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February 2, 2023

**VIA EMAIL**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, Pa 17120

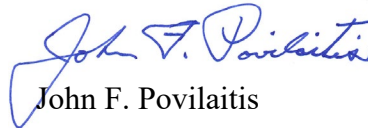
Re: Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for approval of the acquisition by Aqua of the wastewater system assets of the Delaware County Regional Water Quality Control Authority, Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Enclosed please find Aqua Pennsylvania Wastewater, Inc.'s ("Aqua") Answer to Joint Motion to Stay in the above-referenced proceeding.

Copies are being served on the Parties to this proceeding as indicated in the attached Certificate of Service.

Very truly yours,

  
John F. Povilaitis

JFP/kas

Enclosure

cc: The Honorable F. Joseph Brady  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for approval of the acquisition by Aqua of the wastewater system assets of the Delaware County Regional Water Quality Control Authority	: : : Docket No. A-2019-3015173 : : :
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**AQUA PENNSYLVANIA WASTEWATER, INC.’S  
ANSWER TO JOINT MOTION TO STAY**

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), by and through its counsel, pursuant to 52 Pa Code § 5.103(b), files this Answer to the Joint Motion for Stay of the Pennsylvania Public Utility Code (“Code”) Chapter 11 and Section 1329 Application (“Joint Motion”) of the County of Delaware Pennsylvania (“County”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”) (collectively, “Joint Movants”) as follows:

**I. BACKGROUND AND PROCEDURAL HISTORY**

1. This proceeding involves the Application of Aqua to acquire the system assets of the Delaware County Regional Water Quality Control Authority ("DELCORA") ("Application").

2. The ALJ and the parties are familiar with the detailed procedural history of this proceeding and Aqua will not, in the interest of brevity and avoiding needless duplication, repeat here the procedural history applicable to this proceeding.

**II. A STAY OF THIS PROCEEDING IS NEITHER NECESSARY NOR APPROPRIATE**

3. The Joint Movants have seized on a court filing outside of this proceeding before the Pennsylvania Public Utility Commission (“PUC”) as a basis for delaying a final PUC

determination of the Application under Code Chapter 11 and Code Section 1329.

4. This proceeding has been an accepted filing and an active docket since the PUC's Secretarial Letter of July 27, 2020, was issued. Principles of both fundamental fairness and constitutional due process require that the Application now be adjudicated on the merits based on the extensive record developed in the initial phase of the proceeding and on remand.

5. Aqua is fully aware that the public interest requirements associated with a Code Chapter 11 application require an analysis of the public interest, which allows for consideration of the impacts of a proposed transaction on all relevant stakeholders. In this specific proceeding, the parties have already been afforded an extensive opportunity to address every aspect of the Transaction, including details of potential ratemaking well beyond what the PUC can lawfully address even in traditional base rate proceedings. But at some point, the litigation process should and must end, particularly in a case involving Code Section 1329 where the General Assembly has indicated its preference for such proceedings to be completed in six-months.

6. The Joint Movants know that delay is the enemy of the Transaction and they have proposed another delay in this proceeding – possibly indefinite – based on a complaint filed recently by DELCORA in the Court of Common Pleas of Delaware County, naming the County and Aqua as defendants (“Complaint”). Importantly, the Complaint has just been served on Aqua, and neither Aqua nor the County has had an opportunity to respond to it in any fashion.<sup>1</sup>

7. In the absence of any response to the Complaint, the Joint Motion speculates what it means for this proceeding and then uses that speculation to wrongfully assert that more time is needed in this proceeding to sort it all out. The effect of this request is to deny Aqua its

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<sup>1</sup> Regardless of any representations regarding the Complaint Aqua asserts in this Answer, the Company reserves its right to make a full response to the Complaint in the Court of Common Pleas of Delaware County.

right to have the Application timely decided based on the extensive record that already exists, and after having already endured a significant delay in reaching a full and complete decision on the merits of the Application.

8. The Joint Motion reflects an expectation – even a legal entitlement – that every time something is filed in any court that in any way relates to the Transaction, the Joint Movants are permitted to seek a delay in this proceeding and inquire into the new matter without regard to whether that matter goes to the core of this proceeding, i.e., issues that are subject to the PUC’s jurisdiction. Some parties to this proceeding, such as the County, or other parties that have unsuccessfully sought entry to this proceeding, such as the City of Chester, have initiated litigation in the trial and appellate courts in a transparent attempt to further delay the PUC’s ultimate decision. The outside litigation is then cited as grounds for delaying the adjudication of the Application.<sup>2</sup>

9. Lost in the Joint Motion’s speculation about the yet unanswered Complaint is that the basic structure of the Transaction has *not* been impacted at all by that filing. Reduced to its essence, the Transaction has always been and remains today about a sale and purchase of assets for consideration. Regardless of the Complaint, there is a transaction seller – DELCORA or the County – and a transaction buyer, Aqua. The filing of the Complaint does not alter this paradigm.

10. The Joint Motion’s request for an indefinite stay is an attempt to expand the scope of this remand proceeding well beyond anything the PUC envisioned when it ordered the remand. The Joint Movants are free in briefing to argue whatever they believe the legal

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<sup>2</sup> By way of example, the County’s interlocutory appeal to Commonwealth Court of the PUC’s remand of this proceeding, which ultimately proved completely meritless, was cited by the County as a ground for not commencing the remand.

implications of the Complaint to be and do not need to further delay this proceeding to address this external litigation.

11. Further, the PUC in its July 26, 2022, Order (“July Order”) disposing of Aqua’s April 27, 2021 Petition for Interlocutory review of Order Staying Proceeding and Answer to Material Question, noted that it cannot and should not be controlled by actions brought in other fora and schedules set in matters outside of the PUC:

The Commission was well aware of the ongoing litigation in other forums when it issued its *March 30 Order*. Aqua asserts that lifting the stay will allow the Commission to reopen the record and receive evidence that permits a full evaluation of its Application. As the remand is interlocutory in nature, a continued stay is not necessary to protect the “substantial rights” of any party. The Commission does have the “duty” to carry out all the provisions of the Code and regulate the conduct of all utilities in the Commonwealth of Pennsylvania. While judicial economy is sometimes a valid basis for a stay, this consideration should not be the primary factor in placing an indefinite hold on a proceeding, particularly where the stay is due to actions in other forums whose schedule is not subject to the provisions of the Code. To the extent that rulings in other forums have some impact on this proceeding, the Commission will afford all parties notice and opportunity to be heard.

July Order at 28.

12. The Joint Motion is inviting the Presiding Officer to stay the proceeding based upon perceptions of the impacts on this proceeding of filings made by others and over which Aqua has no control, and in contravention to the PUC’s statements in the July Order. The Complaint should in no way result in a stay of this proceeding any more than the then-pending appeal that was addressed in the July Order. The PUC has a duty to decide this proceeding timely

and Aqua has a right to have a completed adjudication of the Application.<sup>3</sup> The Joint Motion improperly stands in the way of such a result.

13. Granting the Joint Movants' request for a stay over Aqua's objection at this late stage of this proceeding in the context of this remand and after an already extended hiatus is tantamount to an indefinite stay, which the PUC rejected in the July Order.

14. The Joint Movants assert that the Complaint alleges new facts and legal issues pertinent to the Application and therefore a stay is warranted. Joint Motion ¶23. But a deeper dive shows that there is nothing *new* at all. The dilemma DELCORA posits in the Complaint – choosing between following the County's June 3, 2020, Ordinance terminating DELCORA ("County Ordinance") and the APA – has been extant from the moment the County Ordinance was passed in June 2020 and neither DELCORA nor the County has taken any action to address this situation. Moreover, it is indisputable that the County Ordinance has undergone appellate review, was found to be valid and is not currently subject to further appeal. However, the County, according to witness Dr. Monica Taylor's proposed Direct Remand Testimony, has elected to not proceed with the termination process because it would be "imprudent" to implement the County Ordinance. Delaware County St. No. 3-RT, p. 4. Apparently, the County strategically finds the County Ordinance more useful as a "sword of Damocles", poised over DELCORA's head as a threat to its fulfillment of the Transaction obligations, than a tool to effectuate an orderly

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<sup>3</sup> Indeed, aside from the six-month time period for completing litigation in Code Section 1329 proceedings, the Pennsylvania constitution ensures that litigants are entitled to timely adjudication of their legal claims:

**§ 11. Courts to be open; suits against the Commonwealth.**

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation *shall have remedy by due course of law, and right and justice administered without sale, denial or delay*. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct. (emphasis added).

termination of DELCORA consistent with at least the specifically stated purpose of the County Ordinance.

