

**AMENDMENT TO THE ALLENTOWN WATER AND SEWER UTILITY
SYSTEM CONCESSION AND LEASE AGREEMENT**

Dated as of May 1, 2013

Between

CITY OF ALLENTOWN

AND

LEHIGH COUNTY AUTHORITY

THIS AMENDMENT to the Allentown Water and Sewer Utility System Concession and Lease Agreement (hereinafter referred to as the “Lease”) 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 into 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 Concession Lease Agreement; and

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

WHEREAS, diverse and distinct disagreements and disputes arose between the City and LCA after the Lease was entered 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 as 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 Lease as follows:

1. The forgoing recitals are incorporated by reference herein as though more fully set forth at length, and undefined terms shall have the meaning set forth in the Lease.

2. Modification to CCRC

Since the Closing Date, LCA and the City have developed practices regarding the calculation of the CCRC in accordance with the Lease which are documented in the CCRC MOU.

In order to support improved cash flows for LCA and to support the use of alternative and lower-cost financing options for Major Capital Improvements, the Parties desire to adjust these practices by amending the definitions of the terms “Capital Cost Recovery Charge” and “Cost Recovery Period” beginning January 1, 2021 for new Major Capital Improvements for which no CCRC is currently in place as of the date of this Amendment. The City and LCA agree that previously approved CCRCs will remain in full force and effect and will not be subject to recalculation or adjustment in accordance with this Amendment.

Section 1.1 (Definitions) is amended to delete the definition of the term “Capital Cost Recovery Charge” and replace it with the following:

Capital Cost Recovery Charge means, for a particular Reporting Year, the annual amount that the Concessionaire may charge during the Cost Recovery Period with respect to the cost of a Major Capital improvement consisting of (i) the amounts required to pay the principal of and interest on debt issued or incurred to finance in whole or in part the Major

Capital improvement plus (ii) a return on equity in the amount of 5.445107% on any LCA existing cash reserves used in whole or in part to fund Major Capital Improvements.

Section 1.1 (Definitions) is amended to delete the definition of the term “Cost Recovery Period” and replace it with the following:

Cost Recovery Period means, in the case of cash or equity funded Major Capital Improvements, the period of time from the later of (i) January 1, 2016 or (ii) the implementation date of the Capital Cost Recovery Charge (as set forth in 4.5 (f)) to the earlier of (i) the 360th month following the implementation of the Capital Cost Recovery Charge or (ii) the last month of the useful life of the Major Capital Improvement. The Cost Recovery Period means, in the case of bond or loan funded Major Capital Improvements, the greater of the bond or loan repayment schedule or fifteen (15) years.

Section 4.5 (Major Capital Improvement Project Implementation) is amended to add new subsection (f), to read as follows:

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 any memoranda of understanding regarding CCRC's that the Parties may execute from time to time. 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.

3. **Modification of Definition of “Major Capital Improvement”- Aggregation**

The definition of the term “Major Capital Improvement” in Section 1.1 of the Lease states: “... Capital improvements to the System may be aggregated and treated as a single capital improvement under clause (d) of this definition when (i) such capital improvements are undertaken to replace water mains or sewer lines and (ii) construction of each such capital improvement commences in the same calendar year...” [Emphasis added.]

Section 1.1 (Definitions) is amended to add the following to the definition of the term “Major Capital Improvement”:

The following types of capital improvements shall not be deemed to be an "aggregation" of individual project components and are therefore considered to be a MCI so long as all other terms of the definition are met:

A. The equipment/components (equipment), structures or treatment units which are included in the capital improvement have the same primary function or purpose in a treatment process.

The equipment, structures, or treatment units contemplated above must be in the same physical location. For purposes of this clarification, the "same physical location" means under the same roof or in adjacent buildings for interior equipment, structures or treatment units or, for exterior capital improvements, such equipment, structures or treatment units must be physically and operationally performing with similar equipment, structures or treatment units as part of the same treatment process.

