

**COOPERATION AGREEMENT**  
**BETWEEN THE CITY OF PITTSBURGH AND**  
**THE PITTSBURGH WATER AND SEWER AUTHORITY**

This Cooperation Agreement ("Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF PITTSBURGH, a municipal corporation existing under the laws of the Commonwealth of Pennsylvania ("City"), and THE PITTSBURGH WATER AND SEWER AUTHORITY, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania ("PWSA").

WHEREAS, the City and the Authority entered into a Cooperation Agreement dated as of June 15, 1995 but effective as of January 1, 1995 (the "1995 Cooperation Agreement") and a First Amendment to Cooperation Agreement dated March 21, 2011 (the "First Amendment" and together with the 1995 Cooperation Agreement, the "Original Cooperation Agreement") relating to the operation and maintenance of the System, as hereinafter defined; and

WHEREAS, pursuant to Act 65 of 2017, which amended the Pennsylvania Public Utility Code (the "Public Utility Code"), PWSA became subject to the Public Utility Code, except Chapters 11 (relating to certificates of public convenience) and 21 (relating to affiliated interests) in the same manner as a public utility and subject to regulation by the Pennsylvania Public Utility Commission (the "PUC"); and

WHEREAS, the Original Cooperation Agreement will terminate on July 5, 2019 and City and PWSA desire to enter into this Agreement to, among other things, (i) reflect changes in their rights and obligations each with respect to the other, (ii) accurately reflect the division of services related to the System, (iii) accurately provide for payments by the City and PWSA to the other based upon actual, verifiable, direct expenses, and in accordance with customary utility practices under the Public Utility Code, (iv) confirm that payments by PWSA to the City continue to be subordinate to all debt obligations of PWSA, (v) provide for cooperation by the City and PWSA in their respective capital projects which may impact each other, (vi) provide for clarification of the responsibilities of PWSA with respect to City Parks larger than 50 acres and other City properties, (vii) confirm that the System will remain under public ownership and (viii) set forth certain other provisions relating to the roles and responsibilities of the City and PWSA with respect to the System.

Therefore, intending to be legally bound, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated herein by reference.

2. **Definitions.**

2.1 "Actual Direct Expenses" will mean all costs and expenses incurred by the City or PWSA that are directly related to services or goods provided to or for the benefit of the other. Expenses in this category are either documented by a third-party invoice or specifically identifiable in the records of the party incurring the expense.

2.2 "Agreement" means this Cooperation Agreement.

2.3 "City Parks" shall mean City owned parks that consist of more than fifty (50) acres.

2.4 The "Effective Date" of this Agreement is \_\_\_\_\_, 2019.

2.5 "Laterals" shall mean those sewer lines that connect to PWSA's sewer mains and carry sewage and/or storm water from one or more buildings or premises to the sewer mains.

2.6 "Senior Debt" will mean all those bonds, notes, indentures, loan agreements, funding agreements, interest-rate swap agreements, hedge agreements, credit facilities, liquidity facilities, remarketing agreements, intercreditor agreements and any other related financial obligations and indebtedness issued, entered into or undertaken by the PWSA at any time, including but not limited to those in existence on the Effective Date hereof, but will not mean or include any obligations of the PWSA to the City, either under this Agreement or otherwise.

2.7 "Service Lines" shall mean those water lines that connect to PWSA's water mains and that deliver water from the water mains to one or more buildings, premises, or facilities.

2.8 "System" shall mean and include, as of any particular time, all plants, warehouses, equipment, structures, facilities, lands, easements, rights of way, water lines and sewer lines, patents, copyrights, contracts with municipalities or authorities outside the boundaries of the City, water treatment plants, pumping facilities, reservoirs, storage tanks, distribution mains, service lines and appurtenances, sewers, inlets, manholes, diversion structures, pumping stations, force mains, subsurface stormwater conveyance lines and facilities conveying stormwater, all patents and copyrights obtained by the City, assigned to the PWSA, or retained directly by PWSA and related to the design, operation, maintenance, replacement or abandonment of water or sewer systems, all other tangible public property, fixed or moveable, then owned or operated by PWSA and used in the rendering of water service and sewer service by PWSA, all capital additions then constructed or otherwise acquired relating to water service and sewer service, and all franchises used or useful to the PWSA at such particular time in the rendering of water service and sewer service by PWSA and other agreements between the City and PWSA.

