

**SERVICE AGREEMENT**

This Service Agreement made as of this 28<sup>th</sup> day of July 2010, 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, the MACM was created by the City of McKeesport for the purpose of acquiring, holding, owning, constructing, improving, maintaining and operating sewers, sewer systems or parts thereof and sewage treatment works, including works for the treatment and disposing of industrial waste; and

WHEREAS, the MACM constructed and operates a Sewage Disposal System consisting of a sewage treatment works, required interceptor sewers, pumping stations and all other appurtenances necessary for the collection, transportation, treatment and disposal of the sewage and acceptable industrial waste of the City of McKeesport and its inhabitants and of certain municipalities adjacent to the City of McKeesport and their inhabitants; and

WHEREAS, the MACM is currently collecting, transporting, treating and disposing the sewage and industrial wastes in the Municipality; and

WHEREAS, the Municipality desires to continue engage MACM to provide sewage service for Municipality in accordance with the terms and conditions hereof; and

WHEREAS, From time to time the MACM will make such changes in and additions to the Sewage Disposal System as may be necessary for efficient and economical treatment and disposal of the sewage and to enable the Municipality to comply with any future lawful orders of the Commonwealth of Pennsylvania and/or the United States of America in respect to the treatment and disposal of sewage and acceptable industrial wastes was entering the Sewage Disposal System from the Municipality, and to comply with any other lawful requirement of the Commonwealth, the Federal Government or agencies or having jurisdiction in the matter.

WHEREAS, this Agreement, executed by the Municipality in conformity with the provisions of the June 22, 1961 Agreement with MACM will benefit the Municipality and its residents.

NOW, THEREFORE, in consideration of the premises and the understandings of each party to the other, the parties hereto each intending to legally bind itself, its successors and its assigns, covenant and agree as follows:

1. MACM shall:
  - (a) Continue to operate and maintain the Sewage Disposal System at its existing capacity or at such capacity as may be determined from time to time by the Board of Directors of MACM and
  - (b) accept all sewage and wastes of the Municipality which are discharged into MACM's intercepting sewer (subject to the provisions of Paragraphs 2 and 3 of this Agreement), transport such sewage and wastes to its treatment plant, provide such treatment and disposal thereof as may be required by law, and operate the Sewage Disposal System; and
  - (c) make such changes in and additions to the Sewage Disposal System as may be necessary to enable MACM and the Municipality to comply with Federal, State, and County of Allegheny laws, rules and regulations in respect of the treatment and disposal of the municipal sewage and wastes which enter MACM's interceptor sewers, and shall if determined by the Board of Directors of MACM at their sole discretion, issue additional revenue bonds for such purpose or purposes; provided, however, that MACM shall have the right to increase its sewage service charges to such extent as will yield the additional revenue needed to meet all bond requirements and operating and other expenses incurred by MACM in the design, construction and operation of such added facilities.

It is understood and agreed that the MACM shall indemnify and save the Municipality harmless from all costs and expenses (except those provided for in this Agreement) liability, claims and demands of any sort arising out of the construction, extension, replacement, operation, maintenance repair or possession of the Sewage Disposal System by MACM. The Municipality shall similarly indemnify and save MACM harmless as to all matters in connection with the Municipality's sewer and sewage collection and conveyance system.

2. The Municipality understands and agrees that the said intercepting sewer is of limited capacity and that therefore this Agreement is limited to handling the Municipality's sanitary sewage only, with no admixture of storm water. The Municipality covenants that they will not connect to MACM intercepting sewer any sewer which discharges storm water from roof drains or other connections or into which flows a surface or sub-surface stream or the acid drainage of a coal mine.

To protect itself against the overloading of its intercepting sewer MACM may, at the Municipality's expense, install and maintain sewages measuring devices to measure the gross volume of sewage emanating from the Municipality and MACM shall install and maintain at each of the Municipality's pumping stations with capacity in excess of 175 gallons per minute, a sewage measuring device of the recording type to which MACM shall have access. If during any quarter year or other billing period, the gross volume of sewage from the Municipality shall exceed

350% of the aggregate quantity of water used by all of the Municipality's water users as hereinafter defined, the Municipality covenants to pay to MACM, out of the Municipality's current revenues as hereinafter provided, MACM's prevailing rates and charges for handling such excess, in addition to the sewage charges hereafter required to be paid by the Municipality or its residents.

