

January 17, 2023

## **POTTSTOWN BOROUGH AUTHORITY**

Manager Justin Keller served as Temporary Chairperson and called the meeting to order at 7:00 p.m.

### **REORGANIZATION**

Chairman Keller requested nominations for the position of Vice Chairman, Treasurer and Assistant Secretary/Treasurer.

Mr. Renn moved that Mr. Ecker and Mr. Benner retain positions of Vice Chairman and Treasurer respectively. He also moved to appoint Mark Gibson as Assistant Secretary/Treasurer. Mr. Benner seconded the motion and it passed unanimously.

Chairman Chomnuk resumed the Chair.

### **LIAISON TO TOWNSHIPS/AUTHORITY MEETINGS**

It was the consensus of the Board to allow Mr. Keller to act as liaison for the Township meetings and provide the report to the Board.

### **ATTENDANCE**

Present were Mike Benner, Jeff Chomnuk, Aram Ecker, Mark Gibson and David Renn. Also present were Solicitor Vincent Pompo, Engineer Cory Salmon, Authority Manager Justin Keller, Public Works Director Doug Yerger, Utilities Director Brent Wagner, Bookkeeper Gerry Keszczyk and Borough Secretary Virginia Takach.

### **PUBLIC COMMENT**

None.

### **APPROVAL OF MINUTES**

Mr. Benner moved to approve the December 20, 2022 minutes as presented. Mr. Renn seconded the motion and it passed unanimously.

### **AUTHORITY MANAGER'S REPORT**

Manager Keller advised that Lower Pottsgrove has reported a significant amount of infiltration into its system and may be a result of the pipeline project. He also advised that Andrew Monastra was appointed to fill the 6<sup>th</sup> Ward Council position on Borough Council. Mr. Keller also reported that Council approved the Credit Enhancement Agreement and the Roadway Maintenance Agreement.

Mr. Keller reported that he had a meeting with Pat Mascaro, along with Brent Wagner and Karen Owens, to discuss a leachate agreement. Mascaro's is requested that the Plant take 24 million gallons of leachate per year from the Pioneer Landfill. Certain customers would need to be reprioritized in order to maintain the capacity limits. Mascaro's is looking for a long-term, life of the landfill, agreement that could be reviewed every 5 years. He added that Staff would be looking for locked-in pricing for sludge disposal. With no objections from the Board, Staff is continuing to review this matter.

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## WELCOME

Chairman Chomnuk introduced and welcomed new Board member, Mark Gibson.

## SOLICITOR'S REPORT

Solicitor Pompo referred to the report distributed with no specifics to discuss. He will review the West Chester case later on the agenda.

## ENGINEER'S REPORT

Mr. Salmon also noted items will be review later on the agenda.

## UTILITIES DIRECTOR'S REPORT

Mr. Wagner advised that the UV analysis is underway and noted that the cost of chemicals is increasing dramatically. He added that he is doing a review and analysis with other Wastewater Treatment plants regarding the cost of chemicals. He also advised that a payback for a UV system for the Wastewater Treatment Plant would be 2.5 years. Mr. Wagner also reported that the Lower Pump House is being redone in the spring.

Mr. Wagner reported that the UV is on line at the Water Treatment Plant and the air scour is in its final phase of getting the pipes and will be on line within the next two months. He also advised that he is working on a contingency plan to replace pipes under the building.

## PUBLIC WORKS DIRECTOR'S REPORT

Mr. Yerger reported that the contractor is doing patching on previous leaks and breaks. He noted a sewer problem in the area of the Elk's home on High Street, which was addressed last week. The Elk's still has a problem with its lateral and will need to replace certain parts.

## FINANCE

Mr. Keszczyk advised that Staff is still processing invoices from last year. He also reported that the water revenues are at 96% and expenses at 83%. The sewer revenues are at 111% and expenses at 72% for the year. Mr. Keszczyk also noted that the bulk sewer revenue is over budget by \$308,000 and sludge hauling expenses are over budget by \$139,000, which is due to the centrifuge issue cost of \$200,000 for the month.

