

Application of Aqua PA Wastewater, Inc.

Docket No. A-2019-3015173

Hearing Date: September 16, 2020

Schmucki Exhibit

- 1 Swarthmore Protest PUC re Aqua
- 2 Swarthmore Planning Commission PUC Protest
- 3 Swarthmore PC comment form
- 4 Schmucki PUC Objections letters and exhibits
- 5 SWP cover letter
- 6 Swarthmore Borough Exhibits

LAW OFFICES OF
ROBERT W. SCOTT, P.C.

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August 25, 2020

VIA FEDERAL EXPRESS

Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

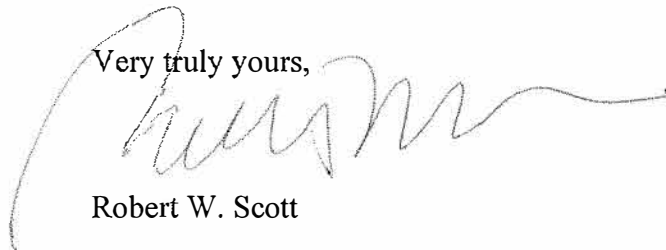
Re: Application for the Acquisition of Delaware County Regional Water Quality
Control Authority's Wastewater System Assets
PUC Docket No. 2019-3015173

Dear Secretary

On behalf of the Borough of Swarthmore (the "Borough"), enclosed please find a Protest to an Application, Verification and Certificate of Service with respect to the above-captioned matter.

Kindly date-stamp and return the enclosed copy of the application in the enclosed self-addressed, stamped envelope.

Very truly yours,



Robert W. Scott

Enclosures

cc: Thomas T. Niesen, Esquire (w/encls)
Borough Council and Mayor
Jane Billings, Borough Manager

FORMAL PROTEST

To complete this form, please type or print legibly in ink.

Application Docket Number: A-2019-3015173

Protestant Information

Provide your name, mailing address, county, and telephone numbers.

Name: Borough of Swarthmore _____

Street/P.O. Box: 121 Park Avenue _____ Apt # _____

City: Swarthmore _____ State: PA _____ Zip: 19081

County: Delaware

Telephone Number(s) Where We Can Contact You During the Day:

(610) 5434-4599 (office) (_____) _____ (mobile)

E-mail Address (optional): rscott@robertwscottpc.com

52 Pa. Code Section 5.52 (a)(1)(2)(3)(c) sets forth the content that must be included in the Protest.

(a)(1) What is your alleged right or interest in filing this Protest?

The Borough of Swarthmore owns and operates a sanitary sewer system and conveys its wastewater (through the Central Delaware County Authority) to DELCORA for treatment, and its residents pay sewer fees which will be affected by the application.

(a)(2) State your grounds for filing this Protest.

See attached "Protest in the PUC by the Borough of Swarthmore."

(a)(3) Set forth facts that you – as the Protestant – have standing to file a Protest. (This means that you must state facts showing that you are affected by this Application).

The Borough of Swarthmore owns and operates a sanitary sewer system and conveys its wastewater (through the Central Delaware County Authority) to

DELCORA for treatment, and its residents pay sewer fees which will be affected by the application.

(c) You must file your Protest by the deadline stated in the publication of the Application; file your Protest timely with the Secretary of the Commission; serve (mail by first class) a copy of your Protest (at the time you file it) to the Applicant or Counsel for the Applicant.

Legal Representation (52 Pa. Code Section 1.21)

If you are filing a protest to an Application as an individual, you are not required to have a lawyer. You may represent yourself during the proceedings. However, all others are required to be represented by a lawyer during the proceedings.

If you are represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and email address, if known.

Lawyer's Name: Robert W. Scott, Esquire

Street/P.O. Box: 205 North Monroe Street, P.O. Box 468

City: Media State: PA Zip: 19081

Area Code/Phone Number (610) 891-0108

Email Address (if known) rscott@robertwscottpc.com

Verification: (52 Pa. Code Section 1.36(b))

I swear that the facts I am presenting in this Protest are true and correct to the best of my knowledge, information, and belief. I understand that the statements I am making in this Protest are made subject to the penalties of 18 Pa.C.S. Section 4904 (relating to unsworn falsification to authorities).


(Original Signature)

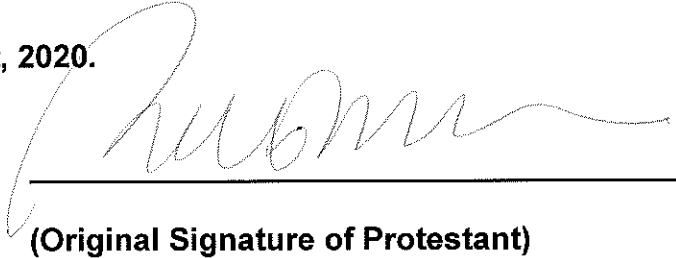
8/25/2020
(Date)

Certificate of Service: (52 Pa. Code Section 1.58)

I certify that I have this day served a true copy of my Protest on the following: (list names and addresses of those served by first class mail)

**Aqua Pennsylvania Wastewater, Inc.
c/o Thomas T. Niesen, Esquire
Thomas, Niesen and Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101**

Date: This 25th day of August, 2020.



(Original Signature of Protestant)

HOW TO FILE

To file your Protest with the PUC, mail the completed form (along with any attachments) to the addresses listed below:

**Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120**

We recommend using overnight delivery service to ensure timely filing.

You may also eFile your Protest by going to the Commission's website at www.puc.pa.gov and visiting our eFiling page. You must open an eFiling account (free of charge) and follow instructions.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of this filing for your records.

Protest in the PUC by The Borough of Swarthmore

Objecting to

Aqua Pennsylvania Wastewater, Inc. Section 1329 Application for the Acquisition of Delaware County Regional Water Quality Control Authority's Wastewater System Assets at Docket No. A2019-3015173

This Protest is filed on behalf of The Borough of Swarthmore, 121 Park Ave., Swarthmore, PA 19081 (herein "The Borough").

The Borough sanitary sewer system connects with the DELCORA sanitary sewer system via the Central Delaware County Authority (CDCA). DELCORA processes Swarthmore sanitary waste and determines Swarthmore sewer rates under service agreements with CDCA that will be acquired by Aqua as part of the acquisition.

The sale of this sewer system cannot proceed fairly without transparent public valuation of the assets, and implementation of a proper Rate Stabilization Agreement subject to PUC oversight. A Rate Stabilization Agreement subject to PUC oversight is necessary to protect customers.

The private Trust proposed by Aqua and DELCORA is not a proper substitute for a Rate Stabilization Agreement with oversight by the PUC of all rate requests by Aqua. The private unregulated Trust proposed by Aqua and DELCORA will lull ratepayers into acquiescing in improper rate hikes. The Trust will avoid proper PUC oversight of the actual utility rates. The Trust and the DELCORA Sale should not be approved.

The transfer of DELCORA's assets to Aqua is NOT in the best financial interests of rate payers in the service area. This sale should not be approved.

Summary of Reasons for Protest

1. The funding and operation of the Trust is a circular transaction that principally benefits Aqua and not DELCORA customers.
2. The Trust does not provide a true discount of the sewer rate - the Trust only provides a partial forbearance on collection of the full billed rate and no actual rate stabilization.
3. The Trust is a fund with no practical legal accountability to customers, ratepayers and consumers and will not be subject to PUC oversight.
4. The Trust is inadequate compensation for transfer to Aqua of DELCORA assets for an undervalued price with no regulated rate stabilization agreement.
5. Aqua is planning immediate substantial rate Increases in order to fund their corporate expansion. The DELCORA Public system must be maintained in Public hands to avoid burdening customers with the cost of Aqua's private profit margin.
6. This asset transfer should not be approved. This sale cannot proceed fairly without a transparent arms-length negotiation of the asset value and a robust rate stabilization agreement subject to regulatory oversight.

7. The DELCORA System is a relatively healthy sewer system. It is not in distress. DELCORA does not need to be rescued by Aqua.

8. Swarthmore Borough has a statutory obligation to provide sewer service within its municipal boundaries, and so the Borough has a direct interest in insuring proper economic and service impacts of the Aqua-DELCORA asset transfer.

The Pennsylvania Utility Commission should deny Aqua's Application for approval of the acquisition of DELCORA.

The deadline for the Public and Municipalities to comment, object and protest these transactions should be extended to October 1, 2020, and notice should be given of extra steps taken by the agencies to ensure significant Public and Municipal participation in the review process due to the Covid-19 emergency.

1. The Funding and Operation of the Trust is a Circular Transaction That Principally Benefits Aqua and Not the DELCORA Customers.

On November 13, 2019, the CDCA board conducted a Public meeting in Ridley Township, PA, of on the subject of Aqua's acquisition of DELCORA, which was attended by representatives of DELCORA and Aqua. At that meeting a member of the Public (Ross F. Schmucki) requested a copy of the Trust to review. Christopher Franklin, Chairman and CEO of Aqua America, and David Nasatir, Esq. (outside counsel for DELCORA) were at that meeting, and they communicated to Mr. Schmucki that Mr. Nasatir was authorized to answer questions about the Trust and would provide Mr. Schmucki with a copy of the Trust. On December 18, 2019, Mr. Nasatir emailed the Trust to Mr. Schmucki.

Please see the Nov. 17, 2019 email of Mr. Franklin attached as Exhibit A; the Dec. 18, 2019 email of Mr. Nasatir attached as Exhibit B; and the Trust document attached as Exhibit C.

Under the combined terms of the Aqua-DELCORA asset transfer agreement and the Trust the money Aqua provides for the Trust will be refunded back to Aqua over the life of the Trust. As Mr. Franking says in his own words to Mr. Schmucki, ". . . Aqua will be the recipient of those funds from the Trust that offset rates." (See Mr. Franklin's email to Mr. Schmucki.)

It is a circular transaction which principally benefits Aqua and not the DELCORA customers. In this sale Aqua will take the DELCORA purchase money out of one Aqua account and that money will be paid back over the life of the Trust into another Aqua account. That circular transaction serves Aqua's interests, but does not serve the interests of DELCORA customers. The Borough of Swarthmore objects to that arrangement.

The Trust provides that Aqua will pay the funds to DELCORA, who will deposit the funds into the Trust account, and then DELCORA will direct the Trust to pay those funds to Aqua Pennsylvania Wastewater, Inc. The funds are never paid to customers.

The Trust money may only be paid to Aqua Pennsylvania Wastewater, Inc. as the "Distribution Agent" under the Trust. DELCORA may only direct the Trust to distribute Trust funds to Aqua Pennsylvania Wastewater, Inc. Aqua distributes the money to itself through the Trust and the Aqua subsidiary, but never to the customers. The Trust provides as follows on page 1,

" . . . Aqua Wastewater will be the designated third party Distribution Agent, pursuant to which (a) Aqua Wastewater will bill DELCORA Customers at reduced levels and (b) the Trust will

reimburse Aqua Wastewater for such reductions, as and when so directed by the Settlor pursuant to Article 5 below;"

2. The Trust Does Not Provide a True Discount of the Rates. The Trust Only Provides a Partial Forbearance on Collection of the Full Billed Rate and No Rate Stabilization.

The Aqua-DELCORA Asset Transfer Agreement and the Trust combined do not provide a true discount of the rate. If it were a true discount, then Aqua would reduce or stabilize the sewer rate. Aqua is not reducing or stabilizing the actual sewer rates under this deal. Aqua's PUC Application says that,

"Aqua is not presenting a rate stabilization plan. Aqua is proposing to implement DELCORA's existing rates after Closing and to maintain those rates until the next Aqua rate proceeding. . . . DELCORA will take a portion of the proceeds of the Proposed Transaction and place them into a trust for the benefit of the DELCORA customers, and is requesting to apply payments to DELCORA customers from the Trust through Aqua's billing process." (PUC Application, page 8, Section VI, paragraph 36)

Aqua plans to raise its rates at the next Aqua rate proceeding in Pennsylvania. Aqua will raise the rates considerably, but the Trust will make the rates appear artificially low. The public will be lulled into complacency by the Trust, never realizing how high the actual rates have risen, until it is too late when the Trust expires.

In fact Aqua will charge the full undiscounted rate which will rise regularly. The customer has no right to reduce that rate, and Aqua will oppose any attempt before the PUC to reduce the rate. That full undiscounted rate will be billed to the customer despite the Trust.

The minimal benefit that the Trust provides is a partial forbearance on collection of the full billed rate. The rate is not discounted - it is fully billed. Aqua Pennsylvania Wastewater, Inc. partially forbears from collecting the full billed rate in light of funds it receives from the Trust. Instead of paying the customers/ratepayers for the sewer system Aqua has purchased, Aqua pays the Trust, which then pays Aqua. It is a circular transaction.

Aqua Wastewater forebears from collecting its full billed rate only to the extent the Trust pays Aqua Pennsylvania Wastewater, Inc. If the Trust investments are poorly managed, there is no forbearance on full rate collection. If the Trust runs out of money, there is no forbearance. The Trust is a poor substitute for a true Rate Stabilization Agreement, where Aqua actually maintains low rates regulated by the PUC that benefit the customer over the long-haul.

3. The Trust is a Fund With No Legal Accountability to Customers, Ratepayers and Consumers and Not Subject to PUC Oversight.

The Trust arises from an unregulated side agreement and Memorandum of Understanding between Aqua and DELCORA. (See Aqua's PUC Application, Exhibit U2, Appendix B, the Memo of Understanding attached to William C. Packer's Testimony on behalf of Aqua).

Aqua describes the Trust in its Application to the PUC, but the Trust is not mentioned or defined in the Aqua-DELCORA Asset Purchase Agreement. The Trust is not part of the Asset Purchase Agreement. The Trust is private, unregulated and it sits outside the Asset Transfer transaction.

Under the Trust there is no independent Trustee, or neutral Master, to determine whether Aqua's rate increases are fair, or in accord with the sale agreement. The Trustee (Univest Bank) does not even have

authority to determine whether proper payments are being made to Aqua Pennsylvania Wastewater, Inc. under the Trust. There is no independent supervision of the Trust.

"The Trustee shall have no duty to determine whether or not the amounts or timing of such Distributions are proper under the Rate Stabilization Agreement." (see Trust Agreement, section 4.1(a).

The forbearance on collection of the full billed rate is not a legally enforceable right held by the DELCORA customers. The Trust is not subject to government regulation. It is not regulated by the PUC or any other government agency. It is a private, unbreakable Trust.

The customers are on their own, and have no one to sue to enforce the forbearance. Aqua cannot be sued because Aqua is not a party to the Trust. Customers cannot sue DELCORA or the Trustee (Univest Bank) because DELCORA and the Trustee have no discretion under the Trust to do anything except make payments to Aqua Pennsylvania Wastewater, Inc. The customer cannot sue Aqua Pennsylvania Wastewater, Inc. because it does not control the Trust. The amount that any single customer may seek to recover will be too small to justify the cost of litigation.

The Trust is a Fund with no accountability to customers or to municipalities. The Trust is an investment bank account that protects and insulates the Trust money from any and all creditors, so that it may be distributed to Aqua, and only to Aqua, over the life of the Trust.

4. The Trust Is Inadequate Compensation For the Sale of DELCORA for An Undervalued Price With No Regulated Rate Stabilization Agreement.

The value of the partial forbearance on bill collection of the full billed rate (the "discount") is minuscule compared to the value DELCORA is transferring to Aqua in this transaction. It is not a square deal. The DELCORA system is grossly undervalued in the transaction.

There was no public bidding process for the purchase of the DELCORA system. That, in itself, guarantees that the sale is undervalued. In Pennsylvania a municipality is not allowed to sell a \$30,000 truck without getting multiple written bids. Yet DELCORA is being allowed to sell a sewer system worth hundreds of millions of dollars and serving 100,000+ customers in dozens of municipalities without a single competitive bid. The lack of bidding guarantees that the asset is severely undervalued. The price paid by Aqua is unfairly low.

Aqua's biggest competitor (American Water Works Co.) published an open letter on December 12, 2019, in the DELCO Times newspaper stating it wished to bid on the DELCORA system and the asset had to be worth at least \$400 million. American Water Works was shut out.

The Aqua PUC Application reveals the following valuations for DELCORA by private appraisers hired by Aqua and DELCORA.

\$408,883,000 appraisal by Gannett Fleming
\$308,194,006 appraisal by ScottMadden
\$358,538,503 average appraisal
\$276,500,000 agreed Aqua purchase price

Aqua is paying a price that is \$31,694,006 less than the lowest private appraisal with no public bidding and no good explanation.

Aqua estimates that the annual revenue from DELCORA customers is \$70,978,127 and the annual expense is \$41,408,283. (Aqua PUC Application paragraphs 42-43, William C. Packer Testimony, Exhibit U2.) That leaves operating income of almost \$30 million dollars per year (\$29,569,844). That dependable, monopoly, stream of income makes the sale price even more undervalued.

Aqua testified in its PUC Application that the price it will pay for each DELCORA retail customer connection is \$2,250. The price Aqua paid for each retail connection in its most recent other acquisition was \$7,750. That price shortfall clearly shows that the DELCORA customers are significantly underpriced in the sale to Aqua. (Testimony of Aqua VP, William C. Packer, Exhibit U2, pages 9-10).

