

BUREAU OF TECHNICAL UTILITY SERVICES DATA REQUESTS

TO PENNSYLVANIA-AMERICAN WATER COMPANY

Docket No. A-2017-2606103

Data Request 1

A-21. Note 11 of MACM's 2015 Financial Statement, contained in the Application's Appendix A-19-a references an Intergovernmental Agreement Fee pursuant to a Cooperation Agreement between MACM and the City of McKeesport. Please provide a copy of the Cooperation Agreement. Please also state if PAWC-WD plans to assume the Cooperation Agreement.

Response: PAWC will not be assuming the MACM and City of McKeesport Cooperation Agreement.

For reference, please find Attachment A-21, Appendix A.

Responsible Witness: James Merante
Title: Director, Finance Analysis and Decision Support

Date: July 14, 2017

Attachment A-21, Appendix A

COOPERATION AGREEMENT

This Cooperation Agreement (the "Agreement") is entered as of the 12th day of December, 2012 (the "Effective Date"), between the MUNICIPAL AUTHORITY OF THE CITY OF MCKEESPORT, a public body organized under the laws of Commonwealth of Pennsylvania (the "Authority") and the CITY OF MCKEESPORT (the "City").

Recitals

WHEREAS, the Authority was originally created by the City for the purpose of providing financing for improvements to the infrastructure utilized in the treatment of sewage WITHIN the City (the "Facilities"); and

WHEREAS, the Authority also accepted the responsibility for the operations of the Facilities; and

WHEREAS, when the Authority became the operator of the Facilities the City deeded most of the real property comprising the Facilities to the Authority without any direct consideration for the assets conveyed; and

WHEREAS, since the Authority commenced functioning as an operating Authority, the City has provided services, expertise, equipment and financing to the Authority; and

WHEREAS, the City and the Authority have been parties to a Cooperation Agreement since the date of creation of the Authority, as amended and supplemented by the Service Contract;

WHEREAS, the Authority and the City desire to amend and restate the Agreement as of the Effective Date and to set forth the parties' agreement with respect to (i) the exemption of the Authority's Projects (as subsequently defined) from all real and personal property taxes, special assessments, and fees, charges or assessments, without regard to nomenclature, assessed by the City or any political subdivision or taxing unit thereof, and (ii) the obligations of the City to perform services for the Authority.

Agreement

In consideration of the promises and mutual covenants set forth herein, the parties hereto, with the intent to be legally bound hereby, agree as follows:

1 Definitions. Whenever used in this Agreement:

(a) The term "Project" shall mean any real or personal property, including, but not limited to, all sanitary system or ancillary facilities and equipment currently owned or operated by the Authority or an affiliate thereof or hereafter developed by the

Authority or an affiliate thereof, including the Authority office buildings and any Authority real estate within the city. The Authority shall endeavor to develop and administer such Project or Projects, many of which shall be located within the corporate limits of the City. The obligations of the parties hereto shall apply to each such Project.

(b) The term "Assessing Body" shall mean the City or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes, special assessments, or other fees, charges or assessments, without regard to nomenclature (collectively, "Assessments"), or to certify such Assessments to an Assessing Body or public officer to be levied for its use and benefit with respect to a Project if it were not otherwise exempt from the levy of such Assessments.

(c) The term "City Services" shall mean those services provided by the City to the Authority as set forth herein.

2. Term. The term of this Agreement shall be five (5) years from the date hereof and shall automatically renew for one-year term(s) each anniversary date thereafter unless either party shall give the other written notice of intent to terminate or renegotiate within sixty (60) days before the end of the then-current term and, if not renegotiated, the Agreement shall terminate on the next anniversary date after the anniversary date of the then-current term.

3. Exemption from Assessments; City Services; Payments.

(a) Under the constitution and statutes of the Commonwealth of Pennsylvania, all Projects are exempt from all real and personal property taxes levied or imposed by any Assessing Body. With respect to any Project, so long as either (i) such Project is owned by the authority or affiliate thereof; or (ii) any bonds issued in connection with such Project remain unpaid the City agrees that it will not levy or impose Assessments upon such Project or upon the Authority with respect thereto and will provide the City Services set forth in Section 4 herein. During such period, the Authority shall make the following annual payments (the "Authority Payments") in lieu of Assessments and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

(h) Each such annual Authority Payment shall be made on December 25th of each year, and shall be in an amount equal to either (i) 1,000,000.00, for the first year of this Agreement, with said annual Authority Payment to be increased by one percent (1%) for each year during the term of this Agreement and for each year during any renewal thereof or (ii) the amount permitted to be paid by applicable state law in effect on the date such payment is made, whichever amount is the lower.