Mr. Keszczyk also advised that the on the water capital side, the UV project should be \$100,000 under budget and the air scour system, \$400,000 under budget, resulting in \$500,000 saving on these capital projects. He also reported that the audit will begin on February 20<sup>th</sup>. Mr. Keszczyk provided information on the final reconciliation on the Upper Pottsgrove accounts.

## OLD BUSINESS

### WEST CHESTER STORMWATER COURT DECISION

Solicitor Pompo reviewed the case of the Borough of West Chester vs. the Pennsylvania State System

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of Higher Education and West Chester University. He explained that the fee is based on the amount of impervious cover. He advised that the Commonwealth of Pennsylvania owns the West Chester University land and the University refused to pay the fee as the Commonwealth is immune from paying taxes and stated that this is a tax and not a fee. The West Chester Borough sued the Commonwealth and was litigated in Commonwealth Court and the Commonwealth Court ruled in favor of the Commonwealth, essentially stating that the fee is an unlawful fee. He also explained that if a fee, it is based on some type of benefit or service that the property owner receives. The Court advised that the Borough did not prove how the fee benefited the property. Solicitor Pompo advised that because of the nature of the case, the Borough cannot charge the fee against the University. He also advised that the Borough of West Chester can appeal directly to the Pennsylvania Supreme Court.

#### CONTRACT LR-1

Mr. Salmon recommended that the Lead Service replacement project be awarded to Joao & Bradley in the amount of \$964,000 and to issue the notice to proceed, which would not occur until after the PennVEST settlement scheduled for January 26, 2023.

Mr. Benner moved to award Contract LR-1, the Lead Service Replacement project to Joao & Bradley in the amount of \$964,000, contingent on the successful closing of the PennVEST loan on January 26, 2023. Mr. Renn seconded the motion and it passed unanimously.

#### PENNVEST – REVISED RESOLUTION TO BORROW

Solicitor Pompo explained that this is a revised resolution from the one adopted at the December 20, 2022 meeting, noting that there is an additional legal step for the borrowing, regarding the existing debt document for the water system. There is an outstanding bond and loan on the water system covered by the Trust Indenture and there is an exclusive lien on the water system. Solicitor Pompo advised that the Resolution has been revised to address the supplemental indenture with US Bank.

Mr. Salmon added that the exact percentages and the amount of \$135 had to be revised as well for the borrowing and also for the reimbursement resolutions.

Mr. Ecker moved to adopt the Revised Resolution to Borrow from the PennVEST Authority for the Lead Service Project. Mr. Benner seconded the motion.

#### RESOLUTION NO. 1- 2023 RESOLUTION TO BORROW

AUTHORIZING THE SECURING OF FUNDING FROM THE PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY ("PENNVEST") IN THE MAXIMUM PRINCIPAL AMOUNT OF \$500,000.00 AND THE ACCEPTANCE OF A PRINCIPAL FORGIVENESS LOAN FROM THE AUTHORITY IN THE MAXIMUM PRINCIPAL AMOUNT OF \$785,135.00 FOR THE PURPOSE OF PROVIDING FUNDS TO FINANCE THE COST OF THE IMPROVEMENT OF THE DRINKING WATER SYSTEM OF THE FUNDING RECIPIENT, TO PAY COSTS AND EXPENSES OF SECURING SUCH FUNDING; AUTHORIZING THE EXECUTION AND DELIVERY OF A PLEDGE OF A LIEN ON THE WATER REVENUES; APPROVING THE FORM, TERMS AND CONDITIONS OF THE FUNDING DOCUMENTS; AUTHORIZING THE EXECUTION OF THE FUNDING DOCUMENTS AND PROVIDING FOR THE AUTHENTICATION AND DELIVERY THEREOF; AND AUTHORIZING THE

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DISPOSITION OF THE FUNDING PROCEEDS RECEIVED OR TO BE RECEIVED FROM PENNVEST.