The facts do not support public claims by Aqua and DELCORA that they low-balled the sale price in order to protect customers from an excessive valuation and future rate hikes. That claim is not genuine and not supported by facts. It is clear that Aqua and DELCORA undervalued the asset and negotiated a poor deal for the customers. Aqua was the committed future employer of the DELCORA negotiating team, and Aqua was effectively negotiating with itself.

Aqua offered employment to the DELCORA negotiating team during the negotiation of the sale. Aqua owned both sides of the negotiating table. The jobs of the Seller (DELCORA) were guaranteed by the Buyer (Aqua). (Asset Purchase Agreement, Section 7.03 Personnel Matters & Schedule 7.03 Transferred Personnel, including Employee No. 129, DELCORA Executive Director.)

5. Aqua is Planning Immediate Substantial Rate Increases in Order to Fund Their Corporate Expansion. The DELCORA Public Sewer System Must Be Maintained in Public Hands to Avoid Burdening Customers With the Cost of Aqua's Private Profit Margin.

The VP Controller of Aqua has testified that the sale of DELCORA to Aqua will result in an immediate 12.55% rate increase to DELCORA customers, a 4.58% rate increase to Aqua water customers and a 14.32% rate increase to Aqua Wastewater customers. (Aqua PUC Application, Testimony of William C. Packer, Exhibit U2, pages 1 & 4)

The Trust will temporarily provide an undefined amount of partial forbearance on collecting these rate increases, but the substantial rate increases themselves will be billed, and permanently "baked into" the customers' long-term, permanent billing rate. The Trust involves a circular payment where funds that DELCORA customers should be paid for the sale of their sewer system are used to finance the Trust in order to hide the impact of the Aqua rate increases. Aqua underpays \$276 million for DELCORA. Instead of paying the purchase price of \$276 million to the ratepayers and Municipalities who financed and authorized the system, Aqua will pay the funds to the empty, defunct shell of DELCORA (now controlled by Aqua). The empty defunct shell of DELCORA then pays the funds to the Trust. The Trust finally pays the funds to Aqua Wastewater, and the circle of payments is complete. The DELCORA customers are left out of the circle of payments.

Aqua will argue that the customers will receive valuable "discounted" sewer service. That is like a store that jacks up their prices before a sale, then "discounts" the prices to provide a "bargain."

Testimony of William C. Packer
PUC App, Exhibit U2

Q: By whom are you employed and in what capacity?

A: I am employed by Aqua Pennsylvania, Inc. ("Aqua PA"), as Vice President - Controller. I also oversee certain financial operations for our parent company and its subsidiary Aqua New

Jersey, Inc. ("Aqua NJ"). Aqua PA is the parent company of Aqua Pennsylvania Wastewater, Inc. ("Aqua" or "the Company").

Q: Have you calculated the estimated incremental rate impact of the Proposed Transaction on Aqua's existing customers and each of the DELCORA rate groups?

A: Yes. The potential impact to DELCORA customers is 12.55%, the potential impact to Aqua wastewater customers is 14.32%, and Aqua water customers is 4.58%. This analysis is required by the Commission and I would note this does not include the effect that the Trust will have to assist DELCORA customers in paying for their own cost of service in their utility bills.

Aqua will raise its rates at the next Aqua rate proceeding in Pennsylvania. The Public is lulled into complacency by the Trust, never focusing on the high actual billed rates until it is too late when the Trust expires. The Trust will conceal the pain of the rate hikes during the life of the Trust. By the time the Trust expires it will be too late to challenge those excessive rate hikes.

6. This Sale Should Not Be Approved. This Sale Cannot Proceed Fairly Without Transparent Arms-length Negotiation of the Asset Value and a Robust Rate Stabilization Agreement Subject to Regulatory Oversight.

This sale should not be approved. The sale of this asset cannot proceed fairly without transparent public valuation of the asset, and implementation of a robust Rate Stabilization Agreement subject to PUC oversight. A robust Rate Stabilization Agreement subject to PUC oversight is necessary to protect customers and give them tangible rights to challenge rates. A deceptive Trust such as this one which suckers ratepayers into acquiescing in rate hikes and avoids PUC oversight of the Trust should never be approved

The absence of a Rate Stabilization Agreement makes these assets attractive for resale. If you want to buy an apartment building, will you pay more for a building with, or without, rent control? Of course you would pay more for an asset without rent/rate control. Aqua can sell off portions of the DELCORA assets over time to another company to raise capital, to eliminate unexpected capital investment costs, to avoid union obligations and to avoid regulatory or environmental liabilities. There is no guarantee that Aqua will continue as the owner if market conditions change. Lower return on investment or other headwinds can cause Aqua to lose interest and sell off parts of the system. If Aqua sells a part of the system to another company, the terms of the distributions from the Trust may change, and no longer result in forbearance of collection of the full rate. This asset sale absolutely requires a robust rate stabilization plan subject to regulatory oversight by the PUC.

7. The DELCORA System is a Relatively Healthy Sewer System. The System is Not in Distress. DELCORA Does Not Need to Be Rescued by Aqua.

The DELCORA system is relatively healthy and does not need to be sold. DELCORA has a healthy reserve balance. In 2013 and 2018 DELCORA presented the Municipalities in its service area with updates to its ACT 537 Plans, which made no suggestion that DELCORA should be sold as an alternative under the Plans. In 2013 and 2018 DELCORA presented viable and affordable plans to maintain and upgrade facilities. Swarthmore Borough approved the DELCORA ACT 537 Plans in 2013 and 2018. It was a total surprise and shock when Aqua announced its takeover of DELCORA. That kind of surprise announcement is typical in the high-stakes world of a publicly traded company with a "hot stock value" like Aqua. That is not how a public utility providing a trusted essential public service should operate.

8. Swarthmore Borough has a statutory obligation to provide sewer service within its municipal boundaries, and so the Borough has a direct interest in insuring proper economic and service impacts of the Aqua-DELCORA asset transfer.

Conclusion

The Borough of Swarthmore requests that,

1. The Pennsylvania Utility Commission deny Aqua's Application for approval of the acquisition of DELCORA.
2. The deadline for the Public and Municipalities to comment, protest or object to this transaction be extended to October 1, 2020, and notice be given of opportunities to participate in virtual hearings.

THE BOROUGH OF SWARTHMORE

By: 

Date:

Protest in the PUC by The Swarthmore Planning Commission

Objecting to

Aqua Pennsylvania Wastewater, Inc. Section 1329 Application for the Acquisition of Delaware County Regional Water Quality Control Authority's Wastewater System Assets at Docket No. A2019-3015173

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Summary of Reasons for Protest

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The minimal benefit that the Trust provides is a partial forbearance on collection of the full billed rate. The rate is not discounted - it is fully billed. Aqua Pennsylvania Wastewater, Inc. partially forbears from collecting the full billed rate in light of funds it receives from the Trust. Instead of paying the customers/ratepayers for the sewer system Aqua has purchased, Aqua pays the Trust, which then pays Aqua. It is a circular transaction.

Aqua Wastewater forebears from collecting its full billed rate only to the extent the Trust pays Aqua Pennsylvania Wastewater, Inc. If the Trust investments are poorly managed, there is no forbearance on full rate collection. If the Trust runs out of money, there is no forbearance. The Trust is a poor substitute for a true Rate Stabilization Agreement, where Aqua actually maintains low rates regulated by the PUC that benefit the customer over the long-haul.

3. The Trust is a Fund With No Legal Accountability to Customers, Ratepayers and Consumers and Not Subject to PUC Oversight.

The Trust arises from an unregulated side agreement and Memorandum of Understanding between Aqua and DELCORA. (See Aqua's PUC Application, Exhibit U2, Appendix B, the Memo of Understanding attached to William C. Packer's Testimony on behalf of Aqua).

Aqua describes the Trust in its Application to the PUC, but the Trust is not mentioned or defined in the Aqua-DELCORA Asset Purchase Agreement. The Trust is not part of the Asset Purchase Agreement. The Trust is private, unregulated and it sits outside the Asset Transfer transaction.

Under the Trust there is no independent Trustee, or neutral Master, to determine whether Aqua's rate increases are fair, or in accord with the sale agreement. The Trustee (Univest Bank) does not even have

authority to determine whether proper payments are being made to Aqua Pennsylvania Wastewater, Inc. under the Trust. There is no independent supervision of the Trust.

"The Trustee shall have no duty to determine whether or not the amounts or timing of such Distributions are proper under the Rate Stabilization Agreement." (see Trust Agreement, section 4.1(a)).

The forbearance on collection of the full billed rate is not a legally enforceable right held by the DELCORA customers. The Trust is not subject to government regulation. It is not regulated by the PUC or any other government agency. It is a private, unbreakable Trust.

The customers are on their own, and have no one to sue to enforce the forbearance. Aqua cannot be sued because Aqua is not a party to the Trust. Customers cannot sue DELCORA or the Trustee (Univest Bank) because DELCORA and the Trustee have no discretion under the Trust to do anything except make payments to Aqua Pennsylvania Wastewater, Inc. The customer cannot sue Aqua Pennsylvania Wastewater, Inc. because it does not control the Trust. The amount that any single customer may seek to recover will be too small to justify the cost of litigation.

The Trust is a Fund with no accountability to customers or to municipalities. The Trust is an investment bank account that protects and insulates the Trust money from any and all creditors, so that it may be distributed to Aqua, and only to Aqua, over the life of the Trust.

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The value of the partial forbearance on bill collection of the full billed rate (the "discount") is minuscule compared to the value DELCORA is transferring to Aqua in this transaction. It is not a square deal. The DELCORA system is grossly undervalued in the transaction.

There was no public bidding process for the purchase of the DELCORA system. That, in itself, guarantees that the sale is undervalued. In Pennsylvania a municipality is not allowed to sell a \$30,000 truck without getting multiple written bids. Yet DELCORA is being allowed to sell a sewer system worth hundreds of millions of dollars and serving 100,000+ customers in dozens of municipalities without a single competitive bid. The lack of bidding guarantees that the asset is severely undervalued. The price paid by Aqua is unfairly low.

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The Aqua PUC Application reveals the following valuations for DELCORA by private appraisers hired by Aqua and DELCORA.

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Aqua is paying a price that is \$31,694,006 less than the lowest private appraisal with no public bidding and no good explanation.

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The facts do not support public claims by Aqua and DELCORA that they low-balled the sale price in order to protect customers from an excessive valuation and future rate hikes. That claim is not genuine and not supported by facts. It is clear that Aqua and DELCORA undervalued the asset and negotiated a poor deal for the customers. Aqua was the committed future employer of the DELCORA negotiating team, and Aqua was effectively negotiating with itself.

Aqua offered employment to the DELCORA negotiating team during the negotiation of the sale. Aqua owned both sides of the negotiating table. The jobs of the Seller (DELCORA) were guaranteed by the Buyer (Aqua). (Asset Purchase Agreement, Section 7.03 Personnel Matters & Schedule 7.03 Transferred Personnel, including Employee No. 129, DELCORA Executive Director.)

5. Aqua is Planning Immediate Substantial Rate Increases in Order to Fund Their Corporate Expansion. The DELCORA Public Sewer System Must Be Maintained in Public Hands to Avoid Burdening Customers With the Cost of Aqua's Private Profit Margin.

The VP Controller of Aqua has testified that the sale of DELCORA to Aqua will result in an immediate 12.55% rate increase to DELCORA customers, a 4.58% rate increase to Aqua water customers and a 14.32% rate increase to Aqua Wastewater customers. (Aqua PUC Application, Testimony of William C. Packer, Exhibit U2, pages 1 & 4)

The Trust will temporarily provide an undefined amount of partial forbearance on collecting these rate increases, but the substantial rate increases themselves will be billed, and permanently "baked into" the customers' long-term, permanent billing rate. The Trust involves a circular payment where funds that DELCORA customers should be paid for the sale of their sewer system are used to finance the Trust in order to hide the impact of the Aqua rate increases. Aqua underpays \$276 million for DELCORA. Instead of paying the purchase price of \$276 million to the ratepayers and Municipalities who financed and authorized the system, Aqua will pay the funds to the empty, defunct shell of DELCORA (now controlled by Aqua). The empty defunct shell of DELCORA then pays the funds to the Trust. The Trust finally pays the funds to Aqua Wastewater, and the circle of payments is complete. The DELCORA customers are left out of the circle of payments.

Aqua will argue that the customers will receive valuable "discounted" sewer service. That is like a store that jacks up their prices before a sale, then "discounts" the prices to provide a "bargain."

Testimony of William C. Packer
PUC App, Exhibit U2

Q: By whom are you employed and in what capacity?

A: I am employed by Aqua Pennsylvania, Inc. ("Aqua PA"), as Vice President - Controller. I also oversee certain financial operations for our parent company and its subsidiary Aqua New

Jersey, Inc. ("Aqua NJ"). Aqua PA is the parent company of Aqua Pennsylvania Wastewater, Inc. ("Aqua" or "the Company").

Q: Have you calculated the estimated incremental rate impact of the Proposed Transaction on Aqua's existing customers and each of the DELCORA rate groups?

A: Yes. The potential impact to DELCORA customers is 12.55%, the potential impact to Aqua wastewater customers is 14.32%, and Aqua water customers is 4.58%. This analysis is required by the Commission and I would note this does not include the effect that the Trust will have to assist DELCORA customers in paying for their own cost of service in their utility bills.

Aqua will raise its rates at the next Aqua rate proceeding in Pennsylvania. The Public is lulled into complacency by the Trust, never focusing on the high actual billed rates until it is too late when the Trust expires. The Trust will conceal the pain of the rate hikes during the life of the Trust. By the time the Trust expires it will be too late to challenge those excessive rate hikes.

6. This Sale Should Not Be Approved. This Sale Cannot Proceed Fairly Without Transparent Arms-length Negotiation of the Asset Value and a Robust Rate Stabilization Agreement Subject to Regulatory Oversight.

This sale should not be approved. The sale of this asset cannot proceed fairly without transparent public valuation of the asset, and implementation of a robust Rate Stabilization Agreement subject to PUC oversight. A robust Rate Stabilization Agreement subject to PUC oversight is necessary to protect customers and give them tangible rights to challenge rates. A deceptive Trust such as this one which suckers ratepayers into acquiescing in rate hikes and avoids PUC oversight of the Trust should never be approved

The absence of a Rate Stabilization Agreement makes these assets attractive for resale. If you want to buy an apartment building, will you pay more for a building with, or without, rent control? Of course you would pay more for an asset without rent/rate control. Aqua can sell off portions of the DELCORA assets over time to another company to raise capital, to eliminate unexpected capital investment costs, to avoid union obligations and to avoid regulatory or environmental liabilities. There is no guarantee that Aqua will continue as the owner if market conditions change. Lower return on investment or other headwinds can cause Aqua to lose interest and sell off parts of the system. If Aqua sells a part of the system to another company, the terms of the distributions from the Trust may change, and no longer result in forbearance of collection of the full rate. This asset sale absolutely requires a robust rate stabilization plan subject to regulatory oversight by the PUC.

7. The DELCORA System is a Relatively Healthy Sewer System. The System is Not in Distress. DELCORA Does Not Need to Be Rescued by Aqua.

The DELCORA system is relatively healthy and does not need to be sold. DELCORA has a healthy reserve balance. In 2013 and 2018 DELCORA presented the Municipalities in its service area with updates to its ACT 537 Plans, which made no suggestion that DELCORA should be sold as an alternative under the Plans. In 2013 and 2018 DELCORA presented viable and affordable plans to maintain and upgrade facilities. Swarthmore Borough approved the DELCORA ACT 537 Plans in 2013 and 2018. It was a total surprise and shock when Aqua announced its takeover of DELCORA. That kind of surprise announcement is typical in the high-stakes world of a publicly traded company with a "hot stock value" like Aqua. That is not how a public utility providing a trusted essential public service should operate.

8. Swarthmore Borough has a statutory obligation to provide sewer service within its municipal boundaries, and so the Borough has a direct interest in insuring proper economic and service impacts of the Aqua-DELCORA asset transfer.

Conclusion

The Swarthmore Planning commission requests that,

1. The Pennsylvania Utility Commission deny Aqua's Application for approval of the acquisition of DELCORA.
2. The deadline for the Public and Municipalities to comment, protest or object to this transaction be extended to October 1, 2020, and notice be given of opportunities to participate in virtual hearings.

SWARTHMORE PLANNING COMMISSION

By: Chris DeBruyn - Chairperson

Date: August 28, 2020

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Comments to an Application

A-2019-3015173 9/16/20 JK

Filing this form does NOT make you a Party to the case.

You have two choices if you decide not to file a formal protest and become a party to the Application case:

1) If a public input hearing is held during the proceedings, you may appear before an administrative law judge and present testimony.

Public input hearings are sometimes held in Application cases. If a public input hearing is scheduled, it may be held in your area to give the public an opportunity to present testimony in person before an administrative law judge regarding the Application. Testimony made upon oath or affirmation at a public input hearing will be considered by the administrative law judge when rendering a decision in the case.

Notice of a public input hearing will be published in a newspaper of general circulation in your area, publicized through Commission press releases, and noted on the Commission's website: www.puc.pa.gov.

2) You may file written comments regarding the Application with the Secretary of the Commission which will be placed in the public comment folder of the case and may be reviewed by the Commission. However, written comments are not evidence and will not be considered by the administrative law judge in rendering a decision in the case.

To file written Comments - complete this form. (please type or print legibly in ink).

Application Docket Number: A- 2019-3015173

Protestant Information

Provide your name, mailing address, county, and telephone numbers.