Upon the occurrence of such excessive quantities of sewage from the Municipality due to infiltration or any other cause, or upon the detection in the Municipality's sanitary sewage of storm water, water from streams or acid mine drainage, the Municipality shall take immediate action to locate and eliminate the cause or causes of the violations of this Agreement or to implement such alternate measures as are acceptable to MACM to mitigate or diminish the adverse impacts MACM resulting therefrom.

If the Municipality endeavors to remediate the occurrence of such excessive quantities of sewage from the Municipality due to infiltration, a Corrective Action Agreement may be negotiated. Under the terms of Corrective Action Agreement appended to this Service Agreement, charges for handling excess flows will not be applicable. Successive Corrective Action Agreements may be negotiated on an as needed basis.

3. The Municipality understands and agrees that any sewage or wastes that are discharged from MACM sewers are subject to full compliance with the laws, rules, permits, orders and regulations of MACM, the County of Allegheny, the Commonwealth of Pennsylvania and the United States of America and their respective departments and agencies as may be amended from time to time (hereafter referred to collectively as "Laws").

Under the National Pollutant Discharge Elimination System as is amended from time to time by the Laws, MACM is prohibited from discharging certain types of sewage and wastes. Such types of sewage and wastes are defined and described more fully and specifically in said Laws and are hereafter referred to as "Prohibited Sewage".

Said Laws also prohibit the discharge of certain types of sewage and wastes unless acceptable pretreatment occurs prior to entry into a sewage system. Such types of sewage and wastes are hereafter referred to as "Tolerable If Pretreated". Other types of sewage and wastes require treatment by MACM that is not normally required for Domestic Sewage. "Domestic Sewage" is herein defined as human body waste and waste from toilets and other receptacles intended to receive or retain body wastes including normal household laundry, cleaning, bath and shower wastes. Such other types of sewage and wastes are hereinafter referred to as "Tolerable But Requiring Additional Treatment".

It is understood and agreed that the Municipality may connect to MACM's intercepting sewer any sanitary sewer conveying Domestic Sewage and any other sewage or wastes except for Prohibited Sewage, Tolerable If Pretreated Sewage and Tolerable But Requiring Additional Treatment Sewage.

The Municipality shall not discharge nor permit the discharge into their sewage collection and conveyance system any Prohibited Sewage. Further, the Municipality shall not discharge nor permit the discharge into their sewage collection and conveyance system any Tolerable If Pretreated or Tolerable But Requiring Additional Treatment without first obtaining the written approval of MACM for such a discharge. It is understood and agreed that MACM

may as a condition to granting such approval require acceptable pretreatment or the payment of additional service charges.

The Municipality hereby covenants and agrees that they will fully comply with the aforementioned Laws and they will indemnify, defend and hold MACM harmless from any damage, costs, expenses or fees (including but not limited to attorney's fees and engineering fees) arising out of or resulting from any sewage or waste that is conveyed to MACM sewers from the Municipality's sewers.

4. The MACM reserves the right, subject to the approval of the legal agencies having jurisdiction thereover but without consulting or notifying the Municipality or the Municipal Authority, to permit additional municipalities to pump or drain additional sewage or wastes into the Sewage Disposal System for treatment and disposal by MACM. It is understood and agreed that the Municipality has not by these covenants waived or in any way granted approval to such additional municipality or municipalities to use the Municipality's sewage collection and conveyance system and facilities.

The MACM also reserve the similar right to enter into agreements with industrial firms within and without the service area for the treatment and disposal of their sewage and wastes which do not enter a municipal sewer; provided, however, that the service charges shall be at least as high as those imposed on others.

5. The Municipality covenants and agrees that MACM shall be the sole and exclusive agency, during the entire life of this Agreement, to provide sewage treatment and disposal service to the Municipality and to all its water users therein who or which discharge sewage or wastes into the Municipality's sanitary sewerage system. The Municipality hereby permits and authorizes MACM to impose upon all such water users the sewage service charges hereinafter set forth, and covenants to perform all of the acts and discharge all the duties and obligations imposed upon it by this Agreement.

