

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered as of the 16th day of October, 2017, by and between **MAHONING TOWNSHIP**, a Township of the Second Class, with its office at 849 Bloom Road, Danville, Montour County, Pennsylvania ("Mahoning Township");

-- AND --

DANVILLE MUNICIPAL AUTHORITY, a municipal authority organized and existing under the Pennsylvania Municipal Authorities Act of 1945, with its offices at 42 West Market Street, Danville, Montour County, Pennsylvania ("DMA");

-- AND --

The BOROUGH OF DANVILLE, a borough organized under the Pennsylvania Borough Code, with its offices at 463 Mill Street, Danville, Montour County, Pennsylvania ("Borough").

All of the foregoing are herein sometimes individually referred to as a "Party" and collectively referred to herein as the "Parties".

BACKGROUND

A. The Parties are engaged in various litigation related, on the one part, to the establishment of certain wastewater rates by the Borough and/or the DMA and the use or allocation of certain sewer funds over time, as have been raised and set forth in the civil matter brought by the Township's predecessor in interest, the Mahoning Township Municipal Authority, at Mahoning Township Municipal Authority v. Borough of Danville and the Danville Municipal Authority, Montour County Court of Common Pleas Docket 406-2009, and litigation related to alleged underreporting of customers flowing into the wastewater treatment system, brought by Danville Municipal Authority and the Borough of Danville, at Danville Municipal Authority and Borough of Danville v. Mahoning Township Municipal Authority, Montour County Court of Common Pleas Docket No. 486-2014. The foregoing shall collectively be referred to herein as the "Litigation," which shall include all claims, assertions, allegations and counterclaims raised in such matters.

B. Effective February 2, 2017, Mahoning Township effectuated the dissolution of the Mahoning Township Municipal Authority, after which the rights, obligations and interests of the Mahoning Township Municipal Authority were conveyed, transferred to and assumed by the Township. By virtue of the same, Mahoning Township is, at present, a party to the Agreement between the Borough of Danville and MTA dated June 1, 1951, the Agreement between the Borough of Danville, MTA and DMA, dated February 23, 1968, and all subsequent amendments thereto (including but not limited to amendments dated April 27, 1981, and May 21, 1985), related to the provision by the DMA of certain wastewater conveyance and treatment services, as set forth in such agreements ("Wastewater Agreements").

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C. As a result of negotiations and settlement discussions between the Parties, the Parties desire to settle all Litigation (including all outstanding disputes, litigation, and claims incorporated therein) in order to make a full, complete, and final settlement of all such matters. Nothing herein shall be construed as an admission of liability or wrongdoing whatsoever by any of the Parties to this Agreement.

NOW THEREFORE, with the foregoing background incorporated herein by reference and made a part hereof, the Parties hereto, intending to be legally bound for themselves and their respective councils, boards, commissions, agencies, officials, appointees, officers, members, employees, principals, directors, partners, agents, stockholders, attorneys, servants, representatives, affiliates, parent corporations, subsidiaries, predecessors, successors, administrators, assigns, heirs and executors, and for good and valuable consideration as set forth herein, the receipt, adequacy and sufficiency of which is hereby acknowledged, do hereby agree as follows:

1. **Monetary Consideration.** In consideration for the withdrawal of the Litigation and the mutual general releases set forth below, Mahoning Township shall remit to the DMA monetary consideration in the amount of \$1,400,000 within thirty (30) days of the date of this Agreement.
2. **Wastewater Treatment Payments.** Mahoning Township represents that, based on its knowledge, information and belief, for the purpose of complying with its payment obligations under the Wastewater Agreements, there are 1226 residences within Mahoning Township connected to the DMA wastewater conveyance, treatment and disposal facilities. Pursuant to the same, the Parties agree that, for a period of twelve (12) months after the end of the third billing quarter of 2017 (concluding on September 30, 2018), Mahoning Township shall continue to remit quarterly payments to the DMA for wastewater conveyance, treatment, and disposal services, based on the above represented number of residences (together with any other payments for non-residential connections or as otherwise provided in the Wastewater Agreements) in addition to payments for any new residential connections after such point.