A MCI may be a single structure or treatment unit that has multiple types of equipment/components that all must be constructed at the same time and are ancillary, integral, and necessary to the complete and functional operation of the equipment or treatment unit which was the MCI's primary focus. The acceptable auxiliary components to the primary equipment or treatment unit would generally include electrical, mechanical, and control components; all connected valving, piping, gauges and similar items; and smaller connected support equipment. With the exception of the replacement of an existing building or the construction of a new building, the acceptable auxiliary components would not include structural elements such as walls, windows, lighting, office or administrative areas, laboratory areas, heating/ventilating/air conditioning (HVAC), personnel areas, and roofs, unless replacement was unavoidable during construction activities and identified in the project design. For clarification purposes, the dewatering building at the wastewater

treatment plant is not considered a single structure as equipment in the structure serve more than one purpose or function.

If a treatment process requires that a certain number of pieces of equipment, structures, or treatment units need to be in service to provide required treatment of water, sewage, or their byproducts, then the MCI shall be constructed as a continuum allowing for completion of a single unit and proceeding to the next. . The Authority will be required to detail the planned progression of construction activities, including a description of the factors influencing the proposed progression schedule, as part of the MCI Conceptual Design (Section 4.5(a) of the Lease) and MCI Substantially Complete Design (Section 4.5(b) of the Lease) and the project must proceed accordingly.

B. Full-scale addition or replacement of water meters, meter reading units, or related equipment (including leak sensors) located at customer properties ("customer metering devices" or "CMDs"), when such work is completed as part of a single project. For replacement projects, LCA's determination of the need for replacements will be based on testing of meter accuracies outlined in the then current edition of American Water Works Association publication, M6 – Water Meter- Selection, Installation, Testing, and Maintenance. Unless a large-scale decline in meter accuracy is observed, testing of CMDs would not be conducted with the intended purpose of possibly developing a replacement project until the CMDs intended to be included had reached their life expectancy as determined by the CMD manufacturer(s).

4. Funding for Preliminary Tasks Relating to Event Driven Capital Improvements

Section 1.1 (Definitions) is amended to add the following definition of the term “Event Driven Capital Improvements”:

Event Driven Capital Improvements means large capital improvements required to address future regulatory mandates which are not currently required, such as treatment of pharmaceuticals at the Wastewater Treatment Plant. Responding to such mandates is expected to require significant preliminary work including feasibility analyses, engineering evaluations, financial assessments, environmental reviews, and legal reviews prior to designing and implementing system improvements to address the new requirement. LCA and the City seek to establish a funding source for these preliminary tasks to ensure resources are available to initiate the work, and to ensure regulatory compliance can be maintained as requirements change over time.

Beginning in 2021, LCA will annually contribute at least \$250,000 but no more than \$500,000 into a dedicated escrow Reserve Account for Event Driven Capital Improvements (“Reserve Account”). LCA will continue to make annual contributions to

the Reserve Account until the balance reaches \$2,000,000. LCA will provide an annual financial report on the reserve account balance, contributions and uses.

In determining whether a regulatory change or other mandate may be considered as an Event Driven Capital Improvement that is eligible for the use of the funding from the Reserve Account, an estimate of the project scope will be made by an engineering firm or LCA staff, as applicable, depending on the type of regulatory change being evaluated. If LCA is expected to incur \$10,000,000, as adjusted annually for inflation, or more in costs to comply with the new regulation or mandate, the use of Reserve Account funds to address preliminary planning tasks will be allowed. However, the Parties may agree to use Reserve Account funds for preliminary tasks related to smaller projects, subject to LCA's submission of a cost and funding proposal for such projects as identified in the Service Charge Adjustment - Change of Law MOU.

For each Event Driven Capital Improvement identified and agreed upon by the Parties, LCA will use up to \$750,000 from the Reserve Account to pay for pre-planning, studies, engineering and other reviews as described above. If more than \$500,000 is invoiced and paid in a calendar year from the reserve account on an applicable project, LCA will use the current year's contribution towards those expenses in lieu of funding the Reserve Account. The use of funds from this reserve account will not be subject to cost recovery through any resulting CCRC or Change of Law fee that may be applicable for the remainder of the project costs.

5. Renewal/Non-Renewal of the Lease at the End of Lease Term

Section 1.1 (Definitions) is amended to add a definition of the term “Final Cumulative Cash Balance” as follows:

“Final Cumulative Cash Balance” refers to the Cumulative Cash Balance that exists on December 31st of the calendar year prior to the termination of the Lease Term, as reported in the Concessionaire’s annual audited financial statements for that year.