Name Swarthmore Planning Commission – Chris DeBruyn, Chairperson

Street/P.O. Box 121 Park Avenue Apt #

City Swarthmore State PA Zip 19081

County Delaware

Telephone Number(s) Where We Can Contact You During the Day:

(610) 283-4514 (Mobile)

E-mail Address (optional):

chris@debruynngroup.com

Please state your comments about this Application. You may use additional paper and attach to this form.

Chris DeBruyn (Print your name)


(Original Signature)

August 28, 2020
(Date)

HOW TO FILE

To file your Comments with the PUC, mail the completed form (by first class mail along with any attachments) to the address listed below:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Comments for your records.

ROSS F. SCHMUCKI
218 Rutgers Ave.
Swarthmore, PA 19081

July 31, 2020

A-2019-3015173 9/16/20 JK

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

Re: Protest by Ross F. Schmucki in opposition to the Aqua Pennsylvania Wastewater, Inc.
Section 1329 Application for the Acquisition of Delaware County Regional Water Quality
Control Authority's Wastewater System Assets at Docket No. A2019-3015173

Dear Secretary Chiavetta,

Enclosed please find my (1) Comment to an Application Form and (2) Statement with Exhibits
Protesting the Aqua Pennsylvania Wastewater, Inc. Section 1329 Application for the Acquisition of
Delaware County Regional Water Quality Control Authority's Wastewater System Assets at
Docket No. A2019-3015173. Please accept my Protest for filing with the PUC.

I submit this Protest on my own behalf as a private ratepayer and system user connected to
the DELCORA public sewer system. I am familiar with these matters because I serve on Swarthmore
Borough Council as Chair of the Council's Public Works Committee. I am not submitting this
statement in my capacity as a public official. The Borough and Planning Commission will file their
own separate comments. This is my private opinion. In my opinion the transfer of assets to Aqua is
not in the best financial interests of all rate payers in the service area.

Thank you for accepting this Protest.

Sincerely,


Ross F. Schmucki

enc. Protest of Ross F. Schmucki with Exhibits, dated July 31, 2020

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Comments to an Application

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Application Docket Number: A- 2019-3015173

Protestant Information

Provide your name, mailing address, county, and telephone numbers.

Name: Ross F. Schmucki

Street: 218 Rutgers Ave.

City: Swarthmore State: PA Zip: 19081

County: Delaware County

Telephone Number(s) Where We Can Contact You During the Day:

(610) 420-3430 (home) (610) 420-3430 (mobile)

E-mail Address (optional): rschmucki@gmail.com

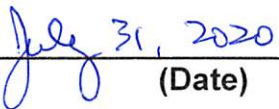
Please state your comments about this Application. You may use additional paper and attach to this form.

Attached please find attached the Statement of Ross F. Schmucki with Exhibits Protesting the -

Aqua Pennsylvania Wastewater, Inc. Section 1329 Application for the Acquisition of Delaware County Regional Water Quality Control Authority's Wastewater System Assets at Docket No. A2019-3015173

Ross F. Schmucki (Print your name)


(Original Signature)


(Date)

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Statement of Ross F. Schmucki Commenting, Objecting, and Protesting the

1. Aqua acquisition of DELCORA

2. Aqua's Application to the Pennsylvania Utility Commission for Approval

3. DELCORA's Asset Transfer Act 537 Plan Update of July 1, 2020 Submitted to PA DEP

My name is Ross F. Schmucki. I reside at 218 Rutgers Ave., Swarthmore, PA 19081. I submit this Comment/Objection/Protest on my own behalf as a private ratepayer and system user connected to the DELCORA public sewer system. Our sanitary sewer system connects with the DELCORA sanitary sewer system via the Central Delaware County Authority (CDCA). DELCORA processes our sanitary waste and determines our sewer rates under service agreements with CDCA that will be acquired by Aqua as part of the acquisition.

I am familiar with these matters because I serve on Swarthmore Borough Council as Chair of the Council's Public Works Committee, the committee dealing with sewer issues. I am not submitting this statement in my capacity as a public official. This is my private opinion.

By this Statement I comment, object and protest the following proposed transactions by Aqua and DELCORA:

1. Aqua's acquisition of DELCORA under the current terms of the Agreement of Sale dated Sept. 17, 2019, as Amended February 24, 2020.

2. Aqua's Application to the Pennsylvania Utility Commission (Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority Docket No. A-2019-3015173.)

3. DELCORA's Asset Transfer Act 537 Plan Update of July 1, 2020, submitted to PA DEP for Approval.

The transfer of assets to Aqua is NOT in the best financial interests of all rate payers in the service area, as explained in my comments below.

Summary of Statement

1. The funding and operation of the Trust is a circular transaction that principally benefits Aqua and not DELCORA customers.
2. The Trust does not provide a true discount of the sewer rate - the Trust only provides a partial forbearance on collection of the full billed rate and no actual rate stabilization.
3. The Trust is a fund with no practical legal accountability to customers, ratepayers and consumers and will not be subject to PUC oversight.

4. The Trust is inadequate compensation for transfer to Aqua of DELCORA assets for an undervalued price with no regulated rate stabilization agreement.

5. Aqua is planning immediate substantial rate increases in order to fund their corporate expansion. The DELCORA assets must be maintained in Public hands to avoid burdening customers with the cost of Aqua's profit margin.

6. This asset transfer should not be approved. This sale cannot proceed fairly without a transparent arms-length negotiation of the asset value and a robust rate stabilization agreement subject to regulatory oversight.

7. The DELCORA System is a relatively healthy sewer system. It is not in distress. DELCORA does not need to be rescued by Aqua.

Relief Requested -

1. The DELCORA Asset Purchase Agreement should be terminated.

2. The Pennsylvania Utility Commission should deny Aqua's Application for approval of the acquisition of DELCORA.

3. The Pennsylvania Department of Environmental Protection should deny approval of DELCORA's Asset Transfer Act 537 Plan Update, dated July 1, 2020, and Order DELCORA to submit an alternative Plan that does not involve sale to Aqua.

4. The deadline for the Public and Municipalities to comment, object and protest these transactions should be extended to October 1, 2020, and notice should be given of extra steps taken by the agencies to ensure significant Public and Municipal participation in the review process due to the Covid-19 emergency.

1. The Funding and Operation of the Trust is a Circular Transaction That Principally Benefits Aqua and Not the DELCORA Customers.

On November 13, 2019, I attended a Public meeting in Ridley Township, PA, of the CDCA board on the subject of Aqua's acquisition of DELCORA, which was attended by representatives of DELCORA and Aqua. At that meeting I asked for a copy of the Trust to review. Christopher Franklin, Chairman and CEO of Aqua America, and David Nasatir, Esq. (outside counsel for DELCORA) were at that meeting, and they both told me that Mr. Nasatir was authorized to answer questions about the Trust and would provide me with a copy of the Trust. On December 18, 2019, Mr. Nasatir emailed me the Trust.

Please see the Nov. 17, 2019 email of Mr. Franklin attached as Exhibit A; the Dec. 18, 2019 email of Mr. Nasatir attached as Exhibit B; and the Trust document attached as Exhibit C.

Under the combined terms of the Aqua-DELCORA asset transfer agreement and the Trust the money Aqua provides for the Trust will be refunded back to Aqua over the life of the Trust. As

Mr. Franking says in his own words to me, ". . . Aqua will be the recipient of those funds from the Trust that offset rates." (See Mr. Franklin's email to me.)

It is a circular transaction which principally benefits Aqua and not the DELCORA customers. In this sale Aqua will take the DELCORA purchase money out of one Aqua account and that money will be paid back over the life of the Trust into another Aqua account. That circular transaction serves Aqua's interests, but does not serve the interests of DELCORA customers. I object to that arrangement.

The Trust provides that Aqua will pay the funds to DELCORA, who will deposit the funds into the Trust account, and then DELCORA will direct the Trust to pay those funds to Aqua Pennsylvania Wastewater, Inc. The funds are never paid to customers.

The Trust money may only be paid to Aqua Pennsylvania Wastewater, Inc. as the "Distribution Agent" under the Trust. DELCORA may only direct the Trust to distribute Trust funds to Aqua Pennsylvania Wastewater, Inc. Aqua distributes the money to itself through the Trust and the Aqua subsidiary, but never to the customers. The Trust provides as follows on page 1,

" . . . Aqua Wastewater will be the designated third party Distribution Agent, pursuant to which (a) Aqua Wastewater will bill DELCORA Customers at reduced levels and (b) the Trust will reimburse Aqua Wastewater for such reductions, as and when so directed by the Settlor pursuant to Article 5 below;"

2. The Trust Does Not Provide a True Discount of the Rates. The Trust Only Provides a Partial Forbearance on Collection of the Full Billed Rate and No Rate Stabilization.

The Aqua-DELCORA Asset Transfer Agreement and the Trust combined do not provide a true discount of the rate. If it were a true discount, then Aqua would reduce or stabilize the sewer rate. Aqua is not reducing or stabilizing the actual sewer rates under this deal. Aqua's PUC Application says that,

"Aqua is not presenting a rate stabilization plan. Aqua is proposing to implement DELCORA's existing rates after Closing and to maintain those rates until the next Aqua rate proceeding. . . . DELCORA will take a portion of the proceeds of the Proposed Transaction and place them into a trust for the benefit of the DELCORA customers, and is requesting to apply payments to DELCORA customers from the Trust through Aqua's billing process." (PUC Application, page 8, Section VI, paragraph 36)

Aqua plans to raise its rates at the next Aqua rate proceeding in Pennsylvania. Aqua will raise the rates considerably, but the Trust will make the rates appear artificially low. The public will be lulled into complacency by the Trust, never realizing how high the actual rates have risen, until it is too late when the Trust expires.

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5. Aqua is Planning Immediate Substantial Rate Increases in Order to Fund Their Corporate Expansion. The DELCORA Sewer System Must Be Maintained in Public Hands to Avoid Burdening Customers With the Cost of Aqua's "Hot Stock" Profit Margin.

The VP Controller of Aqua has testified that the sale of DELCORA to Aqua will result in an immediate 12.55% rate increase to DELCORA customers, a 4.58% rate increase to Aqua water customers and a 14.32% rate increase to Aqua Wastewater customers. (Aqua PUC Application, Testimony of William C. Packer, Exhibit U2, pages 1 & 4)

The Trust will temporarily provide an undefined amount of partial forbearance on collecting these rate increases, but the substantial rate increases themselves will be billed, and permanently "baked into" the customers' long-term, permanent billing rate. The Trust involves a circular payment where funds that DELCORA customers should be paid for the sale of their sewer system are used to finance the Trust in order to hide the impact of the Aqua rate increases. Aqua underpays \$276 million for DELCORA. Instead of paying the purchase price of \$276 million to the ratepayers and Municipalities who financed and authorized the system, Aqua will pay the funds to the empty, defunct shell of DELCORA (now controlled by Aqua). The empty defunct shell of DELCORA then pays the funds to the Trust. The Trust finally pays the funds to Aqua Wastewater, and the circle of payments is complete. The DELCORA customers are left out of the circle of payments.

Aqua will argue that the customers will receive valuable "discounted" sewer service. That is like a store that jacks up their prices before a sale, then "discounts" the prices to provide a "bargain."

Testimony of William C. Packer
PUC App, Exhibit U2

Q: By whom are you employed and in what capacity?

A: I am employed by Aqua Pennsylvania, Inc. ("Aqua PA"), as Vice President - Controller. I also oversee certain financial operations for our parent company and its subsidiary Aqua New Jersey, Inc. ("Aqua NJ"). Aqua PA is the parent company of Aqua Pennsylvania Wastewater, Inc. ("Aqua" or "the Company").

Q: Have you calculated the estimated incremental rate impact of the Proposed Transaction on Aqua's existing customers and each of the DELCORA rate groups?

A: Yes. The potential impact to DELCORA customers is 12.55%, the potential impact to Aqua wastewater customers is 14.32%, and Aqua water customers is 4.58%. This analysis is required by the Commission and I would note this does not include the effect that the Trust will have to assist DELCORA customers in paying for their own cost of service in their utility bills.

Aqua will raise its rates at the next Aqua rate proceeding in Pennsylvania. The Public is lulled into complacency by the Trust, never focusing on the high actual billed rates until it is too late when the Trust expires. The Trust will conceal the pain of the rate hikes during the life of the Trust. By the time the Trust expires it will be too late to challenge those excessive rate hikes.

6. This Sale Should Not Be Approved. This Sale Cannot Proceed Fairly Without Transparent Arms-length Negotiation of the Asset Value and a Robust Rate Stabilization Agreement Subject to Regulatory Oversight.

This sale should not be approved. The sale of this asset cannot proceed fairly without transparent public valuation of the asset, and implementation of a robust Rate Stabilization Agreement subject to PUC oversight. A robust Rate Stabilization Agreement subject to PUC oversight is necessary to protect customers and give them tangible rights to challenge rates. A deceptive Trust such as this one which suckers ratepayers into acquiescing in rate hikes and avoids PUC oversight of the Trust should never be approved

The absence of a Rate Stabilization Agreement makes these assets attractive for resale. If you want to buy an apartment building, will you pay more for a building with, or without, rent control? Of course you would pay more for an asset without rent/rate control. Aqua can sell off portions of the DELCORA assets over time to another company to raise capital, to eliminate unexpected capital investment costs, to avoid union obligations and to avoid regulatory or environmental liabilities. There is no guarantee that Aqua will continue as the owner if market conditions change. Lower return on investment or other headwinds can cause Aqua to lose interest and sell off parts of the system. If Aqua sells a part of the system to another company, the terms of the distributions from the Trust may change, and no longer result in forbearance of collection of the full rate. This asset sale absolutely requires a robust rate stabilization plan subject to regulatory oversight by the PUC.

7. The DELCORA System is a Relatively Healthy Sewer System. The System is Not in Distress. DELCORA Does Not Need to Be Rescued by Aqua.

The DELCORA system is relatively healthy and does not need to be sold. DELCORA has a healthy reserve balance. In 2013 and 2018 DELCORA presented the Municipalities in its service area with updates to its ACT 537 Plans, which made no suggestion that DELCORA should be sold as an alternative under the Plans. In 2013 and 2018 DELCORA presented viable and affordable plans to maintain and upgrade facilities. Swarthmore Borough approved the DELCORA ACT 537 Plans in 2013 and 2018. It was a total surprise and shock when Aqua announced its takeover of DELCORA. That kind of surprise announcement is typical in the high-stakes world of a publicly traded company

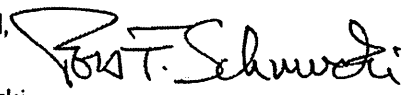
with a "hot stock value" like Aqua. That is not how a public utility providing a trusted essential public service should operate.

Conclusion

I request that,

1. The DELCORA Asset Purchase Agreement be terminated.
2. The Pennsylvania Utility Commission deny Aqua's Application for approval of the acquisition of DELCORA.
3. The Pennsylvania Department of Environmental Protection deny approval of DELCORA's Asset Transfer Act 537 Plan Update, dated July 1, 2020, and Order DELCORA to submit an alternative Plan that does not involve sale to Aqua.
4. The deadline for the Public and Municipalities to comment, protest or object to these 3 transactions be extended to October 1, 2020 (90 days), and notice be given of opportunities to participate in virtual hearings.

Respectfully submitted,


Ross F. Schmucki

Date: July 31, 2020

EXHIBIT A

To: R. Schmucki Comment



RE: [EXTERNAL] Swarthmore Borough - DELCORA Asset Purchase Trust

Franklin, Christopher H <CHFranklin@aquaamerica.com>

Sun, Nov 17, 2019 at 10:15 PM

To: Ross Schmucki <rossswatborough@gmail.com>, "david.nasatir@obermayer.com" <david.nasatir@obermayer.com>

Cc: Jane Billings <borough_manager@comcast.net>, "Luning, Christopher P" <CPLuning@aquaamerica.com>

Ross,

Thank you for the follow up to our conversation last week. As I mentioned while we were together, I am always happy to visit municipal leadership in areas we serve water. Swarthmore is no exception and as such, please feel free to contact me at any time with questions or comments or to consider dates for mutually convenient in-person discussions.

While we were together, you had questions regarding the DELCORA Trust that is in the process of formation. While I appreciate your questions and understand that you have a considerable background in this area of the law, I am not in a position to answer your questions. The customers are the beneficiaries of the Trust and Aqua will be the recipient of those funds from the Trust that offset rates. As such, Aqua executives and our legal team cannot participate in the planning or execution of the DELCORA Trust. As a representative of the customers in Swarthmore, you are asking the right questions and I am certain that representatives of DELCORA, including David Nasatir (DELCORA outside counsel) will be happy to answer your questions or address your concerns once the Trust documents are far enough along in their development.

Again, if you have any questions regarding Aqua's future ownership of DELCORA, I am happy to discuss them with you. All Trust questions should be posed to DELCORA and their counsel.

Thanks again for your time and follow up.

Best Regards,

Chris



Christopher Franklin

Chairman & CEO

O: 610-645-1081

M: 610-324-3179



From: Ross Schmucki <rossswatborough@gmail.com>
Sent: Wednesday, November 13, 2019 8:16 PM
To: Franklin, Christopher H <CHFranklin@aquaamerica.com>; david.nasatir@obermayer.com
Cc: Jane Billings <borough_manager@comcast.net>; Ross Schmucki <rossswatborough@gmail.com>
Subject: [EXTERNAL] Swarthmore Borough - DELCORA Asset Purchase Trust

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Franklin and Mr. Nasatir,

Yesterday (Nov. 13) Jane Billings (Swarthmore Borough Manager) and I met you at the CDCA board meeting regarding the AQUA offer to purchase DELCORA assets. Swarthmore Borough is serviced by CDCA. Ms. Billings and I asked questions about the asset purchase, and you spoke with us after the meeting.

