

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between The Philadelphia Gas Works, by The Philadelphia Facilities Management Corporation (“PFMC”), solely in its capacity as operator and manager of the City-owned PHILADELPHIA GAS WORKS, under and pursuant to an Agreement with The City of Philadelphia dated December 29, 1972, as amended (collectively “PGW”), the City of Philadelphia Office of Inspector General (“OIG”), and Danella Companies, Inc., doing business as Danella Construction Corporation (“Danella”). PGW, Danella and the OIG are collectively referred to as “the Parties.”

### PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Danella provides construction and engineering services to major gas, electric, water and fiber utility companies. Danella is organized under the laws of Pennsylvania, with its headquarters located at 2290 Butler Pike, Plymouth Meeting, Pennsylvania. In calendar years 2010, 2011 and 2012, PGW and Danella entered into various agreements (the “D/C Contracts”) for Danella to install gas mains, service lines and all appurtenances at various locations throughout the City of Philadelphia. Pursuant to the D/C Contracts, PGW and Danella agreed that Danella, or its subcontractors, would pave and restore all portions of the roadways affected by construction, in accordance with City, Commonwealth and PGW specifications.

B. PGW is a collection of real and personal assets, owned by the City of Philadelphia (the “City”), including a gas distribution system of approximately 6,000 miles of gas mains and service pipes, supplying approximately 500,000 customers throughout Philadelphia. PGW is located at 800 West Montgomery Avenue, Philadelphia, Pennsylvania. PGW is managed by PFMC, a non-profit corporation organized under the laws of Pennsylvania, pursuant to a contract with the City.

C. The OIG is an office that was created by the Mayor of Philadelphia to enhance the public confidence in the integrity of City government by investigating corruption, fraud, misconduct, waste, and mismanagement involving City departments, City-related agencies and those doing business with the City or City-related agencies.

D. Beginning on or about March 1, 2013, the OIG investigated an allegation that Danella failed to install required amounts of concrete and asphalt when paving the roadways that were affected by the gas line replacement, repair and maintenance performed pursuant to the D/C Contracts. Through examination of roadway core samples obtained by PGW, OIG investigation confirmed that roadways restored by Danella, or its subcontractor, contained less than the required amounts of concrete and asphalt, in contravention of PGW, City and Commonwealth specifications and the D/C Contracts. Furthermore, OIG investigation found that Danella submitted invoices to PGW, which PGW subsequently paid, for materials that were not provided.

E. The OIG contends that Danella engaged in the following conduct (“the Covered Conduct”) under the D/C Contracts:

For periods prior to and up through February 28, 2013, Danella or its subcontractor failed to install specified amounts of concrete and asphalt when paving and restoring the roadways affected by gas line replacement, repair and maintenance. Danella invoiced, and PGW paid, for quantities of concrete and asphalt that were not provided.

F. PGW believes that it has certain civil and administrative claims against Danella for engaging in the Covered Conduct.

G. Danella expressly denies that it breached any contract or engaged in any wrongful conduct in connection with the Covered Conduct.

H. This Agreement is made in compromise of disputed claims relating to the Covered Conduct. This Agreement is not an admission of facts or liability by Danella. This

Agreement is not a concession by PGW that its claims are not well founded. Neither this agreement, its execution, nor the performance of any obligation under it, including payment, nor the fact of any settlement, is intended to be, or shall be understood, as an admission of liability or wrongdoing, or other expression reflecting on the merits of the dispute by Danella.

I. To avoid delay, uncertainty, risk, inconvenience, and potential expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

#### TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein, and in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties, intending to be legally bound, agree as follows:

1. Danella agrees to remit to PGW the sum of \$1,836,000 (the "PGW Settlement Amount") no later than ten (10) business days after this Agreement is fully executed by the Parties and delivered to counsel for Danella.<sup>1</sup> Danella further agrees to remit to the City the sum of \$525,000 (the "City Settlement Amount") no later than ten (10) business days after this Agreement is fully executed by the Parties and delivered to counsel for Danella.

