

**Application of Pennsylvania-American Water Company for Acquisition of  
the Wastewater Assets of the Borough of Kane Authority  
66 Pa. C.S. § 1329  
Application Filing Checklist – Water/Wastewater  
Docket No. A-2019-3014248**

25. Provide a copy of all municipal and affiliate contracts to be assumed by buyer as part of the acquisition and a list and dollar value of other contracts.

**AMENDED RESPONSE:**

Please find attached as Amended Appendix A-25 the Agreement between Borough of Kane Authority, Borough of Kane and Township of Wetmore dated July 8, 1992. The only other contract to be assumed is the WGL Energy Service, Inc. Agreement, dated April 12, 2019, which has an estimated dollar value of \$95,000.

AGREEMENT

THIS AGREEMENT entered into this 8th day of JULY, 1992, by and between the Borough of Kane Authority ("Authority"), the Township of Wetmore ("Township"), and the Borough of Kane ("Borough"),

WITNESSETH:

WHEREAS, the Borough of Kane Authority is a body corporate and politic, organized and existing under the constitution and laws of the Commonwealth of Pennsylvania, pursuant to the Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended, having been duly organized by the Borough of Kane, McKean County, Pennsylvania; and

WHEREAS, the Township of Wetmore, a Second Class Township, is a municipal corporation organized and existing under the constitution and laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Borough of Kane is a municipal corporation organized and existing under the constitution and laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Authority is the owner and lessor under an Agreement of Lease with the Borough of Kane dated March 1, 1967, of a Sewer System, consisting of inter alia, The Kinzua Road and Pine Street Publicly Owned Treatment Works (hereinafter "POTWs"), the sewer lines, and other property and appurtenances owned by the Authority and used or useful in the collection, conveyance, and treatment of sanitary sewage within the Borough of Kane and certain portions of Wetmore Township; and

WHEREAS, the Township desires to construct or have constructed within certain designated portions of its jurisdiction a system of gravity collector sewers, raw sewage pump stations, force mains and

other appurtenances necessary to collect and convey sanitary sewage to the sewer lines and POTWs owned by the Authority as part of the Sewer System for treatment and ultimate discharge into the waters of the Commonwealth;

WHEREAS, the Township is engaged in the process of obtaining the approval of the Commonwealth of Pennsylvania Department of Environmental Resources (hereinafter "DER") of its Act 537 Official Sewage Plan, which Plan contemplates, inter alia, the acquisition and construction by the Authority of the facilities described above; and

WHEREAS, the Borough is engaged in the process of obtaining the approval of the Commonwealth of Pennsylvania Department of Environmental Resources (hereinafter "DER") of its Act 537 Official Sewage Plan, which Plan contemplates, inter alia, the acquisition and construction by the Authority of certain capital improvements and additions to the existing Sewer System serving the Borough and certain portions of the Township; and

WHEREAS, the Authority, subject to the terms and conditions contained herein, has the authority and is willing to finance, construct and otherwise acquire the capital additions and improvements, above described, within both the Borough and Township; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the respective parties do agree as follows:

1. The Township does hereby:
  - a. Request the Authority to finance, construct and otherwise acquire such wastewater collection and conveyance facilities within the Township, including but not necessarily limited to gravity collector sewers, raw sewage pump stations, force mains, and such necessary lands, easements and other appurtenances and equipment as are contemplated and outlined in its proposed Act 537 Official Sewage Plan (hereinafter

sometimes referred to as "Township Plan") which is hereby made a part hereof and incorporated herein by reference.

b. Request the Authority to receive, treat and discharge into the waters of the Commonwealth such sanitary sewage generated from or within the Township as is contemplated in the Township Plan.

2. The parties hereto agree to comply with the Legislative Acts, including the Act of May 2, 1945, P.L. 382, § 3.1 et seq. (53 P.S. § 304) as amended, and do the items required to enable the Township to become a member of the Authority. The respective applications, resolutions or ordinances adopted by the parties hereto toward that end shall provide that the board of said Authority shall remain comprised of five (5) members; however, representation on said board shall be one (1) member who is a resident of Township and four (4) members who are residents of Borough. The board member representing the citizenship of the Township shall be appointed by the Township and take office on the Authority Board upon the first retirement from office of an existing board member, but in no event later than January 5, 1993.

3. The Borough does hereby:

a. Request the Authority to finance, construct and otherwise acquire such wastewater treatment, collection and conveyance facilities, including but not necessarily limited to gravity collector sewers, raw sewage pump stations, force mains, and such necessary lands, easements and other appurtenances and equipment as are contemplated and outlined in its proposed Act 537 Official Sewage Plan (hereinafter sometimes referred to as "Borough Plan") which is hereby made a part hereof and incorporated herein by reference.

b. Request the Authority to receive, treat and discharge into the waters of the Commonwealth such sanitary sewage generated from or within the Borough as is contemplated in the Borough Plan.

