

**BOARD ACTION/DISCUSSION ITEMS
APRIL 2013 – JUNE 2013**

PRIORITY*	PROJECT/ISSUE	TYPE OF ACTION	TIMING**
<i>AS NEEDED</i>			
H	Update on LCA/City 537 Plan Study	Status Report	As needed
H	Acquisition/Growth Strategy Activities	Status Report	As needed
H	Jordan Creek Wastewater Plant	Status Report	As needed
<i>WITHIN 45 DAYS</i>			
H	Wynnewood Force Main Replacement, Design Phase	Approval	May (W or B)
L	Upper Milford Central Division – Radon Study Alternatives	Report	May (B)
<i>WITHIN 75 DAYS</i>			
H	Arcadia Water Pump Station Upgrades, Construction Phase	Approval	Jun (B)
M	Crestwood Alternate Water Supply-Design Phase	Approval	Jun (B)
M	Madison Park Division Water Pump Station Upgrades, Design Phase	Approval	Jun (B)
H	Pine Lakes Division - Water Pump Station Upgrades, Design Phase	Approval	Jun(B)
H	Lynn Township WTP Improvements, Phase 1&2-Permitting/Bid Phase	Approval	Jun (B) or Jul (W)
4/22/13	April Board Meeting		
5/13/13	May Workshop Meeting		
* H – High			** (W) – Workshop
M – Medium			(B) – Board
L – Low			(W/B) - Either

LEHIGH COUNTY AUTHORITY
WORKSHOP AGENDA
Monday, April 8, 2013 – 12:00 PM

INITIAL ITEMS *(Collectively 5 Minutes)*

1. **Identify items for April Board Meeting**

- Review Board Discussion items, April 2013 – June 2013

ACTION/DISCUSSION ITEMS

1. **Electrical Energy Demand Response Contract** *(Approval)*

PJM Interconnection's (PJM) Emergency Load Response Program (ELRP) enables program participants to receive revenue for being available to reduce electricity consumption when the reliability of the electric grid is in jeopardy and voltage reductions and rolling brownouts are imminent. The Board's approval is requested for a contract with EnerNoc, Inc. to provide Curtailment Services in the PJM's Emergency Load Response Program (ELRP) on behalf of LCA. A written Request for Quotes (RFQ) was issued Feb. 22 to three curtailment service providers as recommended by our consultant, Envinity. EnerNoc's bid was the most beneficial to LCA in its terms and payment. The projected 3 year Capacity Payment to LCA is \$104,036. Energy payments are based on actual performance during an event and reimbursed at \$0.75/kWH. Called ELRP events are infrequent. See attached draft contract, PJM territory map and ELRP event history (**blue**).

2. **Refinancing of Water Revenue Bond, Series of 2008 (the "2008 Bond")** *(Approval)*

The Authority's 2008 Bond is currently outstanding at a fixed rate of 3.55% until November 1, 2016. At that time, the interest rate converts to a variable rate. In addition, also on or after November 1, 2016, PNC Bank can require the bond be "put" back to the Authority, at which time the Authority would be forced to refinance the 2008 Bond. Under the proposed arrangement, the Authority would receive a fixed rate of 2.05% from November 1, 2016 through November 1, 2019, and the put option would also be postponed until November 1, 2019. If the Authority decides to move forward with this proposal, a resolution will need to be approved. The draft resolution arrived just before mailing and needs review and revision before being forwarded to the Board, which will be done electronically. Chris Gibbons, financial advisor, will be at the meeting to review the proposal.

3. **LCA Facilities Emergency Power Project – Construction Phase** *(Approval)*

The Board authorized the design phase of this project in May 2012 and the Programmable Logic Control (PLC) for staged electrical load starting at the January 2013 workshop meeting. The project will provide emergency standby power at 12 satellite facilities and the Office Operations Center. The project was advertised for bid on February 13, 2013. A mandatory pre-bid meeting was held on Monday February 25, 2013 and representatives of 16 contracting firms attended. Bids were received on March 14, 2013. Approval of the Construction Phase is requested at the Board meeting. Reference the attached memo for additional information (**gold**).

4. **2013 Signatory CCTV Physical Condition Assessment, Malcolm Pirnie** *(Approval)*

A Memo, Capital Project Authorization Amendment and Professional Services Authorization (**green**) for Malcolm Pirnie is being presented to the Board for consideration. The work is for the physical condition assessment (PCA) of 50,000 LF of pipe in the Signatory Collector Systems as part of the I & I SCARP Program and has been recommended by the Signatories' Consultant. The 50,000 LF was televised in 2012 and the database provided to Malcolm Pirnie. The work will rate, assess and recommend follow-up actions if required. PCA figures showings the findings and recommended follow-up actions will be prepared. This work will lead to the actual rehabilitation within the system and the actual removal of I and I.

