jr.
Thomas Chiomento, III
Joseph McGinn
William Riley
Leonard Rivera
John Shelton, Sr.
Livia Smith
Robert Judge, Executive Manager
Chester County Commissioners
City of Chester – Mayor and Council
Delaware County Council

Exhibit C

October 25, 2017

Cynthia F. Leitzell, Chairperson
Chester Water Authority Board of Directors
415 Welsh Street
Chester, PA 19013

Re: Chester Water Authority

Dear Chairperson Leitzell,

As Mayor of the City of Chester, it is my sworn duty to do everything in my power to help my city achieve its incredible potential and to always put the health, safety, and welfare of every Chester resident first. I am proud that Chester is home to many of our region's greatest assets—from our waterfront's industrial and entertainment institutions to our first-class rail, road, and water infrastructure, which has roots as deep as the Commonwealth itself. Indeed, I consider stewarding these assets as one of my most important duties as Mayor, not only for the people of my city, but for our region.

One of the City's greatest assets is its water system, which, since its founding in (and by) the City just over 150 years ago, has powered our industries, grown our businesses, and, most importantly, made the City, Delaware County, and Chester County great places to live and raise a family. What was established by the City as the Chester Water Authority in 1939 has developed over the years from a small water works to one of the largest municipal authorities in the Commonwealth, always evolving to meet the ever-changing needs of the industries and people the water system serves.

Recently, I have watched with great interest the Authority consider another change: to return the water system, after nearly 80 years as a publicly-owned entity, to private ownership. As City-appointed Authority Board members and their colleagues expressed in their unanimous "No" vote on the question of accepting an offer from Aqua America to purchase the water system assets, I also did not and do not believe accepting such an unsolicited and un-vetted offer to be prudent.

I am, however, certain it is in all of our interests to pursue a more comprehensive and cooperative effort to consider how this great asset can best serve our broader community and keep water rates low and water quality high. To that end, my administration has engaged a team of experts to ensure that the interests and rights of the City and its residents are expressed, understood, and incorporated into any evolution of the Authority. The team is led by the law firm Buchanan Ingersoll & Rooney PC, who will be supported by Financial Advisor Steven Goldfield of Municipal Advisor Solutions and HJA Strategies, a strategic consultancy.

Over the course of the past several months, I have been somewhat disappointed by the responsiveness of the Authority and Delaware and Chester counties to some of our basic information requests for what should be uncontroversial documents, such as Authority bylaws and Board actions, as well as operational and financial reports that have already been discussed openly in public and in the press. As we have not received any response to date, I am attaching to this letter a formal Right to Know request for a series of documents that we have every right to see. While the Authority has invoked its right to request a thirty (30) day extension, perhaps you will reconsider the request for an extension. We hope that you will do so much sooner and begin to work collegially with the City's team to analyze and understand that most responsible future for the City, the Authority and its ratepayers.

I have also found, and my team has confirmed, that the Authority's initial appraisal of the City's role in this critical process has been somewhat ill-informed. In short, I believe that the City has been treated, at least thus far, as a passenger in this process when, in reality, we can put ourselves more in the driver's seat, should we so choose. I remind you / the Authority that the City of Chester is the sole municipality which created the Authority and may determine that the project of the Authority, namely, the provision of the supply, treatment, and distribution of water 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.

Like you, I believe the first mission of the Authority and any water system is to guarantee that every person has access to clean drinking water of the highest quality; and, as Mayor of a city of working people for whom every dollar counts, I want to make sure water rates stay as low as possible and in line with our peers. As you know, the City itself has also been declared financially distressed by the Commonwealth since 1995 and has been working cooperatively with the appointed Act 47 Coordinator to carry out the initiatives and mandates of the 2016 Revised Recovery Plan. In 2014, Act 47 was amended to prevent municipalities from staying in the program indefinitely, as nearly every Act 47 municipality has. Following the timeline established by the revision, the Coordinator will determine in the next several months whether or not the City is ready to exit Act 47, whether it needs as much as three additional years to achieve financial stability or whether to recommend appointment of a receiver.

