

AMENDMENT TO MEMORANDUM OF UNDERSTANDING

(Capital Cost Recovery Charges)

Dated July 1, 2015

Between

CITY OF ALLENTOWN

AND

LEHIGH COUNTY AUTHORITY

THIS AMENDMENT to the Memorandum of Understanding (*Capital Cost Recovery Charges*) dated July 1, 2015 (hereinafter, "CCRC MOU") is made and entered into this ____ day of _____, 2020, by and between the CITY OF ALLENTOWN, a Home Rule City of the Third Class organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as "the City") and the LEHIGH COUNTY AUTHORITY, a municipal authority organized and existing under the Municipality Authorities Act of 1945, as amended (hereinafter referred to as "LCA").

WITNESSETH:

WHEREAS, the City and LCA entered a certain Water Supply Agreement (the "Water Supply Agreement"), dated as of January 7, 2009; and

WHEREAS, the City and LCA (hereinafter sometimes referred to as the "Parties") entered into a certain 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 certain Memorandum of Understanding with respect to Capital Cost Recovery Charges as defined in the Lease (hereinafter "CCRC" or "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 Parties wished to establish, in writing, responsibilities and procedures in regard to the usage, development and application of CCRCs the Lease; and

WHEREAS, diverse and distinct disagreements and disputes arose between the City and LCA after the Lease was entered into that are in various stages of resolution per the terms of Article 19 of the Lease, and which include those known by the Parties as the Fraudulent Inducement Claim, Monthly Billing Dispute, Roof Project Dispute, Employee

Benefits Claim, Employee Sick Leave Dispute, and the Surcharge Dispute, and which include all other current disputes not specified above ("the Disputes"); and

WHEREAS, the Parties specifically intend to memorialize the terms of the settlement of the Disputes by entering into the following Agreements contemporaneously each of which shall be read and construed together integral parts of the comprehensive, global settlement between the Parties to terminate their respective claims in the Disputes (the "Integrated Agreements.")

- 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.

NOW THEREFORE, the parties hereto, in consideration of the mutual promises and covenants contained herein and intending to be legally bound hereby, mutually agree to amend the CCRC MOU as follows:

1. The forgoing recitals are hereby incorporated by reference herein as though more fully set forth at length.
2. City waives its right to withhold approval of any proposed Capital Cost Recovery Charge (CCRC) that includes for any Reporting Year during the Cost Recovery Period a CCRC that is greater than 200% of the CCRC for any other Reporting Year under Section 7.1(f) of the Concession Lease Agreement. No other provisions of the foregoing paragraphs are amended hereby. The waiver granted hereby is continuing and shall apply to each and every request for a proposed CCRC by LCA submitted after the date hereof. The City shall not revoke the waiver granted by this Section 2 for the term of the Lease.
3. The paragraph entitled "**Equity Funding**" on page 5 of the CCRC MOU is deleted in its entirety and replaced with the following:

Any CCRC calculated for a MCIP funded by LCA in whole or in part through the use of LCA's existing cash reserves will allow for a return on equity in the amount of 5.445107% on the use of those reserves.

Any other reference to return on equity, "equity funding rate of return," and/or "equity rate of return" in the CCRC MOU shall be interpreted consistent with the foregoing amendment.

4. Page 7 of the CCRC MOU is amended by adding the following procedural instructions for addressing Major Capital Improvement Project funding scenarios directly following the heading "**Capital Cost Recovery Charge (CCRC) Timeline**":

CCRC Implementation Timing:

In the event that LCA uses solely debt (e.g. loans, bonds) to fund any MCIP, the CCRC incorporating such MCIP will be implemented on January 1st of the calendar year in which the debt payments are due, so long as this information is available and submitted to the City and the Substantially Complete Design review and approval (per Lease §§ 4, 5(b)(iv)) is completed prior to October 1st of the prior year.

In the event that LCA uses solely equity (e.g. cash, securities) to fund a MCIP, the CCRC incorporating such MCIP will be implemented on January 1st of the calendar year so long as the Substantially Complete Design approval (per Lease §4.5(b)(iv)) is completed prior to October 1st of the previous year. When a CCRC is implemented in accordance with this provision, the CCRC will be adjusted based on final actual project costs calculated after project completion, and a one-time CCRC adjustment shall be made to reflect the variance between the cost estimated at the time of Substantially Complete Design and the final project cost.

In the event that LCA uses a combination of debt and equity to fund a MCIP, LCA shall provide a CCRC proposal (Lease §4.5(c)) to include the timing of the incorporation of the CCRC and the Cost Recovery Period to be applied, for the City's consideration and in accordance with the terms of this MOU. At no time will a CCRC be implemented for a project that will provide annual cost recovery to LCA that is less than the debt service payment due for debt that is issued to fund any portion of the project.

These changes will begin in 2021 and apply to new MCIP for which no CCRC is currently in place. LCA and the City agree that previously approved CCRCs will remain in force as previously approved and will not be subject to recalculation or adjustment in accordance with this agreement.