5. **West Hills Business Center - Amended Usage & Contribution Agreement** (Approval)

The financing for the Western Weisenberg Wastewater Treatment Plant (WWWTP) is scheduled for settlement with PennVEST on Wednesday, March 27th. In a recent conversation with PennVEST legal counsel, a more formal documentation of the contribution of the developer of West Hills Business Center, Hillwood, to the project costs or the deposit of the actual funds, was required by PennVEST prior to settlement. At the time of preparation of these notes, staff is still working out language with Hillwood, but a proposed amended agreement, with minimal amendments of the agreement approved previously by the Board, is expected to be presented for action.

6. **Wastewater Treatment Plant Annual Report** (Presentation)

The 2012 Annual Report for the LCA Wastewater Treatment Plant will be presented. The Report will highlight the financials, plant operation, hauler program and maintenance activities.

INFORMATION ITEMS

1. **Education and Training**

Linda Eberhardt	GFOA-PA – State College, PA	4/29-30; \$350

OTHER ITEMS

1. ***None.***

**WASTEWATER TREATMENT PLANT
USAGE AND CONTRIBUTION AGREEMENT
(Amended)**

West Hills Business Center, Weisenberg Township

THIS AGREEMENT, made as of the _____ day of _____ 2013,
by and between:

WEST HILLS PARTNERS, L.P., a Texas limited partnership, by its general partner, **WEST HILLS GP, LLC**, a Delaware limited liability company, all with their principal offices at 3090 Olive Street, Suite 300, Dallas, Texas 75219, and all hereinafter jointly referred to as "Developer", party of the first part;

and

LEHIGH COUNTY AUTHORITY, a Pennsylvania municipal authority with its principal office at P.O. Box 3348, 1053 Spruce Street, Allentown, Pennsylvania 18106-0348, hereinafter referred to as "Authority", party of the second part.

WITNESSETH:

WHEREAS, the Authority has been requested by the Commissioners of Lehigh County to develop and provide, among other services, sewer service in the Lehigh Valley; and

WHEREAS, Developer owns certain contiguous tracts of land, identified by Lehigh County PINs 544600781932-1, 543671912251-1, 543691239198-1, 543662588865-1, 543672784352-1, 543661238765-1, 543661174325-1, 543661095005-1 and 543651896436-1, all located in Weisenberg Township, Lehigh County, Pennsylvania that it intends to develop as the West Hills Business Center (hereinafter the "Development") with buildings that in turn will connect to and use the public sewer system; and

WHEREAS, Developer requires public sewer service to the buildings erected or to be erected within the Development; and

WHEREAS, the Authority is willing to provide said sewer service;

WHEREAS, to meet the Development and other regional sewer needs, the Authority plans to construct a new wastewater treatment facility (the "WTP") on the site of an existing Authority treatment plant (the "Old Plant") located on an Authority parcel of land identified as Lehigh County PIN 543631926455 with an address of 9767 Commerce Circle, as a replacement of the Old Plant, as well as certain appurtenant facilities to the WTP, such as the influent pump station and emergency generator, all such new facilities

jointly referred to as the "New Public Wastewater Facilities" or "NPWF"), if the Authority settles on a loan from the Pennsylvania Infrastructure Investment Authority ("PennVEST") to finance the NPWF construction (the "PennVEST Loan") and if Developer constructs the internal Development sewer collection system (the "West Hills Collection System" or "WHCS") to meet the needs of the Development for interconnection with the public sewer system and, ultimately, dedication to the Authority; and

WHEREAS, Developer and the Authority have expended funds to complete the preliminary design and permitting of the NPWF; and

WHEREAS, Developer and the Authority entered into a Usage & Contribution Agreement dated July 23, 2012, but several terms have changed;

NOW THEREFORE, in consideration of their mutual promises and with the intention of being legally bound, the parties agree as follows:

1. The Authority agrees to complete the design of and construct the NPWF to serve the Development and other regional sewer service needs subject to the conditions of this Agreement, receipt of all necessary regulatory approvals for the project and the procurement of project financing acceptable to the Authority; however, service will not be provided until substantial completion of the NPWF project. Furthermore, public sewer service in the Development will be contingent on Developer completion of construction of the WHCS, which construction shall be addressed in a separate developer's sewer system agreement with the Developer (the "DSSA"). To assure that Developer is able to market the Development as "sewer ready", the Authority agrees to use best efforts to substantially complete the NPWF project in accordance with a construction schedule attached hereto as Exhibit A; recognizing, however, that the Authority shall not be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control and occurring without its fault or negligence, including, but not limited to Acts of God, force majeure, government restrictions or denial of necessary permission or permits, legal suits or action, wars, insurrections and/or any other cause beyond the reasonable control of the Authority.