### 3. **Services to be Provided between the City and PWSA.**

3.1. **The City Services.** The City may render to PWSA the following services and goods: (i) participation of eligible PWSA employees in the City's Pension Plan, (ii) fuel for PWSA vehicles, (iii) City permits and licenses relating to PWSA projects (the charges to PWSA to be based on the usual customary charges paid by other utilities), (iv) vehicle fleet maintenance services, (v) a portion (50%) of street sweeping costs starting January 1, 2020, and (vi) any other services and goods upon such terms as may be agreed to by the parties hereto performed at usual and customary costs and the charges to PWSA based on the usual customary charges paid by other utilities. Except where otherwise specifically provided, PWSA will compensate the City for those services and goods provided pursuant to this Agreement. Any payments by PWSA

pursuant to this Agreement shall be based on Actual Direct Expenses and must meet external audit and PUC auditing standards. The parties to this Agreement acknowledge that due to the unavailability of actual cost data certain current year charges by the City to PWSA may be based on prior year data.

3.2 PWSA Services. PWSA may render to the City such services as agreed to by the City and PWSA which may include but not be limited to the following: (i) providing water through PWSA water mains to City properties, (ii) fire hydrant services, (iii) conveyance of sewage through PWSA sewer mains to ALCOSAN and payment of ALCOSAN charges, subject to Section 6.3 of this Agreement, and (iv) payment of any subsidy to other water service providers. Any such services by PWSA to the City will either be paid for directly by the City to PWSA or taken as a credit by PWSA against amounts owed by PWSA to the City under this Agreement. Any payments by the City to PWSA shall be based on Actual Direct Expenses.

4. Capital Improvement Projects. The parties will work together in good faith, consistent with the City Right-of-Way Manual, as the same exists on the date of this Agreement (the "City Right-of-Way Manual") and the PWSA Developer Manual, as the same exists on the date of this Agreement (the "PWSA Developer Manual") to determine the impact of a City project on the System, including the design and location of any project and including the reconstruction and/or resurfacing of roadways. The parties will also work together in good faith, consistent with the City Right-of-Way Manual and the PWSA Developer Manual, to determine the impact of a PWSA project on the City's existing facilities and infrastructure, including the design and location of any replacement facilities or infrastructure resulting from the PWSA's project construction.

5. Water and Sewer Lines To and Within City Properties. The City and the PWSA agree as follows:

5.1 City Parks.

5.1.1 Water Mains and Service Lines. The PWSA will be responsible for the operation, maintenance, repair, and replacement of water mains. The PWSA will be responsible for existing and new service lines, which provide water service by PWSA to City Parks larger than 50 acres. If a water meter is not in place, PWSA shall provide a meter installation, and if necessary, a meter vault, as prescribed in the PWSA Developer Manual and in accordance with PUC requirements. The cost of the meter and meter vault installation shall be shared equally by PWSA and the City. The City shall be responsible for the cost of the repair and replacement of any meter vaults and meters. The City will be responsible for the operation, maintenance, installation, repair and replacement of plumbing inside City Park buildings or other City Park facilities such as fountains, spray pools and swimming pools.

5.1.2 Combination and Sanitary Sewers Mains and Laterals. The PWSA will be responsible for the operation, maintenance, repair and replacement of sanitary sewer and combination sewer mains. The PWSA will be responsible for existing and new sewer laterals within the City Parks larger than 50 acres.

5.2 Other City Properties.

5.2.1 Water and Sewer Mains, Service Lines and Laterals. The PWSA will be responsible for the operation, maintenance, repair, and replacement of water mains providing water service by PWSA to City properties. The PWSA will be responsible for the operation, maintenance, repair, and replacement of sanitary sewer and combination sewer mains.

The City shall be treated like other commercial customers of PWSA with respect to service lines and sewer laterals with two important exceptions:

First, the operation, maintenance, repair and replacement of water service lines and sewer laterals in City Parks larger than 50 acres shall remain the responsibility of PWSA.