On or after September 30, 2018, either Party may request in writing that an audit be performed to ascertain the accuracy of the represented number of residential connections into the DMA wastewater conveyance, treatment and disposal facilities from Mahoning Township, and payments related thereto. The audit shall be performed by an accountant, wastewater engineer or other professional consultant, mutually agreeable by the Parties, the agreement for which shall not unreasonably be withheld. The Parties agree that the mutually agreeable consultant performing the audit shall be provided any documentation requested by such individual necessary for them to complete the audit assessment. Fifty percent (50%) of the cost of the audit shall be borne by Mahoning Township, and fifty percent (50%) of the cost of the audit shall be borne by the DMA. Each Party shall bear its own legal, consulting and other costs related to the same. The audit shall be completed by the mutually-agreeable consultant within ninety (90) days after the engagement of the individual to perform such services, except as extended in writing by the Parties. To the extent that

the mutually agreeable consultant conducting the audit concludes that the number of residences within Mahoning Township exceeds the above-referenced represented number of connections, the quarterly payments remitted by Mahoning Township shall thereafter be modified accordingly, and Mahoning Township shall be required to remit payment of any underpayments applicable to all time periods after September 30, 2018 to such date.

3. **Withdrawal of Litigation.** The Parties agree that, within three (3) business days of the full and complete execution of this Agreement, the DMA and Mahoning Township shall take all appropriate action to have the Litigation marked as settled, discontinued, and ended, and to take all actions necessary to effectuate the same.
4. **Court Approval.** The Parties agree to submit this Settlement Agreement and Release to the Court for its approval in the matter docketed at Montour County Court of Common Pleas Docket No. 486-2014.
5. **Wastewater Agreements.** The Parties acknowledge that the Wastewater Agreements remain in effect pursuant to the terms thereof, and nothing set forth herein shall be deemed to abrogate, rescind or modify such provisions, except as explicitly set forth herein. The Parties further acknowledge that nothing herein shall be construed to limit, restrict or bind any of the Parties with respect to any future agreement (or an amendment to an agreement) for the provision of wastewater conveyance, treatment and disposal services provided by DMA to Mahoning Township and its residents (with the term of the current Wastewater Agreements presently extending to January 23, 2020, except as further extended by operation of the Wastewater Agreements).
6. **Release.** In consideration of the execution of this Agreement, Mahoning Township hereby remises, releases, and forever discharges the Borough of Danville, in addition to its Borough Council, all elected and appointed Borough Officials, and all Borough employees, agents and consultants (in their individual and official capacities), the Danville Municipal Authority, together with their attorneys, insurers, reinsurers, affiliates, agents and assigns, from any, and all manner of, actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity that exist or could exist as of the date of this Settlement Agreement or the Litigation, which Mahoning Township, the Mahoning Township Municipal Authority or any other successors or parties in interest, that such have ever had or now has by reason of any cause, matter or thing whatsoever, related to the Litigation. This paragraph is not intended to preclude any Party from taking action to enforce the terms of this Agreement or to seek redress for a violation of the same in the future.

In consideration of the execution of this Agreement, Danville Borough and the DMA hereby remise, release, and forever discharge Mahoning Township, in addition to its Board of Supervisors, elected and appointed Township Officials, and all Township employees, agents and consultants (in their individual and official capacities), together with their attorneys, insurers, reinsurers, affiliates, agents and assigns, from

any, and all manner of, actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity that exist or could exist as of the date of this Settlement Agreement or the Litigation, which Danville Borough and the DMA have ever had or now have by reason of any cause, matter or thing, whatsoever related to the Litigation. This paragraph is not intended to preclude any Party from taking action to enforce the terms of this Agreement or to seek redress for a violation of the same in the future.