Section 1.1 (Definitions) is amended to add a definition of the term “Master Plan” as follows:

“Master Plan” means LCA’s most recently prepared Comprehensive Planning Study required under the Operating Standards Capital Improvements Section A.9.1 and Section B.5.4.2.

The Parties agree to amend the Lease as follows:

Section 16.4 (Consequences of Termination and Reversion) is amended to add a new Paragraph (n):

(n) **Extension of or Rebidding of Lease; Sale of System.** LCA may continue as the Operator and Concessionaire or may purchase the System through a competitive bidding or other sale process established by the City.

(i) **Negotiated Lease Extension-Preconditions.** As a precondition to any negotiated extension of the Lease, the parties shall have received a favorable opinion of counsel as set forth in subsection (iii) hereof. Upon receipt of such favorable opinion, LCA shall, not less than three years before the Termination date, submit to the City a written request for an extension of the Lease. In evaluating LCA's request for an extension, the City shall consider whether LCA has performed satisfactorily in meeting the requirements of the Lease. Evaluation by the City of such satisfactory performance shall consist of the following factors: (1) LCA's compliance in all material respects with the Lease, the Operating Standards and all regulatory requirements applicable to LCA's operation of the System, along with timely responses to any non-compliance with these requirements (for purposes hereof, a response shall be deemed timely if it is delivered by LCA in accordance with the requirements of the Lease and applicable law); (2) LCA's completion of capital improvements to the System in substantial compliance with the Master Plan and requirements of the Lease; (3) LCA's submission of timely responses to any Notices of Violation ("NOVs") from the City or a regulatory agency (for purposes hereof, a response shall be deemed timely if it is delivered by LCA in accordance with the requirements of the Lease and applicable law); and (4) the existence of any outstanding or unresolved Operational Liquidated Damages claims by the City.

(ii) **Procedure for Approval or Denial of a Request for Extension of the Lease.** Within 60 days of receipt of the renewal request from LCA, the City shall provide a written response informing LCA whether its request for renewal has been approved or denied. In the case of a denial by the City of LCA's request for a renewal, the City shall set forth in the written response the specific deficiencies which formed the basis for its denial.

In the event LCA's request for renewal is denied by the City, LCA may submit within 90 days of receipt of the written denial a written action plan for remediation of the specified deficiencies. This plan shall include completion dates for all action plan items such that all action plan items are completed, functional, and on-line six (6) months prior to expiration of the Lease or as otherwise agreed to by the Parties. The City shall review LCA's remediation plan and, if acceptable, shall approve LCA's Lease renewal request, such approval to not be unreasonably withheld. Approval shall not be considered unreasonably withheld if it is based on a determination that LCA's written action plan will not result in the remediation of all of the specified deficiencies identified by the City in its written denial.

Any dispute arising out of or relating to a request for renewal of the Lease by LCA hereunder shall be resolved as set forth in Article 19 of the Lease.

(iii) **Legal Determination of Lease Extension.** Upon written request of LCA, delivered not later than five years before the Termination Date, the Parties shall engage a mutually acceptable law firm from the top 50 Pennsylvania firms by size, with no physical presence in the Lehigh Valley, as published by the Pennsylvania Law survey or similar publication to provide a legal opinion as to the legality of an extension of the Lease, Said firm shall not have served as counsel to the City or LCA during the previous ten (10) years. Such opinion shall be required from the selected law firm within sixty (60) days of retention. Should such opinion confirm that the Parties may extend the Lease, LCA shall be entitled to submit a written request for a renewal in accordance with subsection (i) hereof. The term of any renewal will be negotiated between the Parties but shall be no less than thirty years nor longer than fifty years.

The costs of the law firm selected by the Parties to deliver the opinion hereunder shall be shared equally by the Parties. All other costs incurred by the Parties in connection with the delivery of the opinion specified herein shall be the sole responsibility of the Party that incurred such cost.

(iv) **Bidding for New Lease or Sale of System.** If the Lease is not renewed pursuant to subsection (i) hereof, the City in its sole discretion may elect to commence a new competitive bidding process or other process for the sale, lease, or other transaction involving a disposition of the System, and LCA shall not be precluded from participating in a competitive bidding process, so long as it complies with all uniform bidding requirements established by the City applicable to all prospective bidders.