5. The CCRC MOU is amended to delete the terms "Placed in Service Date," "PISD," and "Carrying Charge" in their entirety from the following paragraphs and pages of the CCRC MOU:

A. "Placed in Service Date" and "PISD":

	¶/Page
Substantially Complete Design CCRC	2 of 18
Finalized CCRC	2 of 18
Determination of Placed in Service Date (PSID)	3 of 18
Carrying Charges	6 of 18
Inclusion of CCRCs on Water and Sewer Bills	6 of 18

Capital Cost Recovery Charge (CCRC) Timeline	7 of 18
Part S-1a- Sewer Project Annual Debt Service Payment (SPADSP)	9 of 18
SCCRC Calculation Example	11 of 18
Part W-1a- Carrying Charge (CC)	15 of 18
WCCRC Calculation Example	16 of 18
Multi- Project/Yar Annual Debt Service Payment Example	18 of 18

B. "Carrying Charge"

	¶/Page
Substantially Complete Design CCRC	2 of 18
Sewer Signatory Adjustments to CCRC for MCIP in Sewer System	4 of 18
Carrying Charges	6 of 18
Capital Cost Recovery Charge (CCRC) Timeline and Example	7 of 18
Part S-1a- Sewer Project Annual Debt Service Payment (SPADSP)	9 of 18
Carrying Charge (CC)	12 of 18
Part W-1- Water Project Annual Debt Service Payment (WPADSP)	14 of 18
Part W-1a- Carrying Charge (CC)	15 of 18
Carrying Charge (CC)	16 of 18
Water Project Annual Debt Service Payment (WPADSP)	17 of 18

The Parties acknowledge that the deletion of these terms will create internal inconsistencies throughout the CCRC MOU, and agree to execute an Amended and Restated Memorandum of Understanding at the earliest convenient opportunity.

6. Assignment.

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

7. Binding Agreement

This Agreement shall be binding on the Parties, their respective successors and assigns.

8. Integration

The Stand-Alone Dispute Settlement Agreement, the Amendment to the Water Supply Agreement, the Amendment to the Lease, and the Amendment to the CCRC MOU (herein above defined collectively as the "Integrated Agreements") constitute and contain the entire agreement between the Parties. The Parties intend the Integrated Agreements to be the complete and exclusive statement of the terms of their agreement. The Integrated Agreements supersede and replace all prior negotiations and proposals, whether written or verbal, between the Parties concerning the subject matter contained herein.

9. Bondholder Consent Required

The Parties acknowledge that the Integrated Agreements are contingent upon obtaining the consent of a majority of the holders of the Bonds, and agree to cooperate in securing such consent (whether through the submission of requests for consent from existing bondholders or through the issuance of refunding bonds by LCA to effectuate such consent). In the event LCA determines in its sole discretion to effectuate such bondholder consent through the issuance of refunding bonds, the City agrees to cooperate with LCA in the issuance of such bonds, and shall execute all instruments, certificates, agreements, and other documents necessary or appropriate in connection with the issuance of the refunding bonds; provided, however, that the City shall not be required to act as guarantor of such bonds or otherwise pledge its full faith, credit and taxing power in connection therewith. The Parties agree that the securing of such consent is a necessary prerequisite to the effectiveness of the Integrated Agreements and the failure to obtain such consent by September 30, 2020 shall result in the Integrated Agreements becoming null and void and of no effect; provided, however that LCA may extend such deadline by up to 60 days by providing notice of such extension to the City no later than September 18, 2020. The effectiveness of each distinct and separate agreement comprising the Integrated Agreements is contingent upon the effectiveness of all other agreements comprising the Integrated Agreements.

10. Modification in Writing

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

11. Documents to Implement

The Parties agree to be bound by this Agreement and agree to execute any and all documents necessary to implement the terms, as agreed.

12. Authorized to Sign

By this Agreement, the Mayor of the City of Allentown and the Chief Executive Officer of LCA are authorized to implement all administrative, financial and operational requirements of this Agreement, subject to existing administrative processes, authorizations and delegated responsibilities.

13. Counterparts

This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but both counterparts together shall constitute a single Agreement.

14. Effective Date

The terms and provisions of this Agreement shall be effective on the date of the last signature hereto.

15. Terms Not Modified Remain in Effect

Except as expressly modified by the Integrated Agreements, the terms and provisions of the CCRC MOU shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the CCRC MOU or caused this Amendment to the CCRC MOU to be executed by their duly authorized representatives the day and year first above-written.

ATTEST:

THE CITY OF ALLENTOWN:

By: _____ Witness: _____

Name: Ray O'Connell Name: _____

Title: Mayor of the City of Allentown Title: _____

Date: _____

LEHIGH COUNTY AUTHORITY:

By: _____ Witness: _____

Name: Liesel Gross Name: _____

Title: Chief Executive Officer Title: _____

Date: _____