One of my questions at the meeting was about the Trust intended to alleviate future rate hikes. I asked if I could see the Trust document to see under what circumstances expenditures of principal and income will be allowed. I asked if the Trust was an exhibit to the asset purchase agreement. Mr. Nasatir you said that the Trust document is not yet prepared, but you are willing to share that document. Mr. Franklin in our conversation you said that I should keep asking to see the Trust document.

I am following up on your offers and asking to review the Trust document(s) when you have a version for review to provide comments. I mentioned to you that as a retired Corporate Counsel I am familiar with reviewing corporate legal documents.

Thank you for your anticipated cooperation in sharing the Trust document(s). I

appreciate Mr. Franklin sharing with me the history that AQUA was founded in Swarthmore at the urging of Swarthmore College Professors. If you have any questions or have any desire to visit us in Swarthmore, feel free to contact me or Borough Manager Jane Billings.

Sincerely, Ross F. Schmucki (610-420-3430)

Member Swarthmore Borough Council & Chair Public Works Committee

cc: Jane Billings, Swarthmore Borough Manager (610-543-4599)

EXHIBIT B

To: R. Schmucki Comment



Rate Stabilization Trust

Nasatir, David <David.Nasatir@obermayer.com>

Wed, Dec 18, 2019 at 12:03 PM

To: Ross Schmucki <rossswatborough@gmail.com>

Cc: "Ayres, Warren" <Warren.Ayres@obermayer.com>, "Stryker, Nina" <Nina.Stryker@obermayer.com>, "Wyatt, Thomas" <thomas.wyatt@obermayer.com>

Ross

As you requested, attached please find in substantially final form, the Rate Stabilization Trust Agreement which will be presented to the DELCORA board at its upcoming meeting. This has been the compilation of work done by our Trust and Estates team, our Tax team, as well as other lawyers including Univest in house counsel and Stradley Ronon attorneys on behalf of Univest. We believe it reflects the interests of all the parties to insure that proceeds will go to the rate stabilization effort envisioned by the DELCORA Board during this process.

Thank you.

Dave



OBERMAYER

Looking forward Thinking ahead**David A. Nasatir, Esquire**

Vice Chair of the Firm

Chair, Business & Finance Department

Obermayer Rebmann Maxwell & Hippel LLP

Centre Square West

1500 Market Street | Suite 3400

Philadelphia, PA 19102-2101

215.665.3036 tel | 215.665.3165 fax

david.nasatir@obermayer.com | www.obermayer.com



Delcora - Rate Stabilization Trust Agreement 12.18.2019.pdf

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**DELCORA RATE STABILIZATION FUND
TRUST AGREEMENT**

between

**THE DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL AUTHORITY**

as SETTLOR

and

UNIVEST BANK AND TRUST CO.

as TRUSTEE

Effective Date: December __, 2019

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[to be conformed to final draft]

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**DELCORA RATE STABILIZATION FUND
TRUST AGREEMENT**

THIS DELCORA RATE STABILIZATION FUND TRUST AGREEMENT, dated as of the Effective Date, is by and between **THE DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY**, a body corporate and politic existing under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601 *et seq.* (the "Settlor"), and **UNIVEST BANK AND TRUST CO.**, a Pennsylvania state-chartered bank and trust company, as trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Settlor currently owns and operates a sewer system (the "Sewer System") serving various residential, commercial, industrial, and municipal customers in Delaware County, Pennsylvania (the "DELCORA Customers");

WHEREAS, pursuant to that certain agreement dated September 17, 2019 (the "Sewer System Sale Agreement") between the Settlor and Aqua Pennsylvania Wastewater, Inc. ("Aqua Wastewater"), the Settlor has agreed to sell the Sewer System to Aqua Wastewater;

WHEREAS, the Settlor has agreed to devote a majority of the proceeds which it receives from the sale of the Sewer System (the "Sale Proceeds") to stabilizing the amounts which the DELCORA Customers will pay for access to the Sewer System during a period of years following the closing under the Sewer System Sale Agreement (the "Closing Date");

WHEREAS, the Settlor and the Trustee desire to establish a trust for the benefit of the DELCORA Customers (the "Trust"), and the Trustee agrees to serve as trustee of such trust;

WHEREAS, the Settlor has entered into a Funding Agreement with the Trustee bearing even date herewith (the "Funding Agreement") pursuant to which the Settlor has agreed to contribute to the Trust a majority of the Sale Proceeds on the Closing Date, as well as any amounts which Settlor may receive under Section 9 of the Escrow Agreement;

WHEREAS, the Settlor and Aqua Resources, Inc., will enter into a rate stabilization agreement, of which Aqua Wastewater will be the designated third party Distribution Agent, pursuant to which (a) Aqua Wastewater will bill DELCORA Customers at reduced levels and (b) the Trust will reimburse Aqua Wastewater for such reductions, as and when so directed by the Settlor pursuant to Article 5 below; and

WHEREAS, the Settlor and the Trustee desire that the Sale Proceeds transferred to the Trust pursuant to this Agreement, together with all other funds transferred to the Trustee hereunder, be held and administered as an irrevocable trust for the benefit of the DELCORA Customers pursuant to the provisions of this Trust Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants expressed herein, and intending to be legally bound, the Settlor and the Trustee hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. Except as otherwise specified herein, or as the context otherwise requires, the following terms have the respective meanings set forth below for all purposes of this Agreement, including, without limitation, the recitals hereto.

"Affiliate" means, with respect to any specified person, any other person controlling or controlled by or under common control with such specified person. For the purposes of this definition, **"control"** when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms **"controlling"** and **"controlled"** have meanings correlative to the foregoing.

"Agreement" or **"Trust Agreement"** means this trust agreement between the Settlor and the Trustee, as such document is modified or reformed from time to time.

"Aqua Resources" means Aqua Resources, Inc., a Pennsylvania business corporation which is an Affiliate of Aqua Wastewater, and its successors and assigns.

"Aqua Wastewater" means Aqua Wastewater Pennsylvania, Inc., a Pennsylvania business corporation operating as a wastewater utility company, and its successors and assigns.

"Beneficiaries" shall refer to the DELCORA Customers.

"Calculation Agent" means the company engaged by the Settlor to provide calculation services in connection with the implementation of the Rate Stabilization Agreement.

"Closing Date" means the date of closing under the Sewer System Sale Agreement.

"Code" means the U.S. Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder. References to such Code shall be taken as references to any corresponding provisions of future law.

"County" means Delaware County, Pennsylvania.

"DELCORA Customers" means the customers connected to the Sewer System.

"Distribution Agent" shall refer to Aqua Wastewater or any successor thereto serving as the entity responsible for allocating rate reductions as provided under the Rate Stabilization Agreement to and among the Beneficiaries.

"Distributions" means distributions made by the Trustee to the Distribution Agent from time to time, as directed by the Settlor, pursuant to Article 4 below.

"Distribution Order" means a written direction delivered by an authorized representative of the Settlor to the Trustee instructing the Trustee to make a Distribution.

"Effective Date" means December __, 2019.

"Escrow Agreement" means that certain Escrow Agreement among the Settlor, the Trustee (as escrow agent), and Aqua Wastewater dated as of December __, 2019.

"Fund" or **"Trust"** means the Delaware County Regional Water Quality Control Authority Rate Stabilization Trust, which is the trust created pursuant to this Trust Agreement.

"Funding Agreement" means that certain agreement between the Settlor and the Trustee bearing even date herewith, pursuant to which the Settlor will be required to transfer a majority of the Sale Proceeds to the Trust on the Closing Date, as well as any amounts which Settlor may receive under Section 9 of the Escrow Agreement.

"Investment Guidelines" means such guidelines for the investment of the Trust assets as shall be provided from time to time by the Settlor to the Trustee.

"Permitted Investments" means investments which an authority constituted under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601 *et seq.* is permitted to make under applicable law.

"Rate Stabilization Agreement" means the agreement to be entered into by and between the Settlor and Aqua Resources, with Aqua Wastewater as a designated third party Distribution Agent, pursuant to which (a) the Distribution Agent will agree to bill the Beneficiaries at reduced levels and (b) the Settlor will agree to direct the Trust to reimburse the Distribution Agent for such reductions, pursuant to Article 4 of this Trust Agreement.

"Settlor" means the Delaware County Regional Water Quality Control Authority and its successors (including the County upon termination of the Settlor).

"Sewer System" means the sewer system which is currently owned and operated by the Settlor and which will be sold by the Settlor to Aqua Wastewater, as improved by Aqua Wastewater subsequent to the Closing Date.

"Trust Assets" means the assets held from time to time by the Trustee in the Trust Fund.

"Trust Expenses" means the trustee compensation and any other expenses of the Trust, including, without limitation, amounts payable out of the Trust Fund pursuant to Section 5.6 below.

"Trustee" means Univest Bank and Trust Co., and its successors and permitted assigns.

"Trust Fund" means the trust estate managed, protected, and conserved pursuant to the terms and conditions of this Trust Agreement, which shall consist of the Sale Proceeds deposited by the Settlor hereunder, and any Additional Contributions made to the Trust under Section 3.3 hereof, together with any and all investment income earned from Permitted Investments made and held by the Trustee pursuant to this Trust Agreement.

Section 1.2 Other Definitional Provisions. (a) All references to Articles, Sections, and subsections are to Articles, Sections, and subsections of this Agreement unless otherwise specified. All terms defined in this Agreement shall have the defined meanings herein when used in any certificate, notice, or other document made or delivered pursuant hereto, unless otherwise defined therein.

(b) In the event of any change in the identity of the Settlor, Distribution Agent or Calculation Agent as defined above, whether by merger, incorporation or cessation of existence, written notice of the identity and contact information for the successor entity shall be provided in writing to the Trustee within ten (10) days of any change in accordance with the notice requirements of Section 9.3 below.

ARTICLE 2 ORGANIZATION

Section 2.1 Declaration of Trust. The name of the Trust shall be "The Delaware County Regional Water Quality Control Authority Rate Stabilization Trust." Effective as of the Effective Date, the Trustee shall have all of the rights, powers and duties set forth herein with respect to accomplishing the purposes of the Trust.

Section 2.2 Purposes of the Trust. The purposes of the Trust are to benefit the Beneficiaries by receiving Sale Proceeds deposited into the Trust Fund by the Settlor and any additional contributions made to the Trust under Section 3.3 hereof, investing and reinvesting such Sale Proceeds and any Additional Contributions, and making Distributions from time to time to the Distribution Agent for the benefit of the Beneficiaries, as directed by the Settlor pursuant to Article 4 below. The Distributions to the Distribution Agent are intended to reimburse the Distribution Agent for rate reductions which the Distribution Agent provides to the Beneficiaries pursuant to the Rate Stabilization Agreement. Neither the Distribution Agent nor any of its Affiliates is an intended beneficiary of the Trust.

Section 2.3 Appointment of Trustee. The Settlor hereby appoints the Trustee of the Trust, effective as of the Effective Date, to have all the rights, powers, and duties and all of the protections, indemnities, and immunities set forth herein. The Trustee hereby accepts such appointment.

Section 2.4 Title to Trust Property. Legal title to all the Trust Assets shall be vested at all times in the Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Trust Assets to be vested in the Trustee, in which case title shall

be deemed to be vested in the Trustee or a Trustee, as the case may be, *provided* that the Trustee shall have the power to cause legal title to any Trust Assets to be held by or in the name of the Trust, a custodian, sub-custodian, securities depository, or their respective nominee.

Section 2.5 Situs of Trust. The Trust shall be located in the Commonwealth of Pennsylvania, and questions pertaining to the validity and construction of this Agreement and with respect to the administration of the Trust shall be determined in accordance with the laws of the Commonwealth of Pennsylvania. The Trustee may, however, at any time and from time to time transfer the situs of the Trust to any other jurisdiction that the Trustee may deem appropriate.

Section 2.6 Use of Trust Assets. Trust Assets shall be used solely to carry out the purposes set forth in Section 2.2 above, and shall not be subject (in whole or in part) to voluntary or involuntary assignment, anticipation, legal process, or claims of creditors of the Settlor, the Distribution Agent, the Aqua Parent, any Beneficiary, or any other person or entity.

ARTICLE 3 CONTRIBUTIONS TO THE TRUST

Section 3.1 Initial Contribution. The Settlor shall transfer one thousand dollars (\$1000.00) in cash to the Trust on the Effective Date.

Section 3.2 Contribution of Sale Proceeds. On or as soon as practicable after the Closing Date, the Settlor shall transfer to the Trust (or direct Aqua Wastewater to transfer to the Trust on the Settlor's behalf) that portion of the Sale Proceeds (comprising a majority of the Sale Proceeds) which the Settlor is required to contribute to the Trust pursuant to the Funding Agreement.

Section 3.3 Additional Contributions. In addition to the contributions described in Sections 3.1 and 3.2 above, the Trustee may receive such additional contributions as may be made to it from time to time by the Settlor or any other person in the form of cash, securities, or other property acceptable to the Trustee (the "Additional Contributions"). Such Additional Contributions may include (without limitation) funds released from time to time from one or more escrow accounts created under the Sewer System Sale Agreement. *Provided, however*, that the Trustee shall have no responsibility for collecting any such Additional Contributions.

Section 3.4 Acceptance by the Trustee. The Trustee hereby agrees to accept the contributions described in sections 3.1, 3.2, and 3.3 above for the benefit of the Beneficiaries, and agrees to use such funds pursuant to the terms of this Agreement.

ARTICLE 4 DISTRIBUTIONS FROM THE TRUST

Section 4.1 Distributions. (a) The Settlor shall direct the Trustee to make Distributions to Aqua Wastewater from time to time in accordance with the Rate Stabilization

Agreement. The Trustee shall have no duty to determine whether or not the amounts or timing of such Distributions are proper under the Rate Stabilization Agreement.

(b) The Trustee shall make Distributions to the Distribution Agent from time to time in accordance with written directions received by the Trustee from a duly authorized representative of the Settlor (each a "Distribution Order"). *Provided, however,* that the Trustee shall make such Distribution no later than ten (10) business days after the date on which the Trustee receives the Distribution Order. Such Distributions will be made to the Distribution Agent solely for the purpose of reimbursing the Distribution Agent for rate reductions made pursuant to the Rate Stabilization Agreement. For purposes of this Section 4.1, written notification of the identity and contact information of the duly authorized representative of the Settlor shall be provided to the Trustee in writing at least annually on January 1, or upon any subsequent change in such authorized representative, within five (5) days thereof, in accordance with the requirements of Section 9.3 below.

Section 4.2 No Right of Reversion. Under no circumstances shall the Settlor or any successor thereto have any rights of reversion under this Trust Agreement. All Trust Assets shall be disbursed in furtherance of the purposes set forth in Section 2.2.

ARTICLE 5 TRUSTEE

Section 5.1 Trustee Resignation, Removal, and Succession. (a) Any Trustee serving hereunder shall have the right, upon ninety (90) days' prior written notice delivered to the Settlor, to resign as Trustee of this Trust. At any time after the sixth (6th) anniversary of the Closing Date, the Settlor shall have the right, upon ninety (90) days' prior written notice to the Trustee, and upon payment of all amounts due and owing hereunder, to remove such Trustee as a trustee. Upon notice of such resignation or removal, the Settlor shall appoint a successor Trustee in writing within thirty (30) days of the expiration of the ninety (90) day notice period, such appointment to be accepted in writing by the successor trustee so designated. If the Settlor fails to appoint a successor trustee, the Trustee may secure the appointment of a successor trustee in any manner permitted by law, including by petition or application to the appropriate court of jurisdiction. The resignation or removal of Trustee shall only become effective upon the appointment and qualification of the successor trustee. *Provided, however,* that the entity serving as Trustee hereunder shall at all times be a corporate trustee having assets under management of no less than _____ dollars (\$ _____).

(b) Upon the appointment, and timely written acceptance of the appointment of a successor trustee as provided herein, the Trustee shall transfer and convey to the successor Trustee all Trust Assets held by the Trustee. When such transfer and conveyance are completed, the Trustee shall be released and discharged from all liability relating to further administration and investment of the Trust.

(c) No Trustee taking office shall be liable in any way for the acts or omissions of any Trustee prior to such Trustee's assumption of office, or shall have any duty to review the performance of a Trustee prior to that date.

(d) Except as specifically authorized hereunder, all powers of the Trustee shall be exercised by the Trustee alone.

Section 5.2 Duties of Trustee. The Trustee undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, subject to and in accordance with the provisions of this Agreement. No implied duties, covenants, or obligations shall be read into this Agreement against the Trustee, the Settlor, or any Affiliate of either the Trustee or the Settlor. The Trustee shall oversee the conduct of the activities of the Trust, make and execute contracts and other instruments on behalf of the Trust, and may sue and be sued on behalf of the Trust in the name of the Trust, subject to the terms of this Agreement.

Section 5.3 Acceptance of Trust and Duties. (a) Except as otherwise provided in this Article 5, in accepting the trust hereby created, the Trustee acts solely as trustee hereunder and not in its individual capacity, and all persons having any claim against the Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust Assets for payment or satisfaction thereof. The Trustee accepts the trust hereby created and agrees to perform its duties hereunder, but only in accordance with the express terms of this Agreement.