The City will be responsible for paying all costs in connection with a new competitive bidding or other process to sell or lease the System, including, but not limited to, the costs of preparing legal documents, making presentations, providing information, and developing programmatic activities. LCA shall assist the City in such manner as the City may require, consistent with Article 16 of the Lease, including coordination with the City for site visits of the System by prospective ~~purchasers~~bidders.

In the event the City determines to enter into a new bidding process for the sale, lease, or other transaction involving a disposition of the System, there will be no inclusion of Uncompleted Work in the bid documents and any bidder will be required to complete the "Five-Year Capital Improvements" within 5 years of the Transition date.

In the event LCA does not submit a written request in accordance with subsection (i) hereof or LCA's request is not considered acceptable under subsection (ii) hereof, the City may begin its due diligence and preparation of documents such that a Request for Qualifications and Statement of Interest for prospective lease concessionaires and/or purchasers may be issued no earlier than thirty (30) months prior to the Termination date. The bidding or sale process will be conducted on a schedule such that an award can be made and contracts finalized so that the successful bidder will have at least 6 months for transition purposes.

(vii). **Discussion of Alternative Service Delivery Options.** By mutual agreement and no later than three years prior to the Termination date, the City and LCA will enter into good faith discussions to evaluate and consider regional or consolidated service delivery options to benefit the customers and municipalities served by the System. These discussions will include an evaluation of regional approaches to providing water and sewer services to the City, portions of the LCA's non-City service area that receive water and/or sewer service from the System, and other municipalities that receive water and/or sewer service from the System that may wish to enter these discussions.

(ix) **Extension of Lease; Completion of Improvements.** If LCA continues as the Operator and Concessionaire subsequent to the termination of the Lease (Termination) through a negotiated Lease extension, LCA shall use Final Cumulative Cash Balance generated under the Lease to complete the capital improvements set forth in its next five (5) year Capital Plan and in the capital improvements recommended for the first five years of the most recent Master Plan (collectively the "Five-Year Capital Improvements"). There shall be no charge to the City rate payers for the Five-Year Capital Improvements so long as accumulated cash remains available for future capital improvements.

6. Billing Frequency

Quarterly billing frequency for City ratepayers with meter sizes 5/8", 3/4" and 1" will not change as a result of this Settlement Agreement except as follows:

After the second full calendar year following the implementation of rates enacted under Paragraph 7 of the Amendment to the Lease Schedule 3, LCA may, at its discretion, undertake a study to determine whether other billing options would be beneficial for LCA and City ratepayers. Issues that will be studied include a review of collections performance, affordability, benefits of various billing options and frequencies, solicited customer preferences and other factors.

If, after review and discussion with the City, LCA determines that implementation of changes to its billing frequencies will be beneficial, any billing frequency changes will occur with no implementation costs passed on to the City ratepayers.

7. Phased Adjustments to Rates

The City and LCA agree that an adjustment of rates to the fixed charges for water and sewer meter sizes 5/8", 3/4" and 1" is necessary to provide funding for capital improvements required to properly maintain the System in a timely manner so as to continuously meet regulatory requirements and maintain the structural integrity and functional operation of the facilities and infrastructure. Larger meter sizes (1.5", 2", 3", 4", 6", and 8") were previously converted.

In balancing the financial needs for capital improvements and impacts on rate payers, the adjustment of rates will be transitioned and implemented over a four-year period. The rate adjustment will be introduced in increments of 50% for the period October 1, 2020 to December 31, 2020 and the year 2021, 75% for the years 2022 and 2023, and the full 100% adjustment in 2024 (the “Transition Period.”)

More specifically, the Parties agree that **Schedule 3** of the Lease is hereby amended as follows:

The column of rates labeled as “Daily Charge (Quarterly Bills)” is retitled as “Previous Daily Charge (“PDC”)” and the column of rates labeled as “Monthly Bills” is retitled as “Current Daily Charge (“CDC”).”

The CDC will continue to be adjusted in accordance with Section 7.1(e) of the Lease during the Transition Period. After the completion of the fourth year of the transition, the CDC will be in full effect and will continue to be adjusted in accordance with Section 7.1(e) of the Lease. At that time, the PDC column will be deleted from the Schedule of Service Charges.

