

IN THE COURT OF COMMON PLEAS OF  
MONTGOMERY COUNTY, PENNSYLVANIA

UPPER POTTS GROVE TOWNSHIP,

Petitioner

No. 2021-06705

vs.

CIVIL ACTION

POTTSTOWN BOROUGH  
AUTHORITY

and

POTTSTOWN BOROUGH,

Respondents

**SETTLEMENT AGREEMENT AND RELEASE**

**THIS SETTLEMENT AGREEMENT AND RELEASE** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by Upper Pottsgrove Township, a first class township, organized and governed pursuant to the provisions of the First Class Township Code with its principal address at 1409 Farmington Avenue, Pottstown, Montgomery County, Pennsylvania 19464 (hereinafter "Petitioner" or "Township"), Pottstown Borough Authority, a municipal authority organized and governed by the provisions of the Pennsylvania Municipality Authorities Act with its principal address at 100 E. High Street, Pottstown, Montgomery County, Pennsylvania 19464 (hereinafter "PBA") and the Borough of Pottstown, a borough organized pursuant to the provisions of the Borough Code, with its principal address at 100 E. High Street, Pottstown, Montgomery County, Pennsylvania 19464 (hereinafter the "Borough") (hereinafter the Borough and PBA are collectively referred to as "Respondents") (hereinafter the Township, the

Borough, and PBA are collectively referred to as the "Parties")

## **BACKGROUND**

**WHEREAS**, Petitioner owns and operates a wastewater collection system for Upper Pottsgrove Township residents which flows wastewater to an interceptor for treatment at PBA's sewage treatment plant (the "STP") in which Upper Pottsgrove Township has purchased 670,100 gpd of bulk wastewater treatment capacity pursuant to a Sewage Treatment Service Agreement dated September 13, 2004, as amended, between Upper Pottsgrove Township, PBA and the Borough (the "STSA").

**WHEREAS**, on or about April 28, 2020, the Petitioner and Pennsylvania American Water Company (hereinafter "PAWC") entered into an agreement whereby PAWC will purchase the Township's sewer system assets and service the Township's residents. The purchase by PAWC will result in the assignment of rights and obligations relating to the Township's sewer system from the Township to the PAWC, subject to the terms of this Settlement Agreement, and the terms of the Assignment and Assumption Agreement and Support Agreement among the Township, PBA, the Borough and PAWC attached to this Settlement Agreement as Exhibit A.

**WHEREAS**, PAWC is a Pennsylvania corporation with a registered business address of 852 Wesley Drive, Mechanicsburg, PA 17055. PAWC is subject to regulation by the Pennsylvania Public Utility Commission ("PUC").

**WHEREAS**, the PUC reviewed PAWC's application for approval of the transfer by sale of the Township's sewer system assets among other items, which application is docketed at A-2020-3021460 (the "PAWC Application"). PUC Administrative Law Judge, Jeffery A. Watson, issued a recommended decision that the PUC conditionally approved the PAWC Application, subject to the assignment of the STSA by the Township to PAWC, among other conditions. The full Commission of the PUC adopted Judge Watson's recommended decision, including its conditions.

**WHEREAS**, Petitioner initiated a litigation against Respondents in the Montgomery County Court of Common Pleas, docketed at No. 21-06705 (the "Litigation"), seeking injunctive relief to compel Respondents' official consent to the assignment of the STSA by the Township to PAWC.

**WHEREAS**, the Litigation includes counterclaims of PBA and the Borough alleging various claims relating to unreimbursed contract overages in the amount of \$470,184.22 incurred by PBA on a project for sewer conveyance upgrades within the Borough in Hanover Street to replace existing pipe and install new siphon boxes and pipe commonly referred to as the Siphon Project.

**WHEREAS**, neither Petitioner nor Respondents admit the validity of any claim asserted against the other in the Litigation

**WHEREAS**, the Petitioner and the Respondents acknowledge that time is of the essence in resolving this matter and that they will work together in that regard as fully set forth below.

**NOW THEREFORE**, in consideration of the facts set forth in the Background to this Agreement, and in consideration of the mutual covenants and agreements contained herein the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Effective Date.** The effective date of this Agreement shall be upon the full execution by Upper Pottsgrove Township, the Pottstown Borough Authority and Pottstown Borough.

2. **Consent to Assignment.** The Pottstown Borough Authority and Pottstown Borough consent to the assignment of the STSA by the Township to PAWC in the form of the Assignment and Assumption Agreement and Support Agreement among the Township, PBA, the Borough and PAWC attached to this Settlement Agreement as Exhibit A, such consent conditioned upon the receipt of the funds set forth in paragraph 3 below.

3. **Settlement Payment.** At the closing on the sale of the Upper Pottsgrove Township sewer system to Pennsylvania American Water Company,

the Township shall immediately pay from the proceeds of the sale the amount of Four Hundred Seventy Thousand One Hundred and Eighty-Hour and 22/100 Dollars (\$470,184.22) in immediate, same-day federal funds wired for credit into such account as follows:

Name: Borough of Pottstown/Pottstown Borough  
Authority Address: 100 E High St, Pottstown, PA 19464  
Account Number: 5200127269  
Bank Name: Tompkins VIST Bank  
Bank ABA: 031312194

4. **Release by Respondents.** Except for the terms and conditions contained herein, Respondents, for themselves and for all successors, assigns, beneficiaries, administrators, surrogates, agents, attorneys, representatives, insurers, employees, officers, directors, and affiliates, irrevocably and absolutely releases and forever discharges Petitioner, their representatives, officers and employees of and from all causes of action (however denominated), whether in law, statute or in equity, present or contingent, for any injury, damage or loss whatsoever arising from any acts or occurrences known or unknown, including but not but limited to (1) any claims, counterclaims and/or crossclaims, arising directly or indirectly from any relationship, agreement or undertaking among and/or between Petitioner and Respondents regarding or pertaining to Petitioner's ownership and/or sale of the Upper Pottsgrove Township Sewer System which were or could have been asserted in the Litigation; and (2) all claims that were and/or could have been asserted in the PAWC Application before the Commonwealth of Pennsylvania's Public Utility Commission, over any claims pertaining to the ownership or sale of the Upper Pottsgrove Township sewer system by Petitioner.

5. **Release by Petitioner.** Except for the terms and conditions contained herein, Petitioner and all of its successors, assigns, beneficiaries, executors, trustees, administrators, surrogates, agents, attorneys, representatives, insurers, employees, officers, directors, partners, parent corporations, subsidiaries and affiliates, irrevocably and absolutely release and forever discharge the Respondents and their successors, assigns, beneficiaries, agents, attorneys and representatives, officers, directors and employees of and from all causes of action (however denominated), whether in law, statute or in equity, present or contingent, known and unknown, asserted and unasserted, including but not but limited to claims, counterclaims or crossclaims for any injury, damage or loss whatsoever arising from any acts or occurrences known or unknown, arising from any acts, occurrences or matters set forth in Petitioner's Complaint, or which could have been set forth in Petitioner's Complaint.

6. **Warranty of Capacity & Authority to Execute Agreement.** Petitioner's and Respondents' representatives warrant that they have the full authority to enter into this Settlement Agreement and Release, that they are

capable of binding the Municipal entities they represent.

7. **Amendments.** This Settlement Agreement and Release shall not be subject to any modification without the express written consent of all Parties hereto.

8. **Who is bound.** This Settlement Agreement and Release is binding on and inures to the benefit of the Parties, their successors, assigns, affiliated entities, insurers, and all of the foregoing officers, agents, employees, representatives, attorneys, agents and assigns.

9. **Representation and Comprehension of Documents.** In entering into this Settlement Agreement and Release, Petitioner and Respondents represent that each has relied on the legal advice of their attorney, who is the attorney of their own choice, and that the terms of this Settlement Agreement and Release have been completely read and explained by their attorney, and that those terms are fully understood and voluntarily expressed.

10. **Docket Settlement.** Within ten (10) days following Township's remittance of the Settlement Payment, the Parties shall file the appropriate document(s) with the Montgomery County Court of Common Pleas to mark the Litigation under this caption as "Settled, Discontinued, and Ended with Prejudice" and all parties acknowledge that this document ends all existing and further claims by Petitioner and Respondent with respect to this matter.

11. **Court Approval.** The Petitioner, Upper Pottsgrove Township together with the Respondents, the Pottstown Borough Authority and Pottstown Borough jointly execute this Settlement Agreement and Release to be submitted to the Montgomery County Court of Common Pleas with a request that this Court enter an Order incorporating its terms.

**IN WITNESS WHEREOF**, the Parties, voluntarily, intending to be legally bound, and after being afforded the opportunity to consult the counsel of their choice, now hereby execute this Agreement to be effective as of the date on which it has been signed by each of the Parties hereto:

**Signatures on Next Page**

Attest:

**Upper Pottsgrove Township**

Michele Riddick  
*Township  
Manager*

Trace Slinkard  
*Chairperson*

Attest:

**Pottstown Borough Authority**

Title: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Jeff Chomnuk  
*Chairperson*

Attest:

**Pottstown Borough**

Justin Keller  
*Borough  
Manager*

Dan Weand  
*Council President*

EXHIBIT "A"

ASSIGNMENT AND ASSUMPTION WITH SUPPORT  
AGREEMENT