At the end of the additional three years, if that is the route chosen, the Coordinator must decide if the City is ready to exit Act 47, or whether to recommend that a receiver be appointed. If the City is unable to exit Act 47, a receiver *will* be appointed. The very first thing the receiver will do is to assess and implement where appropriate monetization of assets in order to pay down debt and pension liabilities and it will do so with all the resources of the Commonwealth it has at its disposal. In sum, a receiver would have no

obligation to work with the Authority and would be required to move swiftly and unilaterally to monetize the City's assets for the sole benefit of the City's debtors.

The City plans to exit Act 47 within the next three years and to do so from a position of strength. Some form of monetization of the water system will almost certainly be part of this final stretch of the recovery effort. To be clear, the City is in no way endorsing any *particular* form of monetization, but, rather, we are demanding a careful, comprehensive, and cooperative examination of *every possibility*. Indeed, I am confident that there are many good monetization options that will meet our shared goals of maintaining a top-flight water system with reasonable and competitive rates, as well as offer a fair distribution of proceeds to provide substantial municipal budget relief for the City and, potentially, other municipalities in the service area. Thus, I believe it is important that my team, the Authority, and its professionals begin to work in concert on this process as soon as possible.

Thank you for your attention to this matter and I look forward to discussing this with you at your convenience.

Respectfully,

Thaddeus Kirkland
Mayor
City of Chester

cc: Francis J. Catania, Esquire
Catania & Parker, LLP
101 W. Baltimore Ave., Ste 201
Media, PA 19063

Exhibit D

Chester Water Authority
P.O. Box 467
Chester, Pennsylvania 19016-0467
Tel: (610) 876-5185

November 3, 2017

VIA ELECTRONIC AND REGULAR MAIL
Thaddeus Kirkland
Mayor, City of Chester
City Hall
1 Fourth Street
Chester, Pennsylvania 19013-4400

Re: Chester Water Authority

Dear Mayor Kirkland:

I am in receipt of your October 25, 2017 letter regarding the Chester Water Authority ("the Authority"). I write because I am surprised by some of its content, and I am concerned that the City of Chester ("City") may be receiving misleading information from other sources.

As you know, I have been Chairperson of the Authority's Board of Directors since 2012. It has been, and it continues to be, my great pleasure to serve on the Board of the Authority, for the benefit of Authority ratepayers, both present and future.

When the Authority was formed, it provided water services to sixty-seven (67) customers in the south end of the City. Today, over 150 years later, the City makes up 22% of the Authority's customer and asset base. The Authority is no longer an asset of the City, but rather of present and future ratepayers throughout Southeastern Pennsylvania, particularly following the 2012 amendments to the Municipal Authorities Act. The Authority serves more than 200,000 residents and businesses in Chester County, Delaware County, and the City. It operates 673 miles of water mains, and its storage facilities have the capacity to hold approximately 106 million gallons of treated water. The Authority continuously strives to invest in and improve its water treatment and distribution infrastructure, and Authority water consistently meets or exceeds the criteria established by the Pennsylvania Department of Environmental Protection (PA DEP), the United States Environmental Protection Agency (US EPA), and the American Water Works Association (AWWA).

The Authority has grown and funded its investments and improvements through its ratepayers; it does not receive (and has not received) funds from the City, Chester County, or Delaware County to support its endeavors. Rather, since 1996, the City has *received* over $13.5 million *from* the Authority. In addition, the Authority does not

charge the City for use of the Authority's fire hydrants, which results in savings to the City of approximately $130,000 per year.

The Authority has been, and it continues to be, open to working with and communicating openly with the City for the benefit of Authority rate payers.

I do not understand the basis for the City's "disappointment" with the Authority's response to requests for public information. The Authority is unaware of any other requests for information by the City, or on its behalf, for Authority records, with the exception of the recent request made pursuant to Pennsylvania's Right to Know Law, 65 P.S. §§ 67.101, *et seq.* ("RTKL") by Buchanan Ingersoll & Rooney PC, which you reference in your October 25, 2017 letter. That request is being addressed in accordance with the timelines set forth in the RTKL. In addition, you have attended our Board meetings and are welcome to do so in the future to raise any concerns you may have. We welcome anyone to do so.