Transition Phase 1A: From October 1, 2020 to December 31, 2020, the Schedule of Service Charges for fixed charges will equal the PDC plus 50 percent (50%) of the difference between the CDC and PDC. Expressed as a formula, the rate will be calculated as follows:

$$\text{Phase 1A Daily Charge} = 2020 \text{ PDC} + [(2020 \text{ CDC} - 2020 \text{ PDC}) \times (0.50)]$$

Transition Phase 1B: For calendar year 2021, the Schedule of Service Charges for fixed charges will equal the PDC plus any applicable increase under Section 7.1(e) (“2021 PDC”) plus 50 percent (50%) of the difference between the CDC plus any applicable increase under Section 7.1(e) the 2021 CDC and the 2021 PDC. Expressed as a formula, the rate will be calculated as follows:

$$\text{Phase 1B Daily Charge} = 2021 \text{ PDC} + [(2021 \text{ CDC} - 2021 \text{ PDC}) \times (0.50)]$$

Transition Phase 2: For calendar year 2022, rates will equal the PDC plus any applicable increase under Section 7.1(e) (“2022 PDC”) plus 75 percent (75%) of the difference between the CDC plus any applicable increase under Section 7.1(e) (“2022 CDC”) and the 2022 PDC. Expressed as a formula, the rate will be calculated as follows:

$$\text{Phase 2 Daily Charge} = 2022 \text{ PDC} + [(2022 \text{ CDC} - 2022 \text{ PDC}) \times (0.75)]$$

Transition Phase 3: For calendar year 2023, rates will equal the PDC plus any applicable increase under Section 7.1(e) (“2023 PDC”) plus 75 percent (75%) of the difference

between the CDC plus any applicable increase under Section 7.1(e) and the 2023 PDC. Expressed as a formula, the rate will be calculated as follows:

$$\text{Phase 3 Daily Charge} = 2023 \text{ PDC} + [(2023 \text{ CDC} - 2023 \text{ PDC}) \times (0.75)]$$

Transition Phases 1A, 1B, 2 and 3 as described above shall only apply to meter sizes 5/8", 3/4" and 1". For all other meter sizes, (1.5", 2", 3", 4", 6", and 8") the full CDC will be in effect for all transition years.

Transition Phase 4: For calendar year 2024, the full CDC plus any applicable increase under Section 7.1(e) will be in effect for all meter sizes.

LCA will be responsible for completing all calculations and will provide the calculations and all support documents to the City for review and approval. City will provide confirmation of the calculations prior to the adjusted rates being posted or included in any public documents. Rates will be calculated and rounded to five (5) decimals.

In the event that this Amendment shall not become effective by October 1, 2020 the rate provisions of this paragraph 7 shall be effective retroactive to October 1, 2020

8. Rate Relief

The Parties agree to amend the Lease as follows:

Section 1.1 (Definitions) is amended to add a definition of the term "Cumulative Cash Balance" as follows:

"Cumulative Cash Balance" is the Concessionaire's unrestricted cash balance as currently reported as "Current Assets / Cash & Cash Equivalents" for LCA's "City Division Fund" in its annual audited financial statements for the prior year, but reduced by the amount of funding required to meet the Trust Indenture requirement for an Operation and Maintenance Reserve Fund ("O&M Reserve Fund"), which is funded through Current Assets / Cash & Cash Equivalents. Therefore, the Cumulative Cash Balance is calculated following payment of all operating expenses, non-operating expenses including debt service payments, Lease related obligations and expenses, and any funding provided to capital improvements. Excluded from the Cumulative Cash Balance are ~~any cash balances that serve as reserves required to satisfy the terms and obligations of Concession Lease Agreement and any amendments thereof and any reserves required by the Trust Indenture~~ reserves established by the Concessionaire for the Annual City Payment, the Annual City Lease Administrative Payment, the Event Driven Capex Reserve Fund and the Sewer Collection Improvement Fund, nor shall it include the Operation and Maintenance Reserve Fund required under the Indenture to the extent that the amount in such reserve

fund does not exceed the Operation and Maintenance Reserve Fund Requirement. The Cumulative Cash Balance will be reported to the City annually upon completion of the annual financial audit along with the Concessionaire's financial statements as required by the Lease and any other documentation required to calculate the Cumulative Cash Balance,