7. All time periods shall be as set forth in this Agreement, excepting that: (a) the Parties may mutually agree upon the extension of any such time periods; and (b) any instance when the time period shall expire on a Saturday, Sunday or a legal holiday, such time period shall extend to the next regular business day.
8. This Agreement contains the entire agreement between the Parties with regard to the subject matters hereof, and shall be binding on the Parties hereto (including their heirs, successors and assigns) and shall not be amended or altered without the written consent of the executory Parties hereto.
9. This Agreement represents a compromise of disputes between the Parties. The Parties hereto agree that they intend this Settlement Agreement shall not be subject to any claim of mistake of fact or of law in that it expresses a full and complete settlement of issues. This Settlement Agreement is intended to avoid and/or resolve litigation involving the aforesaid Litigation. The consideration set forth herein are in compromise of disputed matters and such shall not to be construed as an admission of liability on behalf of any party to this Settlement Agreement or any one on their behalf.
10. **Representation and Warranties.** The Parties represent and warrant to each other that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in the Litigation and this Agreement; that they have the sole and exclusive right to receive the consideration contemplated herein; and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement to any third-party person or entity as of the date of this Agreement.
11. **Authority.** In executing this Agreement, the Parties represent and warrant that they have the full power and authority to execute and deliver this Agreement and to carry out the terms set forth herein.
12. **Governing Law.** The Parties hereto enter into this Agreement in the Commonwealth of Pennsylvania, and this Agreement shall be construed, interpreted and enforced in accordance with its laws and the laws of the United States.
13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

14. **Headings.** All paragraph headings are for convenience of the Parties only and are not to be construed as a substantive part of this Agreement.

WHEREFORE, the Parties hereto, intending to be legally bound by the terms of this Settlement Agreement and Release, have duly executed and delivered this Agreement as of the date and year first above written.

THE BOROUGH OF DANVILLE

By: William R. Rogers IV
COUNCIL VP

DANVILLE MUNICIPAL AUTHORITY

By: Richard Johns
Richard Johns, Chairman

MAHONING TOWNSHIP

By: Ken Woodruff
Ken Woodruff, Chairman
Board of Supervisors

PENNSYLVANIA PUBLIC UTILITY COMMISSION

CERTIFICATE OF FILING

Agreement dated January 20, 1992, between the Borough of Danville, Montour County, Pennsylvania and Mahoning Township and Mahoning Township Authority relative to the Authority previously entered into an agreement, dated June 1, 1951, which provided for Danville to furnish sewage disposal service for the Authority by permitting the Authority to connect sewer lines to the Danville sewerage system at the Danville-Township boundary line, and Danville and the Authority desire to continue the arrangement whereby Danville provides sewage disposal service to the Authority and Danville is required to comply with various requirements under the Clean Water Act and other Acts which impose duties and obligations for controlling industrial discharges, also known as an industrial pretreatment program. In order to perform the duties required in administering an industrial pretreatment program Danville is required to have the legal authority to perform inspection and sampling, issue permits and orders, require reporting and recordkeeping, control rates and quantities of discharges, require that certain discharges be halted, seek equitable and injunctive relief and impose penalties and fees on certain industrial waste discharges located in the Township. The Township and Authority desire to have such activities performed by Danville in order to protect the Authority's sewerage system and in order to comply with Federal regulations. Danville, on the one hand and the Township and Authority on the other hand, for and in consideration of the covenants and agreements contained herein, to be kept and observed, each intending to be legally bound hereby.

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BY THE COMMISSION:

AND NOW, December 6, 2018, the Public Utility Commission certifies that the above, captioned contract or indenture dated January 20, 1992, has been on file with the Commission since July 20, 2018, in accordance with Section 507 of the Public Utility Code, 66 Pa. C.S. §507.

PENNSYLVANIA PUBLIC UTILITY COMMISSION



Secretary