



UNIVERSITY AREA JOINT AUTHORITY

A G E N D A
Special Meeting – 4:00 pm - September 25, 2024

- 1. Call to Order**
- 2. Public Comment**
 - 2.1 Other items not on the agenda
- 3. Old Business**
 - 3.1 Interim Agreement with State College Borough (*Page 3, Addt'l Page 4*)
- 4. Reports of Officers**
 - 4.1 Executive Directors Report (*Page 2*)
- 5. Other Business**
- 6. Adjournment**



EXECUTIVE DIRECTOR'S REPORT

Special Meeting

September 25, 2024

ACTION ITEMS

2. Public Comment

2.1 Other items not on the agenda

3. Old Business

3.1 Interim Agreement with State College Borough

The proposed agreement is included in the agenda report. If the agreement is approved by both parties, the Borough will transfer \$2,596,948.44 to UAJA. The Borough will continue to pay as they have been, based on the now 4-year-old volumetric rate that was in the expired agreement (\$5,287 per Million Gallons), and place the difference between what the Borough pays and what UAJA bills into an escrow account.

The parties will continue to work towards a final agreement through mediation.

UAJA will issue willingness to serve letters for projects within the Borough during the time this agreement is in effect.

The interim agreement expires January 1, 2025, and can be extended by written mutual agreement.

Recommendation: Approve the interim agreement as presented.

4. Reports of Officers

5. Other Business

6. Adjournment

INTERIM AGREEMENT

THIS AGREEMENT made this _____ day of September, 2024, by and between **UNIVERSITY AREA JOINT AUTHORITY**, a municipal authority existing under the laws of the Commonwealth of Pennsylvania, with principal offices at 1576 Spring Valley Road, State College, Centre County, Pennsylvania, hereinafter referred to as “**UAJA**,”

-AND-

THE BOROUGH OF STATE COLLEGE, a Home Rule Municipality operating a municipal sewage system, having offices at 243 South Allen Street, State College, Centre County, Pennsylvania, hereinafter referred to as “**Borough**.”

BACKGROUND

WHEREAS, the UAJA and the Borough commonly share wastewater facilities for various customers in State College Borough as well as the Townships of Patton, Ferguson, College, and Harris, all located in Centre County, Pennsylvania;

WHEREAS, in October 2021, the Authority adopted a rate for treatment and conveyance of sewage from the State College wastewater system (“Rate”);

WHEREAS, the Borough notified UAJA of the Borough’s objection to the Rate and has held funds for the difference between the amount billed by the Authority and the amount paid by the Borough based on metered flows in an assigned fund balance account;

WHEREAS, the Borough and UAJA are in litigation regarding the Rate and the Borough’s withholding of funds docketed at Centre County CCP 2022-2348; and

WHEREAS, the Borough and UAJA have engaged the services of Jeffrey Wendle for the purposes of mediating the dispute between the parties and working on a potential resolution plan.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound by, the parties do hereby agree as follows:

1. **Incorporation of Background.** The paragraphs set forth in the Background section are incorporated herein as if set forth at length.
2. **Term of Agreement.** Upon execution of this Agreement, this Agreement shall commence and will terminate as of January 1, 2025. This Agreement’s term can be extended by written mutual agreement by the parties, which will do so in good faith in the event a wastewater treatment agreement is not confirmed by that time.

3. **Payments to UAJA.** Upon execution of this Interim Agreement by the parties, the Borough shall make payment to the Authority in the sum of \$2,596,948.44. The Borough will continue to make payments quarterly based on metered flows less any interest, fees, and penalties accrued. The Borough agrees to continue to deposit the difference between the amount billed by UAJA and the sums owed and the amount paid by the Borough based on metered flows, less any interest, fees, and penalties accrued in an assigned fund balance account on a quarterly basis until the parties reach a mutually agreed upon rate, subject to the provisions of this paragraph. As it pertains to this Paragraph, UAJA does not waive claims or demand to accrued interest, late fees, and/or penalties from the Borough as to the Borough's payment of the invoices issued by the Authority under the disputed wastewater treatment rate, subject to UAJA's option to waive and release accrued interest, late fees, and/or penalties in the event of a final agreement.

4. **Payments to Jeffrey Wendle.** The parties will be equally responsible and split evenly payment on all invoices issued by Jeffrey Wendle.

5. **Good Faith Negotiations.** The parties hereby expressly agree that they will negotiate in good faith toward entering into a settlement agreement by no later than January 1, 2025, or as extended by the parties.

6. **Good Faith Negotiation Milestones and Preliminary Agreements.** The Parties acknowledge and agree that significant and staggered negotiations will need to occur and preliminary, piecemeal agreements will need to be reached from their negotiations in order to finalize and agree upon all necessary terms for a wastewater treatment agreement that the Parties can enter into as set forth in Paragraph 3 of this Agreement. The Parties refer to this work as the "good faith negotiations and preliminary agreements work." The Parties expressly agree and understand that the good faith negotiations and preliminary agreements work and all communications had between parties surrounding those efforts are expressly for the purposes of settlement purposes and are not admissible in the underlying litigation pursuant to Pa.R.E. 408. The good faith negotiations and preliminary agreements work shall be performed in stages and in accordance with a timeline to be mutually agreed upon between the parties.

7. **Right to Opt-Out/Terminate Agreement.** In the event either Party fails to complete or uphold their obligations set forth in Paragraph 5 of this Agreement or if a Party takes the position that the Parties reasonably will be unable to negotiate mutually satisfactory terms for a wastewater treatment agreement, any Party can choose to terminate this Agreement and opt-out of its obligations under this Agreement by providing seven (7) days written notice to the other Party through counsel.

8. **Overpayment.** The Authority hereby expressly agrees that upon the parties reaching a mutually agreed upon wastewater treatment agreement, including the rate, the Authority will remit any overpayment to the Borough received by the Authority from the Borough should the mutually agreed upon rate be less than the Rate currently in place. The Authority agrees to remit such payment within thirty (30) days of the parties reaching a final settlement.

9. **Letter to Serve.** During the pendency of this Agreement UAJA agrees to issue otherwise valid Letters to Serve without requiring additional executed agreements from developers

that are customers of the Borough.

10. **Waiver.** No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by both UAJA and the Borough. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. Nothing in this Agreement shall be construed to waive any claims asserted by either party and/or any defenses asserted or available to either party in the litigation docketed at Centre County CCP 2022-2348.

11. **Assignment.** This agreement shall not be assignable to any party.

12. **Validity.** The invalidity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

13. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the domestic, internal laws of the Commonwealth of Pennsylvania.

14. **Headings.** The section headings of this Agreement are for convenience only and shall not control or affect the meaning or construction or limit the scope of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WITNESS:

UNIVERSITY AREA
JOINT AUTHORITY

Cory Miller

WITNESS:

THE BOROUGH OF STATE COLLEGE

Thomas J. Fountaine, II