A determination of the potential for rate relief (Rate Relief) will be made annually in time to be included in LCA's forthcoming budget and rate schedules which would include the determined rates for the forthcoming year for the City rate payers. LCA shall potentially provide Rate Relief to City ratepayers if LCA's Cumulative Cash Balance is at least two (2) times the average annual capital improvements cost as shown in the then-current 5-year Capital Plan ("Cash Balance Metric"). If the Cash Balance Metric is equal to 2.0 or greater than 2.0, Rate Relief can be implemented provided one of the following conditions (Financial Metrics) have also been satisfied:

A). ~~LCA's 2013 and 2018 Revenue Bonds issued in connection with the Lease acquisition and System improvements ("the Bonds") have been paid in full under the terms and rate schedule in place at the date of signing, without refinancing; or~~ All of the following Leasehold Mortgage Debt incurred by the Concessionaire (the "Existing Bonds") has been paid in full in accordance with the terms and debt service repayment schedules in place on September 17, 2020: (i) the Concessionaire's Water and Sewer Revenue Bonds (City of Allentown Concession), Series 2013A, (ii) the Concessionaire's Water and Sewer Capital Appreciation Revenue Bonds (City of Allentown Concession), Series 2013B, (iii) the Concessionaire's Water and Sewer Revenue Bond (City of Allentown Concession), Series 2018 (Federally Taxable); and (iv) the Concessionaire's Water and Sewer Revenue Bonds (City of Allentown Concession), Series 2020 (Federally Taxable);; or

B) ~~The~~ All or a portion of the Existing Bonds are still outstanding, are current in debt service payments, all requirements with respect to the Existing Bonds have been met, including full funding of all required reserve amounts, ~~the~~ under the Indenture, the debt service coverage ratio calculated under Section 9.01 of the Indenture (the "Debt Service Coverage Ratio") is at least 1.70, and any Capex Loans issued prior to the ~~signing~~ Effective Date have been paid, without refinancing; or

C) In the event the ~~Bonds and any bonds issued by LCA~~ Concessionaire has incurred additional Leasehold Mortgage Debt after September 17, 2020 to refund or refinance any of the Existing Bonds (the "Refunding Bonds"), such Refunding Bonds and any unrefunded portion of the Existing Bonds are outstanding, ~~the Bonds and/or~~ such Refunding Bonds and any unrefunded portion of the Existing Bonds are current in debt service payments, all requirements of any indenture ~~or~~ loan agreement or other instrument or document entered into by the Concessionaire with respect to the ~~Bonds and/or~~ Refunding Bonds and any unrefunded portion of the Existing Bonds have been met, including full funding of all required reserve amounts under such documents, the Debt Service Coverage Ratio is at least 1.70, and any Capex Loans issued prior to the ~~signing~~ Effective Date have been paid, without refinancing.

In determining whether the Financial Metrics have been met, the portion of any debt incurred by the Concessionaire to expand the Kline's Island WWTP for the benefit of municipalities other than the City, and any corresponding revenue received by the Concessionaire from such municipalities, will not be taken into account, as the Parties anticipate that such debt will be repaid by the municipal beneficiaries of any such capacity expansion project(s)

Provided that both the Cash Balance Metric and the Financial Metrics are met, Rate Relief shall be provided and equal to fifty percent (50%) of the difference between LCA's Cumulative Cash Balance and two (2) times the average annual capital improvements cost as shown in the then-current 5-year Capital Plan.

The form of Rate Relief will be determined annually between the Parties and may include: (a) elimination or reduction of the CCRC to be applied in the following calendar year, or a portion thereof; (b) elimination or reduction of a Change of Law or DRBC charge to be applied in the following year, or a portion thereof; (c) reduction in the water volume or sewer flow charge to be applied in the following year from the charge that is allowable under the terms of the Lease, with a calculation showing that that reduction will provide the rate relief specified; and/or (d) reduction in the water or sewer fixed charge to be applied in the following year from the charge that is allowable under the terms of the lease. At no time will LCA eliminate or reduce the rate applied to any water or sewer signatory that is based on actual cost recovery calculations, including but not limited to LCA's purchase of water for its Suburban Division and all municipal sewer signatories with similar cost recovery provisions.