15. Any concerns about the operation of the Trust and DELCORA's continuing role post Transaction closing (Joint Motion ¶23) have already been addressed in the Trust Funding Agreement and the Trust Agreement, both of which have provisions dealing with their successors. *See* DELCORA Rate Stabilization Fund Trust Agreement, Section 9.5 Successors and Assigns; DELCORA Trust Funding Agreement, ¶4 Successors.

16. Aqua has been informed by DELCORA that it does not believe the Complaint to have any impact on the timely completion of this PUC proceeding or the relief sought by Aqua in the Application.

17. While the Joint Motion claims that judicial economy and administrative efficiency support the issuance of a stay (Joint Motion ¶35), the Joint Movants do not provide a compelling reason to depart from the PUC's finding in the July Order that rejected claims of cost and judicial economy as a basis for continuing a stay. This is especially true now when this matter is close to completion and there are prophylactic measures available to the PUC to address the existence of or possible impacts associated with proceedings external to the PUC.

### **III. THE COMPLAINT RAISES NO UNCERTAINTY OR NEW FACTUAL OR LEGAL MATTERS JUSTIFYING A STAY**

18. The Joint Motion posits that the Complaint raises uncertainty about DELCORA's ability to fulfill its obligations under the Asset Purchase Agreement ("APA"). Joint Motion ¶35. However, this argument ignores the fact that the Commonwealth Court has already explicitly ruled that the County has a legal obligation to implement the APA if it terminates DELCORA, meaning that there will always be a seller to convey the DELCORA assets and an

APA to govern the Transaction. There is in reality no uncertainty, let alone uncertainty supporting a stay of this late-stage proceeding.

19. The Joint Motion lists four alleged factual issues posed by the DELCORA Complaint. Joint Motion ¶24. However, none of these assertions are factual matters requiring additional evidence. It is correct that DELCORA continues to operate as a municipal authority. DELCORA has obligations it must fulfill under the APA until it transfers its assets and obligations to the County under the Ordinance. DELCORA's Articles of Incorporation have been amended to allow for its participation in a Trust. Before the Commonwealth Court, DELCORA stated that it had authority under the Municipalities Authority Act ("MAA") to sell its assets and that the APA was a valid and enforceable contract. Appendix A, Commonwealth Court Opinion at 19. As far as DELCORA's intent that the Trust be a governmental entity with MAA protections is concerned, it is not clear that any Transaction agreements support this intention. Finally, the replacement of Univest as the Trustee of the Trust placed before the Delaware County Court of Common Pleas for resolution has been fully addressed in this proceeding. *See*, Aqua Statement No. 5-RRT and Aqua Statement No. 2-RRT, pages 18 and 62.

20. There has been ongoing litigation in Delaware County civil courts and related appeals before the Commonwealth Court for much of this proceeding. However, during the course of this proceeding much of this litigation has been the subject of trial court and Commonwealth opinions, all of which provide clarity – not uncertainty – regarding DELCORA's obligations under the APA and the relationship between the APA and the County Ordinance.

21. For example, while the Complaint asserts that that "the Commonwealth Court issued an order finding the County Ordinance terminating DELCORA to be valid and enforceable, yet remained silent on the other issues brought on appeal" (Complaint p. 4, ¶18), the



Commonwealth Court opinion at No. 148 C.D. 2021 (“Commonwealth Court Opinion”) certainly was not silent on this issue. In reversing the lower court’s opinion that the County Ordinance was not enforceable because it could not be implemented by DELCORA and the County before closing on the Transaction, the Commonwealth Court Opinion found the County Ordinance to be valid under the MAA. The Commonwealth Court also anticipated that DELCORA and the County would proceed with implementing the County Ordinance and, if termination of the Authority pursuant thereto occurred before closing on the Transaction, the County would then by operation of law assume legal responsibility for implementing DELCORA’s obligations, specifically including its obligations under the APA.

22. The Commonwealth Court laid out the precise steps the County and DELCORA were to take to transfer the Authority’s assets and obligations to the County: “Here, once the County ascertains and later obtains the transfer of DELCORA’s assets and obligations, and technically assumes their ownership as a matter of law, the County can then demand, with an amendment to or creation of a new ordinance, that DELCORA execute a legal instrument that officially conveys those assets and obligations as a matter of fact.” Appendix A, Commonwealth Court Opinion at 18-19. The Commonwealth Court upheld the County Ordinance and confirmed that DELCORA must transfer its assets and liabilities/obligations to the County:

*Therefore, we conclude that the Ordinance is valid and enforceable to the extent it directs the termination/dissolution of DELCORA and dictates that, after termination/dissolution is underway, DELCORA must engage in conduct necessary to effectuate the transfer of its assets and the assumption of its liabilities/obligations by the County.*

Appendix A, Commonwealth Court Opinion at 19. (emphasis added).

23. The Commonwealth Court noted that DELCORA cited its authority to enter into the APA with Aqua under section 5607(d)(4) and (13) of the MAA and DELCORA asserted

that the APA is a valid and enforceable contract. Appendix A, Commonwealth Court Opinion at

19. Moreover, the Court confirmed that among the “obligations incurred” by an authority that a municipality assumes are contracts to sell its assets:

That is, based on the plain language of section 5622(a) of the MAA, a municipality can “assume” all of the “obligations incurred” by an authority, including those in a contract to sell its assets, by obtaining an authority’s project and legal title to the assets of the project.

Appendix A, Commonwealth Court Opinion at 21.

24. The Commonwealth Court left no doubt that by following the process it laid out in the Commonwealth Court Opinion, DELCORA’s contractual obligations under the APA would transfer to the County, which includes the obligation in the APA to support completion of the Transaction:

...it is important to note that the County, in its demand that DELCORA terminate its operations and transfer its assets to the County, effectively places the County in a situation where it would receive a “contractual assignment” from DELCORA as a matter of statutory law. Consequently, the County would, without question or condition, be bound by the terms and conditions of the APA, just as if it were DELCORA itself in the sense that it would essentially become a “party” to a contract. *See Employers Insurance of Wausau v. Department of Transportation*, 865 A.2d 825, 830-31 (Pa. 2005).

Appendix A, Commonwealth Court Opinion at 22.

25. Finally, the Commonwealth Court also addressed the lower court’s and the parties’ concerns that the County may be unable to fulfill the APA’s contractual obligations:

...all of the concerns that the trial court enunciated regarding the County’s inability to fulfill the APA’s contractual obligations is completely irrelevant and has no place in the statutory analysis if section 5622(a) vis-à-vis section 5607(d)(4) and (13) and the issue of whether the County retains its authority pursuant to section 5622(a) despite the APA and its specific obligations. This is because the County, *irrespective of whether it can live up to the contractual promises made in the APA, will have no choice but to abide by and fully perform its*

*obligations or else be potentially subjected to a breach of contract suit by Aqua. See Employers Insurance of Wausau v. Department of Transportation, 865 A.2d 825, 830-31.*

Appendix A, Commonwealth Court Opinion at 22-23. The County referred to in this excerpt from the Commonwealth Court Opinion is not some hypothetical county, but the County of Delaware. In short, the Commonwealth Court concluded that the County must fulfill DELCORA's obligations under the APA upon DELCORA's termination.

26. Pursuant to the Commonwealth Court Opinion, any legal uncertainty on DELCORA's part (and claimed in the Joint Motion to support the stay request) regarding how it can harmonize its obligations under the APA to support the Transaction with the directives of the County Ordinance has been self-created by both the County and DELCORA by not proceeding with the "immediate" termination/dissolution process of DELCORA required by the County Ordinance, the validity of which was unambiguously upheld by Commonwealth Court.