2. The WTP will be designed to meet effluent limitations contained in the National Pollutant Discharge Elimination System (NPDES) Permit and the Water Quality Management Permit, both issued by the Pennsylvania Department of Environmental Protection ("DEP") and attached hereto as Exhibits B and C. The WTP shall be designed and constructed with an annual average flow hydraulic capacity of 40,000 gallons per day ("gpd"). "Annual Average Flow" means the total flow received at the WTP during any consecutive twelve month period divided by 365 (the number of days in that period) in terms of gpd. The Development shall be entitled to an Annual Average Flow of 12,000 gpd of the 40,000 gpd WTP capacity (hereinafter the "West Hills Allocation").

3. To reflect the West Hills Allocation in the WTP and usage of the existing Authority public sewer system assets as well as the NPWF (these facilities combined hereinafter referred to as the "Sewer System"), Developer shall pay the following infrastructure costs:

- (a) Thirty (30%) per cent of all NPWF planning, design, permitting and

construction costs as well as thirty (30%) per cent of all Authority costs related to the planning, design, permitting and construction costs; and

- (b) All applicable capital recovery fee obligations at the rates current at the time of purchase of allocation, which fees may include a Land Fee and/or LCA Fee¹ calculated in the manner set forth in Exhibit D, captioned "Hillwood Tapping Fee Summary"; and
- (c) One Hundred (100%) per cent of the costs of the WHCS, including the force main extension to the point of connection to the Sewer System, as determined pursuant to separate agreement between the parties, the Developer's Sewer System Agreement ("DSSA").

4. The Authority will finance the Developer's portion of the NPWF project costs set forth in §3(a) above, which shall be thirty (30%) percent of such costs based on Developer's projected share of the capacity, less any NPWF project costs already contributed or paid by Developer, with said Developer costs being limited to fees Developer paid to its consulting engineers, permit fees and the rental of the pilot plant during the design phase. For purposes of this Agreement, NPWF project costs shall be as set forth in §3(a) above. Based on current estimates provided in Exhibit E, but subject to change, the Developer's share of the NPWF project cost net of payment already made will be Eight Hundred Thirty-three Thousand, Thirty and ⁰⁰/₁₀₀th \$833,030.00) Dollars. The Authority will finance Developer's share over a term of twenty (20) years at the rates of interest in the PennVEST loan and in any other borrowings that the Authority may incur for the NPWF project. These interest rates shall apply to the Developer's share in the same proportion as in the Authority's total borrowings for the NPWF project. Following completion of construction, Developer's share of the NPWF project costs shall be adjusted to actual costs and the monthly financing payment shall be adjusted accordingly. Any underpayments or overpayments that are made before the actual costs are determined shall be paid by the Developer or refunded to the Developer within thirty (30) days after the actual costs are determined. The first monthly payment shall first be due within fifteen (15) days of the date of settlement of the PennVEST loan and each month thereafter on the day of the month corresponding to the first payment day. Developer shall have the right to prepay all or any portion of the financed amount to the Authority without prepayment penalties.

Because the Authority had to rebid the construction contract, the NPWF project costs have risen and are estimated at an amount higher than the loan amount authorized by PennVEST. To avoid the Authority having to obtain a supplemental loan for this additional amount, Developer has agreed to pre-pay a portion of the costs for which it is

¹ These capital recovery or tapping fees are subject to the criteria of allowable costs under Pennsylvania statute for tapping fees and therefore there are various components of the Wastewater System tapping fees. Solely with respect to the NPWF under this Agreement, the components of these fees are related to the value of the land on which the treatment plant is located (the "Land Fee") and the LCA Fee. Although permitted under the tapping fee legislation, Developer shall have no capital recovery fee obligation for either: (i) the value of the treatment plant (the "Plant Fee"), which mirrors the Capacity Part set forth in the tapping fee legislation and; ii) a component to reflect the value of the wastewater collection system (the "Collection System Fee"), which mirrors the Collection Part set forth in the tapping fee legislation.

responsible under §3 above. Developer will deposit an amount up to a maximum of Three Hundred Twenty Thousand (\$320,000) Dollars with the Authority on July 1, 2013. The amount of the deposit will be established at that time, depending on the Authority's need for funds to complete the NPWF project. The amount of the deposit shall be credited against the developer's share of the NPWF project costs described above in paragraph 4. The repayment amount and schedule will be revised accordingly.