I understand the pressures that can be exerted by outside entities on cities in Act 47 status. I am concerned, however, that your letter appears to be a prelude, at the behest of other entities, to an attempted unilateral termination of the Authority for purposes of raising cash for the City's general fund in order to pay its debts. Such action would be contrary to controlling law, including the Pennsylvania Constitution, and detrimental to present and future ratepayers. I certainly hope the City is not endorsing such action, or demanding that anyone it has appointed or appoints in the future to the Authority's Board, support such action as a condition of retaining or obtaining that appointment.

I also do not understand your reference to the City being treated by the Authority as "a passenger in this process." We recently learned that over a year ago, in May 2016, a consultant for the Commonwealth's Department of Community and Economic Development ("DCED") requested copies of the Authority's articles of incorporation and articles of amendment. It appears that this was done in connection with the DCED's attempts to find sources of cash for the City to pay down the City's debts.

Notwithstanding the apparent analysis of the Authority's records over a year ago by the City's Act 47 consultants, and likely discussions between them and DCED about the potential monetization of the Authority over the course of a year without contacting the Authority, there is no mention of the monetization of the Authority in the multiple versions of the City's Act 47 plan. The potential monetization of the Authority appears to be a more recent topic forced upon the City by DCED and the Act 47 consultants as they struggle to find any potential sources of cash outside of the City's or the Commonwealth's funding sources in order for the City to exit Act 47 status before the deadline. It appears that if the City is being treated as "a passenger in this process," whatever that "process" is, it is not by the Authority; rather, it appears that the City and the Authority are both being treated as passengers by the DCED and the City's Act 47 consultants.

Additionally, you may be aware that the law firm which made the recent RTKL request to the Authority represented the Scranton Sewer Authority ("SSA") as transaction counsel during its asset sale to Pennsylvania American Water in 2016. Proceeds from the sale were divided, in part, between the City of Scranton and the Borough of Dunmore.

Following that transaction, the City of Scranton has become the subject of numerous lawsuits, including a lawsuit filed this month by Scranton ratepayers alleging that the SSA asset sale violated Section 5612(a.1) of the Pennsylvania Municipality Authorities Act by providing proceeds of the sale to Scranton and Dunmore for their general funds. Section 5612(a.1) precludes money of an authority from being used for any purpose not directly related to the mission or purpose of that authority, and provides ratepayers with a cause of action against the recipient of that money to seek the return of any funds expended in violation of Section 5612(a.1). See 53 Pa.C.S. § 5612(a.1).

The SSA lawsuit seeks the return of all money from the SSA asset sale, and it requests that all funds from the sale be placed in trust. It is widely reported in the media that the litigation Scranton faces following the SSA asset sale could derail Scranton's three-year plan to exit Act 47 distressed status.[1]

For these reasons and others, I hope that an attempted unilateral termination of the Authority for purposes of monetizing it for the City's use is not what you have in mind when you mention the "evolution of the Authority." To that end, I appreciate your offer to include the Authority in discussions with the City. To date, the Authority has not been included in any discussions with other governmental entities about the Authority's own future. It is incumbent that we be included so that we, the City, and other governmental entities are compliant with our shared fiduciary obligations imposed by the Pennsylvania Constitution to conserve and maintain water resources for the public benefit, including future generations. It is also my hope that the Authority may clear up any other misconceptions the City may have about the Authority from third parties. Further, I am confident there is a resolution that is not detrimental to the City's Act 47 concerns, mitigates legal risk, and ensures that present and future Authority ratepayers receive the same high quality water at low rates that they have received for over 150 years.

Please contact me at your earliest convenience. I look forward to hearing from you.

Very truly yours,

Cynthia F. Leitzell

cc: Francis J. Catania, Esquire

[1] It is alleged that the SSA's transactional counsel was paid approximately $1.7 million in 2016 for its work on the sale.

Exhibit E

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 14th day of March, 2018:

CITY OF CHESTER

By: The Honorable Thaddeus Kirkland
Mayor, City of Chester

Attest: _____
City Clerk, City of Chester

ACCEPTED this 15th day of March, 2018:

CHESTER WATER AUTHORITY

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

Attest: _____
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 14th day of March, A.D. 2018.