If LCA takes any such action to provide Rate Relief in a given year ("Year 1") via the methods described above and LCA's financial condition changes in the immediately succeeding year ("Year 2") such that ~~Cash Balance Metrics or the~~ Financial Metrics in Year 2 are ~~no longer able to be met~~ not satisfied, LCA shall have the right ~~to implement the full rates allowable under the terms of the Lease as if rate relief had not been provided the previous year. In determining whether the Cash Balance Metrics or Financial Metrics have been met, the portion of any bonds or other borrowing that might be used to expand Kline's Island Wastewater Treatment Plant for the benefit of municipalities other than the City of Allentown will not be considered in the application of the,~~ in addition to not providing Rate Relief in Year 2, to adjust rates in Year 2 for the City ratepayers to recoup the amount of Rate Relief ~~terms of this Agreement. It is expected that such funding will be paid by the beneficiaries of any such capacity expansion project(s) that was provided in Year 1.~~

9. City Water / Sewer Fund Payment

To support the City's administration of the Lease along with the City's other related water and sewer expenses including regulatory review and permitting, among others, LCA will contribute \$400,000 annually to the City for such expenses beginning in 2021. Payment terms including cost escalation, payment due dates, and interest charges for

past-due payments will be identical to those of the Annual City Payment in Section 3.24 of the Lease; however, LCA shall not be required to pre-fund this payment via the use of an escrow account.

This \$400,000 payment shall be in addition to the Annual City Payment in the sum of \$500,000 as defined in Section 1.1 of the Lease Concession Agreement.

10. Modification to Operating Standards- Water Distribution Leak Detection

The City and LCA agree to amend **Schedule 4 (Operating Standards)** to the Lease with respect to the Water Distribution Leak Detection investigations requirements as follows:

Schedule 4 (Operating Standards), Part A (Water System Operating Standards), Section 6.10.2. a (Leak Detection) is hereby amended, beginning for the year 2021 and continuing for four years through the year 2024, to increase the requirement for water distribution leak detection from 110 miles of pipe per year minimum to 165 miles per year.

Schedule 4 (Operating Standards), Part A (Water System Operating Standards), Section 6.10.2. a (Leak Detection) is further amended to add the following paragraphs:

Every four (4) years, with the first being 2024 and the second 2028, representatives of the City and LCA will review leak detection history and repairs, main breaks with consideration for weather conditions, water audits as presented in the “Annual Consulting Engineer’s Report for the Allentown Water and Sewer Utility System Concession,” sinkhole history, and similar concerns which might affect or impact continuation or modification of the replacement mileage. As a result of this review, the City and LCA shall agree upon the requirement for water main replacement and leak detection quantities for the following four-year period. The annual mileage determination will never be less than one (1) mile per year or more than two (2) miles per year but may be set at increments of one quarter mile per year between those limits as may be agreed by the Parties.

Should LCA fail to comply with the leak detection quantity requirements that is in effect during a given year within the four-year period and as had been agreed to by the Parties, the requirements under Schedule 4, Part A, Section 6.19 of the Operating Standards shall return to the initial conditions under the Lease in the following Calendar year and this section of the Agreement shall become null and void.

11. Modification to Operating Standards- Water Distribution Pipeline Replacement

The City and LCA agree to amend **Schedule 4 (Operating Standards)** to the Lease with respect to the Water Distribution Pipeline Replacement requirement as follows:

Schedule 4 (Operating Standards), Part A (Water System Operating Standards), Section 6.19. 2 (Evaluation and Replacement Requirements) is hereby amended to reduce the annual requirement for water distribution pipeline replacement to one (1) mile from at least two (2) miles of pipe beginning for the year 2021 and continuing for four years through the year 2024.

The City agrees to assist and coordinate with LCA to ensure cost-effectiveness of the projects through evaluation of the proximity of projects, similar types of projects, coordination with City programs and other prioritization protocols under the Pipeline Replacement Program.

LCA shall complete a minimum of the required one (1) mile of water main replacement in the calendar year 2021. For the remainder of the four-year period, LCA may combine the individual annual water main replacement projects so long as at least four (4) miles of water main replacement will have been completed in the four-year period.