4. At the request of the Authority, both the Township and Borough shall, respectively, acquire, by condemnation or otherwise, such temporary and permanent easements, lands, and other property rights as may be necessary to enable the Authority to implement and complete the construction, maintenance, repair, replacement, and/or removal of the wastewater collection and conveyance facilities contemplated by the Township's and Borough's approved Act 537 Official Sewage Plans, and shall promptly convey said temporary and permanent easements, lands, and property rights to the Authority. Upon submission of invoice, the Township and Borough shall, within a reasonable time, be reimbursed by the Authority for all reasonable and necessary costs of said acquisition, including, but not necessarily limited to, court costs, attorneys' fees, recording fees, expert witness or appraiser's fees, and postage.

5. Conditioned upon available funding including state and federal financial assistance in the form of grants and loans from, respectively, the Pennsylvania Infrastructure Investment Authority (hereinafter "Pennvest") and the United States Department of Agriculture, Farmers Home Administration (hereinafter "FmHA"), as contemplated by the parties hereto, the Authority does agree to finance, construct and otherwise acquire such wastewater collection and conveyance systems within the Township and Borough, as above described, including but not necessarily limited to gravity collection sewers, raw sewage pump stations, force mains and such lands, easements and other necessary appurtenances and equipment as are contemplated by the Township Plan and Borough Plan, which, upon acquisition and completion of construction, shall be and remain the property of the Authority.

6. If required to do so by Pennvest, FmHA or other funding source as a condition of extending financial assistance to the Authority, both the Township and Borough shall pledge their full faith, credit and taxing power as security for the repayment of that portion of any financial assistance as was applied or allocated toward the construction

of wastewater collection, conveyance and treatment facilities within the respective Borough or Township. However, all other provisions hereof notwithstanding, in the event that either the Township or Borough is obligated to so pledge its full faith, credit and taxing power, the other municipal body shall similarly pledge its full faith, credit and taxing power to the end that if one municipality shall pledge then both shall pledge.

7. Upon construction and completion of the aforementioned wastewater collection, conveyance and treatment systems within the Township and Borough, the Authority shall supervise the general operations of same and shall establish all service rates and fees including treatment and tap-in charges and shall make all decisions concerning extensions, expansions and improvements to said facilities. Under and subject to the terms of an agreement to be established between Borough and Authority, Borough may be engaged to perform the daily operation, management and maintenance of the collection and treatment facilities including the handling of accounts payable and receivable and the keeping of the accounts and records associated with said functions.

8. As contemplated herein, the sewage to be received by the Authority from the Township and Borough shall mean only residential sanitary sewage or industrial wastes as currently defined in the Code of Ordinances of the Borough or in any future revisions or amendments thereto.

9. The Township and Borough shall amend, adopt and rescind their respective ordinances to the end that the citizens or entities situated within the jurisdiction of each municipal entity to be served by the wastewater collection system shall be obligated to the following:

a. That all property owners abutting the sewer lines connect with and discharge all sanitary sewage into the Sewer System, and that use of privy vaults, holding tanks, septic systems, or any other form of

sewage disposal system, other than the Sewer System to be operated, constructed or acquired by the Authority, be prohibited;

b. That all users who connect with the Sewer System to be operated, constructed or acquired by the Authority comply with all technical standards and specifications approved by the Authority including, but not limited to, the following:

(1) That no foundation drains, floor drains, downspouts, sump pump discharges, and other sources of extraneous water be permitted to connect with or discharge into Authority sewer lines;

(2) That all users required to or wishing to connect to the Sewer System permit a plumbing inspection to be done to their properties and to lateral lines to the Sewer System prior to connection to assure that there is no prohibited infiltration of extraneous water into the Sewer System;

(3) That all lateral lines and connections comply with the technical standards and specifications adopted by the Authority; and

(4) That all existing lateral sewer lines be air tested to verify their integrity prior to connection.

c. That all users who connect with the said Sewer System pay such user, inspection and/or tap-in fees as may from time to time be established by the Authority.

d. That all users whose water usage is not metered by a municipal or PUC regulated utility acquire and install, in accordance with standards and specifications to be established by the Authority, a water meter, so that such user's water usage may be measured for sewer rate classification and billing purposes.

e. The Township and Borough shall not adopt any ordinance, rule or regulation which relates to or affects the Sewer System which is inconsistent with any ordinance, rule or regulation of the Authority or any contract duly entered into by the Authority.

10. The parties do hereby agree that all rates and charges, including but not necessarily limited to rates for inspection, tap-in and user fees, imposed by the Authority shall be uniform for users of a particular classification regardless of whether said user is located within the Township or the Borough.

11. If the Township or Borough shall, at any time, deem it necessary or advisable that the Authority construct or otherwise acquire capital additions to the Sewer System within the respective municipalities in accordance with or as contemplated by an approved Act 537 Office Sewage Plan, then they shall proceed in accordance with such lawful procedures established, or as may be established from time to time, by the Authority.

