

CORRECTIVE ACTION AGREEMENT

This Corrective Action Agreement made as of this 28th day of July 2008, by and among The Municipal Authority of the City of McKeesport (hereinafter referred to as MACM, a body corporate and politic of the Commonwealth of Pennsylvania created and existing under the provisions of the Municipality Authorities Act of 1945, as amended,

AND

Liberty Borough (hereinafter referred to as "Municipality"), a Municipal Corporation of the Commonwealth of Pennsylvania),

WHEREAS, MACM owns and operates a sewage conveyance and treatment system (the "MACM System"); and

WHEREAS, the Municipality owns and operates a sewage collection and conveyance system serving customers located in Liberty Borough, PA and

WHEREAS, MACM and the Municipality are parties to an Agreement, dated as of July 28, 2010 (the "Service Agreement") providing for, among other things, the discharge of sewage from the Municipality into the MACM System for treatment and disposal; and

WHEREAS, the average daily flow of sewage discharged from the Municipality into the MACM System has exceeded and continues to exceed the excess infiltration and inflow discharge limit set forth in the Service Agreement; and

WHEREAS, the inordinate volume of discharge from the Municipality into the MACM System is due to the infiltration and inflow; and

WHEREAS, in accordance with the provisions of the Service Agreement and MACM's schedule of rates and charges, MACM may impose a surcharge for all excessive discharges from the Municipality into the MACM System; and

WHEREAS, the Municipality has agreed to complete the Sewer Maintenance Program and the schedule for completion of the tasks identified within said Sewer Maintenance Program are required to be completed by last day of December 2017, these items being agreed to through the endorsement of the McKeesport Area Act 537 Plan; and

NOW, THEREFORE, the parties hereto, each intending to be legally bound hereby, covenant and agree as follows:

1. For and during the Remedial Period, MACM will suspend the Municipality's obligation to pay the Surcharge Rate. The term "Remedial Period" is herein defined to mean the period beginning on the date of execution of this agreement and ending on the last day of December 2017, said date corresponding to the end of the ten (10) year period from the

Pennsylvania Department of Environmental Protection (PADEP) approval of the McKeesport Area Act 537 Plan for completion of the Sewer Maintenance Program, or if earlier, the date of the completion of all work specified under the Sewer Maintenance Program, or the date on which MACM delivers to the Municipality notice that an Event of Default (as such term is hereinafter defined) has occurred and is continuing.

2. For and during the Remedial Period, the Municipality will provide the MACM with an annual report and certification, prepared by their Consulting Engineer, of the work completed under the Sewer Maintenance Program. The report and certification will be submitted to the MACM by February 15 of each year.
3. "Default" or "Event of Default" is herein defined to mean any failure by the Municipality to observe and perform any covenant, condition or agreement on its part to be observed or performed if such failure or breach continues for a period of 30 days after written notice thereof shall have been given to the Municipality by MACM, unless MACM shall agree in writing to an extension of such time prior to its expiration.
4. Whenever a Default or Event of Default occurs and its continuing, MACM shall have right to discontinue its suspension of the Surcharge Rate and may take whatever action at law or in equity may appear necessary or desirable to collect the Surcharge Rate and to enforce performance and observance of any obligation, agreement or covenant of the Municipality under this Agreement or the Service Agreement.
5. Notices, documents, information and legal process to be delivered to or served upon any party hereto shall be deemed to have been duly delivered or served when delivered in written form by hand or a recognized overnight delivery service or three days after posting by registered mail or certified mail with return receipt requested, to the applicable parties hereto as follows:

If to MACM: Municipal Authority of the City of McKeesport
100 Atlantic Avenue
McKeesport, PA 15132
Attention: Executive Director

If to Municipality: Liberty Borough
2921 Liberty Way
McKeesport PA 15133
6. This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter of this Agreement.
7. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally. Any such change, waiver, discharge or termination may be effected only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

- 8. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, except to the extent certain matters may be governed as a matter of law by federal law. If any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision were not contained herein.
- 9. No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default under this Agreement shall impair any such right, power or remedy of such party, nor shall it be a waiver of such breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, or any waiver of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent in such writing specifically set forth. All rights and remedies, either under this Agreement or by law or otherwise afforded to a party, shall be cumulative.
- 10. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument, and in making proof hereof, it shall not be necessary to produce or account for more than one such executed counterpart.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers and their respective corporate seals to be thereto affixed and attested as of the date first above written.



[Seal]

Attest:

Rob McCall
Secretary

MUNICIPAL AUTHORITY OF
THE CITY OF MCKEESPORT

By *Regina J. McGough*
Chairman

[Seal]

Attest:

Melissa A. Heidt
Secretary

BOROUGH OF LIBERTY

By *Ronald K. Papp*
Chairman