MAYOR

Attest: Carlita Thompson
CITY CLERK

Exhibit F

CHESTER WATER AUTHORITY
SPECIAL PUBLIC MEETING NOTICE
January 24, 2019 at 2:00 p.m.
Neumann University
One University Place, Aston, Pa
Mullen Room in the Bruder Life Center

Purpose of Meeting

To consider a rate increase to avoid a forced sale of the Chester Water Authority ("CWA"). The forced sale of CWA would likely double (probably more) CWA's customers' current water rates.

Background

- CWA has not raised rates since 2010.
- The proposed water rate increase will be effective no earlier than Spring/Summer of 2019
- The proposed water rate increase is ten percent (10%).

The Real Choice: 10% Water Rate Increase vs. Prospect of Doubling of the Water Rates if CWA is sold to a *for profit company*.

Why is the Board considering this?

Since at least early 2017, the Act 47 Consultants, their attorneys and members of State Government have been continually encouraging the City of Chester Government ("City") to attempt to take over the assets of the CWA and allow a *for profit company* owned by investors to purchase CWA's assets and its customers.

The CWA Board has resisted these efforts because its evaluation is that upon the sale of CWA's assets and customers to a *for profit company*, the CWA customer water rates would double and then continue to increase over time. Further the Board's concern is that if the Authority was sold under this type of action the money would not go to the ratepayers/customers, and public control of the CWA's operations would cease forever.

The CWA Board recognized the continuing pressure being put on the City to sell the CWA's assets and customers to a *for profit company* so the Board authorized discussions with representatives of the City to find a solution that did not involve the sale of CWA's assets and customers. That proposed "settlement" is what will be voted on by the Board at its January 24, 2019 Board meeting.

If CWA was sold to a *for profit company*, customer rates would soon be raised to the same rates as the rates Pennsylvania *for profit company* customers currently pay – which is double in the CWA service area.

If CWA is taken over and customer rates double, customers can count on paying an **additional** One Billion Dollars ($1,000,000,000) in water rates to the *for profit company* every 23 years.

If the proposed settlement is approved by the CWA Board and then approved by the City, it would then be submitted to the Delaware County Court of Common Pleas for Court approval. Public Notice of hearings would be given.

How will this affect me?

If Current Bill is:	**After the Increase your bill would be:**
$110.00 per quarter	$121.00*

*This is equivalent to an increase of $3.65 per month or 12 cents per day.

Outline of Proposed Settlement

Specific terms are still being reviewed and will be made available when finalized.

The purpose of the rate increase as set forth on the Explanation of Proposed Rate Increase is to provide funding for the proposed settlement with the City of Chester. The main financial terms of the proposed settlement are as follows:

A. Settlement Agreement will be in effect for forty (40) years. When the forty years is up the agreement ends by its terms and the parties return to the same legal positions that they have today.

B. The Authority raises its water rates ten percent (10%) to support borrowing funds to allow for the payment of $60,285,000.00 to the City in exchange for the City's express and binding written promise, covenant and agreement that it shall not, for a period of forty (40) years, exercise any claim it may have to terminate and/or acquire any project of CWA (any and all of which claims CWA disputes).

C. To further protect and benefit CWA's present and future ratepayers in accordance with the CWA's duties as trustee under *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911, 916 (Pa. 2017)and *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (plurality), the settlement agreement shall also provide for CWA to transfer certain of its assets into an express trust for the forty (40) year term of the settlement agreement.

What Can I do?

- Visit this website and Facebook page regularly for updated information
- Communicate with the Board by emailing us your comments at

  Contact CWA on the CWA website at:
  http://www.chesterwater.com/contact-us.html

- Attending the public board meeting

Exhibit G

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.

1.24.2019V

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;

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;

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 Releasors"), 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

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 Releasors"), 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 Releasors 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 Releasors 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.

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 it 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.

1.24.2019V

ACCEPTED this __ day of _____, 2019:

CITY OF CHESTER

_____

By: The Honorable Thaddeus Kirkland
Mayor, City of Chester

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

Attest:_____

City Clerk, City of Chester

ACCEPTED this __ day of _____, 2019:

CHESTER WATER AUTHORITY

_____

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

Attest:_____

Secretary, Board of Directors
Chester Water Authority

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

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.

- 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.

FILED
04-03-2019 03:58 PM
OFFICE OF JUDICIAL SUPPORT
DELAWARE COUNTY, PA