Second, the City will be responsible for the total cost of the operation, maintenance, repair and replacement of all other water service lines and sewer laterals beginning in 2025 and thereafter. Prior to 2025, the City will be responsible for the cost of these service lines and sewer laterals in increasing proportion following this annual schedule:

<u>Year</u>	<u>Percentage of Cost to be paid by City</u>
2020	0%
2021	20%
2022	40%
2023	60%
2024	80%
2025 and thereafter	100%

With respect to water service provided by PWSA, if a water meter is not in place, PWSA shall provide a meter installation, and if necessary, a meter vault, as prescribed in the PWSA Developer Manual and in accordance with PUC meter requirements. The cost of the meter and meter vault installation shall be shared equally by PWSA and the City. The City shall be responsible for the cost of the repair and replacement of any meter vaults and meters. The City shall be responsible for the operation, maintenance, installation, repair and replacement of internal plumbing with respect to all City buildings, facilities and City properties, including City Parks of 50 acres or less.

5.3 Saw Mill Run. PWSA will be responsible for the operation, maintenance, repair and replacement of water and sewer mains located in Saw Mill Run. PWSA shall not be responsible for the operation, maintenance, repair and replacement of service lines and laterals located in Saw Mill Run.

6. Subsidy Payments; Water to City; Sewage Treatment Charges.

6.1 Subsidy Payments. Pursuant to Ordinance No. 675 of the City enacted on December 27, 1973, the City entered into an agreement, dated December 28, 1973, with the Western Pennsylvania Water Company (now known as the Pennsylvania American Water Company ("PAWC")) (the "Water Rate Subsidy Agreement"). This agreement permitted the

City to subsidize the water rates for City residents who are customers served by PAWC. Currently PWSA makes those subsidy payments to PAWC on behalf of the City. PWSA is now subject to PUC regulation and PUC regulations do not permit one utility to subsidize the rates of another utility.

Pursuant to this Agreement, it is agreed by both parties that:

- (1) The original Water Rate Subsidy Agreement is immediately assigned to PWSA;
- (2) It is understood that this Subsidy Agreement will be terminated by PWSA as soon as PWSA's current and projected rate increases have effectively eliminated any measurable subsidy to at least 67% of the residential customers (those with a 5/8" meter) for City residents served by PAWC. A measurable subsidy is defined as more than \$1.00 per month. The termination of the subsidy could occur as early as 2020.
- (3) Until the Water Rate Subsidy Agreement is terminated, PWSA and the City will share in the subsidy payments as follows:

--In 2020, PWSA will pay for any subsidy pursuant to the Water Rate Subsidy Agreement, if one exists;

--In 2021, PWSA and the City will share equally in any subsidy payment pursuant to the Water Rate Subsidy Agreement, if one exists;

--In 2022 and years thereafter, the City will pay any existing subsidy pursuant to the Water Rate Subsidy Agreement, if one exists.

During this period, the City will either promptly reimburse PWSA or PWSA will take as a credit the amount of any subsidy payments made by PWSA against payments to be made by PWSA hereunder.

6.2 Water to City and Fire Hydrant Charges. Until January 1, 2020, the City shall be entitled without charge to receive up to 600 million gallons of water each calendar year to be used by the City, its departments, agencies, and instrumentalities, and as the City is contractually obligated to provide without charge to third parties as of the Effective Date. The City shall not receive a credit for any water not used. To the extent the City uses in excess of 600 million gallons in any calendar year, the PWSA may offset that cost based on normal PWSA charges against monies owed the City under this Agreement. The City will cooperate with the PWSA in providing for the installation of water meters and meter vaults, if necessary, in all City properties including City Parks not metered as of the Effective Date, the cost of which shall be shared equally by PWSA and the City as set forth in Section 5 of this Agreement. The City shall not withhold or impede the installation of water meters and meter vaults at any of its properties including parks. Any City properties including parks not metered by January 1, 2024 will be subject to Flat Water charges levied by PWSA in accordance with its usual and customary practices.

Beginning January 1, 2020, the City shall pay PWSA normal PWSA charges on City-owned metered properties for all water usage and any fire hydrant usage charge. The foregoing charges shall be phased in over a five-year period as follows:

<u>Year</u>	<u>Percentage of Usage Charged</u>
2020	20%
2021	40%
2022	60%
2023	80%
2024 and thereafter	100%

6.3 **Sewage Treatment Charges.** As set forth in Section 5B of that certain Memorandum of Understanding by and among the City, PWSA and ALCOSAN dated October 16, 1996, the City will pay ALCOSAN directly for all City property ALCOSAN accounts. If ALCOSAN does not permit the City to pay it directly for the City property ALCOSAN accounts and PWSA makes such payments to ALCOSAN on behalf of the City, the City shall either promptly reimburse PWSA the amount of such payments made by PWSA to ALCOSAN or PWSA shall be entitled to a credit against any payments required to be made by PWSA under this Agreement.