27. The Joint Movants, which include the County, cannot claim there is a need for the PUC to stay this proceeding until there is Court direction on the Complaint when DELCORA and the County have not yet followed the Commonwealth Court's clear guidance on how to meet both the requirements of the County Ordinance *and* the legal contractual obligations of the APA. DELCORA would have no exposure to claims of violating the County Ordinance once the transfer of its assets and obligations under the APA were transferred to the County. While DELCORA notes in the Complaint that Aqua has advised it of its ongoing obligation to support and assist in completion of the Transaction, Aqua has never advised DELCORA that it would violate that obligation by cooperating with the County on its termination/dissolution and the transfer of the APA's obligations to the County as outlined in the Commonwealth Court Opinion.

28. The Commonwealth Court Opinion understandably did not envision that

there would be an extended period during which DELCORA would have to fulfill APA obligations while also following the County Ordinance. Aqua is not responsible for DELCORA's failure to implement the County Ordinance and the County's failure to force adherence thereto. Consequently, Aqua's entitlement to a timely adjudication of the Application should not be denied by an indefinite stay or a ninety (90) day stay for unnecessary additional discovery and testimony.

29. Implementation of the County Ordinance would not create any legal ambiguity regarding the funding of the Trust created by the DELCORA Rate Stabilization Fund Trust Agreement between DELCORA and Univest Bank and Trust Co. ("Trust Agreement"). Appendix B. The term "Settlor" in the Trust Agreement is defined as "the Delaware County Regional Water Quality Control Authority and its successors (including the County upon termination of the Settlor)." Appendix B p. 3. The "Trust Fund" consists of "the Sale Proceeds deposited by the Settlor". Appendix B p. 4. The Trust Agreement therefore explicitly provides for the County to assume DELCORA's obligations as Settlor upon DELCORA's termination.

#### **IV. CONSIDERATIONS TYPICALLY APPLICABLE TO THE ISSUANCE OF A STAY OR INJUNCTION ARE NOT APPLICABLE TO THIS PROCEEDING**

30. The Joint Motion is predicated on the erroneous contention that the mere filing of the Complaint justifies a stay of a proceeding in a completely different forum. However, it is impossible to leap to any conclusion about the impact of the filing of the Complaint on this proceeding, especially since the Complaint case has just been initiated. There is no way to assess the likelihood of success for any issue raised in the Complaint in part because it is not clear that there is any actual dispute articulated in the Complaint or relief requested. Further, neither the County nor Aqua have answered the Complaint, and it is far from clear whether issues appropriate for resolution by a Declaratory Order have been raised. Nor is irreparable harm present. There is

no need for the PUC to consider issues raised in the Complaint in this proceeding. As discussed above, resolution of the Complaint is not necessary before the PUC can review and decide this proceeding. Whatever the merits of the Complaint might, or might not, be, the issues the Joint Movants now claim to support a stay as a result of the filing of the Complaint have already been fully addressed twice. The ability of a “Seller” to meet the terms of the APA is not in doubt. If DELCORA cannot meet those terms because of the County Ordinance, then it falls to the County to meet DELCORA’s obligations under the APA. The issuance of a stay would harm Aqua by indefinitely postponing a decision on the merits of its Application, an adjudication that is long overdue, especially in the context of Code Section 1329. It is unreasonable to even suggest that Aqua’s prior willingness to extend the six-month time period in Code Section 1329 to allow the Commission additional time to review new pleadings is tantamount to acquiescence in an unlimited review period.<sup>4</sup> Joint Motion ¶ 34. The public benefits of this Transaction have been postponed far too long, and further delay in their receipt by customers is not in the public interest.

## **V. CONCLUSION**

WHEREFORE, for the reasons discussed above, Aqua respectfully requests that the Joint Motion be dismissed in its entirety, and that the Presiding Officer grant Aqua such other relief as may be just and reasonable.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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<sup>4</sup> Moreover, the Commonwealth Court has stated that even where a time period is legally a directory rather than mandatory provision, it does not mean the provision is optional or to be ignored at will. *Dep’t of Transp., Bureau of Driver Licensing v. Claypool*, 618 A.2d 1231, 1232 (Pa. Cmwlth 1992).

By:



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*Counsel for Intervenor, Aqua Pennsylvania Wastewater, Inc*

# APPENDIX A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

County of Delaware, Pennsylvania,	:	
Appellant	:	
	:	
v.	:	No. 148 C.D. 2021
	:	
Delaware County Regional Water	:	
Quality Control Authority, and	:	Argued: October 18, 2021
DELCORA Rate Stabilization Fund	:	
Trust Agreement b/t The Delaware	:	
County Regional Water Quality	:	
Control Authority as Settlor and	:	
Univest Bank and Trust Co. as	:	
Trustee	:	
	:	
v.	:	
	:	
Darby Creek Joint Authority, Southern	:	
Delaware County Authority, and Aqua	:	
Pennsylvania Wastewater, Inc.	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge  
HONORABLE MICHAEL H. WOJCIK, Judge  
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION BY  
JUDGE McCULLOUGH

FILED: March 3, 2022

The County of Delaware (County) appeals from the December 28, 2020 final order of the Court of Common Pleas of Delaware County (trial court), which was entered following a bench trial and disposed of all claims filed by the County and counterclaims filed by Delaware County Regional Water Quality Control Authority (DELCORA) and Aqua Pennsylvania Wastewater, Inc. (Aqua).



Recently, in *In re Chester Water Authority Trust*, 263 A.3d 689 (Pa. Cmwlth. 2021) (*en banc*),<sup>1</sup> this Court reconfirmed that a municipality, per section 5622(a) of the Municipality Authorities Act (MAA),<sup>2</sup> 53 Pa.C.S. §5622(a),<sup>3</sup> possesses the unilateral power to dissolve and/or obtain an authority that it had created or the authority's assets. The major issue in this appeal is whether a municipality (here, the County) can exercise that statutory power after an authority (here, DELCORA), acting pursuant to section 5607(d)(4) and (13) of the MAA, 53 Pa.C.S. §5607(d)(4), (13),<sup>4</sup>

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<sup>1</sup> *Petition for allowance of appeal pending* (Pa., Nos. 519-522 MAL, filed September 17, 2021, and 569-572 MAL 2021, filed October 18, 2021).

<sup>2</sup> 53 Pa.C.S. §§5601-5623.

<sup>3</sup> Titled “[c]onveyance by authorities to municipalities or school districts of established projects,” section 5622(a) of the MAA presently states as follows:

(a) *Project*.--If a project established under this chapter by a board appointed by a municipality is of a character which the municipality has power to establish, maintain or operate and the municipality desires to acquire the project, it may by appropriate resolution or ordinance adopted by the proper authorities signify its desire to do so, and the authorities shall convey by appropriate instrument the project to the municipality upon the assumption by the municipality of all the obligations incurred by the authorities with respect to that project.

53 Pa.C.S. §5622(a).

<sup>4</sup> Section 5607(d)(4) and (13) provides as follows:

(d) *Powers*.--Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers:

....

(4) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the

**(Footnote continued on next page...)**

entered a contract to sell its assets to a private third party (here, Aqua). Given the underlying factual circumstances, this issue arises specifically at a point where the obligations of the contract have not been fully performed, the contract is subject to a condition subsequent, the municipality arguably did not assume the obligations of the contract via an ordinance, and the municipality—disputedly—cannot fulfill the obligations of the authority in the event the municipality did assume the contract.

Upon review, we conclude that the County retains its statutory authority under section 5622(a) of the MAA, notwithstanding DELCORA’s exercise of power under section 5607(d)(4) and (13) of the MAA. Accordingly, we reverse the order of the trial court and remand for further proceedings.

### **Background**

In its opinion, the trial court set forth the factual history of this case as follows:

DELCORA is a municipal authority formed by the County pursuant to the [MAA] of 1945<sup>[5]</sup> for the purpose of collecting, conveying, and treating wastewater generated by residents and businesses located in the County. On October 20, 1971, the County . . . created DELCORA by filing Articles of Incorporation . . . with the Department of State.

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authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.