Every four (4) years, with the first being 2024 and the second 2028, representatives of the City and LCA will review leak detection history and repairs, main breaks with consideration for weather conditions, water audits as presented in the “Annual Consulting Engineer’s Report for the Allentown Water and Sewer Utility System Concession,” sinkhole history, and similar concerns which might affect or impact continuation or modification of the replacement mileage. As a result of this review, the City and LCA shall agree upon the requirement for water main replacement and leak detection quantities for the following four-year period. The annual mileage determination will never be less than one (1) mile per year or more than two (2) miles per year but may be set at increments of one quarter mile per year between those limits as may be agreed by the Parties. The annual required mileage of leak detection in Section A 6.10.2 will be adjusted proportionally to the annual mileage of the pipe replacement.

Should LCA fail to comply with the water main replacement requirements that are in effect during a given year within the four-year period and as agreed by the Parties, the requirements under Sections A.6.19 of the Operating Standards shall return to the initial conditions under the Lease Concession in the following Calendar year and this section of the Agreement will become null and void.

12. Sewer Collection System Improvements

The availability of sewer system capacity is of critical importance for the economic growth, vitality, and environmental protection goals of all municipalities whose sewage is treated at the City's Wastewater Treatment Plant. Within the City's sewer collection

system, which is among the oldest and most extensive in the region, extraneous flows from inflow and infiltration ("I&I") must be addressed in order to meet these goals.

In 2018, the City detailed its plans to complete certain rehabilitation projects ("I&I Projects") as part of its response to the United States Environmental Agency Administrative Orders. This work is expected to be completed during calendar years 2020 through 2024 using the Administrative Order Fund as described in the Lease. During this time period a Flow Characterization Study ("FCS") will also be completed using flow metering and hydraulic modeling tools to better define the sewer rehabilitation and capacity expansion needs of the entire sewer collection system including the City and all municipalities whose sewage flows to the City's Wastewater Treatment Plant.

Following the City's completion of the I&I Projects and FCS, but no sooner than 2024, LCA will establish a Sewer Collection System Improvement Fund and will contribute \$650,000 per year to fund rehabilitation projects in the City's sewer collection system. Projects funded through the Sewer Collection System Improvement Fund will address areas identified via the FCS as having excess I&I. The City and LCA will jointly review the results of the FCS to determine the projects and prioritization of work to be completed. In the event that the City and LCA disagree on these priorities, the City will make a final determination of the project scope and prioritization. Projects funded by the Sewer Collection System Improvement Fund may include additional sanitary sewer evaluation studies in addition to actual rehabilitation projects. In any calendar year, project costs which exceed that year's accumulated balance in the Sewer Collection System Improvement Fund will be treated as a Major Capital Improvement for purposes of cost recovery through a Capital Cost Recovery Charge.

Contributed money not spent in any calendar year will be retained in the Sewer Collection System Improvement Fund for use in subsequent years, and LCA will continue to contribute to the Sewer Collection System Improvement Fund annually. After all projects identified via the FCS have been completed, any funds remaining in the Sewer Collection System Improvement Fund will be returned to LCA's City Division project reserves and all subsequent sewer system rehabilitation projects will be completed in accordance with the terms of the Lease.

The Sewer Collection System Improvement Fund will be used exclusively for the restoration of existing sewers and may not be used for expansion of service or capacity projects.

Nothing in this agreement serves to supersede or modify any terms or conditions included in the Lease or Operating Standards regarding the sewer system operation or the rights, obligations and liabilities of the Parties.

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

14. This Agreement shall be binding on the Parties' respective successors and assigns.

15. This Amendment, the Lease, the Stand-Alone Dispute Settlement Agreement, the Amendment to the Water Supply Agreement, 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 that the Integrated Agreements be a 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.

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

17. The Parties agree to be bound by this Agreement and agree to execute any and all documents necessary to implement its terms, as agreed, including, but not limited to, an Amended and Restated Allentown Water and Sewer Concession Lease Agreement.

18. 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.

19. 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 and delegated responsibilities.

20. 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.

21. The terms and provisions of this Amendment to the Lease shall be effective on the date of the last signature hereto.

22. Except as expressly modified herein, the terms and provisions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Lease or caused this Amendment to the Lease 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: _____

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9:32:39 AM

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Description	#121555298v3<PHL> - City of Allentown LCA- Final Amendment to Lease Agreement
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