Developer shall provide collateral for its pro rata share of the financed construction costs in a form acceptable to the Authority in an amount at least one hundred fifteen (115%) percent of its pro rata share. One acceptable form of collateral would be real estate in Lehigh County, Pennsylvania with value at least two times the amount of the Developer's financing obligation [land with a present appraised value of One Million, Six Hundred Sixty-six Thousand, Sixty and ⁰⁰/₁₀₀th (\$1,666,060.00) Dollars] as collateral for the Authority's financing of the Developer's contribution to the NPWF project by agreeing to the Authority placing a municipal lien upon the appropriate real estate. Further, the Authority may only execute such municipal lien without Developer's objection if Developer fails to pay the full monthly payment amount owing on an agreed-upon date or bankruptcy or other liquidation proceedings are filed by or against Developer or another owner of the collateral property. The form of recordable lien instrument is attached hereto as Exhibit F. In the event the value of the collateral diminishes below the two times threshold, additional real estate shall be pledged. Developer shall provide a letter appraisal supporting the fair market value of the applicable property from an A.S.A or SRA designated appraiser as well as annual reappraisals to confirm the present fair market value of the real estate, all at Developer's sole cost, with copies of such appraisal being supplied to the Authority within fifteen (15) days of the Developer's receipt of the respective appraisal. The required value of the lien collateral may be reduced annually in line with the decrease in the amount of the Developer's financed NPWF cost. The Authority does not require a survey of the parcel to be liened. During the course of repayment, Developer may substitute a parcel or parcels in Lehigh County, Pennsylvania with a fair market value of at least 200% of the balance of the principal, or an irrevocable letter of credit with a Federal or Commonwealth-chartered lending institution authorized to conduct the business of posting financial security within the Commonwealth of Pennsylvania with of a value of at least 115% of the balance of the principal. The Authority agrees to satisfy an existing lien: (1) upon full payment by Developer of its pro rata share of the infrastructure costs listed in §3; (2) upon substitution of cash or a letter of credit from an appropriate banking institution equal to or exceeding the value of the collateral to be released; or (3) release any portion of the collateral, after it has been supplied with an appraisal of either the remaining collateral, or of property to be exchanged, or both, with a cumulative fair market value of at least 200% of the balance of the principal, at the same time as the substituted lien is placed against the new property.

Should the Authority be required to take possession of the collateral to satisfy Developer's pro rata share of the financed construction costs, the 12,000 gpd of Developer's capacity shall remain with the land parcels identified on Page 1 of this Agreement.

5. Developer and the Authority contemplate that the Authority's Old Plant site will be adequate for both the construction of the WTP and demolition of the Old Plant, but if additional area is required, it shall be obtained by the Authority with thirty (30%) per cent of any resulting cost and expense being added to the sum set forth in §3(a) that is to be

reimbursed by the Developer.

6. No more than 5.6 EDUs (equivalent dwelling units) of sewer service shall be available for the Development prior to the issuance of the Certificate of Completion by the Authority to its contractor in regard to substantial completion of the NPWF construction.

7. The West Hills Allocation of 12,000 gpd shall be reserved for the Development until such time as Developer agrees to relinquish any capacity deemed to be excess. If Developer chooses to relinquish excess capacity, Developer shall be reimbursed for such excess capacity at the pro-rata cost to Developer under §3 above, provided that the Authority shall not be obligated to make such payment until such time as the excess capacity is allocated to another user of the NPWF.

8. The Authority shall be able to expand or replace the WTP to meet regional sewage needs as long as the West Hills Allocation is not used for properties outside the Development. Prior to, and possibly in lieu of, any expansion of the WTP to meet additional capacity demands of existing buildings and/or new buildings outside the Development, the Authority may offer Developer the option to permanently relinquish all or any part of the West Hills Allocation to serve the needs outside of the Development. If Developer so agrees to relinquish some portion of the West Hills Allocation before the Development is fully developed, the Authority shall make a payment equal to the pro-rata cost to Developer under §3 above, for the excess Allocation. If a building in the Development should need the additional allocation in the future, it will purchase the allocation, if available, as any other user would in this part of the Authority's public sewer system.