....

(13) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.

53 Pa.C.S. §5607(d)(4), (13).

<sup>5</sup> Act of May 2, 1945, P.L. 382, No. 164, *as amended, formerly* 53 P.S. §§301-322. Later, section 3 of the Act of June 19, 2001, P.L. 287 (2001 Act), repealed the MAA of 1945 and replaced it with the current MAA.

The County is the only municipal incorporator of DELCORA. The County is governed under its Home Rule Charter and consists of five elected council members. The original Articles provide that DELCORA[]

shall be organized for the purpose only to acquire, hold, construct, improve, maintain, operate, own and lease, either in the capacity of lessor or lessee, projects of the following kind and character: sewers, sewer systems or parts thereof, sewerage treatment works, including works for the treating and disposing of industrial waste, in and for the County, and such other territory as it may be authorized to serve, and to contract with individuals, corporations, municipal corporations, authorities, and other governmental bodies or regulatory agencies both within and without the County [], and shall exercise all of the powers granted to an Authority organized for such purpose by the [MAA] of 1945 under which it is organized.

The Articles were subsequently amended by the County through the filing of Articles of Amendment on November 9, 1977, to increase the number of board members of DELCORA from seven to nine. On April 16, 2002, the Articles were again amended to extend the term of existence of DELCORA from October 20, 2021, to January 15, 2052.

DELCORA currently owns, operates, and maintains wastewater collection systems that serve approximately a half million people in [42] municipalities in both Delaware and Chester Counties. DELCORA is responsible for building and operating interceptors, force mains and pump stations, [] a regional wastewater treatment plant, and acquiring treatment capacity from the Philadelphia Water Department. DELCORA also currently owns and operates sewer collection systems serving eight municipalities: the City of Chester [(City)], parts of the Township of Chester, and the Boroughs of Parkside, Upland, Trainer, Marcus Hook, Rose Valley, and Edgemont. In addition, DELCORA owns and operates two treatment plants in Pocopson Township, Chester County. Intervenor Darby Creek Joint Authority [(DCJA)] and Southern Delaware County Authority [(SDCA)] both have service contracts with

DELCORA and rely upon DELCORA's wastewater collection and treatment, as they represent various communities themselves.

In 2019, when faced with dramatically increasing estimated capital costs that would substantially increase rates that would have to be charged to its customers, DELCORA engaged in discussions with [i]ntervenor [Aqua], a provider of wastewater utility service in Pennsylvania, for the purchase of DELCORA's system. At its regularly scheduled meeting on September 17, 2019, the DELCORA Board unanimously approved a \$276.5 million sale to [Aqua]. The Asset Purchase Agreement [(APA)] is dated September 17, 2019, and was subsequently amended on February 24, 2020. The [APA] is structured in such a way as to protect DELCORA's customers by capping all rate increases for customers at 3% per year. Through a separate DELCORA Trust Agreement, known as the Rate Stabilization Fund Trust [(the Trust, Trust Agreement, or Rate Stabilization Fund Trust)], DELCORA agreed to place the proceeds of the sale (after paying down DELCORA's obligations) into an independently managed irrevocable trust for the benefit of DELCORA's customers, with Intervenor Univest Bank and Trust Co. serving as trustee [(Univest)]. [Aqua] is identified as a third-party beneficiary under the [] Trust Agreement.

As a municipal authority that is governed by the [MAA], DELCORA has all the rights, powers, and duties that are set forth in the [MAA], including the right and power to sell its system to an investor[-]owned utility such as [Aqua]. The [APA], dated September 17, 2019, was properly authorized and properly entered into by DELCORA in full compliance with the law and the [MAA], at a public meeting and constitutes a binding, enforceable agreement and contractual obligation of DELCORA.

The [APA] contains multiple provisions which in effect mandate that DELCORA proceed to closing on the sale to [Aqua] prior to any dissolution of DELCORA by the County.

There are provisions in the APA that can only be satisfied by DELCORA prior to closing, and not the County, as evidenced by [certain,] relevant provisions of the APA.<sup>[6,7]</sup>

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<sup>6</sup> Reproduced in a somewhat reworded and summarized form, the trial court commented upon the pertinent provisions of the “Representations & Warranties” section of the APA as follows: (1) Article IV, introductory language—DELCORA makes its representations and warranties “as a material inducement” to Aqua to enter into and consummate the transactions contemplated by the APA; (2) Section 4.06—DELCORA must confirm that there are no undisclosed liabilities for the system as of closing; (3) Section 4.09—The APA involves hundreds of distinct interests in real property and the ongoing searches may reveal many more. DELCORA is required to confirm at closing that Aqua is getting all of its real property interests, and only DELCORA will have knowledge regarding whether disclosure of real property interests is accurate and complete; (4) Section 4.13—DELCORA’s environmental representations and warranties are critical to the APA, and the County, if it was permitted to dissolve DELCORA prior to closing, will be unable to determine whether the representations and warranties remain true and correct at closing. Further, Aqua agreed to allow DELCORA to make several representations and warranties subject to DELCORA’s knowledge of the conditions covered in those specific representations and warranties, which the County would be unable to make; (5) Section 4.14—The transaction requires that DELCORA’s permits be transferred; however, there is no indication that the County is prepared or would be permitted to assume the Department of Environmental Protection (DEP) permits that are required to operate this system; (6) Section 4.15—The transaction requires the assignment of approximately 200 service contracts (many of which require the consent of the parties), all consents secured thus far were based upon the understanding that the provision of service would be transferred from DELCORA to Aqua, and the County is in no position to honor some of the obligations that were made; (7) Section 4.17(b)—This section mandates assurances that the assets Aqua agreed to buy are sufficient to operate the system, and the County would be unable to make this representation at closing; (8) Section 9.03—This section requires DELCORA to update representations and warranties within 3 days of becoming aware of information that implicates a disclosure, which DELCORA alone would know; and (9) Section 12.02—DELCORA must certify at closing that the representations and warranties made as of the date the parties signed the APA remain true and correct as of the date of closing, but the County, due to lack of knowledge, is not in a position to make that closing certification, and, as a result, the closing itself would be jeopardized or Aqua would be forced to decide whether to terminate the APA or accept an insufficient closing certification. (Trial court op. at 5-6.)

<sup>7</sup> Replicated in a relatively more succinct fashion, the trial court analyzed the remaining portions of the APA that it deemed to be relevant to this case as follows: (10) Section 7.06—This provision makes closing contingent upon approval by the Pennsylvania Public Utility Commission (PUC). Because customers exist outside of the County, the County would need to secure a first PUC approval to obtain DELCORA’s assets and, then the subsequent sale to Aqua, would require a second PUC approval, which could nullify the pending PUC application to approve the sale directly from DELCORA to Aqua and threaten the closing date; (11) Section 9.01—This section requires **(Footnote continued on next page...)**

The [APA] is subject to [PUC] approval, which is the subject of an application filed by Aqua that is pending before the PUC at Docket No. A-2019-3015173 [(PUC Application)].

On or about December 18, 2019, the County amended DELCORA's Articles to add the following to the "purpose" provision:

In anticipation of the dissolution of [DELCORA] and/or the transfer and sale of all or substantially all of [DELCORA's] assets, property, and projects in exchange for the receipt of a cash payment, [DELCORA] and its Board, in addition to any other authority granted by applicable law, shall have the full authority, without limitation to: (1) establish a trust or non-profit entity to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or [DELCORA's] dissolution; and (2) execute any necessary agreement to effectuate this purpose prior, during or after any transfer and sale and/or dissolution.