WHEREAS, Pottstown Borough Authority, created and existing under the laws of the Commonwealth of Pennsylvania, has determined that it is necessary and in its best interests to improve the drinking water system (the "Project") by replacing the existing lead service lines within the Borough with copper service lines, and associated restoration and appurtenances (the "System"); and

WHEREAS, in order to finance the cost of the Project, Pottstown Borough Authority intends to secure a loan in the maximum principal amount of \$500,000.00, from PENNVEST to be evidenced by a debt obligation (the "Debt Obligation"), substantially in the form and including the proposed amortization schedule presented to this meeting and attached to and part of this Resolution, and a principal forgiveness loan in the maximum principal amount of \$785,135.00 (the "PENNVEST Funding"), secured by a pledge of a lien on the water revenues (the "Project Collateral") and other agreements granting and creating security interests, all as more particularly set forth in the funding agreement between Pottstown Borough Authority and PENNVEST (the "Funding Agreement") and the funding offer from PENNVEST dated October 20, 2021 (the Debt Obligation, Project Collateral, other security agreements, funding offer, the Funding Agreement and all other agreements, documents, certificates and instruments described in or contemplated by the Funding Agreement are collectively referred to as the "Funding Documents"); and

WHEREAS, Pottstown Borough Authority desires and intends to take all necessary and proper actions and to execute all documents required by PENNVEST to be executed to obtain the PENNVEST Funding and assure its proper repayment, as well as to perfect the required lien and security interest in the Project Collateral.

NOW, THEREFORE, Pottstown Borough Authority hereby resolves as follows:

Section 1. For the purpose of providing funds to finance the cost of the Project and to pay costs and expenses in connection with the PENNVEST Funding, Pottstown Borough Authority hereby authorizes the execution of all Funding Documents and the taking of all actions necessary and required by PENNVEST to obtain the PENNVEST Funding in the maximum principal amount of \$1,285,000.00 pursuant to the provisions of the Pennsylvania Municipality Authorities Act of May 2, 1945, P.L. 382, as amended and the Funding Documents.

Section 2. The PENNVEST Funding shall be secured by the Funding Documents from Pottstown Borough Authority to PENNVEST, and to the extent and in the manner therein set forth, the Project Collateral and other agreements granting and creating certain security interests in favor of PENNVEST, as well as a pledge of water revenues and receipts of Pottstown Borough Authority for the payment of costs of Pottstown Borough Authority, and for the payment of principal of, and interest on, the Debt Obligation. In addition, Pottstown Borough Authority shall accept the Debt Obligation as a special revenue obligation and pledge its water revenues toward the repayment of the Debt Obligation under and subject to an Eleventh Supplemental Trust Indenture between the Pottstown Borough Authority and U.S. Bank Trust Company, National Association, as trustee.

The Funding Documents shall not in any manner pledge the full faith and credit or taxing power of the Commonwealth of Pennsylvania, nor shall it be deemed to be an obligation of the Commonwealth of Pennsylvania, nor shall the Commonwealth be liable for the payment of the principal of, or interest on, such obligation, but it shall be secured upon and payable from the water revenues and receipts of Pottstown Borough Authority derived from the System and from such other moneys as may be made available for the purpose of repaying the Debt Obligation.

Section 3. The form, terms and conditions of the Funding Documents prepared by counsel for Pottstown Borough Authority and PENNVEST, to be substantially in the form as submitted to this meeting are hereby approved. The Chairman of the Board of Pottstown Borough Authority is hereby

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authorized to execute the Funding Documents in such form on behalf of Pottstown Borough Authority, subject to such changes and modifications, if any, as may be approved by such Chairman of the Board, the execution of the Funding Documents to be conclusive evidence of such approval, and the Secretary is hereby authorized to cause the corporate seal of Pottstown Borough Authority to be affixed thereto and to attest the same. The Chairman of the Board of Pottstown Borough Authority is further authorized to acknowledge the same on behalf of Pottstown Borough Authority and to deliver said Funding Documents to PENNVEST.

Section 4. The PENNVEST Funding shall be repaid in the amounts and on certain dates, all as set forth in the Funding Documents as submitted to this meeting. The PENNVEST Funding is also subject to early repayment as provided in the Funding Documents.

Section 5. The application for the PENNVEST Funding ("Application") in the form submitted at this meeting is hereby approved with such subsequent, necessary and appropriate variations, omissions and insertions, if any, as may be approved by the Chairman of the Board of Pottstown Borough Authority, and the Chairman of the Board is hereby authorized to sign said Application, amended as aforesaid, on behalf of Pottstown Borough Authority. The review of the Application and any amendments by PENNVEST, as well as any investigation required by PENNVEST in connection with the PENNVEST Funding, are hereby authorized.