2. Danella agrees to extend its Guarantee obligation with regard to the paving and restoration work only on the D/C Contracts pursuant to Section 7 (entitled Final Acceptance and Guarantee) of the Addendum to General Conditions PGW D-Contracts, revised January 5, 2009

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<sup>1</sup>The Parties agree that the PGW Settlement Amount shall be deducted from payments currently withheld Danella pending the resolution of this dispute. PGW agrees to release all withheld payments, less the PGW Settlement Amount, no later than ten (10) business days after this Agreement is fully executed by the Parties.

("General Conditions") until the later of (i) the date that is the 3<sup>rd</sup> anniversary of the date of full execution of this Agreement or (ii) the original date that Danella's obligation is set to expire under the applicable contract. Nothing in this Agreement is intended to or shall be construed to amend, alter or change the Guarantee given by Danella except for the date of its expiration.

3. Danella further agrees, to the extent not already completed, to implement the following enhancements to its corporate compliance program no later than seventy five (75) calendar days after this Agreement is fully executed by the Parties and delivered to counsel for Danella, and shall maintain this compliance program for as long as it contracts with PGW, the City or other City-related agencies and such contracts contain requirements relating to roadway paving:

(a) Danella agrees to comply with any and all quality assurance measures that have been or may in the future be implemented by PGW, the City or other City-related agencies, including, but not limited to, roadway core sampling, compressive strength and density testing, on-site inspections and any other test, inspection or requirement designed to ensure that paving is completed in accordance with City, Commonwealth and PGW specifications;

(b) Danella agrees to designate a Quality Manager to implement the compliance program. The Quality Manager shall ensure that all work is performed according to the compliance program as well as all PGW standards, procedures, technical specifications and guidelines;

(c) Danella will have individuals in the field to provide inspection of a minimum of 10% of all work performed. Quality Control inspections shall be conducted by subject matter experts dedicated to the quality control function and not part of the work production effort;

(d) Any non-conformance to the compliance program shall be documented and reported to PGW. PGW may withhold payment for non-conforming work until corrective action is satisfactorily completed;

(e) Danella shall incorporate into its current compliance program written policies and procedures regarding Danella's compliance with all City, Commonwealth and PGW paving specifications. All Danella operating locations will follow these policies and procedures when contracting with the City or any City-related agency, including PGW, when paving of any kind is required as part of the contract.

(f) Danella shall provide at least one hour of general training to any and all project managers and staff responsible for preparing bids, initiating projects or otherwise performing work relating to contracts with PGW, the City or City-related agencies where paving is required as part of the contract. This training, at a minimum, shall explain Danella's written policies and procedures as they pertain to PGW, City and Commonwealth paving requirements.

(g) Danella shall review the training annually, and, where appropriate, update the training curriculum to reflect changes in PGW, City or Commonwealth requirements and any other relevant information.

(h) Within one hundred eighty (180) days after this Agreement is fully executed by the Parties and delivered to counsel for Danella, Danella shall submit a written report to PGW and the OIG summarizing the status of its implementation of these requirements.

4. Danella's compliance with the foregoing measures shall be evidence of good-faith effort to comply with PGW, City and Commonwealth specifications; notwithstanding the foregoing, PGW or the appropriate City or City-related agency shall in all instances determine on

a contract-by-contract basis whether Danella has complied with paving specifications applicable to any individual contract.

5. In consideration of the obligations of Danella as outlined herein, and excepting only those obligations expressly stated in this Agreement, PGW agrees to fully and finally release Danella and any and all of its subsidiary, affiliate or parent companies, subcontractors (but only to the extent such subcontractors provided paving or restoration services to PGW through Danella on the D/C contracts), and their past and present directors, officers, and employees from any and all claims (including attorney fees, costs, and expenses of every kind and however denominated) related to the Covered Conduct, and the OIG's investigation thereof, that PGW has asserted or could assert now or in the future, against Danella, any and all of its subsidiary, affiliate or parent companies, subcontractors and their past and present directors, officers, and employees. Moreover, except as federal or state law may otherwise require, PGW will not seek and shall refrain from instituting, directing, or maintaining any civil or administrative action, including any action seeking debarment from entering into contracts with PGW, resulting from the Covered Conduct. The OIG agrees that it will confirm that Danella has at all times been fully cooperative with PGW and the City's investigation.