6. MACM shall, for the services and facilities furnished or to be furnished by it, impose upon and collect from the Municipality or from the owner, tenant or occupant of each lot or parcel of land within the Municipality from which sewage or wastes enter a Municipality sewer and thence reach the Sewage Disposal System (hereinafter sometimes called a "user" or "water user", fees or charges (hereinafter sometimes called "sewage service charges" or "charges"), which shall be based upon the quantity of water used in or upon such lot or parcel as determined by metering.

Except for the additional surcharge rate described previously and except those additional service fees charged to industrial firms under industrial agreements and for Tolerable But Requiring Additional Treatment Sewage, MACM's schedule of sewage service charges shall be uniform throughout the entire service area of the Sewage Disposal System, and shall be so calculated as to yield in the aggregate during each month or quarter year for paying all current administrative, operating, maintenance and replacement costs and expenses of MACM including reserves therefore, and the interest on and the principal of all outstanding bonds and other obligations as the same become due and payable, and to create such reserves for such purposes as may be required by the resolution authorizing the issuance of its bonds or in the trust indenture securing the same. The schedule shall impose reasonable minimum charges, may include such block

rates for metered water users and such charges for flat-rate water users as MACM shall determine, and shall provide extra charges for commercial and industrial wastes which impose an extraordinary burden to the Sewage Disposal System. The schedule shall be subject to adjustment from time to time in such manner as MACM shall deem necessary or proper to insure the collection of adequate revenues to meet its financial requirements.

7. The Municipality shall pay the aggregate amount of all sewage service charges which, under paragraph 8 of this Agreement, would be payable by its water users, in consideration of the performance by MACM of the Municipality's legal duty to refrain from the pollution of the water of the Commonwealth. In such event, the individual charges of each water user shall be computed in the same manner as hereinbefore set forth, but instead of sending individual bills to all water users, all such individual bills shall be totaled and the aggregate amount thereof shall be billed quarterly to the Municipality. The Municipality covenants that so long as such method of payment is in effect it will pay each such quarterly aggregate amount, out of the Municipality's current revenues as hereinafter provided, within sixty (60) days after the date of the bill therefore. There shall be a fifteen (15) day grace period but, in the event payment is not received by then, the Municipality shall be obligated to pay a six percent (6%) late charge of the overdue payment.

The schedule of sewage service charges imposed by MACM and collected during any year shall be so calculated and adjusted as to provide revenues which will be sufficient to pay all current expenses and meet all obligations of MACM during such year. It is understood by the Municipality that not all bills for sewage service charges will be paid promptly, and that some of such bills in an indeterminate amount will become delinquent each year. In consideration of the services rendered by the MACM to the Municipality under the provisions of this Agreement, which will effect compliance by the Municipality with the duty imposed upon it by law to refrain from the pollution of the waters of the Commonwealth, the Municipality agrees to pay to MACM out of the Municipality's current revenues as hereinafter provided, the face amount of all delinquent accounts.

8. All bills for sewage service charges shall be computed on the basis of the quantity of water used, whether the water is furnished by the waterworks system of the Municipality or secured from any other source.

The sewage service charge to be paid by each water user within the Municipality shall be computed as follows:

- (a) Metered water customers – by applying the MACM schedule of charges then in effect to the quantity of water delivered to each water customer during the preceding quarter year or other metered period, as measured by the most recent water meter reading;
- (b) Flat-rate water customers – by applying the percentage set forth in the MACM schedule of charges then in effect to the flat-rate water bill;
- (c) Users of water taken from a private water source or public stream – by applying the MACM schedule of charges then in effect to the quantity of water used as estimated by MACM; provided, however, that if any such water user shall at his or its own expense install and maintain in good operating

condition a meter or other measuring device of a type approved by MACM, the amount payable by such water user shall be based upon the quantity of water used as so measured.

There shall be no free service rendered by the Sewage Disposal System, and the Municipality (or any department, agency or instrumentality thereof) and all public corporations, all charitable or non-profit institutions and all school districts and other political sub-divisions shall pay for the use of the service and facilities thereof in accordance with the established schedule of sewage service charges.

Subject to the rules and regulations of the individual municipality, if any substantial portion of the water used regularly on any lot or parcel of land for commercial, manufacturing or industrial purposes does not enter the Municipality's sanitary sewerage system, the owner, tenant or occupant of such lot or parcel may secure a reduction in the amount of the sewage service charges to be paid by him, subject to the established minimum charges, by installing, at his own expense and subject to such regulations as may be prescribed by MACM, a separate meter or other measuring device approved by MACM measuring the water so used, in which event the quantity of water so used shall thereafter be excluded in computing the sewage service charges to be paid by the owner, tenant or occupant of such lot or parcel.

9. The Municipality agrees that if the schedule of sewage service charges in effect at any time does not, or in the opinion of MACM may not, yield sufficient revenue to meet the MACM financial requirements, or if MACM finds that the schedule has proved to be inequitable, MACM shall have the right at any time and from time to time to revise and adjust its sewage service charges in such manner and to such extent as it may deem necessary or advisable, but not more than twice in one year.

At least sixty (60) days before any revised sewage service charges shall become effective, MACM shall submit in writing to the Municipality a statement setting forth the new schedule for sewage service charges and the reasons why it was found necessary or advisable to put them into effect. Such new schedule of charges shall go into effect at the time specified in said statement (not earlier, however, than sixty (60) days from the furnishing of such statement), unless suspended by a final decree of a court of competent jurisdiction. To the extent any revised sewage service charges shall become effective during the year at such time when the Municipality, pursuant to Pennsylvania law, is unable to amend its budget to account for the payments required by this Agreement, the Municipality shall have the option to continue payments pursuant to the pre-revision sewage service charge for the remainder of the calendar year and to reimburse the difference to MACM over the next calendar year.

10. MACM shall have the right to promulgate, issue, publish and enforce rules and regulations governing its activities and carrying into effect the provisions of this Agreement. Such rules and regulations may include provisions prohibiting or regulating the discharge into the Municipality's sewage system of oils, acids and other substances which maybe prohibited under Paragraph 3 hereof or harmful to the MACM sewers, pumping stations or other structures or which may interfere with the sewage treatment processes of the MACM plant, and prohibiting the discharge into any Municipality sanitary sewer of surface or ground water.

The Municipality may, in its own discretion and without let or hindrance from MACM permit the connection with any Municipality sewer that discharges into an MACM interceptor sewer of any and all premises used wholly as private dwellings, but no permit shall be issued by the Municipality for the connection with any such sewer or any premises used wholly or in part for commercial or industrial purposes unless the application for such permit shall first have been submitted to and been approved by MACM, such approval to not be unreasonably withheld jeopardizing or delaying development of that which would otherwise be a legal commercial activity.

The Municipality recognizes that the carrying out by MACM of its obligations under this Agreement will enable the Municipality to perform the duty imposed upon it by law to provide for the proper treatment and disposal of its sewage, and the Municipality, therefore, agrees to exercise for the benefit of MACM all rights and powers which it may possess to carry into effect the purpose and intent of this Agreement. The Municipality accordingly agrees, on request of MACM to enact an ordinance incorporating all or designated portions of the MACM rules and regulations and providing appropriate penalties for the violation thereof, to amend such ordinance from time to time as requested by MACM and to enforce the provisions thereof fully and prosecute all violators thereof diligently.

11. This Agreement shall become effective immediately, and shall remain in full force and effect, subject to the provisions of Paragraphs 2 and 3 hereof, until the date of expiration of the legal existence of MACM or until the expiration of one calendar year following the payment in full of all bonds, notes and other obligations of MACM, original and refunding, issued by it to finance the construction, replacement, maintenance and operation of the Sewage Disposal System and additions thereto, whichever date shall be later.

12. This Agreement shall supersede and replace the Agreement dated June 22, 1961 by and between MACM and the Municipality.

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]

MUNICIPAL AUTHORITY OF THE CITY OF MCKEESPORT

Attest:

[Signature]  
Secretary

By: [Signature]  
Chairman

[Seal]

BOROUGH OF LIBERTY

Attest:

[Signature]  
Secretary

By: [Signature]  
President of Council