(c) Upon failure of the Authority to make any Authority Payment, no lien against any Project or assets of the Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof and said payments shall, in all respects, be subordinate to any bonds, loans, notes, or trust indentures entered into by the Authority.

4 Responsibilities of the City.

A. During the period commencing with the date of the acquisition of any part of the site or sites of any Project and continuing so long as either (i) such Project is owned by the Authority, or (ii) any bonds issued in connection with such Project remain unpaid the City without cost or charge to the Authority (other than the Authority Payments) shall:

(1) Without cost or charge, other than the Authority Payments, furnish or cause to be furnished to the Authority all public services and facilities of the same character and to the same extent as are furnished from time to time to other similar Projects and Authorities in the City;

(2) Vacate, subject to applicable law, such streets, roads and alleys within the area of such Project as may be necessary in the development thereof, and convey without charge to the Authority such interest as the City may have in such vacated areas, excepting those interests required to be retained by the City in connection with its own municipal operations, and, in so far as it is lawfully able to do so without cost or expense to the Authority or to the City, cause to be removed from such vacated areas, in so far as it may be necessary, all public or private utility lines and equipment;

(3) In so far as the City may lawfully do so, (i) grant such deviations from the building code of the City as are reasonable and necessary to promote economy and efficiency in the development and administration of such Project, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary for the development and protection of such Project and the surrounding territory and in *accordance* with applicable law and practice, (iii) Any surety required for City development and/or subdivision proposals will include and identify the City's surety requirements. The Authority shall be named as principal on the surety. The surety held for the City will not be released without written approval of the City;

(4) Accept, but not require, grants of easements necessary for the development of such Project;

(5) Cooperate with the Authority by such other lawful action or ways as the City and the Authority may mutually find necessary in connection with the development and administration of such Project, including cooperating with the Authority in evaluating the conditions of existing sewer and water lines in an internal capital improvement plan before initiating an official act 537 plan update under Pennsylvania Law;

(6) Provide drafting services and assistance to the Authority, as requested, in the creation of its computerized mapping system and such other Authority projects as may benefit from such services;

(7) Provided services in connection with collection of fees and issuance of permits for sewer taps and relays;

(8) Coordinate the timely review of subdivision, land development, and other proposed plans which affect water and sewer services by providing copies of all such plans for comment prior to finalizing them;

(9) Provide engineering review of plans for sewer upgrades and extensions and provide advice in connection with these construction activities and provide assistance to the Authority in evaluating and implementing its nine minimum control techniques for combined sewer systems management. This assistance will include the development of written procedures for those components of the management plan best implemented and reported to the Authority by the City;

(10) Provide periodic inspection of sewer caps on properties where the building no longer exists and the facility lines have been terminated;

(11) (a) The City will assist the Authority as needed in procurement of right-of-ways and easements required by the Authority;

(b) The City will provide and record all right-of-way easements on City or Redevelopment Authority owned property for the Authority activities. The City will survey and record private easements acquired by the City within the City limits;

(12) Provide compilation of data and the completion of the GPS mapping project undertaken by the City;

(13) Provide surveying services to establish boundaries and/or location of Authority premises and easements where City or RACM property is involved;

(14) Provide dissemination of information to users and professionals attached to the Authority's sewer system within the limits of the City;

(15) Apply for and/or procure available grants and other public funds to be utilized for extensions of the Authority's facilities within the limits of the City;

(16) Create and implement bidding procedures for projects, as such services may be requested by the Authority;

(17) Permit use of specialized equipment owned by the City when requested by the Authority;

(18) Provide assistance to the Authority in gaining access to its facilities in extreme weather conditions;

(19) Provide the exclusive use of the premises generally known as the Pallisades for rate payer educational or instructional activities;

(20) Provide for the provision of information and equipment, when needed, to access the Authority's service lines contained within City streets and rights-of-way

and assistance in the restoration of the street surfaces to a condition acceptable to the City;

(21) By virtue of current worldwide events, the Authority requires increased vigilance at its water and sewer treatment facilities to protect against the potential for destruction of the facilities or contamination of its water supplies. The City agrees, when required, and on an on-going basis, to increase the police presence at Authority sites. While no specific times are being set forth in this Agreement, it is the understanding of the parties that this increased presence will cause the City to incur additional costs not easily calculable and will provide special value to the Authority in that the availability of these services will enable the Authority to provide increased security for its systems when required without the creation and training of a private security force, which would not be economically feasible at this time. To the extent that City Police may provide security for Authority premises outside the City limits, the police officers shall have such police powers as may be provided in the Municipality Authorities Act and/or any intermunicipal agreements with the Townships involved or by state law. Notwithstanding, any other provision to the contrary, it is understood that the City shall hold harmless, indemnify and defend the Authority from any and all claims, actions, liabilities and causes of actions including but not limited to workers' compensation/heart and lung claims, civil rights claims, awards, verdicts, fines, costs, attorney fees and all other liabilities, costs and expenses related to any claims hereunder arising out of the actions of any police officers and firefighters performing services under this Agreement.