12. It is the intent of the parties hereto that the Authority shall be responsible for the establishment of all rates, including rates for inspection, tap-in and user fees. The day-to-day duties of collecting said fees may be delegated to the Borough or other entity. In the event of non-payment of any such fees by any resident or owner of property within the Borough or Township, the Borough and Township do respectively authorize and empower the Authority (and/or the Borough or other entity) to the extent as may be required by law, to collect such unpaid fees in any legal manner and do hereby specifically authorize and empower the Authority and/or the Borough or other entity to record a municipal lien against property located within the Borough or Township to the same extent and with the same force as if filed and recorded by the Township or Borough, respectively.

13. All of the other provisions hereof notwithstanding, the parties agree that the Authority shall hire the engineering firm of B.C.M. Engineers, Inc., to serve as consulting engineer and resident project inspector for that portion of the Sewer System to be constructed to serve existing customers of the Authority, and including the Pine Street and Kinzua Road wastewater treatment plant expansion and Kinzua

Road interceptor sewer, in accordance with the Borough Plan. The Authority shall hire the engineering firm of K.L.H. Engineering, Inc., to serve as consulting engineer and resident project inspector for that portion of the Sewer System to be constructed in accordance with the Township Plan. As used herein, the term "consulting engineer" is intended to mean the person or entity that designs and prepares the project plans and specifications and that supervises the general implementation of said plans by performing the tasks, which include but are not limited to periodic site visits, review and approval of shop submittals, the materials and equipment, review and approval of periodic payments requests, preparation of change orders, mediation of disputes with construction contractors, attendance at monthly authority meetings and other meetings as requested, final inspection of the construction contract, and supervision of the resident project inspector. The term "resident project inspector" is intended to mean the person or entity that periodically inspects the contractor's progress, conducts progress meetings with all contractors as required by the Authority, serves as on-site liaison with contractors, reports all unsatisfactory work to the consulting engineer, provides clarification to contractors, maintains the diary of project progress and communicates with the consulting engineer and Authority as to other relevant work items or problems. Engineers are not intended to be third party beneficiaries of this paragraph or contract and shall have no rights of enforcement in or causes of action arising from this paragraph or contract. If either engineering firm is not willing to perform services defined by the Authority for fees as allowed by the funding sources, the Authority may select another firm of choice. All other provisions hereof notwithstanding, B.C.M. Engineers, Inc., will serve as lead engineer only with respect to paperwork submissions to funding sources, including but not limited to, grant applications and monthly draw-down applications. In that capacity, B.C.M. Engineers, Inc., will be compensated in the amount allowed by the funding sources.

The provisions of this Paragraph 13 shall apply only with respect to the current projects and have no applicability to future improvements or capital additions under any revised or updated Act 537 Plans.

14. Notwithstanding anything contained herein to the contrary, for so long as any of the Series of 1967 Bonds issued by the Authority and secured by that certain Trust Indenture dated March 1, 1967, between the Authority and the Warren National Bank, as Trustee, remain outstanding, none of the receipts and revenues derived by the Authority from its ownership of the Sewer System shall be used for any purpose other than as provided in the said Trust Indenture, and neither this Agreement, nor any other agreement or contract or contracts entered into by the Authority shall be deemed to impair or diminish the rights of the bondholders under the said Trust Indenture, and to the extent that such rights are impaired or otherwise diminished hereby, then this Agreement, or any part thereof having such effect, shall be deemed null and void.

15. The parties hereto covenant to make, execute and deliver all documents, adopt such ordinances, and in general do all such things as may be necessary to operate the sewer system above described as a single unit for the mutual benefit of the Township and Borough and their respective citizens and to otherwise give full force and effect to the intent and provisions of this Agreement.

16. The parties acknowledge that the obligations incumbent upon each are conditioned upon the approval of the Authority and of the Pennsylvania Department of Environmental Resources of the Borough Plan and Township Plan. In the event that either or both plans are not so approved, then this Agreement shall be rendered null and void, and the parties shall have no further obligation to each other hereunder. Township agrees to submit the Township Plan to the Authority and the Pennsylvania Department of Environmental Resources for approval, on or before August 1, 1992, or within thirty (30) days following final determination of project scope by FmHA, whichever event shall last occur.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have set their respective hands and seals, all in accordance with resolutions of their governing bodies duly adopted and recorded in their official minutes. Dated and effective this 16th day of September, 1992.

ATTEST: (SEAL)

BOROUGH OF KANE AUTHORITY

Dennis L. Dixon  
Secretary

By Thomas H. Hahlinger  
(title)

ATTEST: (SEAL)

TOWNSHIP OF WEIMORE

Rhett L. Tinsall  
Secretary

By Chester N. Bush  
(title)

ATTEST: (SEAL)

BOROUGH OF KANE

Dennis L. Dixon  
Secretary

By Paul By Pres.  
(title)