According to the Amended Articles, assets of a trust or non-profit entity will be distributed to the rate payers for the purpose of "Rate Stabilization." On December 27, 2019, the [Rate Stabilization Fund] Trust between DELCORA, as Settlor, and [Univest], as Trustee, was created. . . . The stated purposes of the Trust are "to benefit the Beneficiaries[,

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DELCORA to operate the system in the ordinary course between signing and closing, and DELCORA credibly alleges that the County has no ability to do so here; (12) Sections 8.01/8.02—DELCORA's representations and warranties survive closing for a full year, and the County would be at risk of an indemnity claim for that full amount in the event the County assumed the obligations of the representations and warranties; (13) Section 8.05(c)—With certain exceptions, Aqua agreed to cap DELCORA's post-closing indemnity obligation for failed representations and warranties at 5% of the purchase price and, if Aqua had known that it would have to go to closing with the County, Aqua never would have agreed to cap its post-closing indemnity right; (14) Section 15.09—The County's intended action with DELCORA would qualify as an assignment of DELCORA's rights and obligations under the APA and would thus require Aqua's consent; and (15) Section 15.11—The parties have a right of specific performance under this APA. (Trial court op. at 6-7.)

defined as DELCORA’s customers,] by receiving Sale Proceeds deposited into the Trust Fund by [DELCORA] and any additional contributions made to the Trust under [s]ection 3.3 [, which refers to other contributions in the form of cash, securities, or other property acceptable to Univest, including funds released from Escrow Accounts related to the sale to Aqua].”

On May 19, 2020, the County published and passed Ordinance No. 2020-4 [(Ordinance)] at a special Zoom [video conference] meeting on June 3, 2020. On June 3, 2020, the County approved and enacted [the] Ordinance [], directing and ordering DELCORA to terminate its operation, wind up its affairs, satisfy outstanding debts, and take all actions necessary to remove any impediments to its termination, and refrain from taking any action or expending any funds inconsistent with DELCORA’s termination of its affairs[.]

Within [24] hours of the County adopting [the] Ordinance [], the County Solicitor sent a letter to DELCORA on June 4, 2020, which, in part, states and directs that DELCORA is

to take all actions necessary to effectuate its termination . . . and take all steps necessary to effectuate the transfer of all its assets, funds, and other property [to the County] . . . . The County strongly cautions [DELCORA] against approving any course of action or expenditure of funds that is inconsistent with termination, such as incurring additional debt, transferring assets to the illegally created Rate Stabilization Fund Trust, or entering into long-term contracts, without the express authority of the County.

The County Solicitor’s letter further cautions [DELCORA] that “any expenditure of funds by [DELCORA] that is contrary to the directives and objectives of the County in the Ordinance is a violation of the restrictions on the expenditure of funds of [DELCORA].” The letter from the County Solicitor, Mr. William F. Martin, directs that “[DELCORA] is hereby directed to cease any activities—and the expenditure of any funds in connection with such activities—

that are contrary to the County’s directives as set forth in the Ordinance.”

(Trial court op. at 3-10) (internal citations and footnotes omitted).

In this factual context, the County filed a complaint on May 14, 2020, and later an amended complaint, seeking among other forms of relief, a writ of mandamus. Thereafter, DELCORA, Aqua, and two other intervenors filed answers and counterclaims. The case then proceeded through a somewhat complex procedural history, which involved or resulted in multiple orders by the trial court, a bench trial on the merits on some of the claims, and procedural issues regarding the filing of post-trial motions. *See* Trial court op. at 2 n.1, 10-16. After conducting a bench trial, the trial court, in short, concluded that the APA was valid and enforceable, and the County lacked the authority under section 5622(a) of the MAA to interfere with DELCORA’s contractual duties to perform under the APA. The trial court further concluded that the County did not—and could not—assume the contractual obligations of DELCORA under the APA. As such, the trial court issued an injunction against the County to this effect, and, in so doing, effectively nullified the Ordinance and the County’s attempt to dissolve and/or obtain the assets of DELCORA. Based on these conclusions, the trial court denied the County’s request for a writ of mandamus.

In its statement of errors complained of on appeal, the County raised five (yet, in some instances, theoretically overlapping) issues for the trial court’s consideration. More specifically, the County asserted that the trial court erred in (1) failing to enter a writ of mandamus compelling DELCORA to comply with the Ordinance; (2) assuming jurisdiction to decide the validity of the APA because exclusive jurisdiction resides with the PUC; (3) concluding that DELCORA and Aqua met the standards for injunctive relief; (4) determining that the Rate Stabilization Fund



Trust was valid and enforceable; and (5) prohibiting the County from introducing evidence as to whether the APA violates public policy.

Relevant here, the trial court disposed of the County's first issue, and its related subsidiaries and corollaries, with the following reasoning:

The fundamental issues of this case are the legality, enforceability, and integrity of a contract, that being the [APA] between DELCORA and Aqua, the enforcement of the Ordinance and the County's actions in opposing and interfering with DELCORA's performance of the same contract, and the legality and funding of the Rate Stabilization Fund Trust between DELCORA and Aqua. The enforcement of legally binding contracts is the foundation of our law. When a county government is a party to a legally binding contract, the change of governmental administration, management, or political persuasion may create the desire to renegotiate or not renew nor extend a contract; but when there is, as there is here, an alleged intentional interference, termination, or obstruction of a legally binding contract, that requires critical judicial examination.

....

Clearly, by way of enforcing the Ordinance, the County directs the termination, or as the County refers to it, the "winding down" of DELCORA. This Court found that the Ordinance does more than "wind down" DELCORA; rather, it imploded DELCORA's ability and obligations to perform contractual obligations to effectuate the sale. The directives, terms, and provisions of the County's June 3, 2020 Ordinance [], as demonstrated by the County Solicitor's Letter dated June 4, 2020, and public rhetoric with strong political overtones, evidences the County's intent and design to thwart, reverse, interfere, and extinguish the contractual agreements and a contract[, *i.e.*, the APA,] which was previously publicly debated, considered, and legally adopted by DELCORA, Aqua, and the County.

....

[T]his Court found that section 5607 of the [MAA] permits DELCORA to enter into such a contract, while also finding that the contract terms were still subject to the approval of the [PUC].

Aqua had and has a fully binding and enforceable agreement to acquire DELCORA's system, which requires the representations and warranties that can only be made by DELCORA. [See *supra* notes 5-6.] Contracts, binding agreements, and various legally public actions are not to be extinguished or interfered with merely because of a reorganization of any County Council or partisan differences. The integrity and predictability of contracts when legally adopted should be relied upon by the parties, for this represents good public policy, and the County shall hereby provide full faith and credit to the [APA], even as [the] County administrations may change[.]

(Trial court op. at 19-21.)

Specifically addressing its denial of the County's request for a writ of mandamus and decision granting DELCORA injunctive relief, the trial court provided the following rationale to support its rulings:

The County requested that the Ordinance be declared valid and enforceable and requested a writ of mandamus to DELCORA to comply with the Ordinance [] and cooperate with termination; this Court disagreed with the position and arguments of the County.

By way of enforcing the Ordinance, the County directed the termination of DELCORA, which this Court determined directly and immediately interfered with [] DELCORA's ability to perform [the APA's] contractual obligations to effectuate the sale and further interferes with Aqua's contractual rights. This Court notes that the Ordinance provides for the assumption of all DELCORA's liabilities by the County but does not provide an assumption of the obligations.

....

The requirements contained in the County's Ordinance of dissolution and termination and the County Solicitor's June 4, 2020 letter directs that DELCORA immediately provide a Certificate of Termination, and places restrictions on expenses and constraints on the actions and performance required of the [APA], which is the functional equivalent to termination and interference of contractual obligations, as well as essential services, and imposes and creates immediate and irreparable harm. Various terms and conditions of the Ordinance are a substantial obstacle to DELCORA and Aqua's performance of contract, and the County has not removed any impediments to the termination of DELCORA. Under [section 5622(a) of] the MAA, the County was required to assume "all the obligations incurred" by DELCORA prior to the termination, and that is not what the County sought in this case. [The County has] taken no steps to remove the existing impediments while, at the same time, has consistently required a Certificate of Termination from DELCORA.

....

[T]he Ordinance fails to address the impediments that exist and must be resolved prior to the termination of DELCORA. Numerous debts and financial obligations must be met prior to the termination of DELCORA, debts and obligations which at this time DELCORA is unable to sufficiently fund, and of which the County has provided no steps to provide DELCORA with any direction as to how DELCORA can remove [these] impediment[s] [and discharge] its debts. As the APA has been found to be binding and valid, it is hence an obligation of DELCORA, and the County must assume it in order to terminate DELCORA and, as such, [the APA] is an impediment to the termination.