(22) Provide the use of the City's emergency command center and/or "mobile command center" and its personnel for training, communication and interaction in response to emergent situations;

(23) Provide City personnel and equipment for the education, training and reaction to hazardous materials circumstances by Authority personnel;

(24) Include, as part of this Agreement, amortization of two PennVest Loans to be paid by the Authority until such time as the obligations have been paid in full.

(25) The City Department of Codes and Inspections will provide copies of all records and permits relating to new construction within the City to the Authority.

(26) Provide cross-connection control and theft-of-service inspection for the Authority as part of Codes Department rental inspections and other routine Code inspections and assist the Authority in connection with lawful enforcement where appropriate, such that whenever the City Code Department inspects a premises, part of the inspection checklist shall include inspections for unlawful service connections.

(27) Provide IT consultation services to the Authority to the extent of personnel availability and expertise.

(28) Provide Electrical Department Services, including use of the bucket truck, depending upon availability.

(29) Provide, upon request, Police Department traffic control and/or safety control on water or sewer main breaks within the City that occur in high-traffic areas.

(30) Provide pooled hospitalization coverage with the City so long as same is advantageous to the Authority.

(31) Promptly, when requested, convey to the Authority any sewer easements, rights of way, lines and/or facilities acquired by the City as part of its prior operation of the sewer system and used or useful in the operation of said system during the period the City leased and operated the sewer system that have not been heretofore conveyed to the Authority.

(32) Promptly, when requested, convey to the Authority any real estate interests utilized in connection with the sewer system not conveyed to the Authority by prior deeds.

(33) Provide to the Authority, as needed available information through G.I.S.

(34) Use all possible means within the power of and not detrimental to the City to assist the Authority in obtaining the State and Federal grants for upgrades to the Authority's Treatment Plants.

(35) Assist the Authority in identifying and obtaining State and Federal grants for other capital projects to be undertaken by the Authority.

B Notwithstanding the foregoing, the Services provided by the City are not limited to those set forth herein and the City shall cooperate and provide such services and make such accommodations as needed to enable the Authority to maintain, operate and upgrade any Project and assist the Authority in providing quality service to its customers.

5. Reduction in Payments. If by reason of the City's failure or refusal to furnish or cause to be furnished any City Services, public services or facilities which it has agreed hereunder to furnish or to cause to be furnished to the Authority the Authority incurs any expense to obtain such services or facilities then the Authority may, upon notice to the City, deduct the amount of such expense from any Authority Payments due or to become due to the City in respect to any Project owned or operated by the Authority. Any dispute in connection therewith shall be subject to mediation/arbitration provisions of paragraph 13.

6. Possession, Control and Operation of the Sewer System. While this Agreement and any renewal thereof, is in force, the Authority shall continue to own, possess, operate, and control the sewer system.

7. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements between the parties with respect thereto, including without limitation the Original

Cooperation Agreement executed at the time of creation of the Authority.

8. No Payments Outstanding. As of the Effective Date, the parties acknowledge that neither party to this Agreement owes the other any sum of money for any reason, including without limitation, (i) real and personal property taxes, special assessments, fees, charges or other assessments, without regard to nomenclature or (ii) City Services set forth herein or in previous Agreements.

9. Insurance.

(a) The City agrees that it shall fully insure all the machinery and equipment utilized in performing services for the Authority and shall maintain Workers' Compensation Insurance and assume Workers' Compensation liability for any City employees utilized in the performing of the services for the Authority.

(b) The Authority agrees that it shall fully insure all of its machinery, equipment and fixtures maintained on premises owned by the City and shall maintain Workers' Compensation Insurance covering all of its employees.

10. Maintenance of Real Property. The Authority agrees that at its sole cost and expense, it shall maintain both the interior and exterior of the Water Yard property in good condition, normal wear and tear excepted, while the Authority occupies same under this Agreement.

11. Indemnification.

(a) The City shall indemnify, protect, defend and save harmless the Authority from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, judgments, suits, actions, proceedings, costs, disbursements and expenses (including, without limitation, attorneys' and experts' fees, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Authority relating to, resulting from or arising out of (1) the performance of any City Service set forth herein, including the negligence of any City worker or official in the performance of the City Services hereunder, or (ii) a material misrepresentation or material inaccuracy in any representation or warranty, illegality of any payment hereunder, or a material breach of or failure to perform any covenant made by the City in this Agreement.

(b) The liability of the City shall in no way be limited, abridged, impaired or affected by (i) any amendment or modification of this Agreement, (ii) any extension of the time for payment or performance of other obligations required by this Agreement, (iii) the release of the City from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of this Agreement, (iv) the invalidity or unenforceability of any of the provisions of this Agreement, (v) any applicable statute of limitations, (vi) the release or discharge, in whole or in part, of the City in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (vii) the accuracy or inaccuracy of the representations and warranties made by the City in this Agreement, and (viii) any other circumstances which might otherwise

constitute a legal or equitable release or discharge in whole or in part, of the City under this Agreement.

(c) Notwithstanding the foregoing, to the extent permitted by law and by the contracts of insurance maintained by the parties, each agrees that in the event of any property casualty loss relating to the property of either party involving the actions of the other party or its agents, workmen or servants, the parties hereto agree to waive their right to seek reimbursement for such losses from the other and will look solely to the applicable insurance coverage for the particular loss. With respect to personal injuries to employees, each party will hold harmless, indemnify and defend the other against and from all claims or such brought by an employee of one party arising out of the negligence or alleged negligence the other party to the extent that the negligence of the party seeking indemnity is less than 50% of the total negligence causing the injury.

12. Relationship of the Parties. This Agreement shall not be construed to create any agency between the parties and nothing contained in this Agreement shall be interpreted to create any relationship between the parties other than that which exists by virtue of law and shall not be interpreted as creating any dual employment. While performing services under this Agreement to the other party, City employees shall remain employees of the City, and Authority employees shall remain employees of the Authority. Each party retains the sole right to direct and control its employees in the manner in which the work is to be performed, and under no circumstances shall any employee performing services under this Agreement be considered a borrowed employee of the other party.

13. Mediation/Arbitration. The parties agree that in the event that any dispute arises in the interpretation of this Agreement or arises out of the performance services under and between the parties concerning the terms of this Agreement, to the extent permitted by the policies of insurance maintained by each, the parties shall seek to resolve their differences utilizing the services of a professional mediator selected by the parties. The fees of the mediator and costs associated with the mediation site shall be borne equally by the parties. If the dispute has not been resolved within sixty (60) days of written notice thereof sent by the party raising the dispute, either party may request that the matter be submitted to arbitration before an arbitrator appointed by the American Arbitration Association under its Commercial Rules in existence at the time the dispute arises.

14. No Conflicts. No member of the governing body of the City or any other public official of the City who exercises any responsibilities or functions with respect to any Project during his tenure or for one year thereafter shall have any interest, direct or indirect, in any Project or any property included or planned to be included in any project, or any contracts in connection with such Projects or property. If any such governing body member or such other public official of the City involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, he shall immediately disclose such interest to the Authority. Should a more stringent standard be provided by law, then that standard shall govern the conduct of said official under this section.

15. Enforcement. The privileges and obligations of the City hereunder shall remain in full force and effect with respect to each Project so long as the beneficial title to

such Project is held by the Authority or by any other public body or governmental agency authorized by law to engage in the development or administration of water systems and/or sanitary sewer systems. If at any time the beneficial title to, or possession of, any Project is held by such other public body or governmental agency the provisions hereof shall inure to the benefit of and may be enforced by, such other public body or governmental agency.

16. Notices. All notices, requests, demands, approvals, or other formal communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed received three days after being sent by registered or certified mail, return receipt requested, postage prepaid; or one day after being sent by a nationally recognized, receipted overnight delivery service, addressed as follows:

If to the City of McKeesport:	City of McKeesport 500 5 th Avenue McKeesport, PA 15132
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If to MACM:	MACM 100 Atlantic Ave. McKeesport, PA 15132
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17. Miscellaneous.

(a) Amendment. This Agreement may be amended or waived only by a writing signed by each of the parties.

(b) Assignment. This Agreement may not be assigned, pledged or otherwise transferred, whether by operation of law or otherwise, without the prior written consent of the other party, provided, however, that the City may pledge the revenue stream herein provided in connection with borrowings in the ordinary course of its operations.

(c) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(d) Governing Law. This Agreement has been made and entered into and shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania.

(d) Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

(e) Headings. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

ATTEST:

Patricia Williams

Patricia Williams, City Clerk

CITY OF MCKEESPORT:

Michael E. Cherepko

Michael E. Cherepko, Mayor

MACM:

Dale R. McCall

Dale R. McCall, Secretary

Nicholas Shermenti

Nicholas Shermenti, Chairman