7. **Granting of Easements and Rights of Way.** The City shall grant to PWSA all necessary easements and rights of way which may be required by PWSA in the maintenance, repair and capital improvements to the System. The granting of such easements and rights of ways shall be effected without additional authorization or approval by the City Council of the City of each individual easement or right of way.

8. **City Payroll Tax.** Similar to other utility employers subject to the City's Payroll Tax, PWSA hereby agrees to pay the City effective January 1, 2020 an amount calculated based on the prior year's payroll data but otherwise in accordance with the City's Payroll Tax and the regulations issued pursuant to the Title II, Article VII, Chapter 258 of the City Code (the "Payroll Tax Regulations"). Such amount shall be paid annually or taken as a credit by PWSA against amounts owed by the City under this Agreement.

9. **PURTA Payments.** Similar to other entities furnishing utility services that are regulated by the PUC, PWSA hereby agrees to pay the City, beginning with the year commencing January 1, 2020, an amount calculated pursuant to the Pennsylvania Public Utility Realty Tax (PURTA) (Article XI-A of the Tax Reform Code of 1971 (P.L. 6, No. 2), as amended). Subject to the phase-in below, the amount to be paid by PWSA ("PURTA Payment") shall be calculated based on the fair market value, as determined under PURTA and the regulations thereunder, of the PWSA realty of the System used for the treatment and delivery of water to PWSA customers. The PURTA Payment shall be paid annually by PWSA to the City in an amount that shall be phased in as follows:

<u>Year</u>	<u>% of PURTA Payment to be paid to the City</u>
2020	20%
2021	40%
2022	60%
2023	80%
2024 and thereafter	100%

In lieu of making a PURTA Payment, the amount of such payment, at the sole option of PWSA, may be taken as a credit against amounts owed by the City to PWSA under this Agreement.

10. **Credit May Not Be Pledged.** The credit of one party to this Agreement will not be pledged for payment of any debts of the other party, and neither party will be liable for debt payments of the other party. Unless consented to by the City, the taxing power of the City will not be pledged for payment of any PWSA indebtedness.

11. **Subordination to Senior Debt.** The City agrees to subordinate all legal and equitable rights it has or may have to payment from the PWSA for services rendered and goods provided by the City to the PWSA, whether under this Agreement, any amendment thereto, or otherwise, to the Senior Debt. The PWSA may make and the City may retain regularly scheduled payments under this Agreement when and as due; provided, however, that no payments may be made by the PWSA or retained by the City upon the occurrence of an event of default under any Senior Debt instrument or agreement or if the making of such payment would cause an event of default thereunder. The City agrees to subordinate, and does hereby subordinate, any payments received from the PWSA to the indefeasible payment or satisfaction in full of the Senior Debt.

12. **Conflict With PUC Regulations.** If any obligation of PWSA to the City under this Agreement conflicts with provisions of the Public Utility Code or regulations of PUC thereunder, the provisions of the Public Utility Code and regulations of the PUC shall control.

13. **Notices.** All notices and correspondence between the City and PWSA concerning or in furtherance of this Cooperation Agreement will be addressed to:

The City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

Solicitor  
Suite \_\_\_\_, City/County Building  
414 Grant Street  
Pittsburgh, Pennsylvania 15219  
Phone:  
Fax:

PWSA:

Executive Director  
The Pittsburgh Water and Sewer Authority  
Penn Liberty Plaza 1  
1200 Penn Avenue  
Pittsburgh, Pennsylvania 15222  
Phone: 412-255-8949  
Fax: 412-393-0522

with copies to:

Director of Engineering and Construction  
The Pittsburgh Water and Sewer Authority  
Penn Liberty Plaza 1  
1200 Penn Avenue  
Pittsburgh, Pennsylvania 15222  
Phone: 412-255-8949  
Fax: 412-393-0522

and

Solicitor for PWSA  
Mark F. Nowak, Esq.  
Clark Hill PLC  
One Oxford Centre  
301 Grant Street—14<sup>th</sup> Floor  
Pittsburgh, Pennsylvania 15219  
Phone: 412-394-2428  
Fax: 412-394-2555

Each party will notify the other whenever there is any change in the required contact.