6. Excepting only those obligations expressly stated in this Agreement, Danella agrees to fully and finally release PGW and the City and each of their past and present officials, directors, officers, employees, servants, and agents from any claims (including attorney fees, costs, and expenses of every kind and however denominated) related to the Covered Conduct (including the investigation and resolution thereof), that Danella has asserted or could assert now or in the future against PGW, the City and each of their officials, directors, officers, employees, servants, and agents.

7. Notwithstanding the mutual releases in Paragraphs 5 and 6 of this Agreement, or any other term of this Agreement, PGW specifically reserves and does not release the right to pursue any claim, other than a claim by PGW relating to the Covered Conduct, arising under the D/C Contracts or any other provision of law or contract.

8. Nothing in this Agreement shall be deemed to adversely affect, in any manner whatsoever, Danella's good standing to do business with and within the City of Philadelphia or with PGW.

9. Danella and PGW each represent that they freely and voluntarily enter into this Agreement without any degree of duress or compulsion whatsoever.

10. Nothing herein precludes the OIG from conducting future investigations of past or future conduct of Danella or its subcontractors unrelated to the Covered Conduct.

11. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the principles of conflicts of laws. Each Party irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Philadelphia, Pennsylvania, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein; and irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court.

12. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

13. This Agreement constitutes the complete agreement among the Parties with respect to the issues that the Agreement covers. This Agreement may not be amended except by express written consent of the Parties. Nothing in this Agreement shall be deemed to conflict with the terms of any other agreement between PGW and Danella.

14. Each Party, and each individual executing this Agreement on behalf of a Party, represents and warrants that the individual is authorized by the Party to execute this Agreement in his or her official capacity.

15. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other person or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. This Agreement is binding upon the successors, transferees, heirs, and assigns of Danella.

17. Danella consents to disclosure to the public by PGW and the OIG of the Agreement and of information about this Agreement, after it has been fully executed.

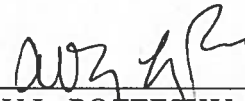
18. This Agreement is effective on the date of signature and delivery of the last signatory to the Agreement. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement, it being understood that the Parties need not sign the same counterpart. Facsimile signature(s) on complete copies of the Agreement shall constitute acceptable, binding signature(s) for purposes of this Agreement.

*(The remainder of this page has been left blank intentionally. Signature page follows.)*



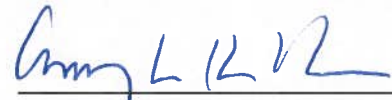
**THE PHILADELPHIA GAS WORKS**

By:  Dated: 12/23/13  
CRAIG E. WHITE, President and CEO  
Philadelphia Gas Works

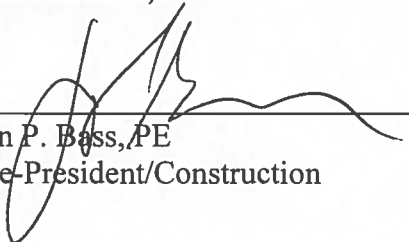
Approved:  Dated: 12/23/13  
ABBY L. POZEFSKY, General Counsel and CAO  
Philadelphia Gas Works

Approved:  Dated: 12/23/13  
SHELLEY R. SMITH, City Solicitor  
City of Philadelphia Law Department

**THE CITY OF PHILADELPHIA OFFICE OF INSPECTOR GENERAL**

By:  Dated: 12/23/13  
AMY L. KURLAND, Inspector General  
City of Philadelphia Office of Inspector General

**DANELLA COMPANIES, INC.**

By:  Dated: 12-20-13  
John P. Bass, PE  
Vice-President/Construction