

## COOPERATION AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between PITTSBURGH WATER AND SEWER AUTHORITY, a body corporate and politic, organized and existing under the Act of May 2, 1945 (P.L. 382 No. 164) (the “PWSA”) and the CITY OF PITTSBURGH, a municipal corporation of the Commonwealth of Pennsylvania (the “City”). **WITNESSETH:**

**WHEREAS**, the PWSA was created by the City as a municipal authority under Pennsylvania law pursuant to the Pennsylvania Municipality Authorities Act, 53 P.C.S.A. § 5601 et seq., to manage and operate the City’s waterworks, water supply works, water distribution systems, and sewer systems with the goal of providing clean, safe, reliable, and efficient drinking water delivery, sanitary sewage conveyance, and storm water removal services;

**WHEREAS**, issues have arisen in the operations of the PWSA that implicate the health, safety, and welfare of the citizens of the City, including non-compliance with limits on lead in drinking water, multiple boil water advisories, several water main breaks, and widespread errors in billing;

**WHEREAS**, the current governing documents of the PWSA provide that the PWSA is to be governed by a seven (7) member Board of Directors, with no fewer than six (6) members appointed by the Mayor of the City and approved by City Council;

**WHEREAS**, the Mayor of the City in March 2017 named a Blue Ribbon Panel to advise the City on a possible restructuring of the PWSA, and the Blue Ribbon Panel issued its report on December 28, 2017, which report provided that the governance of the PWSA should be restructured to make it accountable to and trusted by the public;

**WHEREAS**, it is the desire of the City, in furtherance of the health, safety and welfare of its residents, to restructure the PWSA to ensure accountable and effective public management;

**WHEREAS**, the PWSA and the City have determined to enter into this Agreement to implement changes recommended by the Infrastructure Management Group, the Auditor General of Pennsylvania and the Controller of the City of Pittsburgh; and

**WHEREAS**, the PWSA and the City recognize that entering into this Agreement is the most expeditious method of making the governance of the PWSA accountable to and trusted by the public, thereby furthering the health, safety, and welfare of the residents of the City.

**NOW, THEREFORE**, intending to be legally bound, the parties hereto agree as follows:

## 1. Definitions.

“Capital Lease Agreement” shall mean the Capital Lease Agreement between the City and the PWSA, effective July 27, 1995.

“Board of Directors” shall mean the Board of Directors of the Pittsburgh Water and Sewer Authority.

“Board of Nominators” shall mean the Board of Nominators of the Pittsburgh Water and Sewer Authority.

**2. Purpose of the Agreement.** Both parties recognize that, to protect the health, safety and welfare of the residents of the City, the PWSA must properly focus on strategic and operational plans that result in the delivery of clean, safe and affordable water to the residents of the City and that this is best accomplished through a governance structure that is accountable to the public, trustworthy, and transparent. The purpose of this Agreement is to set forth the terms of such a governance structure.

**3. Board of Nominators.** The City, by Ordinance, shall establish a Board of Nominators (the “BON”) for the PWSA subject to the following:

**a. Purpose of the BON.** The BON shall submit to the Mayor a list of potential members to the Board of Directors of the PWSA. The Mayor shall appoint those nominees to the Board of Directors, subject to the confirmation of City Council. The BON shall annually evaluate the performance of each of the Directors separately and, in the aggregate, of the Directors as a deliberative body.

**b. Appointment of the BON.** Initial members of the BON shall be appointed by the Mayor of the City from among nominees presented by the PWSA Blue Ribbon Panel, subject to confirmation by City Council. The BON shall adopt procedures to ensure an open nominating process with respect to members of the BON and to ensure that the composition of the BON, as described below, is broadly representative of the City.

**c. Number and Terms of Members of the BON.** There shall be five (5) members of the BON, with each member serving a term of five (5) years except for initial members of the BON. To ensure that there are staggered terms for the BON and that one member’s term shall expire each year, the initial members of the BON shall be assigned by lottery to terms of 1, 2, 3, 4 or 5 years, and initial members shall serve for such term as they are assigned. Members of the BON shall be limited to serving for ~~three~~ **two (2)** full terms, however, initial members serving less than a five year initial term shall be eligible for **two (2)** full terms following their initial term.

**d. Composition of the BON.** Members of the BON shall reflect the diversity of the City and be broadly representative of the City, including geographically. Members shall be well-respected for their competence, experience and demonstrated community engagement. No member of the BON may be a paid employee of the City or Allegheny County.

**e. Evaluation of the Board of Directors.** The BON shall adopt policies and procedures to annually evaluate the Directors of the PWSA, with such policies and procedures to include:

- (i) Defined performance metrics and a Board of Directors Survey to undertake the evaluation; and,
- (ii) An annual meeting with the Board of Directors to address the performance evaluations and the Directors' goals and priorities for the upcoming year.

**f. Removal of a BON Member.** A member of the BON may be removed by the City for any reason upon the affirmative vote of two-thirds of the elected members of City Council and the approval of the Mayor.

**g. Resources for the BON.** The PWSA shall provide resources for the operations of the BON, including reasonable operating expenses not to exceed \$50,000 per year and reasonable administrative support services

**h. Duties of the Initial Board of Nominators.** The initial BON shall meet to consider the selection of nominees of new directors of the BOD in conformance with this Agreement within sixty (60) days of appointment by the City.

**4. Board of Directors.** The City and the PWSA, in accordance with applicable law, shall cause to be filed with the Secretary of the Commonwealth amended Articles of Incorporation, changing the composition of said Board as follows:

**a. Purpose of the BOD.** The BOD shall have the powers and responsibilities of a board of directors as set forth in the Pennsylvania Municipality Authorities Act, including oversight of the public health and safety with respect to water treatment and delivery, sanitary sewage conveyance, and storm water removal services of the PWSA, fiscal management, efficiency, productivity, and the affordability of rates.

**b. Appointment of the BOD.** Members of the BOD shall be nominated by the BON, submitted to the Mayor for appointment, subject to confirmation by City Council. The BON shall create an open and transparent process with respect to the nomination of members of the BOD, including processes that are accessible to the general public and permit interested parties to apply. Prior to selecting prospective nominees to the BOD, the BON shall hold a public meeting for the purpose of presenting nominees for the BOD to the public and providing the public with the opportunity to make inquiries of the nominees.

**c. Number and Terms of Members of the BOD.** There shall be nine (9) members of the BOD, with each member eligible to serve terms of three (3) years, with eight members subject to re-nomination twice by the BON. No member of the Board of Director shall serve more than three (3) three (3) year terms. In addition to the eight (8) members nominated by the BON, the Mayor shall appoint a member of Pittsburgh City Council to serve as a full voting member of the BOD.

**d. Composition of the BOD.** The members of the BOD shall, as a group, reflect the diversity of the City. The BOD members shall be selected by the BON based on the competence and capacity of the member to carry out the purposes of the BOD, and in particular, the BOD should include members with areas of expertise relevant to the operations and management of the PWSA, such as financial, legal, engineering, public utility management, human resources/management, labor relations, public health, and green infrastructure. All members of the BOD must reside or work within the PWSA water service area. No member of the BOD may be a paid employee of the City or Allegheny County with the exception of one (1) member of Pittsburgh City Council.

**e. Reconstitution of the Board of Directors** As vacancies occur through the restructuring process and the need to appoint the new expanded BOD members, the BON and the City shall appoint those members as follows:

There shall be nine (9) members of the BOD, with each member eligible to serve three (3) terms of three (3) years, subject to re-nomination by the BON. To ensure that there are staggered terms for the BOD, the initial members of the BOD selected by the BON shall be assigned by lottery to a term of 1, 2, or 3 years, with three members in each category, and initial members shall serve for such term as their initial term. Initial directors pursuant to this Agreement and the Amended Articles of Incorporation serving less than a three (3) year initial term shall be eligible for three (3) full terms following their initial term.

**f. Eligibility.** All members of the BOD must reside or work within the PWSA water or sewage service area. No member of the BOD may be a paid employee of PWSA, the City or the County of Allegheny, except for the member of City Council.

~~**g. Officers.** The BOD shall annually elect the following officers of the BOD: Chairperson, Vice Chairperson, Secretary, Assistant Secretary, and Treasurer. Officers shall serve for a one (1) year term but may be reelected for successive terms.~~

~~**h. Conduct of the BOD:**~~

~~The BOD within sixty (60) days of the confirmation of its new members, shall adopt the following policies:~~

~~**a. Financial management**~~

- ~~i. The annual adoption of a detailed five (5) year operating plan with a minimal fund balance and, at a minimum, a ten (10) year capital improvement plan that shall be publicly available and filed with the City;~~
- ~~ii. The financial plan shall clearly demonstrate the efficient delivery of safe and clean drinking water;~~
- ~~iii. Adoption of a debt service policy that promotes level debt service, accurately reflects the assets and purposes for which money is borrowed, and discourages use of risk latent debt practices;~~

- iv. ~~Abide by National Institute of Government Procurement best practices in purchasing;~~
- v. ~~Submission of quarterly financial reports sent to the BOD, the City of Pittsburgh, Pittsburgh City Council and the City Controller; and,~~

**~~b. Transparency/Ethics~~**

- i. ~~PWSA, its officers and employees shall abide by the Pennsylvania Public Official and Employee Ethics Act;~~
- ii. ~~Pennsylvania Open Records Act and Right to Know Laws;~~
- iii. ~~Disclosure of conflicts of BON and BOD members; and,~~
- iv. ~~The PWSA, its entire Board of Directors, Pittsburgh City Council and the City of Pittsburgh shall be notified immediately of any changes in water quality or treatment, including changes in treatment chemicals.~~

**~~c. Customer Service~~**

- i. ~~Adopt the Public Utility Commission's rules as contained in Title 66 applicable to water utilities~~
- ii. ~~Provide for a concise, plain language listing of rights and responsibilities of customers; and,~~
- iii. ~~Provide for a fund for qualified low income residents.~~

**~~d. Rate Setting~~**

- i. ~~In order to assure that the appropriate revenue is generated to meet the short and long term goals of distributing clean, safe drinking water and meeting the requirements of sewage conveyance, rate submissions shall be approved by the BOD based on a(n) annual or biennial study that fully funds the five (5) year operating and ten (10) or twenty (20) year capital plans.~~

**5. Notices.** Notices provided pursuant to this Agreement shall be in writing and addressed as follows unless notice is provided in writing by either party to the other of a different address: To the City: City of Pittsburgh Department of Law 313 City-County Building 414 Grant Street Pittsburgh, PA 15219 To the PWSA:

**6. Amendments to the Pennsylvania Municipality Authorities Act.** The City and the PWSA agree to work in good faith with the goal of proposing and otherwise sponsoring amendments to the Pennsylvania Municipality Authorities Act with respect to the structure and governance of the PWSA.

**7. Term of Agreement.** *Section to be completed by Law, including their recommendations regarding termination of agreement by either party.*

**~~8. Changes to PWSA Governing Documents.~~** ~~PWSA agrees to amend its By Laws, Rules, Code(s) of Ethics and all other policies and procedures in a manner consistent with the provisions of this Agreement.~~

**9. Amendment to 1995 Capital Lease Agreement.** The City and PWSA, pursuant to Section 18 (b)(ii) of the Capital Lease Agreement, effective July 27, 1995, titled, "Waivers and Amendment", do hereby agree that this Agreement shall modify said Capital Lease Agreement by removing Section 3(b), which states as follows:

“3. Term.

(b) At the expiration of the Term the Lessee shall have the option to acquire all of the Leased Property from the Lessor in consideration of the payment of one dollar (\$1.00) in immediately available funds by the Lessee to the Lessor.”

Any changes to this provision of the Agreement shall require the approval of the PWSA Board of Directors, the affirmative votes of a majority of the elected members of City Council and the approval of the Mayor.

**10. Amendments.** Any and all changes to this agreement shall require the approval of the PWSA Board of Directors, the affirmative votes of a majority of the elected members of City Council and the approval of the Mayor.

**11. Authorizing Resolution.** This Agreement is entered into by the City pursuant to Resolution No. \_\_\_\_\_, approved \_\_\_\_\_ and effective \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first written above.

PITTSBURGH WATER AND SEWER  
AUTHORITY

By: \_\_\_\_\_

THE CITY OF PITTSBURGH

By: \_\_\_\_\_  
Mayor

WITNESS:

\_\_\_\_\_

Approved for form and legality:

By: \_\_\_\_\_  
Solicitor

Countersigned:

By: \_\_\_\_\_  
Controller