14. **Dispute Resolution.** In the event of any dispute between PWSA and the City with respect to the matters set forth in this Agreement, excepting, however, disputes arising out of renegotiation hereof, such disputes shall be settled by arbitration in accordance with the provisions of the Uniform Arbitration Act as adopted by the Commonwealth of Pennsylvania, 42 Pa. C.S.A. §§7301-7320. In any such case, three arbitrators shall be appointed, one by PWSA, one by the City, and one by the two arbitrators so appointed by PWSA and the City. The decision of a majority of the arbitrators shall be binding and conclusive upon PWSA and the City. In the event of the failure of the two arbitrators appointed by PWSA and the City to effect the appointment of a third arbitrator within two weeks after the appointment of the second, the third arbitrator shall be appointed by the trustee at that time under the PWSA senior trust indenture. The expense of such arbitration, exclusive of expenses of each party in its own behalf, shall be born equally by the parties. As a condition to the filing of an arbitration claim, the parties agree to first mediate any claims between them at U.S. Arbitration and Mediation. Any party refusing to mediate shall not prevent the other party from pursuing its claims in arbitration. The parties will share the cost of mediation equally.

15. **Miscellaneous Matters.**

a. With respect to tap-in fees charged by PWSA, until January 1, 2025, or at such later date as approved by the PWSA Board, the City shall be entitled to a 100% governmental exception to tap-in fee charges with respect to City owned governmental projects.

b. The City will conduct a real estate title search to determine ownership, access rights and boundaries of water reservoirs located within the City.

c. PWSA and the City will obtain an appraisal of the water facilities component of the System, the cost of which shall be equally shared by the City and PWSA.

d. With respect to unknown water lines, if PWSA or the City discovers a previously unknown water line PWSA will consider such line to be part of the System provided the line was constructed in accordance with PWSA specifications that existed at that time and located within City owned property.

e. The City and PWSA will jointly create a map identifying water service lines and laterals within the City Parks. Each party will be entitled to an original copy of this map.

f. If PWSA abandons or vacates any System property prior to September 1, 2025, such property shall remain as City-owned property.

16. **Relationship of PWSA and City.** The City agrees that the interactions between the City and PWSA under this Agreement will be on a business-like, transactional basis and the provisions hereof will be applied to PWSA in a manner similar to other utilities operating in the City subject to the provisions of this Agreement.

17. **Public Ownership.** The City and PWSA agree that the System will remain under public ownership,

18. **Entire Agreement.** This Agreement will constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts will be relevant or admissible for purposes of determining the meaning or intent of any of the provisions hereof.

19. **Amendments.** No changes, additions, modifications or amendments of this Agreement will be effective unless they are set out in writing and signed by the parties hereto.

20. **Assignment.** This Agreement will not be assignable by either party without the written consent of the other party.

21. **Termination.** The City and PWSA shall each have the right to unilaterally terminate this Agreement at any time upon ninety (90) days written notice to the other.

22. **Governing Law.** This Agreement will be governed by the laws of the Commonwealth of Pennsylvania, without reference to its conflicts-of-laws principles.

23. **Conflict.** To the extent that any provision in this Agreement conflicts with any provision of any trust indenture securing any indebtedness of the PWSA, the provisions of the trust indenture will prevail.

24. **Severability.** The provisions of this Agreement will be severable and should any part of the Agreement be declared invalid or unenforceable, the remainder will continue in full force and effect.

25. **No Third-Party Beneficiaries.** This Agreement shall create no rights in any party other than the City and the PWSA and no other party is intended to be a third-party beneficiary of this Agreement, except as specifically indicated herein. Moreover, the respective responsibilities and obligations of PWSA and the City with respect to service lines and the System set forth in this Agreement shall only apply to PWSA and the City and not to any other customer of PWSA.

26. **Pittsburgh Home Rule Charter.** This Agreement is subject to the provisions of the City of Pittsburgh Home Rule Charter.

27. **Authorizing Resolution.** The City is authorized to enter into this Agreement under Resolution No. \_\_, approved \_\_\_\_\_; and the PWSA is authorized to enter into this Agreement under Agenda Item No. \_\_\_ of \_\_\_\_\_ duly approved and adopted at a meeting of its Board held on \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have duly executed this Cooperation Agreement the day and year first above written.

ATTEST:

CITY OF PITTSBURGH

\_\_\_\_\_

\_\_\_\_\_

Mayor

Approved as to form:

\_\_\_\_\_  
City Solicitor

ATTEST:

THE PITTSBURGH WATER AND SEWER  
AUTHORITY

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairman