

AGREEMENT OF SETTLEMENT AND FINAL RELEASE OF ALL CLAIMS

This Agreement of Settlement and Final Release of All Claims (“Settlement”) is made by, between, and among the City of Hoboken (“City” or “Releasor”) and J. Fletcher Creamer & Son, Inc. (“JFC”) and Public Service Electric and Gas Company (“PSE&G”) and (JFC and PSE&G collectively, the “Releasees”). For purposes of this Settlement, the Releasor, Releasees, potential parties, and their insurers, are collectively referred to herein as the “Parties.”

WHEREAS the City instituted claims against JFC and PSE&G for damages as a result of work performed on February 27, 2023 that resulted in a water main break on or around Madison Street between Observer Highway and Newark Street in Hoboken, New Jersey (“Incident”). The Releasor and Releasees have agreed to resolve this matter amicably, and this document shall contain the terms of the Settlement. By entering into this Settlement, the Parties intend to, and in fact do, terminate and end all presently pending claims, including those of the Releasor.

WHEREAS, the Parties hereto have concluded that it is in the best interest of all concerned to compromise amicably all claims which have been asserted or could be asserted by the Parties in pre-litigation, including all claims, crossclaims, counterclaims, causes of action, complaints, petitions or disputes, known or unknown, in law or in equity, in tort or in contract, or pursuant to any federal, state or local statute which the Parties ever had, now have, or hereafter can, shall or may have against any of the other Parties by reason of any cause, matter or event whatsoever arising out of the Incident. It is specifically understood that by signing below, this particular pre-litigation is henceforth settled, ended, and completely terminated.

WHEREAS, the Parties agree that continued prosecution and defense of the litigation concerning this Incident will be expensive and time consuming and will distract them from the conduct of their business.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the signatories hereto, each intending to be legally bound, agree as follows:

I. TERMS OF SETTLEMENT.

(a) Payment. JFC, for themselves and PSE&G, shall pay the total sum of Two-Hundred Fifty Thousand Dollars (\$250,000) in full and final settlement of any current or potential claims against Releasees (“Settlement Payment”).

(b) Time of Payment. The Settlement Payment shall be made within thirty (30) days of receipt by the Releasees’ respective counsel of a copy of this Settlement executed by the City.

(c) Settlement Fund. It is the intention of the City to establish a settlement fund (“Settlement Fund”) when the City has received in excess of \$500,000 from parties from either settlements and/or judgements, verdicts or court process related to the Incident to aid in settling claims raised by businesses and/or individuals in the City of Hoboken. . The City or it’s assign is solely responsible for organizing, managing, maintaining, and overseeing the Settlement Fund.

Releasees to this Settlement shall not be deemed responsible in any way for the Settlement Fund. The City agrees to ensure that distributions by and from the Settlement Fund to any person, business or entity shall serve to fully release JFC and PSE&G from any claim(s) related to this Incident by every person, business or entity receiving any payment from the Settlement Fund.

(d) Tax Indemnification. The City agrees that it is solely responsible for all applicable taxes, if any, as a result of the receipt of these monies. The City understands and agrees that Releasees are providing no representation for any tax obligations or consequences that may arise from this Settlement. If any action or proceeding shall be instituted against Releasees related to any alleged failure to make withholdings or other taxes on such monies, Releasees will within five (5) days provide written notice to the City of the action or proceeding. The City hereby agrees to indemnify Releasees in any such action and for any judgment which may be entered against Releasees for taxes owed by the City, including costs, penalties, interests, and fees.

II. NO ADMISSION OF LIABILITY. As an express and essential condition of this Settlement, the City fully accepts, acknowledges, and understands that JFC and PSE&G, their respective agents servants, employees, elected officials and representatives, all deny any wrongdoing or liability whatsoever in connection with the Incident. The City accepts and acknowledges that nothing in this Settlement constitutes an admission of any kind by Releasees, their agents, servants, employees, elected officials and representatives, of any liability, or any violation of any law, or any violation of duty or obligation, or that any decisions or actions taken in connection with this matter were unwarranted, unjustified, wrongful, unreasonable, negligent or otherwise unlawful. Releasees deny any wrongdoing whatsoever as to the City or that the action or failure to act of any of its agents, servants, employees, elected officials and/or representatives caused the City's damages. The City further agrees, understands, and accepts that, by entering into this Settlement, no admission whatsoever is made by Releasees, their agents, servants, employees, elected officials and/or representatives, that the City, its agents, servants, employees, elected officials and/or representatives, violated any constitutional or other rights of the City, were negligent, acted pursuant to any unconstitutional or unlawful policy, custom, or practice, or were otherwise liable or responsible for any of the City's damages.

III. RELEASE. In consideration of the Settlement Payment and other consideration provided for in this Settlement, the City waives, releases, and gives up any and all claims, demands, obligations, damages, liabilities, causes of action, and rights, in law or in equity, known and unknown, that they may have against Releasees, their agents, servants, employees, subcontractors, elected officials, and/or representatives (present and former), or any of their respective successors and assigns, heirs, executors, and personal or legal representatives, and their insurers as to the Incident ("Release"). This Release is based upon any act, event or omission occurring before the Effective Date of this Settlement. The term "claim" shall include any and all claims, counterclaims, third-party claims, contribution claims, cross-claims, and any other type of claim, including but not limited to claims relating to, or arising from, debts, demands, actions, promises, judgments, rights, trespasses, extents, executions, causes of action, suits, accounts, covenants, sums of money, dues, reckonings, bonds, bills, liens, attachments, trustee process, specialties, contracts, controversies, agreements, promises, damages, and all other claims of every kind and nature in law, equity, arbitration, or other forum, whether arising under state, federal or other law, known or unknown, matured or unmatured, foreseeable or

unforeseeable, suspected or unsuspected, fixed or contingent, which were asserted, could have been asserted, or could in the future be asserted, whether or not asserted, threatened, or litigated, from the beginning of time to the Effective Date of this Release, any and all claims arising out of, relating to or in any way connected with the Incident or that have been asserted or could have been asserted arising out of the Incident, whether absolute or contingent, direct or indirect, known or unknown.

The City specifically releases any and all claims against Releasees, their agents, servants, employees, subcontractors, elected officials, and representatives, related to alleged damages sustained as a result of the Incident. In making this Release, it is understood and agreed that the City relies wholly upon its judgment, belief and knowledge of the nature, extent, effect and duration of said damages and liability, therefore. This release is made without reliance upon any statement or representation of the Releasees, their agents, servants, employees, elected officials and/or representatives.

IV. COVENANT NOT TO SUE. The City warrants that it has not filed any civil or administrative complaints of any nature against Releasees as of the date of the execution of this Settlement. The City agrees that, for the matters released herein and against Releasees, it will not file, charge, claim, sue or cause or permit to be filed any civil action, suit, administrative claim, or other legal proceeding seeking personal, equitable or monetary relief on their behalf in connection with this Incident concerning Releasees. In the event of a violation of this paragraph, the City agrees that Releasees shall be entitled to immediate dismissal of such civil action, suit or legal proceeding and that the City shall be responsible for the payment of the reasonable attorneys' fees and expenses incurred by Releasees.

V. INDEMNIFICATION. In the event the City has recovered or recovers any monies from any other person or entity who thereafter seeks contribution, indemnification or allocation of fault from the Releasees arising from the claims released in this Settlement, the City shall indemnify and hold Releasees harmless for any money spent in defending against these claims including, but not limited to, attorney 's fees, costs of suit, judgment or settlement.

VI. EFFECTIVE DATE. This Settlement shall become effective upon service upon counsel for the Releasees of the Settlement executed by the City. Service may be effectuated by reasonable means, including electronic means. Electronic or .pdf signatures shall be treated as originals for all purposes applicable hereto.