(Trial court op. at 25-30.)

## Discussion

On appeal, the County reiterates the arguments that it made in its statement of errors, contending, among other things, that the trial court erred in failing to enter a writ of mandamus compelling DELCORA to comply with the Ordinance.

### **Whether the County’s Ordinance Complies with—and is Valid and Enforceable under—Section 5622(a) of the MAA despite DELCORA’s Exercise of the Power to Contract pursuant to Section 5607 of the MAA<sup>8</sup>**

The County argues that, pursuant to section 5622(a) of the MAA, it has the unfettered and unilateral right to terminate/dissolve DELCORA without DELCORA’s consent and to mandate that DELCORA remove any “impediments” to its termination/dissolution. The County, citing and quoting provisions of the Ordinance, also contests the trial court’s determination that the Ordinance was invalid because it did not include any express provision for the assumption of DELCORA’s contractual obligations as required by section 5622(a) of the MAA.

With regard to *In re Chester Water Authority Trust*, the County contends that our decision “makes abundantly clear that the powers of the incorporating municipality to acquire an authority and its assets under section 5622(a) of the MAA are paramount, and superior to, any independent powers that an authority possesses under the MAA,” including an authority’s power to transfer its assets to another entity pursuant to section 5607(d)(4) and (13) of the MAA. (County’s Suppl. Br. at 7.) The County maintains that in *In re Chester Water Authority Trust*, this Court’s “analysis acknowledge[d] the structural distinction between the powers of municipalities and the authorities they have created.” *Id.* For support, the County cites a passage from the

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<sup>8</sup> On October 6, 2021, this Court entered a *per curiam* order granting the County’s application for leave to file a supplemental brief in light of our recent decision in *In re Chester Water Authority Trust*. The County, DELCORA, and Aqua have all filed supplemental briefs to address whether *In re Chester Water Authority Trust* has any impact on this issue.

opinion, which states that “just because an authority may transfer its assets to other governmental entities, as part of its daily operational affairs under other sections of [the MAA], *this does not mean that an authority possesses the same and sole power under section 5622(a) of the MAA.*” *Id.* at 6-7 (quoting *In re Chester Water Authority Trust*, 263 A.3d at 704) (emphasis in brief). At bottom, the County views our decision in *In re Chester Water Authority Trust* as marking a distinguishing line between the statutory powers associated with an authority’s operational affairs, such as the contracting and selling of assets per section 5607(d)(4) and (13) of the MAA, and a municipality’s authority, via section 5622(a), “to dissolve an authority and obtain and later transfer and/or convey the authority’s assets *as it deems fit*, without any input on the part of the authority.” *Id.* at 8 (quoting *In re Chester Water Authority Trust*, 263 A.3d at 700) (emphasis in brief).

In response, DELCORA and Aqua argue that the APA is a legitimate exercise of DELCORA’s authority under section 5607(d)(4) and (13) of the MAA and constitutes a binding and enforceable contract. They contend that the County, through the enactment of the Ordinance, seeks to thwart and essentially violate the terms and conditions of the APA, thereby intentionally interfering with their contract. Apparently in the alternative, DELCORA and Aqua assert that the Ordinance failed to expressly assume DELCORA’s debts and obligations and, thus, failed to satisfy the preconditions needed for the County to obtain DELCORA’s assets under section 5622(a). In addition, DELCORA and Aqua maintain that the County, even if it had explicitly assumed the contractual obligations in connection with the APA, lacks the capabilities to perform them and this serves as an “impediment” to the County’s usage of power pursuant to section 5622(a). *See supra* notes 5-6.

DELCORA and Aqua further assert that *In re Chester Water Authority Trust* has no bearing on or relevance to the issue presented here. They argue that *In re Chester Water Authority Trust* only addressed the interplay between sections 5622(a) and 5610(a.1) of the MAA, 53 Pa.C.S. §5610(a.1.),<sup>9</sup> and ultimately issued a “narrow” holding, to wit, that section 5610(a.1) “did not abrogate, supersede, or otherwise alter a municipality’s longstanding power under section 5622(a) and its statutory predecessors to unilaterally obtain an authority and/or its assets.” (Aqua’s Suppl. Br. at 3) (quoting *In re Chester Water Authority Trust*, 263 A.3d at 692.) To buttress its point, DELCORA notes that the present case does not involve section 5610(a.1) of the MAA in any manner and quotes the following passage from *In re Chester Water Authority Trust*:

[W]e accepted one issue, and only one issue, for review: whether section 5610(a.1) of the MAA mandates that the City [of Chester (City)], the County of Chester, and the County of Delaware, as the “governing body” of the [Chester Water Authority (Authority)], approve a transfer of the Authority’s assets to the City, or whether the City, pursuant to section 5622(a) of the MAA, can obtain the Authority and its assets without the approval of the Authority or its “governing body.”

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<sup>9</sup> In 2012, “the General Assembly passed Act 73 of 2012, which added subsection (a.1) to section 5610 of the MAA.” *In re Chester Water Authority Trust*, 263 A.3d at 692. Succinctly, this statutory provision effectively added members to a board of an authority where “a water or sewer authority incorporated by one municipality provides water or sewer services to residents in at least two counties and has water or sewer projects in more than two counties.” 53 Pa.C.S. §5610(a.1). In such a situation, “the powers of each authority shall be exercised by a board composed of . . . [t]hree members appointed by the governing body from each county in which the services to residents are provided” and “[t]hree members appointed by the governing body of the incorporating municipality.” 53 Pa.C.S. §5610(a), (a.1)(1)(i)-(ii). This composition of a water/sewer authority’s board stands in contrast to the scenario where an “authority is incorporated by one municipality,” in which case “the board shall consist of a number of members, not less than five, as enumerated in the articles of incorporation.” 53 Pa.C.S. §5610(a)(1).

(DELCORA’s Suppl. Br. at 3) (quoting *In re Chester Water Authority Trust*, 263 A.3d at 705). For these reasons, DELCORA and Aqua posit that the trial court did not err in denying the County a writ of mandamus and issuing an injunction prohibiting the enforcement of the Ordinance.

After consideration of the parties’ contentions, we find merit in the County’s arguments.

Titled “[c]onveyance by authorities to municipalities or school districts of established projects,” section 5622(a) of the MAA states as follows:

*(a) Project.--If a project established under this chapter by a board appointed by a municipality is of a character which the municipality has power to establish, maintain or operate and the municipality desires to acquire the project, it may by appropriate resolution or ordinance adopted by the proper authorities signify its desire to do so, and the authorities shall convey by appropriate instrument the project to the municipality upon the assumption by the municipality of all the obligations incurred by the authorities with respect to that project.*

53 Pa.C.S. §5622(a) (emphasis added).

Here, in relevant part, the Ordinance provides as follows:

Section 1. *The County Council hereby directs and orders that [DELCORA] be terminated.*

Section 2. *[DELCORA] is directed and ordered to take all actions necessary to effectuate its termination, including, but not limited to, the following:*

. . . .

[Section] 2.02. *[DELCORA] shall cooperate with the County in an orderly windup of its activities, and take all steps necessary to effectuate the transfer of all of its assets, funds and other property, including, as applicable, any*

regulatory permits, to the County, *and the assumption of all of its liabilities by the County.*

....

Section 8. *The County Council [is] authorized to take any further action necessary to effectuate the termination of [DELCORA], the removal of any impediments to such termination, [] and the assumption of any liabilities of [DELCORA].*

Ordinance, §§1-2, 2.02, 8 (emphasis added).

As we explained in *In re Chester Water Authority Trust*, a municipality possesses the unilateral power under section 5622(a) to pass an ordinance mandating an authority that it had created to dissolve and transfer its assets to the municipality. In that case, the City, alone, created the Authority, and the Authority originally serviced the City, but later expanded to provide water service to other parts of Chester County and, also, Delaware County. Consistent with section 5610(a.1) of the MAA, *see supra* note 8, the City enlarged the governing body or “board” of the Authority to nine members, in order to account for, and more fairly represent, the areas outside its borders that received the services of the Authority. Ultimately, this Court held that, although section 5610(a.1) of the MAA reconfigured the representation on the board in charge of the Authority, to include members from outside the City, the City, as the sole municipal incorporator of the Authority, nonetheless retained the power granted to it by section 5622(a) of the MAA. In so doing, we reviewed and detailed our line of case law on the issue, originating in 1971 and reaffirmed throughout the years,<sup>10</sup> and determined “these cases demonstrate[] that, as a matter of law, section 5622(a) confers

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<sup>10</sup> *See Township of Forks v. Forks Township Municipal Sewer Authority*, 759 A.2d 47 (Pa. Cmwlth. 2000); *Forward Township Sanitary Sewage Authority v. Township of Forward*, 654 A.2d 170 (Pa. Cmwlth. 1995); *Clearfield Borough v. Clearfield Borough Park Authority*, 285 A.2d 532 (Pa. Cmwlth. 1971), *aff’d*, 301 A.2d 372 (Pa. 1973) (*per curiam*).



upon a municipality, via a duly enacted ordinance, the power to dissolve an authority and obtain and later transfer and/or convey the authority's assets as it deems fit, without any input on the part of the authority." *In re Chester Water Authority Trust*, 263 A.3d at 700.

Clearly, the Ordinance dictated the termination/dissolution of DELCORA. *See* Ordinance, §§1-2, 2.02. While the parties dispute whether the Ordinance contained language wherein the County affirmatively and explicitly "assumed" the "obligations incurred" by DELCORA, at the very least, the Ordinance unambiguously required DELCORA, and authorized the County, to take the steps necessary for such an assumption. *See* Ordinance, §§2.02, 8. By its terms, the Ordinance thus acknowledges the absolute necessity for, and imperative nature of, an assumption of obligations, which is an event that would occur during (or in a sense, subsequent to) the time when DELCORA institutes its process of termination/dissolution, or, in other words, its "winding down" and the identification, itemization, or taking of inventory of its assets and obligations. Importantly, the process and procedure utilized by the County, as expressed in the Ordinance, is entirely consonant with section 5622(a) of the MAA. A municipality can initially order an authority to dissolve and transfer all its assets to the municipality, but, naturally, a municipality cannot direct the transfer of any specific assets until it can legally and officially verify the assets of an authority. Similarly, before the County can embark upon an "assumption . . . of all the obligations incurred by" DELCORA, the County must first acquire information regarding those obligations. 53 Pa.C.S. §5622(a).

Here, once the County ascertains and later obtains the transfer of DELCORA's assets and obligations, and technically assumes their ownership as a matter of law, the County can then demand, with an amendment to or creation of a new

ordinance, that DELCORA execute a legal instrument that officially conveys those assets and obligations as a matter of fact. *See Forward Township Sanitary Sewage Authority*, 654 A.2d at 175 (stating that “a municipality may, by ordinance, impose upon an authority the duty of executing the necessary documents for a transfer of all of the authority’s property to its creating municipality”). Indeed, according to its structure, section 5622(a) of the MAA envisions—but does not necessarily require—a three-step process: first, a municipality enacts a resolution or ordinance to “signify” its “desire to acquire [a] project;” second, the municipality engages in measures to complete an “assumption . . . of all the obligations incurred . . . with respect to that project”; and, third, the authority “conveys[s] by appropriate instrument the project to the municipality.” 53 Pa.C.S. §5622(a). The Ordinance is designed in such a way that mimics or otherwise complies with this process. Therefore, we conclude that the Ordinance is valid and enforceable to the extent it directs the termination/dissolution of DELCORA and dictates that, after termination/dissolution is underway, DELCORA must engage in conduct necessary to effectuate the transfer of its assets and the assumption of its liabilities/obligations by the County.

Citing its authority to enter into the APA with Aqua under section 5607(d)(4) and (13) of the MAA and claiming that the APA is a valid and enforceable contract, DELCORA questions whether the County could perform the obligations imposed by the APA. Likewise, Aqua, referring to the trial court’s findings and determinations on the issue, asserts that the County, in the event it would assume the obligation of the APA, would breach the terms and conditions of the APA. Both DELCORA and Aqua contend that the County’s inability to satisfactorily fulfill the obligation of the APA serves as an “impediment”—or a bar—to the County’s exercise of power under section 5622(a) of the MAA.

In addressing these arguments, we find guidance in *In re Chester Water Authority Trust*. Notably, in concluding that “the City [of Chester] possesses the sole power under section 5622(a) of the MAA to demand and compel the conveyance of the Authority and its assets by enacting the appropriate resolution and/or ordinance,” 263 A.3d at 706, this Court commented upon former section 4B(d) of the 1945 MAA, now section 5607(d)(4) of the current MAA, which provided—and presently provides—an authority with the power “to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it.” *Formerly* 53 P.S. §306B(d); 53 Pa.C.S. §5607(d)(4). While expressly acknowledging that our General Assembly unmistakably granted an authority “the power to convey its property to another governmental entity,” we stated, in relevant part:

Nonetheless, just because an authority may transfer its assets to other governmental entities, as part of its daily operational affairs under [section 5607(d)(4)], this does not mean that an authority possesses the same and sole power under section 5622(a) of the MAA. Indeed, as a juxtaposition, the Supreme Court in *County of Allegheny v. Moon Township Municipal Authority*, 671 A.2d 662 (Pa. 1996)], clarified that, in contrast to [section 5607(d)(4)], section 5622(a) of the MAA was “applicable only to instances in which an authority’s project is being transferred to the municipality or municipalities that actually created the authority.” *County of Allegheny*, 671 A.2d at 665 (emphasis added). The Supreme Court further added that [section 5622(a)] was “presumably enacted to preclude a municipality . . . from assuming responsibility over projects absent a resolution or ordinance indicating the municipality’s clear willingness to do so.” *Id.* (emphasis added). Therefore, while *County of Allegheny* confirmed that *an authority may transfer or convey its assets to another governmental entity in the daily course of its business, it also reaffirmed that, assuming an authority does not want to transfer its assets to another authority or governmental entity, the creating and/or incorporating municipality, proceeding under [ ] section 5622(a) of the*

*MAA, can obtain the authority and its assets by passing an ordinance stating the municipality's desire to do so.*

*In re Chester Water Authority Trust*, 263 A.3d at 704-05 (emphasis added).

We find our reasoning in *In re Chester Water Authority Trust* equally applicable to the situation where an authority has expressed its desire to sell its assets, and has executed a contract to that effect, at least where, as here, the contract has not been fully performed. Reading section 5622(a) in tandem with section 5607(d)(4) and (13), it is apparent that section 5622(a) of the MAA presupposes that an authority has the power to enter contractual obligations, even with respect to a transfer of its assets, and expressly accounts for the scenario where the authority has already entered a valid and binding contract. That is, based on the plain language of section 5622(a) of the MAA, a municipality can “assume” all of the “obligations incurred” by an authority, including those in a contract to sell its assets, by obtaining an authority’s project and legal title to the assets of the project. Otherwise, if an authority could override the power granted to a municipality in section 5622(a) by simply incurring contractual obligations, then the last clause of section 5622(a) would be rendered nugatory. *See* 53 Pa.C.S. §5622(a) (stating that “the authorities shall convey by appropriate instrument the project to the municipality upon the assumption by the municipality of all the obligations incurred by the authorities with respect to that project”). When analyzing statutory language, the courts “must give effect to every provision of the statute,” *Pocono Mountain School District v. Department of Education*, 151 A.3d 129, 138 (Pa. 2016), and “[w]e are not permitted to ignore the language of a statute, nor may we deem any language to be superfluous.” *Commonwealth v. McCoy*, 962 A.2d 1160, 1168 (Pa. 2009). Therefore, in order to give meaning to both section 5622(a) and section 5607(d)(4) and (13) of the MAA, and construe them in a harmonious fashion, we conclude that an authority may utilize its power to contract and sell its assets to

another entity; however, a municipality may invoke its power under section 5622(a) to demand that the authority terminate and/or convey its assets to the municipality at any time prior to the complete performance of that contract.