(b) In carrying out its duties hereunder, the Trustee shall exercise the rights and powers vested in it hereunder in good faith, but only on the terms expressly set forth herein. Neither the Trustee nor any of its officers, directors, employees, agents or affiliates shall have any implied duties (including fiduciary duties) or liabilities otherwise existing at law or in equity with respect to the Trust, which implied duties and liabilities are hereby eliminated. No provision of this Agreement shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, its own bad faith, its own breach of its representations, warranties or covenants given in its individual capacity or its own willful misconduct. In addition:

(i) The Trustee shall be liable for its willful misconduct or gross negligence in acting or failing to act, except that the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in accordance with a direction received by it from the Settlor or Calculation Agent pursuant to this Agreement;

(ii) The Trustee shall not be liable for any error of judgment, or for any action taken, suffered or omitted to be taken by it, in good faith, nor for any act or omission of any predecessor and/or successor Trustee;

(iii) The Trustee shall not be deemed to have notice or knowledge of any matter unless written notice thereof is received by the Trustee in accordance with this Agreement;

(iv) The Trustee shall have no duty to monitor or supervise, or be liable for anything done or omitted by any other person, including the Settlor, the Distribution Agent or the Calculation Agent;

(v) The Trustee shall not be liable for the default or misconduct of the Settlor, the Distribution Agent, the Calculation Agent or any other person, and the Trustee shall not be deemed to have knowledge of any default on the part of any such person unless the Trustee receives written notice of such default in accordance with this Agreement; nor shall the Trustee be responsible for performing, monitoring or supervising the performance of any such person's obligations under this Agreement or any related agreement;

(vi) Under no circumstance shall the Trustee be liable for any representation, warranty, covenant, obligation or indebtedness of the Trust, or any other payment or distribution obligations evidenced by or arising under this Agreement;

(vii) The Trustee shall not be liable for or in respect of, and makes no representation with respect to, the validity or sufficiency of any provision of this Agreement, or the due execution hereof or thereof by any person, other than itself, or the value of the Trust Assets, or the efficacy of the Trust or its ability to generate the amounts intended to be distributed for the benefit of the Beneficiaries;

(viii) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document;

(ix) The Trustee shall not be liable for (x) any special, consequential or punitive damages, however styled, including, without limitation, lost profits, (y) the acts or omissions of any nominee, correspondent, clearing agency or securities depository through which it holds the Trust's securities or assets, or (z) any losses due to forces beyond the reasonable control of the Trustee, as applicable, including, without limitation, strikes, lockouts, riots, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances;

(x) Other than with respect to any report or information that the Trustee has an express duty to review under this Agreement, receipt by the Trustee of any report or other information delivered or otherwise made available to the Trustee pursuant to the terms of this Agreement or any other document related to the Trust shall not be deemed to constitute knowledge by the Trustee of such information, unless the Trustee receives written notice with respect thereto;

(xi) Except as otherwise expressly set forth in this Agreement, knowledge or information acquired by (x) Univest Bank and Trust Co. in any of its

respective capacities hereunder or under any other document related to this transaction shall not be imputed to Univest Bank and Trust Co. in any of its other capacities hereunder or under such other documents, and (y) any Affiliate of Univest Bank and Trust Co. shall not be imputed to Univest Bank and Trust Co. in any of its respective capacities hereunder and vice versa;

(xii) The right of the Trustee to perform any discretionary act enumerated in this Agreement or in any other document to which the Trust is a party shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct in the performance of any such act; the Trustee shall be under no obligation to exercise any of the discretionary rights or powers vested in it by this Agreement;

(xiii) The Trustee shall have no duty to recompile, recalculate or otherwise verify the accuracy of any information provided to it by the Settlor except as otherwise expressly set forth in this Agreement, and may conclusively rely thereon in good faith;

(xiv) The Trustee may consult with counsel, accountants and other experts, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants, or other experts selected by it in good faith, and any opinion of counsel shall be full and complete protection in respect of any action taken or suffered or omitted by it under this Agreement in good faith and in accordance with such opinion of counsel;

(xv) The Trustee shall be under no obligation to institute, conduct or defend any litigation under this Agreement or otherwise in relation to the Trust at the request, order or direction of the Settlor or any other person, unless such requesting person(s) shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby;

(xvi) The Trustee may execute any of the trusts or powers under this Agreement, or perform any duties under this Agreement, either directly or by or through agents or attorneys or one or more custodians (any of which may be Affiliates of the Trustee) and the Trustee shall not be liable for the acts or omissions of any agent, attorney or custodian selected by such Trustee in good faith;

(xvii) The Trustee shall have no duty or obligation to manage, make any payment in respect of, register, record, sell, dispose of or otherwise deal with the Trust Assets, or to otherwise take or refrain from taking any action under, or in connection with, any document contemplated hereby to which the Trustee is a party, except as expressly provided by the terms of this Agreement; and

(xviii) The Trustee shall have no responsibility to record this Agreement, to prepare or file any financing or continuation statement in any public office at any time or otherwise to perfect or maintain the perfection of any ownership or security interest or

lien or to prepare or file any tax, qualification to do business or securities law filing or report except as expressly provided by the terms of this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, the Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties under this Agreement, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, and none of the provisions contained in this Agreement or any other document to which the Trust is a party, shall in any event require the Trustee, to perform, or be responsible for the manner or omission of performance of, any of the duties or obligations of the Settlor under any other agreement or document.

(d) Each of the parties hereto hereby agrees, and each Beneficiary, as evidenced by its acceptance of any benefits hereunder, understands and agrees, that the Trustee, in any capacity, has not provided and will not in the future provide, any advice, counsel or opinion regarding the tax, financial, investment, securities law or insurance implications and consequences of the formation, funding and ongoing administration of the Trust.

(e) Each of the parties hereto hereby agrees, and each Beneficiary, as evidenced by its acceptance of any benefits hereunder, understands and agrees, that that the Trustee, in any capacity, has not (i) made any investigation as to the accuracy of any representations, warranties or other obligations of the Trust under this Agreement or any other document contemplated hereby, and shall have no liability in connection therewith and (ii) prepared or verified, and shall have no liability for, any information, disclosure or other statement made in any document issued or delivered in connection with the transactions contemplated by this Agreement or any related document or agreement.

Section 5.4 Refrain from Certain Actions. The Trustee shall not be required to take any action under this Agreement if the Trustee shall have reasonably determined, or shall have been advised by counsel, that such action is likely to result in liability on the part of the Trustee, is contrary to the terms of this Agreement, or is otherwise contrary to applicable law.

Section 5.5 Reliance. The Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond, facsimile transmission, or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by an authorized representative of the proper party or parties, and need not investigate any fact or matter in any such document. As to any fact or matter the method of the determination of which is not specifically prescribed herein, the Trustee may for all purposes hereof rely on a certificate signed by an authorized officer of the Settlor, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

Section 5.6 Compensation and Expenses. (a) The Trustee shall be entitled to compensation and reimbursement from Trust Assets for all expenses incurred in the course of discharging its duties thereunder, as provided in the schedule attached hereto as Exhibit A.

(b) Trust assets may be used to pay compensation and expenses of the Calculation Agent, upon receipt by the Trustee of written directions to this effect from the Settlor.

Section 5.7 Investment of Trust Assets. (a) The Trustee shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Assets invested, without distinction between principal and income, in Permitted Investments that comply with the Investment Guidelines. The Trustee may, however, reserve from investment and keep, either as uninvested contributions or the proceeds of sale of investments, such amounts as it may from time to time it deems advisable in order to provide for anticipated Distributions or other expenditures from the Trust Fund, notwithstanding the provisions of 20 Pa. C.S. §7207. The Trustee does not guaranty any positive return on any such investment and the Trustee shall not be liable for any loss, including without limitation any loss of principal or interest, or for any breakage fees or penalties, in connection with the purchase or liquidation of any investment made hereunder.

(b) The Settlor shall provide a draft set of Investment Guidelines to the Trustee no later than February 28, 2020, and shall provide final Investment Guidelines to the Trustee no later than the Closing Date. Such final Investment Guidelines may be subsequently revised by agreement of the Settlor and the Trustee, but only with the written approval of Aqua Wastewater.

Section 5.8 Trustee Powers. Except as otherwise specifically provided in this Trust Agreement, the Trustee shall have authority, in addition to and not in limitation of any authority given it by law, but shall have no obligation to exercise the following powers:

(a) To acquire or dispose of Permitted Investments which may from time to time or at any time constitute the Trust Fund for such prices and on such terms as the Trustee may deem proper, and to make, execute, and deliver to the purchasers thereof good and sufficient deeds of conveyance therefor and all assignments, transfers, and other legal instruments, either necessary or convenient for passing the title and ownership thereto, free and discharged of all trusts and without liability on the part of such purchasers to see to the application of the purchase money.

(b) To cause any Permitted Investment to be registered in or transferred into (i) its name as the Trustee, (ii) the name of the Trust, or (iii) the name or names of their nominee or nominees or to retain same unregistered or in form permitting transfer by delivery, and to maintain all such investments through such agents, custodians, and other means as it deems appropriate, *provided* that the books and records of the Trustee at all times shall show that all such investments are part of the Trust Fund.

(c) To vote upon any stocks, bonds, or other securities, and to give general or special proxies or powers of attorney with or without power of substitution; provided that the Trustee shall vote in favor of management or recommended proposals in all instances unless otherwise directed in writing by the Settlor.

(d) To exercise any option, to accept in exchange or to subscribe for additional securities, to exercise any conversion privileges, and to make any necessary payments therefor.

(e) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Trust, without liability for interest thereon.

(f) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(g) To determine what is principal and what is income hereunder, and, in its sole discretion, to allocate or apportion gains and losses realized from the sale or other disposition of any assets between principal and income.

(h) Generally to exercise all rights of ownership and disposition over the Trust Fund and to do all acts and things which the Trustee may consider in the best interests of the Trust Fund.

Section 5.9 Indemnity of Trustee.

To the fullest extent permitted by applicable law, the Trustee and each of its directors, officers, employees, agents, affiliates, successors, assigns and legal representatives, (each an “Indemnified Person”) shall be indemnified, defended and held harmless by, and entitled to reimbursement from, the Trust out of Trust Assets with respect to any loss, liability, obligation, damages, penalty, tax, claim, action, investigation, proceeding, cost, expense or disbursement, including reasonable attorneys’, experts’ and other professionals’ fees and expenses of any kind or nature whatsoever (collectively “Costs”), arising out of or incurred in connection with this Agreement, the Trust Fund, the Trust Assets, the administration of the Trust Fund and the Trust Assets or any action or inaction of the Trustee hereunder, except to the extent that such Costs arise out of or result from the Trustee’s own willful misconduct, bad faith or gross negligence. The indemnities contained in this Section 5.9 shall survive the resignation or removal of the Trustee or the termination of this Agreement.

Section 5.10 Interpretation and Direction.

To the extent the Trustee determines that any substantial ambiguity exists in the interpretation of any definition, provision or term contained in this Agreement pertaining to the performance of its duties hereunder, or to the extent more than one methodology can be used to make any of the determinations or calculations to be performed by any Trustee hereunder, the Trustee may request written direction from the Settlor as to the interpretation or methodology it should adopt with respect thereto. The Settlor shall promptly provide such written direction, and the Trustee shall be entitled conclusively to rely upon, and shall be protected and held harmless in acting upon, such written direction.

Section 5.11 Books and Records. (a) The Trustee shall direct the preparation and maintenance of full and accurate accounts of all receipts, investments, disbursements, and other transactions of the Trust Fund. All such accounts, books, and records shall be open to inspection and audit at all reasonable times by any authorized representative of the Settlor.

(b) The Trustee shall retain records relating to the Trust Fund for as long as necessary for the proper administration thereof, and at least for any period required by applicable law.

Section 5.12 Accounting and Reports. (a) The Trustee shall provide to the Settlor customary quarterly or monthly written reports of all receipts and expenditures made from the Trust Fund during the month, in such detail and format as may be agreed upon by the Trustee and the Settlor from time to time. Unless otherwise determined by the Trustee, the Trustee shall (a) maintain (or cause to be maintained) the books of the Trust on a calendar-year basis and on the cash method of accounting. The financial records of the Trust shall be kept in conformity with generally accepted accounting principles applied on a consistent basis, and with such other requirements as may reasonably be required by the Trustee or the Settlor.

(b) The Trustee shall as soon as practicable, but in no event later than three (3) months after the end of each fiscal year of the Trust, provide to the Settlor or its designee (i) the Trust's revenue and expense statement for such fiscal year and (ii) the Trust's balance sheet as of the end of such fiscal year, each accompanied by the certificate or opinion of a firm of independent certified public accountants selected by the Trustee and approved by the Settlor.

(c) Within ninety (90) days after termination of the duties of the Trustee, and at such other times (if any) as the Settlor may determine in its discretion, the Trustee shall render to the Settlor or its designee a written account setting forth all transactions effected by the Trustee since the period covered by its last such preceding account and showing at its then fair market value all property held at the end of the accounting period. Upon the expiration of ninety (90) days from the date such account is rendered, the Trustee shall be released and discharged from accountability to the Settlor as respects the same, unless the Settlor shall have filed with the Trustee a written statement claiming gross negligence, willful misconduct, or lack of good faith by the Trustee with respect thereto. If any such objection is filed and is not satisfactorily adjusted by the parties, the Trustee shall have the right to apply to a court of competent jurisdiction for judicial settlement of such account at the sole cost and expense of the Trust. Neither the Settlor nor any other person shall have the right to demand or be entitled to any further or different accounting by the Trustee, except as may otherwise be required by law.

(d) The Trustee shall also furnish to the Settlor or its designee such other reports as may be reasonably requested by the Settlor; provided that any costs or expenses incurred by the Trustee in preparing, directly or through a third party subcontractor, any reports that are outside of the scope of the trustee's usual and customary reporting shall be borne solely by the Trust .

Section 5.13 Third Party Reliance. (a) No person having any dealing with the Trust Fund or the Trustee shall be bound to inquire of the duty, authority, or power of the Trustee to perform any act which it undertakes to perform. No person purchasing or acquiring property or lending money to the Trustee shall be bound to see to the application of the purchase money or other property transferred or loaned to the Trustee, or to inquire into the propriety or validity of the said sale, disposition, or loan by the Trustee.

(b) Every instrument executed by the Trustee shall be conclusive in favor of any person, partnership, corporation relying thereon that (a) at the time of the delivery of the instrument the

Trust was in full force and effect, (b) the instrument was effected in accordance with the terms and conditions of this Agreement, and (c) the Trustee was duly authorized and empowered to execute the instrument.

Section 5.14 Interpretation; Rules. The Trustee shall have the power to construe the provisions of this Agreement and the terms used in this Agreement, and any construction adopted by the Trustee in good faith consistent with the purpose of the Trust shall be binding upon all persons.

ARTICLE 6 POWER OF SUBSTITUTION

Section 6.1 Power of Substitution. (a) The Settlor shall have the right to acquire any asset of the Trust (an “Acquired Asset”) by transferring to the Trustee in exchange for the Acquired Asset one or more other assets (collectively the “Substituted Asset”) having a fair market value that is no less than the fair market value of the Acquired Asset.

(b) To the extent (if any) that the fair market value of the Substituted Asset exceeds the fair market value of the Acquired Asset, the Settlor shall be deemed to have made an Additional Contribution to the Trust under Section 3.3 above.

Section 6.2 Confirmations. (a) The Trustee shall take such reasonable steps as may be necessary in order to confirm, prior to the exchange of assets, that the fair market value of the Acquired Asset is no greater than the fair market value of the Substituted Asset. If the Trustee determines that the fair market value of the Acquired Asset is greater than the fair market value of the Substituted Asset, the Trustee shall not transfer the Acquired Asset to the Settlor or accept the Substituted Asset from the Settlor.

(b) The Trustee shall not accept any Acquired Asset in substitution for a Substituted Asset unless it has previously received written confirmation from the Calculation Agent that such substitution will not adversely affect the ability of the Settlor to fund Distributions (*e.g.*, due to a reduction in the liquidity of the Trust).

ARTICLE 7 TERMINATION

Section 7.1 Termination. The Trust shall terminate when all of the assets of the Trust have been exhausted in furtherance of the purposes set forth in Section 2.2 above.

Section 7.2 Trust Irrevocable. Neither the Settlor nor any other person is entitled to revoke or terminate the Trust.

ARTICLE 8 AMENDMENTS

Section 8.1 Amendment of Agreement. Notwithstanding the irrevocability of the Trust, the Trustee is authorized to institute a judicial proceeding in a court of competent jurisdiction to reform this Trust for the sole purpose of meeting any and all federal statutory or regulatory requirements which may affect the taxability of the Trust and which were enacted or instituted subsequent to the inception of the Trust. *Provided, however,* that this provision shall not apply if its existence would result in the overall loss of favorable tax treatment, thereby defeating the purpose of this right of reformation.

ARTICLE 9 MISCELLANEOUS

Section 9.1 No Legal Title to Trust Property. No transfer, by operation of law or otherwise, of any right, title, or interest in the Trust assets shall operate to terminate this Agreement or the Trust, or shall entitle any transferee to an accounting or to the transfer to it of legal title to any part of the Trust Assets.