VII. COOPERATION OF THE PARTIES. The Parties and their attorneys, agents, representatives, and employees shall cooperate with one another in the implementation of the terms and conditions of this Settlement and agree to use reasonable efforts to promptly secure the signatures required to effectuate this Settlement, including the necessary signatures to expedite the filing of the dismissal of the Party's claims asserted in the Litigation with prejudice.

VIII. APPLICABLE LAW. This Settlement shall be construed and interpreted in accordance with the laws of the State of New Jersey.

IX. CONSTRUCTION OF AGREEMENT. This Settlement shall not be construed more strictly against any Party to this Settlement merely by virtue of the fact that the Settlement may have been drafted or prepared by such Party or its counsel, it being recognized that all Parties have contributed substantially and materially to its preparation, all Parties have been represented by counsel in this matter, and that this Settlement has been the subject of negotiations between the Parties and is a product of those negotiations. This Settlement also shall not be interpreted as rendering any Party a prevailing party for any purpose, including, but not limited to an award of attorney's fees under any statute or otherwise.

X. ENTIRE AGREEMENT. This Settlement contains the sole and entire agreement between the Parties hereto and fully supersedes any and all prior agreements and understanding pertaining to the subject matter hereof and is intended to memorialize the settlement of the City's claims. The City represents and acknowledges that, prior to executing this Settlement, it consulted with its attorney, that it had ample time to do so, that it obtained the advice of counsel prior to making the decision to execute the Settlement and that it had not relied upon any representation or statement not set forth in this Settlement made by the Releasees thereto, or the Releasees' counsel or representatives, with regard to the subject matter of this Settlement. No other promises or agreements shall be binding unless in writing between the Parties.

XI. SEVERABILITY. The Parties agree that if any court declares any portion of this Settlement unenforceable, the remaining portion shall be fully enforceable.

XII. AMENDMENTS. This Settlement may not be amended, changed, or modified except in a writing between the Parties. It is expressly understood and agreed that this provision may not be orally amended, but must be amended in writing. This Settlement shall be binding on the heirs, executors, and beneficiaries and any successor organization by merger, change of control or operation of law.

XIII. FURTHER ASSURANCES. The Parties agree to execute additional documents reasonably necessary to effectuate this Settlement.

XIV. NO WAIVER. The delay or failure of a Party to exercise any right power or privilege hereunder or failure to strictly enforce any breach or default shall not constitute a waiver with respect thereto and no waiver of any such right, power, privilege, breach or default on any one occasion shall constitute a waiver thereof on any subsequent occasion unless clear and express notice thereof in writing is provided.

XV. COSTS AND FEES. The City agrees to bear its own costs and attorney's fees in connection with the Incident referenced herein and in connection with the negotiation of this Settlement. This Settlement shall not be interpreted as rendering any Party a prevailing party for any purpose, including, but not limited to an award of attorney's fees under any statute or otherwise.

XVI. ACKNOWLEDGEMENT. The City acknowledges that it has read all of the terms of this

Settlement and has had an opportunity to discuss it with individuals of its own choice. The Parties have been represented throughout this negotiation by attorneys of their own choosing and each affirm they have had an opportunity to review the Settlement with such counsel. The City further

acknowledges and understands that by signing this Settlement and accepting the terms set forth above, it is receiving monies and benefits to which it might not otherwise be entitled but for this Settlement. The City understands that it is receiving such benefits as a result of entering into and complying with the terms and provisions of this Settlement. The City acknowledge that it executes this Settlement voluntarily and knowingly in exchange for the consideration described herein, which is acknowledged to be adequate and satisfactory.

XVII. SIGNATURE. Each Party understands and agrees to the terms of this Settlement. If this Settlement is made by a corporation, its proper corporate officers have signed, and its corporate seal is affixed. Each Party has consulted with competent counsel and is fully satisfied with the advice received herein.

EXECUTED AND AGREED TO:

Witnessed or Attested by:

City of Hoboken
Name, Title

Date

J. Fletcher Creamer & Son, Inc.
Name, Title

Date

Public Service Electric and Gas Company
Name, Title

Date