Moreover, a municipality's ability to perform the contractual obligations that it acquires from an authority is not an "impediment" recognized by the law where, as here, the authority has not obtained (and a municipality will thus not assume) any continuing "debt" or obligation that an authority has to repay, in what is basically financial installments, outstanding loans, or other forms of an immediate or continuing repayment obligation. *See Forward Township Sanitary Sewage Authority*, 654 A.2d at 175 (explaining that, absent a financial "impediment" imposed by another section of the MAA that pertains to debt securitization prior to dissolution, a county can dissolve an authority and demand conveyance of all its assets). That said, it is important to note that the County, in its demand that DELCORA terminate its operations and transfer its assets to the County, effectively places the County in a situation where it would receive a "contractual assignment" from DELCORA as a matter of statutory law. Consequently, the County would, without question or condition, be bound by the terms and conditions of the APA, just as if it were DELCORA itself in the sense that it would essentially become a "party" to a contract. *See Employers Insurance of Wausau v. Department of Transportation*, 865 A.2d 825, 830-31 (Pa. 2005). As such, all of the concerns that the trial court enunciated regarding the County's inability to fulfill the APA's contractual obligations is completely irrelevant and has no place in the statutory analysis of section 5622(a) vis-à-vis section 5607(d)(4) and (13) and the issue of whether the County retains its authority pursuant to section 5622(a) despite the APA and its specific obligations. This is because the County, irrespective of whether it can live up to the contractual promises made in the APA, will have no choice but to abide

by and fully perform its obligations or else be potentially subjected to a breach of contract suit by Aqua. *See Employers Insurance of Wausau*, 865 A.2d at 830-31.<sup>11</sup>

In sum, section 5622(a) provides the County with the authority to enact the Ordinance, and the Ordinance complies with the requisites necessary for the County to demand the termination of DELCORA and the conveyance of DELCORA's assets and obligations to the County.

### **Conclusion**

For the above-stated reasons, we conclude that the trial court erred in denying the County's request for a writ of mandamus and granting injunctive relief in favor of DELCORA and Aqua. Accordingly, we reverse the trial court's order and remand to the trial court for the entry of an order consistent with this opinion. Due to the basis of and grounds for our disposition, we need not address the County's remaining arguments.

*s/ Patricia A. McCullough*

PATRICIA A. McCULLOUGH, Judge

President Judge Cohn Jubelirer and Judges Covey, Fizzano Cannon and Wallace did not participate in this decision.

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<sup>11</sup> We express no opinion with respect to the viability of any potential remedies at law that Aqua and/or DELCORA may have in the event the County assumes the obligations of the APA.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

County of Delaware, Pennsylvania,	:	
Appellant	:	
	:	
v.	:	No. 148 C.D. 2021
	:	
Delaware County Regional Water	:	
Quality Control Authority, and	:	
DELCORA Rate Stabilization Fund	:	
Trust Agreement b/t The Delaware	:	
County Regional Water Quality	:	
Control Authority as Settlor and	:	
Univest Bank and Trust Co. as	:	
Trustee	:	
	:	
v.	:	
	:	
Darby Creek Joint Authority, Southern	:	
Delaware County Authority, and Aqua	:	
Pennsylvania Wastewater, Inc.	:	

**ORDER**

AND NOW, this 3<sup>rd</sup> day of March, 2022, the December 28, 2020 order of the Court of Common Pleas of Delaware County (trial court) is hereby REVERSED and the case is REMANDED to the trial court for entry of an order consistent with the accompanying opinion.

Jurisdiction relinquished.

s/ Patricia A. McCullough  
PATRICIA A. McCULLOUGH, Judge

Order Exit  
03/03/2022

# APPENDIX B



**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 27, 2019**

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Exhibit A - Trustee Compensation and Reimbursement

**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 27, 2019.

“Escrow Agreement” means that certain Escrow Agreement among the Settlor, the Trustee (as escrow agent), and Aqua Wastewater dated as of December 27, 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 (6<sup>th</sup>) 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 of no less than one billion dollars (\$1,000,000,000).

(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 the parties shall mutually agree in writing on final Investment Guidelines no later than the Closing Date. Such final Investment Guidelines may be subsequently revised by mutual written 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.  
762 Lancaster Avenue  
Bryn Mawr, PA 19010  
Attention: General Counsel

***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: Robert J. Willert

Name: Robert J. Willert

Title: Executive Director

**TRUSTEE:**

UNIVEST BANK AND TRUST CO.

By: J. Matthew Holliday

Name: J. Matthew Holliday

Title: Sr. V.P. and Sr. Trust Officer

## **EXHIBIT A**

### **TRUSTEE COMPENSATION AND REIMBURSEMENT**

The Trustee shall be entitled to receive a monthly fee in an amount equal to one-twelfth of the product obtained by multiplying (a) 0.0006 by (b) the aggregate value of Trust Assets. The aggregate value of Trust Assets for any calendar month shall be equal to the sum of the average daily valuations of all Trust Assets for such month. The Trustee shall be permitted to deduct its fees and expenses from the Trust Assets.

The Trustee shall be reimbursed from the Trust Assets for third party tax preparation and filing fees and costs. Any and all taxes due shall be paid by the Settlor, provided, however, that in the event that the Trust is responsible for the payment of any taxes, such taxes shall be paid from the Trust Assets.

The Trustee shall be entitled to reimbursement for any and all Costs and other indemnity amounts from the Trust out of Trust Assets.

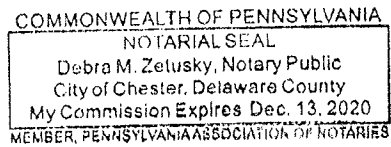
In addition, the Trustee shall have the right to be reimbursed from the Trust Assets for fees for extraordinary/administrative services, including, without limitation:

- Managing, selling or liquidating real estate
- Ascertaining the cost basis of securities for tax purposes
- Handling any assets outside the continental United States
- Assisting counsel with litigation
- Transferring securities from another account
- Preparation of court accountings and filings
- Preparation of any reports other than customary quarterly or monthly written reports

COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF :

On this, the 20<sup>th</sup> day of December 2019, before me, the undersigned officer, personally appeared Robert J. Willert, 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.



Debra M. Zetuský  
Notary Public  
My Commission expires:

COMMONWEALTH OF PENNSYLVANIA

:

ss.

COUNTY OF

:

On this, the 27<sup>th</sup> day of December 2019, before me, the undersigned officer,  
personally appeared J. Matthew Holiday who acknowledged himself to be a  
Senior Trust officer of Univest Bank, and that he as such Senior Trust officer 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.

Dana Granite  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
DANA GRANITE - Notary Public  
Montgomery County  
My Commission Expires Aug 5, 2023  
Commission Number 1355575



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Application of Aqua Pennsylvania</b>	<b>:</b>	
<b>Wastewater, Inc. pursuant to Sections 1102,</b>	<b>:</b>	
<b>1329 and 507 of the Public Utility Code for</b>	<b>:</b>	<b>Docket No. A-2019-3015173</b>
<b>approval of the acquisition by Aqua of the</b>	<b>:</b>	
<b>wastewater system assets of the Delaware</b>	<b>:</b>	
<b>County Regional Water Quality Control</b>	<b>:</b>	
<b>Authority</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

**Via Email:**

The Honorable F. Joseph Brady  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
[fbrady@pa.gov](mailto:fbrady@pa.gov)

Steven C. Gray, Esq.  
Assistant Small Business Advocates  
Office of Small Business Advocate  
[sgray@pa.gov](mailto:sgray@pa.gov)

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Kenneth R. Stark, Esq.  
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[ryoung@mcneeslaw.com](mailto:ryoung@mcneeslaw.com)  
[kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com)

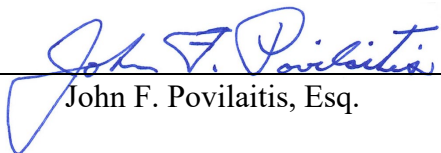
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Joseph L. Vullo, Esq.  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
[jlvullo@bvrrelaw.com](mailto:jlvullo@bvrrelaw.com)



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John F. Povilaitis, Esq.

Date: February 2, 2023