Section 6. Upon receipt, the proceeds from the PENNVEST Funding authorized to be secured in this Resolution, shall be applied by Pottstown Borough Authority under the terms and conditions set forth in the Funding Documents.

Section 7. The proper officers of Pottstown Borough Authority are hereby authorized, empowered and directed on behalf of Pottstown Borough Authority to execute any and all papers and documents to do and cause to be done any and all acts and things necessary or proper for the execution or carrying out of this Resolution, as well as all acts and thing necessary or proper for the execution or carrying out of the Funding Documents and in the Application and securing of the PENNVEST Funding.

Section 8. All resolutions or parts of resolutions inconsistent herewith shall be, and the same are, hereby rescinded, cancelled and annulled.

The motion passed unanimously.

#### PENNVEST – REVISED RESOLUTION FOR REIMBURSEMENT

Mr. Ecker moved to adopt the Revised Resolution for Reimbursement for the PennVEST Loan. Mr. Benner seconded the motion.

#### PENNVEST REVISED RESOLUTIO FOR REIMBURSEMENT

#### RESOLUTION NO. 2 -2023

#### DECLARATION OF OFFICIAL INTENT TO REIMBURSE WATER REVENUE FUNDS USED TO CONSTRUCT IMPROVEMENTS TO ITS DRINKING WATER SYSTEM WITH FUNDS RECEIVED FROM THE PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY

WHEREAS, Pottstown Borough Authority ("Funding Recipient") has determined that construction of improvements to the drinking water system located in Pottstown Borough, Montgomery County, Pennsylvania (the "Project"), are necessary; and

WHEREAS, in order to finance the costs of the Project, the Funding Recipient has issued or intends to issue its Debt Obligation to the Pennsylvania Infrastructure Investment Authority ("PENNVEST") consisting of a loan in the maximum principal amount of \$500,000.00 and a principal forgiveness loan

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in the maximum amount of \$785,135.00, with a total maximum funding amount of \$1,285,000.00 (the "PENNVEST Funding Agreement").

WHEREAS, Funding Recipient intends to pay Project costs, on an interim basis, using its Water Revenue Funds until the proceeds of the PENNVEST Funding Agreement are received;

NOW, THEREFORE, the Funding Recipient hereby declares as follows:

Pursuant to federal requirements set forth at 26 C.F.R. § 1.150-2, the Funding Recipient officially intends to reimburse its Water Revenue Funds for Project costs incurred by the Funding Recipient with the proceeds of the PENNVEST Funding Agreement up to the maximum principal amount of \$1,285,000.00.

Mr. Keller added that the intention is to pay off in 5 years, with \$1 million I debt coming off this year.

The motion passed unanimously.

### NEW BUSINESS

#### TERM OF EXISTENCE

Solicitor Pompo reviewed the existence of the Authority, which under the Authority's Act, cannot be more than 50 years. The existing term ends in 2038. He added that certain borrowing or permitting may exceed the term ending in 2038 and borrowing cannot extend the life of the Authority. The Authority may also consider any expanded purposes, i.e., stormwater matters.

Chairman Chomnuk tasked the Capital Committee to work with the Solicitor on this project and provide any reports to the Board.

#### SEWER LEASE AGREEMENT

Solicitor Pompo referred to the Sewer Lease Agreement, whereby the Authority leases the system to the Borough, and informed the Board that the Lease has expired. The Agreement dates back to May 1989. Under a separate agreement, the Borough operates the system. Solicitor Pompo added that the water system extends to other municipalities and therefore the Authority owns the system and not subject to regulations of the Public Utilities Commission. He added that with the sewer system, the Borough has never provided a service beyond the borders of the Borough. Solicitor Pompo requested authorization to draft a new lease agreement in negotiations with the Borough.

Chairman Chomnuk requested that the Solicitor keep the Board informed.

### ADJOURNMENT

The meeting adjourned at 8:05 p.m. on motion **by** Mr. Benner.

Submitted by,

Virginia L. Takach, Borough Secretary  
for David Renn, Secretary