Section 9.2 Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of the Settlor, the Trustee, and the Beneficiaries, and nothing in this Agreement, whether express or implied, shall be construed to give to the Distribution Agent, any Affiliate of the Distribution Agent, any other person any legal or equitable right, remedy, or claim in the Trust Assets or under or in respect of this Agreement or any covenants, conditions, or provisions contained herein.

Section 9.3 Notices. All demands, notices and communications upon or to the Settlor or the Trustee under this Agreement (including Distribution Orders) shall be in writing, personally delivered, sent by electronic facsimile (with hard copy to follow via first class mail), sent by email (with hard copy to follow via first class mail), or mailed by certified mail return receipt requested, and shall be deemed to have been duly given upon receipt, to the following address (or to such other address as the notice party may direct):

To the Settlor:

DELCORA
100 East Fifth Street
Chester, PA 19013
Attention: Executive Director

with copies to:

DELCORA
100 East Fifth Street
Chester, PA 19013
Attention: Solicitor

and

AQUA WASTEWATER PENNSYLVANIA, INC.

Attention: _____

To the Trustee:

Univest Bank and Trust Co.
14 North Main Street
PO Box 559
Souderton, PA 18964
Attention: John C. Kazary, Esq., CTFA – Vice President and Wealth Trust Advisor

with a copy to:

Univest Bank and Trust Co.
14 North Main Street
PO Box 64197
Souderton, PA 18964
Attention: Megan Duryea Santana, General Counsel

Section 9.4 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Section 9.5 Successors and Assigns. (a) Neither party hereto may assign any of its obligations or rights under this Agreement without the prior written consent of the other party except for obligations and rights delegated under 20 Pa. C.S. Section 7206.

(b) All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Settlor, the Trustee, and their respective successors and permitted assigns.

Section 9.6 Headings, etc. Titles for sections are for general information only, and this Agreement shall not be construed by reference to such titles. Wherever required by context, the singular of any word used in this Agreement shall include the plural and the plural may be read in the singular. Words used in the masculine shall be read and construed in the feminine where they would so apply.

Section 9.7 Governing Law. This agreement shall in all respects be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, including all matters of construction, validity, and performance.

Section 9.8 Consent to Jurisdiction and Service of Process. Each of the parties to this Agreement hereby irrevocably submits to the jurisdiction of any Pennsylvania state court sitting in Delaware County, Pennsylvania or the U.S. District Court for the Eastern District of

Pennsylvania, and any appellate courts thereof, in any action or proceeding arising out of or relating to this Agreement, and each of the parties hereby irrevocably agrees, to the extent permitted by law, that all claims in respect of such action or proceeding may be heard and determined in such Pennsylvania state or U.S. federal court. Each of the parties hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding and any right of jurisdiction in such action or proceeding on account of the place of residence or domicile of such party. A final judgment in any such action or proceeding shall, to the extent permitted by law, be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties consents to the service of process by mail. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by law or affect its right to bring any action in any other court.

Section 9.9 Tax Status of the Trust. The Trust is intended to be a “grantor trust” of which the Settlor is treated as the owner for federal income-tax purposes under Code Sections 671 *et seq.* The Trust is intended to qualify as a governmental entity for state and local tax purposes.

Section 9.10 Entire Agreement. This Trust Agreement shall not be deemed to be varied, altered or amended by any other statement, representation or agreement by or between any person or persons whomsoever, whether written, oral or implied in any way, except as provided in this Agreement.

Section 9.11 Reliance on Trust Agreement. Any person dealing with the Trustee may rely upon a copy of this Agreement and any amendments thereto certified to be true and correct.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of Effective Date.

SETTLOR:

DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY

By: _____

Name: _____

Title: _____

TRUSTEE:

UNIVEST BANK AND TRUST CO.

By: _____

Name: _____

Title: _____

EXHIBIT A
SCHEDULE OF TRUSTEE COMPENSATION

COMMONWEALTH OF PENNSYLVANIA :
 :
 : SS.
COUNTY OF :
 :

On this, the _____ day of December 2019, before me, the undersigned officer, personally appeared _____, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same on behalf of the Delaware County Regional Water Quality Control Authority for the purposes therein contained.

I have signed my name and affixed my seal.

Notary Public
My Commission expires:

COMMONWEALTH OF PENNSYLVANIA :
 : ss.
COUNTY OF :

On this, the _____ day of December 2019, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be a _____ of _____ Bank, and that he as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as trustee.

I have signed my name and affixed my seal.

Notary Public

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY
AND
AQUA PENNSYLVANIA WASTEWATER, INC.

_____, 2020

This Memorandum of Understanding ("MOU") between the Delaware County Regional Water Quality Control Authority, a body corporate and politic existing under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601, *et seq.* ("DELCORA") and Aqua Pennsylvania Wastewater, Inc. ("Aqua Wastewater") is being entered into as of [inset date] in support of a certain agreement dated September 17, 2019, as amended on February 24, 2020, between DELCORA and Aqua Wastewater ("Sewer System Sale Agreement") under which DELCORA has agreed to sell and Aqua Wastewater has agreed to purchase certain sewer equipment and facilities of DELCORA's serving various residential, commercial, industrial, and municipal customers in Delaware County and Chester County, Pennsylvania ("Sewer System").

DELCORA and Aqua Wastewater, individually a "Party" and collectively the "Parties" intend for this MOU to be legally binding upon them and be construed and subject to the laws of the Commonwealth of Pennsylvania.

The purpose of this MOU is to set forth the Parties' general understanding and agreement regarding how Aqua Wastewater can assist with applying a payment to DELCORA customers bills from the net proceeds to be received by DELCORA from Aqua Wastewater from the sale of the Sewer System under the Sewer System Sale Agreement.

The Parties acknowledge that DELCORA has separately established a trust under the DELCORA Rate Stabilization Fund Trust Agreement dated December 27, 2019 (the "Trust Agreement"), into which the net sale proceeds, along with investment earnings thereon and any other amounts contributed to the Trust, will be distributed in accordance with the Trust Agreement.

This MOU shall be effective on the date specified above ("Effective Date") and shall be filed with the Pennsylvania Public Utility Commission ("PUC") under Section 507 of the Pennsylvania Public Utility Code ("Code"), 66 Pa. C. S. § 507. On and after the Closing:

1. Aqua Wastewater shall issue a bill to each DELCORA customer for each billing period using the full cost of service rates authorized by the PUC.
2. The customer assistance payment for each DELCORA customer for each billing period shall be applied to each DELCORA customer bill.
3. Aqua Wastewater shall calculate the customer assistance payment amount for each DELCORA customer and the total customer assistance payment amount for each billing period, and shall provide its calculation, along with any and all information

necessary to confirm the calculation of both payment amounts to the designated calculation agent.

4. DELCORA shall timely direct the Trustee under the Trust Agreement to transfer to Aqua Wastewater by Fedwire an amount equal to the total customer assistance amount confirmed by the designated calculation agent for the applicable billing period.
5. The Parties shall at all times cooperate with each other and the designated calculation agent to implement this MOU timely.

Dated: _____

Aqua Pennsylvania Wastewater, Inc.

By: _____

Name: _____

Title: _____

Dated: _____

Delaware County Regional Water Quality
Control Authority

By: _____

Name: _____

Title: _____



A-2019-3015173
9/16/20 JK

121 Park Avenue
Swarthmore, Pennsylvania 19081
Telephone 610•543•4599
Fax 610•543•1833
Email swarthmore2@comcast.net
www.swarthmorepa.org

August 28, 2020

Mr. Edward L. Woyden
Gannett Fleming
Valley Forge Corporate Center
1010 Adams Avenue
Audubon, PA 19403-2404

Dear Mr. Woyden:

In accordance with PA Code Title 25 Chapter 71 §71.31(b), Swarthmore Borough Planning Commission hereby provides comments on the DELCORA Asset Transfer Act 537 Plan Update. These comments were approved by Swarthmore Borough Planning Commission on Thursday, August 27, 2020.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "CD 19", written over a horizontal line.

Chris DeBruyn
Swarthmore Planning Commission Planning Commission

cc Swarthmore Borough Council
Swarthmore Planning Commission

EXHIBIT A

A-2019-3015173 9/16/20 JK



RE: [EXTERNAL] Swarthmore Borough - DELCORA Asset Purchase Trust

Franklin, Christopher H <CHFranklin@aquaamerica.com>

Sun, Nov 17, 2019 at 10:15 PM

To: Ross Schmucki <rossswatborough@gmail.com>, "david.nasatir@obermayer.com" <david.nasatir@obermayer.com>

Cc: Jane Billings <borough_manager@comcast.net>, "Luning, Christopher P" <CPLuning@aquaamerica.com>

Ross,

Thank you for the follow up to our conversation last week. As I mentioned while we were together, I am always happy to visit municipal leadership in areas we serve water. Swarthmore is no exception and as such, please feel free to contact me at any time with questions or comments or to consider dates for mutually convenient in-person discussions.

While we were together, you had questions regarding the DELCORA Trust that is in the process of formation. While I appreciate your questions and understand that you have a considerable background in this area of the law, I am not in a position to answer your questions. The customers are the beneficiaries of the Trust and Aqua will be the recipient of those funds from the Trust that offset rates. As such, Aqua executives and our legal team cannot participate in the planning or execution of the DELCORA Trust. As a representative of the customers in Swarthmore, you are asking the right questions and I am certain that representatives of DELCORA, including David Nasatir (DELCORA outside counsel) will be happy to answer your questions or address your concerns once the Trust documents are far enough along in their development.

Again, if you have any questions regarding Aqua's future ownership of DELCORA, I am happy to discuss them with you. All Trust questions should be posed to DELCORA and their counsel.

Thanks again for your time and follow up.

Best Regards,

Chris

**Christopher Franklin****Chairman & CEO****O: 610-645-1081**

M: 610-324-3179



From: Ross Schmucki <rossswatborough@gmail.com>
Sent: Wednesday, November 13, 2019 8:16 PM
To: Franklin, Christopher H <CHFranklin@aquaamerica.com>; david.nasatir@obermayer.com
Cc: Jane Billings <borough_manager@comcast.net>; Ross Schmucki <rossswatborough@gmail.com>
Subject: [EXTERNAL] Swarthmore Borough - DELCORA Asset Purchase Trust

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Franklin and Mr. Nasatir,

Yesterday (Nov. 13) Jane Billings (Swarthmore Borough Manager) and I met you at the CDCA board meeting regarding the AQUA offer to purchase DELCORA assets. Swarthmore Borough is serviced by CDCA. Ms. Billings and I asked questions about the asset purchase, and you spoke with us after the meeting.

One of my questions at the meeting was about the Trust intended to alleviate future rate hikes. I asked if I could see the Trust document to see under what circumstances expenditures of principal and income will be allowed. I asked if the Trust was an exhibit to the asset purchase agreement. Mr. Nasatir you said that the Trust document is not yet prepared, but you are willing to share that document. Mr. Franklin in our conversation you said that I should keep asking to see the Trust document.

I am following up on your offers and asking to review the Trust document(s) when you have a version for review to provide comments. I mentioned to you that as a retired Corporate Counsel I am familiar with reviewing corporate legal documents.

Thank you for your anticipated cooperation in sharing the Trust document(s). I

appreciate Mr. Franklin sharing with me the history that AQUA was founded in Swarthmore at the urging of Swarthmore College Professors. If you have any questions or have any desire to visit us in Swarthmore, feel free to contact me or Borough Manager Jane Billings.

Sincerely, Ross F. Schmucki (610-420-3430)

Member Swarthmore Borough Council & Chair Public Works Committee

cc: Jane Billings, Swarthmore Borough Manager (610-543-4599)



Rate Stabilization Trust

Nasatir, David <David.Nasatir@obermayer.com>

To: Ross Schmucki <rossswatborough@gmail.com>

Cc: "Ayres, Warren" <Warren.Ayres@obermayer.com>, "Stryker, Nina" <Nina.Stryker@obermayer.com>, "Wyatt, Thomas" <thomas.wyatt@obermayer.com>

Wed, Dec 18, 2019 at 12:03 PM

Ross

As you requested, attached please find in substantially final form, the Rate Stabilization Trust Agreement which will be presented to the DELCORA board at its upcoming meeting. This has been the compilation of work done by our Trust and Estates team, our Tax team, as well as other lawyers including Univest in house counsel and Stradley Ronon attorneys on behalf of Univest. We believe it reflects the interests of all the parties to insure that proceeds will go to the rate stabilization effort envisioned by the DELCORA Board during this process.

Thank you.

Dave



OVERMAYER

Looking forward Thinking ahead



David A. Nasatir, Esquire

Vice Chair of the Firm

Chair, Business & Finance Department

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 **Delcora - Rate Stabilization Trust Agreement 12.18.2019.pdf**
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**DELCORA RATE STABILIZATION FUND
TRUST AGREEMENT**

between

**THE DELAWARE COUNTY REGIONAL
WATER QUALITY CONTROL AUTHORITY**

as SETTLOR

and

UNIVEST BANK AND TRUST CO.

as TRUSTEE

Effective Date: December __, 2019

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[to be conformed to final draft]

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**DELCORA RATE STABILIZATION FUND
TRUST AGREEMENT**

THIS DELCORA RATE STABILIZATION FUND TRUST AGREEMENT, dated as of the Effective Date, is by and between **THE DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY**, a body corporate and politic existing under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601 *et seq.* (the "Settlor"), and **UNIVEST BANK AND TRUST CO.**, a Pennsylvania state-chartered bank and trust company, as trustee (the "Trustee").

WITNESSETH:

WHEREAS, the Settlor currently owns and operates a sewer system (the "Sewer System") serving various residential, commercial, industrial, and municipal customers in Delaware County, Pennsylvania (the "DELCORA Customers");

WHEREAS, pursuant to that certain agreement dated September 17, 2019 (the "Sewer System Sale Agreement") between the Settlor and Aqua Pennsylvania Wastewater, Inc. ("Aqua Wastewater"), the Settlor has agreed to sell the Sewer System to Aqua Wastewater;

WHEREAS, the Settlor has agreed to devote a majority of the proceeds which it receives from the sale of the Sewer System (the "Sale Proceeds") to stabilizing the amounts which the DELCORA Customers will pay for access to the Sewer System during a period of years following the closing under the Sewer System Sale Agreement (the "Closing Date");

WHEREAS, the Settlor and the Trustee desire to establish a trust for the benefit of the DELCORA Customers (the "Trust"), and the Trustee agrees to serve as trustee of such trust;

WHEREAS, the Settlor has entered into a Funding Agreement with the Trustee bearing even date herewith (the "Funding Agreement") pursuant to which the Settlor has agreed to contribute to the Trust a majority of the Sale Proceeds on the Closing Date, as well as any amounts which Settlor may receive under Section 9 of the Escrow Agreement;

WHEREAS, the Settlor and Aqua Resources, Inc., will enter into a rate stabilization agreement, of which Aqua Wastewater will be the designated third party Distribution Agent, pursuant to which (a) Aqua Wastewater will bill DELCORA Customers at reduced levels and (b) the Trust will reimburse Aqua Wastewater for such reductions, as and when so directed by the Settlor pursuant to Article 5 below; and

WHEREAS, the Settlor and the Trustee desire that the Sale Proceeds transferred to the Trust pursuant to this Agreement, together with all other funds transferred to the Trustee hereunder, be held and administered as an irrevocable trust for the benefit of the DELCORA Customers pursuant to the provisions of this Trust Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants expressed herein, and intending to be legally bound, the Settlor and the Trustee hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. Except as otherwise specified herein, or as the context otherwise requires, the following terms have the respective meanings set forth below for all purposes of this Agreement, including, without limitation, the recitals hereto.

"Affiliate" means, with respect to any specified person, any other person controlling or controlled by or under common control with such specified person. For the purposes of this definition, **"control"** when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms **"controlling"** and **"controlled"** have meanings correlative to the foregoing.

"Agreement" or **"Trust Agreement"** means this trust agreement between the Settlor and the Trustee, as such document is modified or reformed from time to time.

"Aqua Resources" means Aqua Resources, Inc., a Pennsylvania business corporation which is an Affiliate of Aqua Wastewater, and its successors and assigns.

"Aqua Wastewater" means Aqua Wastewater Pennsylvania, Inc., a Pennsylvania business corporation operating as a wastewater utility company, and its successors and assigns.

"Beneficiaries" shall refer to the DELCORA Customers.

"Calculation Agent" means the company engaged by the Settlor to provide calculation services in connection with the implementation of the Rate Stabilization Agreement.

"Closing Date" means the date of closing under the Sewer System Sale Agreement.

"Code" means the U.S. Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder. References to such Code shall be taken as references to any corresponding provisions of future law.

"County" means Delaware County, Pennsylvania.

"DELCORA Customers" means the customers connected to the Sewer System.

"Distribution Agent" shall refer to Aqua Wastewater or any successor thereto serving as the entity responsible for allocating rate reductions as provided under the Rate Stabilization Agreement to and among the Beneficiaries.

"Distributions" means distributions made by the Trustee to the Distribution Agent from time to time, as directed by the Settlor, pursuant to Article 4 below.

"Distribution Order" means a written direction delivered by an authorized representative of the Settlor to the Trustee instructing the Trustee to make a Distribution.

"Effective Date" means December __, 2019.

"Escrow Agreement" means that certain Escrow Agreement among the Settlor, the Trustee (as escrow agent), and Aqua Wastewater dated as of December __, 2019.

"Fund" or **"Trust"** means the Delaware County Regional Water Quality Control Authority Rate Stabilization Trust, which is the trust created pursuant to this Trust Agreement.

"Funding Agreement" means that certain agreement between the Settlor and the Trustee bearing even date herewith, pursuant to which the Settlor will be required to transfer a majority of the Sale Proceeds to the Trust on the Closing Date, as well as any amounts which Settlor may receive under Section 9 of the Escrow Agreement.

"Investment Guidelines" means such guidelines for the investment of the Trust assets as shall be provided from time to time by the Settlor to the Trustee.

"Permitted Investments" means investments which an authority constituted under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601 *et seq.* is permitted to make under applicable law.

"Rate Stabilization Agreement" means the agreement to be entered into by and between the Settlor and Aqua Resources, with Aqua Wastewater as a designated third party Distribution Agent, pursuant to which (a) the Distribution Agent will agree to bill the Beneficiaries at reduced levels and (b) the Settlor will agree to direct the Trust to reimburse the Distribution Agent for such reductions, pursuant to Article 4 of this Trust Agreement.

"Settlor" means the Delaware County Regional Water Quality Control Authority and its successors (including the County upon termination of the Settlor).

"Sewer System" means the sewer system which is currently owned and operated by the Settlor and which will be sold by the Settlor to Aqua Wastewater, as improved by Aqua Wastewater subsequent to the Closing Date.

"Trust Assets" means the assets held from time to time by the Trustee in the Trust Fund.

"Trust Expenses" means the trustee compensation and any other expenses of the Trust, including, without limitation, amounts payable out of the Trust Fund pursuant to Section 5.6 below.

"Trustee" means Univest Bank and Trust Co., and its successors and permitted assigns.

"Trust Fund" means the trust estate managed, protected, and conserved pursuant to the terms and conditions of this Trust Agreement, which shall consist of the Sale Proceeds deposited by the Settlor hereunder, and any Additional Contributions made to the Trust under Section 3.3 hereof, together with any and all investment income earned from Permitted Investments made and held by the Trustee pursuant to this Trust Agreement.

Section 1.2 Other Definitional Provisions. (a) All references to Articles, Sections, and subsections are to Articles, Sections, and subsections of this Agreement unless otherwise specified. All terms defined in this Agreement shall have the defined meanings herein when used in any certificate, notice, or other document made or delivered pursuant hereto, unless otherwise defined therein.

(b) In the event of any change in the identity of the Settlor, Distribution Agent or Calculation Agent as defined above, whether by merger, incorporation or cessation of existence, written notice of the identity and contact information for the successor entity shall be provided in writing to the Trustee within ten (10) days of any change in accordance with the notice requirements of Section 9.3 below.

ARTICLE 2 ORGANIZATION

Section 2.1 Declaration of Trust. The name of the Trust shall be "The Delaware County Regional Water Quality Control Authority Rate Stabilization Trust." Effective as of the Effective Date, the Trustee shall have all of the rights, powers and duties set forth herein with respect to accomplishing the purposes of the Trust.

Section 2.2 Purposes of the Trust. The purposes of the Trust are to benefit the Beneficiaries by receiving Sale Proceeds deposited into the Trust Fund by the Settlor and any additional contributions made to the Trust under Section 3.3 hereof, investing and reinvesting such Sale Proceeds and any Additional Contributions, and making Distributions from time to time to the Distribution Agent for the benefit of the Beneficiaries, as directed by the Settlor pursuant to Article 4 below. The Distributions to the Distribution Agent are intended to reimburse the Distribution Agent for rate reductions which the Distribution Agent provides to the Beneficiaries pursuant to the Rate Stabilization Agreement. Neither the Distribution Agent nor any of its Affiliates is an intended beneficiary of the Trust.

Section 2.3 Appointment of Trustee. The Settlor hereby appoints the Trustee of the Trust, effective as of the Effective Date, to have all the rights, powers, and duties and all of the protections, indemnities, and immunities set forth herein. The Trustee hereby accepts such appointment.

Section 2.4 Title to Trust Property. Legal title to all the Trust Assets shall be vested at all times in the Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Trust Assets to be vested in the Trustee, in which case title shall

be deemed to be vested in the Trustee or a Trustee, as the case may be, *provided* that the Trustee shall have the power to cause legal title to any Trust Assets to be held by or in the name of the Trust, a custodian, sub-custodian, securities depository, or their respective nominee.

Section 2.5 Situs of Trust. The Trust shall be located in the Commonwealth of Pennsylvania, and questions pertaining to the validity and construction of this Agreement and with respect to the administration of the Trust shall be determined in accordance with the laws of the Commonwealth of Pennsylvania. The Trustee may, however, at any time and from time to time transfer the situs of the Trust to any other jurisdiction that the Trustee may deem appropriate.

Section 2.6 Use of Trust Assets. Trust Assets shall be used solely to carry out the purposes set forth in Section 2.2 above, and shall not be subject (in whole or in part) to voluntary or involuntary assignment, anticipation, legal process, or claims of creditors of the Settlor, the Distribution Agent, the Aqua Parent, any Beneficiary, or any other person or entity.

ARTICLE 3 CONTRIBUTIONS TO THE TRUST

Section 3.1 Initial Contribution. The Settlor shall transfer one thousand dollars (\$1000.00) in cash to the Trust on the Effective Date.

Section 3.2 Contribution of Sale Proceeds. On or as soon as practicable after the Closing Date, the Settlor shall transfer to the Trust (or direct Aqua Wastewater to transfer to the Trust on the Settlor's behalf) that portion of the Sale Proceeds (comprising a majority of the Sale Proceeds) which the Settlor is required to contribute to the Trust pursuant to the Funding Agreement.

Section 3.3 Additional Contributions. In addition to the contributions described in Sections 3.1 and 3.2 above, the Trustee may receive such additional contributions as may be made to it from time to time by the Settlor or any other person in the form of cash, securities, or other property acceptable to the Trustee (the "Additional Contributions"). Such Additional Contributions may include (without limitation) funds released from time to time from one or more escrow accounts created under the Sewer System Sale Agreement. *Provided, however*, that the Trustee shall have no responsibility for collecting any such Additional Contributions.

Section 3.4 Acceptance by the Trustee. The Trustee hereby agrees to accept the contributions described in sections 3.1, 3.2, and 3.3 above for the benefit of the Beneficiaries, and agrees to use such funds pursuant to the terms of this Agreement.

ARTICLE 4 DISTRIBUTIONS FROM THE TRUST

Section 4.1 Distributions. (a) The Settlor shall direct the Trustee to make Distributions to Aqua Wastewater from time to time in accordance with the Rate Stabilization

Agreement. The Trustee shall have no duty to determine whether or not the amounts or timing of such Distributions are proper under the Rate Stabilization Agreement.

(b) The Trustee shall make Distributions to the Distribution Agent from time to time in accordance with written directions received by the Trustee from a duly authorized representative of the Settlor (each a "Distribution Order"). *Provided, however,* that the Trustee shall make such Distribution no later than ten (10) business days after the date on which the Trustee receives the Distribution Order. Such Distributions will be made to the Distribution Agent solely for the purpose of reimbursing the Distribution Agent for rate reductions made pursuant to the Rate Stabilization Agreement. For purposes of this Section 4.1, written notification of the identity and contact information of the duly authorized representative of the Settlor shall be provided to the Trustee in writing at least annually on January 1, or upon any subsequent change in such authorized representative, within five (5) days thereof, in accordance with the requirements of Section 9.3 below.

Section 4.2 No Right of Reversion. Under no circumstances shall the Settlor or any successor thereto have any rights of reversion under this Trust Agreement. All Trust Assets shall be disbursed in furtherance of the purposes set forth in Section 2.2.

ARTICLE 5 TRUSTEE

Section 5.1 Trustee Resignation, Removal, and Succession. (a) Any Trustee serving hereunder shall have the right, upon ninety (90) days' prior written notice delivered to the Settlor, to resign as Trustee of this Trust. At any time after the sixth (6th) anniversary of the Closing Date, the Settlor shall have the right, upon ninety (90) days' prior written notice to the Trustee, and upon payment of all amounts due and owing hereunder, to remove such Trustee as a trustee. Upon notice of such resignation or removal, the Settlor shall appoint a successor Trustee in writing within thirty (30) days of the expiration of the ninety (90) day notice period, such appointment to be accepted in writing by the successor trustee so designated. If the Settlor fails to appoint a successor trustee, the Trustee may secure the appointment of a successor trustee in any manner permitted by law, including by petition or application to the appropriate court of jurisdiction. The resignation or removal of Trustee shall only become effective upon the appointment and qualification of the successor trustee. *Provided, however,* that the entity serving as Trustee hereunder shall at all times be a corporate trustee having assets under management of no less than _____ dollars (\$_____).

(b) Upon the appointment, and timely written acceptance of the appointment of a successor trustee as provided herein, the Trustee shall transfer and convey to the successor Trustee all Trust Assets held by the Trustee. When such transfer and conveyance are completed, the Trustee shall be released and discharged from all liability relating to further administration and investment of the Trust.

(c) No Trustee taking office shall be liable in any way for the acts or omissions of any Trustee prior to such Trustee's assumption of office, or shall have any duty to review the performance of a Trustee prior to that date.

(d) Except as specifically authorized hereunder, all powers of the Trustee shall be exercised by the Trustee alone.

Section 5.2 Duties of Trustee. The Trustee undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, subject to and in accordance with the provisions of this Agreement. No implied duties, covenants, or obligations shall be read into this Agreement against the Trustee, the Settlor, or any Affiliate of either the Trustee or the Settlor. The Trustee shall oversee the conduct of the activities of the Trust, make and execute contracts and other instruments on behalf of the Trust, and may sue and be sued on behalf of the Trust in the name of the Trust, subject to the terms of this Agreement.

Section 5.3 Acceptance of Trust and Duties. (a) Except as otherwise provided in this Article 5, in accepting the trust hereby created, the Trustee acts solely as trustee hereunder and not in its individual capacity, and all persons having any claim against the Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust Assets for payment or satisfaction thereof. The Trustee accepts the trust hereby created and agrees to perform its duties hereunder, but only in accordance with the express terms of this Agreement.

(b) In carrying out its duties hereunder, the Trustee shall exercise the rights and powers vested in it hereunder in good faith, but only on the terms expressly set forth herein. Neither the Trustee nor any of its officers, directors, employees, agents or affiliates shall have any implied duties (including fiduciary duties) or liabilities otherwise existing at law or in equity with respect to the Trust, which implied duties and liabilities are hereby eliminated. No provision of this Agreement shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, its own bad faith, its own breach of its representations, warranties or covenants given in its individual capacity or its own willful misconduct. In addition:

(i) The Trustee shall be liable for its willful misconduct or gross negligence in acting or failing to act, except that the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in accordance with a direction received by it from the Settlor or Calculation Agent pursuant to this Agreement;

(ii) The Trustee shall not be liable for any error of judgment, or for any action taken, suffered or omitted to be taken by it, in good faith, nor for any act or omission of any predecessor and/or successor Trustee;

(iii) The Trustee shall not be deemed to have notice or knowledge of any matter unless written notice thereof is received by the Trustee in accordance with this Agreement;

(iv) The Trustee shall have no duty to monitor or supervise, or be liable for anything done or omitted by any other person, including the Settlor, the Distribution Agent or the Calculation Agent;

(v) The Trustee shall not be liable for the default or misconduct of the Settlor, the Distribution Agent, the Calculation Agent or any other person, and the Trustee shall not be deemed to have knowledge of any default on the part of any such person unless the Trustee receives written notice of such default in accordance with this Agreement; nor shall the Trustee be responsible for performing, monitoring or supervising the performance of any such person's obligations under this Agreement or any related agreement;

(vi) Under no circumstance shall the Trustee be liable for any representation, warranty, covenant, obligation or indebtedness of the Trust, or any other payment or distribution obligations evidenced by or arising under this Agreement;

(vii) The Trustee shall not be liable for or in respect of, and makes no representation with respect to, the validity or sufficiency of any provision of this Agreement, or the due execution hereof or thereof by any person, other than itself, or the value of the Trust Assets, or the efficacy of the Trust or its ability to generate the amounts intended to be distributed for the benefit of the Beneficiaries;

(viii) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, entitlement order, approval or other paper or document;

(ix) The Trustee shall not be liable for (x) any special, consequential or punitive damages, however styled, including, without limitation, lost profits, (y) the acts or omissions of any nominee, correspondent, clearing agency or securities depository through which it holds the Trust's securities or assets, or (z) any losses due to forces beyond the reasonable control of the Trustee, as applicable, including, without limitation, strikes, lockouts, riots, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances;

(x) Other than with respect to any report or information that the Trustee has an express duty to review under this Agreement, receipt by the Trustee of any report or other information delivered or otherwise made available to the Trustee pursuant to the terms of this Agreement or any other document related to the Trust shall not be deemed to constitute knowledge by the Trustee of such information, unless the Trustee receives written notice with respect thereto;

(xi) Except as otherwise expressly set forth in this Agreement, knowledge or information acquired by (x) Univest Bank and Trust Co. in any of its

respective capacities hereunder or under any other document related to this transaction shall not be imputed to Univest Bank and Trust Co. in any of its other capacities hereunder or under such other documents, and (y) any Affiliate of Univest Bank and Trust Co. shall not be imputed to Univest Bank and Trust Co. in any of its respective capacities hereunder and vice versa;

(xii) The right of the Trustee to perform any discretionary act enumerated in this Agreement or in any other document to which the Trust is a party shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct in the performance of any such act; the Trustee shall be under no obligation to exercise any of the discretionary rights or powers vested in it by this Agreement;

(xiii) The Trustee shall have no duty to recompile, recalculate or otherwise verify the accuracy of any information provided to it by the Settlor except as otherwise expressly set forth in this Agreement, and may conclusively rely thereon in good faith;

(xiv) The Trustee may consult with counsel, accountants and other experts, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants, or other experts selected by it in good faith, and any opinion of counsel shall be full and complete protection in respect of any action taken or suffered or omitted by it under this Agreement in good faith and in accordance with such opinion of counsel;

(xv) The Trustee shall be under no obligation to institute, conduct or defend any litigation under this Agreement or otherwise in relation to the Trust at the request, order or direction of the Settlor or any other person, unless such requesting person(s) shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that may be incurred therein or thereby;

(xvi) The Trustee may execute any of the trusts or powers under this Agreement, or perform any duties under this Agreement, either directly or by or through agents or attorneys or one or more custodians (any of which may be Affiliates of the Trustee) and the Trustee shall not be liable for the acts or omissions of any agent, attorney or custodian selected by such Trustee in good faith;

(xvii) The Trustee shall have no duty or obligation to manage, make any payment in respect of, register, record, sell, dispose of or otherwise deal with the Trust Assets, or to otherwise take or refrain from taking any action under, or in connection with, any document contemplated hereby to which the Trustee is a party, except as expressly provided by the terms of this Agreement; and

(xviii) The Trustee shall have no responsibility to record this Agreement, to prepare or file any financing or continuation statement in any public office at any time or otherwise to perfect or maintain the perfection of any ownership or security interest or

lien or to prepare or file any tax, qualification to do business or securities law filing or report except as expressly provided by the terms of this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, the Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties under this Agreement, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, and none of the provisions contained in this Agreement or any other document to which the Trust is a party, shall in any event require the Trustee, to perform, or be responsible for the manner or omission of performance of, any of the duties or obligations of the Settlor under any other agreement or document.

(d) Each of the parties hereto hereby agrees, and each Beneficiary, as evidenced by its acceptance of any benefits hereunder, understands and agrees, that the Trustee, in any capacity, has not provided and will not in the future provide, any advice, counsel or opinion regarding the tax, financial, investment, securities law or insurance implications and consequences of the formation, funding and ongoing administration of the Trust.

(e) Each of the parties hereto hereby agrees, and each Beneficiary, as evidenced by its acceptance of any benefits hereunder, understands and agrees, that that the Trustee, in any capacity, has not (i) made any investigation as to the accuracy of any representations, warranties or other obligations of the Trust under this Agreement or any other document contemplated hereby, and shall have no liability in connection therewith and (ii) prepared or verified, and shall have no liability for, any information, disclosure or other statement made in any document issued or delivered in connection with the transactions contemplated by this Agreement or any related document or agreement.

Section 5.4 Refrain from Certain Actions. The Trustee shall not be required to take any action under this Agreement if the Trustee shall have reasonably determined, or shall have been advised by counsel, that such action is likely to result in liability on the part of the Trustee, is contrary to the terms of this Agreement, or is otherwise contrary to applicable law.

Section 5.5 Reliance. The Trustee shall not incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond, facsimile transmission, or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by an authorized representative of the proper party or parties, and need not investigate any fact or matter in any such document. As to any fact or matter the method of the determination of which is not specifically prescribed herein, the Trustee may for all purposes hereof rely on a certificate signed by an authorized officer of the Settlor, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

Section 5.6 Compensation and Expenses. (a) The Trustee shall be entitled to compensation and reimbursement from Trust Assets for all expenses incurred in the course of discharging its duties thereunder, as provided in the schedule attached hereto as Exhibit A.

(b) Trust assets may be used to pay compensation and expenses of the Calculation Agent, upon receipt by the Trustee of written directions to this effect from the Settlor.