9. If available, WTP capacity beyond the West Hills Allocation can be purchased for use outside of the Development upon payment of all applicable charges and fees, including capital recovery charges.

10. The Authority will establish and monitor treatment capacity limits (allocations) for waste volumes and strengths for each user within the Development, monitor compliance with such limits, and may impose penalties and remedies for violations.

11. Usage of treatment capacity, as referenced herein, may be calculated based on a user's water use, exempting therefrom water used for fire protection and water that is measured and can be proven not to be discharged to the Sewer System. In lieu of determining the total volume of sewage discharge at any connection point by water usage, the Authority reserves the right to require the user to install and maintain at user's own expense, a sewage metering facility acceptable to the Authority that will record the actual sewage flow into the Sewer System from that facility. Furthermore, the Developer or user reserves the right to install and maintain, at user's own expense, a separate irrigation water meter in order to be able to determine what portion of the water usage does not contribute to the actual sewage flow into the Sewer System from that facility. In order to facilitate the verification of the actual sewage discharge by a user to the Sewer System, the parties agree to provide each other, upon request, any relevant sewage flow or water consumption data. Nothing in this section is intended to limit the ability of the Authority to establish and assess additional fees and charges to reflect the effect of average flows that exceed Developer's or user's allocation of flow or strength. In addition, if any user in the Development discharges

waste exceeding the design parameters set forth in Exhibit G or the user discharges waste exceeding allocation assigned to that property, the Authority may charge the owner of such property the then current tapping fee for such exceedances, which in addition to other costs may reflect the cost to meet such regulatory requirement. In no event shall Developer or a purchaser of a lot in the Development be required to make a capital contribution or pay any tapping fee attributable to any WTP modifications necessary to exclusively address the treatment of sewage emanating from other users.

12. Upon fulfillment of the conditions of this Agreement and the DSSA, the Authority covenants and agrees that it will provide sewer service to the buildings built by Developer in its Development under and pursuant to its rules and regulations and at such duly-established rates and charges as may be enacted from time to time by the Authority. Developer agrees to permanently and perpetually use the Authority as the sole source for all sanitary sewer service for its Development and to sell all lots subject to the requirement to use the Authority sewer system for transportation and treatment of all sewage discharged from buildings in the Development, subject to the strength parameters and flow limits established elsewhere in this Agreement, provided that the Authority can provide the needed capacity and treatment through the WTP.

13. Developer shall limit lot sales to users discharging waste compatible with Sewer System design parameters and permits, disclose such limitation to potential buyers and include such limitation in sale agreements with buyers within the Development. Furthermore, Developer shall execute a Notice of Record, to be recorded with the Lehigh County Recorder of Deeds, providing notification of the requirement of all properties in the Development to connect to the Sewer System, the strength limitations of wastewater discharged to the Sewer System, the requirement for all buildings to provide a sampling access point and the obligation to install and maintain, at its own expense, a water metering facility approved by the Authority, and any other pertinent requirements set forth in the DSSA, with the notice of record in substantially the form attached as Exhibit H.

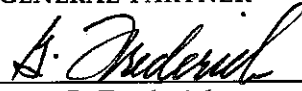
14. Developer may assign its rights, duties or remedies under this Agreement to any person or entity owning a real property interest in any part of the Development with written notice and written approval by the Authority, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Developer may also assign this Agreement, without the Authority's consent, to any individual or entity owning a real property interest in any part of the Development provided that such transferee also assumes the obligations under this Agreement.

15. This agreement shall amend and replace the July 23, 2012 Usage & Contribution Agreement in full.

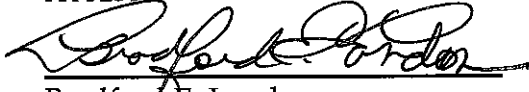
WITNESS their hands and seals the day and year first above written.

**WEST HILLS PARTNERS, L.P.,
A TEXAS LIMITED PARTNERSHIP**

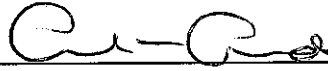
**BY: WEST HILLS GP, LLC
A DELAWARE LIMITED LIABILITY COMPANY,
ITS GENERAL PARTNER**

By:  (Seal)
Gary B. Frederick
Senior Vice President

ATTEST:


Bradford E. Landon
Solicitor

LEHIGH COUNTY AUTHORITY

By:  (Seal)
Aurel M. Arndt
General Manager