



CITY OF ALLENTOWN

No. R-85

RESOLUTION

- 2020

Introduced by the Administration on July 15, 2020

Authorizes the Administration to Execute the Integrated Agreements to Resolve and Settle All Pending Legal Disputes under the Allentown Water and Sewer Utility System Concession and Lease, dated as of May 1, 2013, between the City of Allentown and the Lehigh County Authority

Resolved by the Council of the City of Allentown, That

WHEREAS, the City of Allentown (the "City") and the Lehigh County Authority ("LCA") entered a Water Supply Agreement (the "Water Supply Agreement"), dated as of January 7, 2009, for the supply of water from the City's water treatment plant and from Schantz Spring for use by LCA's commercial, industrial, and residential customers in its Central Lehigh Division via facilities owned by LCA; and

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

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

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

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

WHEREAS, the City and LCA have negotiated a settlement of the Disputes, the terms of which memorialized in four (4) Agreements, the provisions of which are incorporated by reference into this Resolution as though more fully set forth at length, which shall be construed together as integral parts of

the comprehensive, global settlement between the City and LCA to terminate their respective claims in the Disputes (the “Integrated Agreements”); and

WHEREAS, the Integrated Agreements consist of the following:

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

WHEREAS, City Council adopted Resolution No. 28936 on April 25, 2013 authorizing the then Mayor to enter the Lease of the System with LCA; and

WHEREAS, because the terms of the settlement of the Disputes comprise a change to the provisions of the Lease authorized by Resolution No. 28936, City Council must affirmatively act by the adoption of a Resolution to alter the provisions of the Lease that are adjusted thereby; and

WHEREAS, in the judgment of the City Council, the settlement of the Disputes by the terms of Integrated Agreements is in the best interests and welfare of the residents of the City of Allentown.

NOW, THEREFORE, BE IT RESOLVED that the Mayor is authorized to execute the Integrated Agreements and is further authorized to execute any and all documents necessary to effectuate the resolution and settlement of the Disputes between the City and the Lehigh County Authority.