Section 5.7 Investment of Trust Assets. (a) The Trustee shall invest and reinvest the principal and income of the Trust Fund and keep the Trust Assets invested, without distinction between principal and income, in Permitted Investments that comply with the Investment Guidelines. The Trustee may, however, reserve from investment and keep, either as uninvested contributions or the proceeds of sale of investments, such amounts as it may from time to time it deems advisable in order to provide for anticipated Distributions or other expenditures from the Trust Fund, notwithstanding the provisions of 20 Pa. C.S. §7207. The Trustee does not guaranty any positive return on any such investment and the Trustee shall not be liable for any loss, including without limitation any loss of principal or interest, or for any breakage fees or penalties, in connection with the purchase or liquidation of any investment made hereunder.

(b) The Settlor shall provide a draft set of Investment Guidelines to the Trustee no later than February 28, 2020, and shall provide final Investment Guidelines to the Trustee no later than the Closing Date. Such final Investment Guidelines may be subsequently revised by agreement of the Settlor and the Trustee, but only with the written approval of Aqua Wastewater.

Section 5.8 Trustee Powers. Except as otherwise specifically provided in this Trust Agreement, the Trustee shall have authority, in addition to and not in limitation of any authority given it by law, but shall have no obligation to exercise the following powers:

(a) To acquire or dispose of Permitted Investments which may from time to time or at any time constitute the Trust Fund for such prices and on such terms as the Trustee may deem proper, and to make, execute, and deliver to the purchasers thereof good and sufficient deeds of conveyance therefor and all assignments, transfers, and other legal instruments, either necessary or convenient for passing the title and ownership thereto, free and discharged of all trusts and without liability on the part of such purchasers to see to the application of the purchase money.

(b) To cause any Permitted Investment to be registered in or transferred into (i) its name as the Trustee, (ii) the name of the Trust, or (iii) the name or names of their nominee or nominees or to retain same unregistered or in form permitting transfer by delivery, and to maintain all such investments through such agents, custodians, and other means as it deems appropriate, *provided* that the books and records of the Trustee at all times shall show that all such investments are part of the Trust Fund.

(c) To vote upon any stocks, bonds, or other securities, and to give general or special proxies or powers of attorney with or without power of substitution; provided that the Trustee shall vote in favor of management or recommended proposals in all instances unless otherwise directed in writing by the Settlor.

(d) To exercise any option, to accept in exchange or to subscribe for additional securities, to exercise any conversion privileges, and to make any necessary payments therefor.

(e) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Trust, without liability for interest thereon.

(f) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(g) To determine what is principal and what is income hereunder, and, in its sole discretion, to allocate or apportion gains and losses realized from the sale or other disposition of any assets between principal and income.

(h) Generally to exercise all rights of ownership and disposition over the Trust Fund and to do all acts and things which the Trustee may consider in the best interests of the Trust Fund.

Section 5.9 Indemnity of Trustee.

To the fullest extent permitted by applicable law, the Trustee and each of its directors, officers, employees, agents, affiliates, successors, assigns and legal representatives, (each an "Indemnified Person") shall be indemnified, defended and held harmless by, and entitled to reimbursement from, the Trust out of Trust Assets with respect to any loss, liability, obligation, damages, penalty, tax, claim, action, investigation, proceeding, cost, expense or disbursement, including reasonable attorneys', experts' and other professionals' fees and expenses of any kind or nature whatsoever (collectively "Costs"), arising out of or incurred in connection with this Agreement, the Trust Fund, the Trust Assets, the administration of the Trust Fund and the Trust Assets or any action or inaction of the Trustee hereunder, except to the extent that such Costs arise out of or result from the Trustee's own willful misconduct, bad faith or gross negligence. The indemnities contained in this Section 5.9 shall survive the resignation or removal of the Trustee or the termination of this Agreement.

Section 5.10 Interpretation and Direction.

To the extent the Trustee determines that any substantial ambiguity exists in the interpretation of any definition, provision or term contained in this Agreement pertaining to the performance of its duties hereunder, or to the extent more than one methodology can be used to make any of the determinations or calculations to be performed by any Trustee hereunder, the Trustee may request written direction from the Settlor as to the interpretation or methodology it should adopt with respect thereto. The Settlor shall promptly provide such written direction, and the Trustee shall be entitled conclusively to rely upon, and shall be protected and held harmless in acting upon, such written direction.

Section 5.11 Books and Records. (a) The Trustee shall direct the preparation and maintenance of full and accurate accounts of all receipts, investments, disbursements, and other transactions of the Trust Fund. All such accounts, books, and records shall be open to inspection and audit at all reasonable times by any authorized representative of the Settlor.

(b) The Trustee shall retain records relating to the Trust Fund for as long as necessary for the proper administration thereof, and at least for any period required by applicable law.

Section 5.12 Accounting and Reports. (a) The Trustee shall provide to the Settlor customary quarterly or monthly written reports of all receipts and expenditures made from the Trust Fund during the month, in such detail and format as may be agreed upon by the Trustee and the Settlor from time to time. Unless otherwise determined by the Trustee, the Trustee shall (a) maintain (or cause to be maintained) the books of the Trust on a calendar-year basis and on the cash method of accounting. The financial records of the Trust shall be kept in conformity with generally accepted accounting principles applied on a consistent basis, and with such other requirements as may reasonably be required by the Trustee or the Settlor.

(b) The Trustee shall as soon as practicable, but in no event later than three (3) months after the end of each fiscal year of the Trust, provide to the Settlor or its designee (i) the Trust's revenue and expense statement for such fiscal year and (ii) the Trust's balance sheet as of the end of such fiscal year, each accompanied by the certificate or opinion of a firm of independent certified public accountants selected by the Trustee and approved by the Settlor.

(c) Within ninety (90) days after termination of the duties of the Trustee, and at such other times (if any) as the Settlor may determine in its discretion, the Trustee shall render to the Settlor or its designee a written account setting forth all transactions effected by the Trustee since the period covered by its last such preceding account and showing at its then fair market value all property held at the end of the accounting period. Upon the expiration of ninety (90) days from the date such account is rendered, the Trustee shall be released and discharged from accountability to the Settlor as respects the same, unless the Settlor shall have filed with the Trustee a written statement claiming gross negligence, willful misconduct, or lack of good faith by the Trustee with respect thereto. If any such objection is filed and is not satisfactorily adjusted by the parties, the Trustee shall have the right to apply to a court of competent jurisdiction for judicial settlement of such account at the sole cost and expense of the Trust. Neither the Settlor nor any other person shall have the right to demand or be entitled to any further or different accounting by the Trustee, except as may otherwise be required by law.

(d) The Trustee shall also furnish to the Settlor or its designee such other reports as may be reasonably requested by the Settlor; provided that any costs or expenses incurred by the Trustee in preparing, directly or through a third party subcontractor, any reports that are outside of the scope of the trustee's usual and customary reporting shall be borne solely by the Trust .

Section 5.13 Third Party Reliance. (a) No person having any dealing with the Trust Fund or the Trustee shall be bound to inquire of the duty, authority, or power of the Trustee to perform any act which it undertakes to perform. No person purchasing or acquiring property or lending money to the Trustee shall be bound to see to the application of the purchase money or other property transferred or loaned to the Trustee, or to inquire into the propriety or validity of the said sale, disposition, or loan by the Trustee.

(b) Every instrument executed by the Trustee shall be conclusive in favor of any person, partnership, corporation relying thereon that (a) at the time of the delivery of the instrument the

Trust was in full force and effect, (b) the instrument was effected in accordance with the terms and conditions of this Agreement, and (c) the Trustee was duly authorized and empowered to execute the instrument.

Section 5.14 Interpretation; Rules. The Trustee shall have the power to construe the provisions of this Agreement and the terms used in this Agreement, and any construction adopted by the Trustee in good faith consistent with the purpose of the Trust shall be binding upon all persons.

ARTICLE 6 POWER OF SUBSTITUTION

Section 6.1 Power of Substitution. (a) The Settlor shall have the right to acquire any asset of the Trust (an "Acquired Asset") by transferring to the Trustee in exchange for the Acquired Asset one or more other assets (collectively the "Substituted Asset") having a fair market value that is no less than the fair market value of the Acquired Asset.

(b) To the extent (if any) that the fair market value of the Substituted Asset exceeds the fair market value of the Acquired Asset, the Settlor shall be deemed to have made an Additional Contribution to the Trust under Section 3.3 above.

Section 6.2 Confirmations. (a) The Trustee shall take such reasonable steps as may be necessary in order to confirm, prior to the exchange of assets, that the fair market value of the Acquired Asset is no greater than the fair market value of the Substituted Asset. If the Trustee determines that the fair market value of the Acquired Asset is greater than the fair market value of the Substituted Asset, the Trustee shall not transfer the Acquired Asset to the Settlor or accept the Substituted Asset from the Settlor.

(b) The Trustee shall not accept any Acquired Asset in substitution for a Substituted Asset unless it has previously received written confirmation from the Calculation Agent that such substitution will not adversely affect the ability of the Settlor to fund Distributions (e.g., due to a reduction in the liquidity of the Trust).

ARTICLE 7 TERMINATION

Section 7.1 Termination. The Trust shall terminate when all of the assets of the Trust have been exhausted in furtherance of the purposes set forth in Section 2.2 above.

Section 7.2 Trust Irrevocable. Neither the Settlor nor any other person is entitled to revoke or terminate the Trust.

ARTICLE 8 AMENDMENTS

Section 8.1 Amendment of Agreement. Notwithstanding the irrevocability of the Trust, the Trustee is authorized to institute a judicial proceeding in a court of competent jurisdiction to reform this Trust for the sole purpose of meeting any and all federal statutory or regulatory requirements which may affect the taxability of the Trust and which were enacted or instituted subsequent to the inception of the Trust. *Provided, however*, that this provision shall not apply if its existence would result in the overall loss of favorable tax treatment, thereby defeating the purpose of this right of reformation.

ARTICLE 9 MISCELLANEOUS

Section 9.1 No Legal Title to Trust Property. No transfer, by operation of law or otherwise, of any right, title, or interest in the Trust assets shall operate to terminate this Agreement or the Trust, or shall entitle any transferee to an accounting or to the transfer to it of legal title to any part of the Trust Assets.

Section 9.2 Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of the Settlor, the Trustee, and the Beneficiaries, and nothing in this Agreement, whether express or implied, shall be construed to give to the Distribution Agent, any Affiliate of the Distribution Agent, any other person any legal or equitable right, remedy, or claim in the Trust Assets or under or in respect of this Agreement or any covenants, conditions, or provisions contained herein.

Section 9.3 Notices. All demands, notices and communications upon or to the Settlor or the Trustee under this Agreement (including Distribution Orders) shall be in writing, personally delivered, sent by electronic facsimile (with hard copy to follow via first class mail), sent by email (with hard copy to follow via first class mail), or mailed by certified mail return receipt requested, and shall be deemed to have been duly given upon receipt, to the following address (or to such other address as the notice party may direct):

To the Settlor:

DELCORA
100 East Fifth Street
Chester, PA 19013
Attention: Executive Director

with copies to:

DELCORA
100 East Fifth Street
Chester, PA 19013
Attention: Solicitor

and

AQUA WASTEWATER PENNSYLVANIA, INC.

Attention: _____

To the Trustee:

Univest Bank and Trust Co.
14 North Main Street
PO Box 559
Souderton, PA 18964
Attention: John C. Kazary, Esq., CTFA – Vice President and Wealth Trust Advisor

with a copy to:

Univest Bank and Trust Co.
14 North Main Street
PO Box 64197
Souderton, PA 18964
Attention: Megan Duryea Santana, General Counsel

Section 9.4 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Section 9.5 Successors and Assigns. (a) Neither party hereto may assign any of its obligations or rights under this Agreement without the prior written consent of the other party except for obligations and rights delegated under 20 Pa. C.S. Section 7206.

(b) All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Settlor, the Trustee, and their respective successors and permitted assigns.

Section 9.6 Headings, etc. Titles for sections are for general information only, and this Agreement shall not be construed by reference to such titles. Wherever required by context, the singular of any word used in this Agreement shall include the plural and the plural may be read in the singular. Words used in the masculine shall be read and construed in the feminine where they would so apply.

Section 9.7 Governing Law. This agreement shall in all respects be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, including all matters of construction, validity, and performance.

Section 9.8 Consent to Jurisdiction and Service of Process. Each of the parties to this Agreement hereby irrevocably submits to the jurisdiction of any Pennsylvania state court sitting in Delaware County, Pennsylvania or the U.S. District Court for the Eastern District of

Pennsylvania, and any appellate courts thereof, in any action or proceeding arising out of or relating to this Agreement, and each of the parties hereby irrevocably agrees, to the extent permitted by law, that all claims in respect of such action or proceeding may be heard and determined in such Pennsylvania state or U.S. federal court. Each of the parties hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding and any right of jurisdiction in such action or proceeding on account of the place of residence or domicile of such party. A final judgment in any such action or proceeding shall, to the extent permitted by law, be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties consents to the service of process by mail. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by law or affect its right to bring any action in any other court.

Section 9.9 Tax Status of the Trust. The Trust is intended to be a "grantor trust" of which the Settlor is treated as the owner for federal income-tax purposes under Code Sections 671 *et seq.* The Trust is intended to qualify as a governmental entity for state and local tax purposes.

Section 9.10 Entire Agreement. This Trust Agreement shall not be deemed to be varied, altered or amended by any other statement, representation or agreement by or between any person or persons whomsoever, whether written, oral or implied in any way, except as provided in this Agreement.

Section 9.11 Reliance on Trust Agreement. Any person dealing with the Trustee may rely upon a copy of this Agreement and any amendments thereto certified to be true and correct.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of Effective Date.

SETTLOR:

DELAWARE COUNTY REGIONAL WATER
QUALITY CONTROL AUTHORITY

By: _____

Name: _____

Title: _____

TRUSTEE:

UNIVEST BANK AND TRUST CO.

By: _____

Name: _____

Title: _____

EXHIBIT A
SCHEDULE OF TRUSTEE COMPENSATION

COMMONWEALTH OF PENNSYLVANIA

:
:
:

ss.

COUNTY OF

On this, the _____ day of December 2019, before me, the undersigned officer, personally appeared _____, known to me, or satisfactorily proven, to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same on behalf of the Delaware County Regional Water Quality Control Authority for the purposes therein contained.

I have signed my name and affixed my seal.

Notary Public

My Commission expires:

COMMONWEALTH OF PENNSYLVANIA

:

SS.

:

COUNTY OF

:

On this, the _____ day of December 2019, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be a _____ of _____ Bank, and that he as such _____, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as trustee.

I have signed my name and affixed my seal.

Notary Public

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY
AND
AQUA PENNSYLVANIA WASTEWATER, INC.

_____, 2020

This Memorandum of Understanding ("MOU") between the Delaware County Regional Water Quality Control Authority, a body corporate and politic existing under the Pennsylvania Municipal Authorities Act, 42 P.S. 5601, *et seq.* ("DELCORA") and Aqua Pennsylvania Wastewater, Inc. ("Aqua Wastewater") is being entered into as of [inset date] in support of a certain agreement dated September 17, 2019, as amended on February 24, 2020, between DELCORA and Aqua Wastewater ("Sewer System Sale Agreement") under which DELCORA has agreed to sell and Aqua Wastewater has agreed to purchase certain sewer equipment and facilities of DELCORA's serving various residential, commercial, industrial, and municipal customers in Delaware County and Chester County, Pennsylvania ("Sewer System").

DELCORA and Aqua Wastewater, individually a "Party" and collectively the "Parties" intend for this MOU to be legally binding upon them and be construed and subject to the laws of the Commonwealth of Pennsylvania.

The purpose of this MOU is to set forth the Parties' general understanding and agreement regarding how Aqua Wastewater can assist with applying a payment to DELCORA customers bills from the net proceeds to be received by DELCORA from Aqua Wastewater from the sale of the Sewer System under the Sewer System Sale Agreement.

The Parties acknowledge that DELCORA has separately established a trust under the DELCORA Rate Stabilization Fund Trust Agreement dated December 27, 2019 (the "Trust Agreement"), into which the net sale proceeds, along with investment earnings thereon and any other amounts contributed to the Trust, will be distributed in accordance with the Trust Agreement.

This MOU shall be effective on the date specified above ("Effective Date") and shall be filed with the Pennsylvania Public Utility Commission ("PUC") under Section 507 of the Pennsylvania Public Utility Code ("Code"), 66 Pa. C. S. § 507. On and after the Closing:

1. Aqua Wastewater shall issue a bill to each DELCORA customer for each billing period using the full cost of service rates authorized by the PUC.
2. The customer assistance payment for each DELCORA customer for each billing period shall be applied to each DELCORA customer bill.
3. Aqua Wastewater shall calculate the customer assistance payment amount for each DELCORA customer and the total customer assistance payment amount for each billing period, and shall provide its calculation, along with any and all information

necessary to confirm the calculation of both payment amounts to the designated calculation agent.

4. DELCORA shall timely direct the Trustee under the Trust Agreement to transfer to Aqua Wastewater by Fedwire an amount equal to the total customer assistance amount confirmed by the designated calculation agent for the applicable billing period.
5. The Parties shall at all times cooperate with each other and the designated calculation agent to implement this MOU timely.

Dated: _____

Aqua Pennsylvania Wastewater, Inc.

By: _____

Name: _____

Title: _____

Dated: _____

Delaware County Regional Water Quality
Control Authority

By: _____

Name: _____

Title: _____

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