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**AGREEMENT FOR PURCHASE OF  
ADDITIONAL TREATMENT CAPACITY**

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EXHIBIT A—Treatment Plant Design Deficiencies

CONSENTS AND JOINDERS OF SUBURBAN MUNICIPALITIES

CONSENT AND JOINDER OF BOROUGH OF ALBURTIS

THIS AGREEMENT, made this 1st day of August, 1986, by and between the CITY OF ALLENTOWN (“City”), a third-class city located in Lehigh County, Pennsylvania, party of the first part,

AND

LEHIGH COUNTY AUTHORITY (“Authority”), a municipal authority organized and existing under the Municipality Authorities Act of 1945, as amended, with offices in Lower Macungie Township, Lehigh County, Pennsylvania, party of the second part.

WHEREAS, the City is, and at all times herein mentioned was, the legal titleholder and operator of a sewage and wastewater treatment plant (“Treatment Plant”) located on Kline’s Island in the City of Allentown, Lehigh County, Pennsylvania, and the Authority is a customer of the City, which purchases and will purchase a service, which is the transmission of its wastewater discharge from the City limits to the City Treatment Plant, and the treatment of this wastewater; and

WHEREAS, by Agreement dated 22 December 1969 (“1969 Agreement”)<sup>1</sup>, the City and the Authority entered into an agreement, pursuant to which the Treatment Plant was to be expanded in order to provide sewage and wastewater treatment capacity in the Treatment Plant for numerous municipalities, including the Authority, in the amount of 4.5 mgd, said treatment capacity being required by the Authority on behalf of four municipalities located in Lehigh County, namely, the Boroughs of Alburtis and Macungie and the Townships of Upper Macungie and Lower Macungie; and

WHEREAS, subsequent to the execution of the 1969 Agreement, the City did expand the treatment capacity at the Treatment Plant to 40 mgd and, at the same time, added a third treatment stage to the Treatment Plant, which project was paid for in part from the proceeds of a bond issue (“1976 Bond Issue”) issued by the City; and

WHEREAS, by agreement dated 29 December 1981 (“1981 Agreement”)<sup>2</sup>, the City and Authority, as well as numerous other parties, entered into an agreement, pursuant to which the Authority purchased an additional 1.65 mgd of treatment capacity; and

WHEREAS, subsequent to the execution of the 1981 Agreement, the City again upgraded the Treatment Plant to improve its operation; and

WHEREAS, this latest upgrading of the Treatment Plant was paid by the proceeds of the City of Allentown Guaranteed Sewer Revenue Bonds, Series of 1985 (“1985 Bond Issue,” which jointly with the 1976 Bond Issue shall be referred to as “Bond Issues”); and

WHEREAS, by agreement dated 27 November 1985 (“1985 Agreement”)<sup>3</sup>, the City and the Authority, as well as numerous other parties, entered into an agreement regarding industrial waste control and pretreatment for industries within the Authority’s service area to improve operation of the Treatment Plant; and

WHEREAS, since the 1969 Agreement, the Authority has initiated service to Lowhill, Upper Milford and Weisenberg Townships; and

WHEREAS, the Authority wishes to purchase a portion of the excess City capacity in the Treatment Plant;

NOW, THEREFORE, in consideration of their mutual promises herein contained, and with the intention of being legally bound hereby, the parties hereto agree as follows, to wit:<sup>4</sup>

1. **[Incorporation of Preambles.]** All of the preambles to this Agreement above set forth are hereby incorporated into and made a part of this Agreement.

2. **[Effect on Existing Agreements.]** Nothing in this Agreement is intended, and nothing in this Agreement shall be construed in any way to amend, modify or supersede any existing agreements between the parties to this Agreement, whether mentioned herein or not, to waive, release, surrender or bar any rights, claims, demands or defenses of any of the parties hereto in any issues, transactions or controversies between or among any of the parties, or to in any other way affect any rights, privileges or obligations.

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<sup>1</sup> **Cross-Reference:** *see* Codified Ordinances ¶ 65-Q(1).

<sup>2</sup> **Cross-Reference:** *see* Codified Ordinances ¶ 65-Q(2).

<sup>3</sup> **Cross-Reference:** *see* Codified Ordinances ¶ 65-Q(4).

<sup>4</sup> **Cross-Reference:** The capacity purchased under this Agreement is allocated among the Western Lehigh Municipalities under the 1987 Post-1985 Allocation Agreement. *See* Codified Ordinances ¶ 65-R(7).

tions of any of the parties, directly or by implication, except to the extent specifically set forth in this Agreement.

3. **[Grant of Perpetual Right to Discharge an Additional 0.4 mgd; Acknowledgment of Total Authority Treatment Capacity.]** The City hereby grants to the Authority the perpetual right to discharge an additional .4 mgd (the "Initial Capacity") of sewage and wastewater from municipalities tributary to the Authority's Western Lehigh Interceptor, of which .15 mgd shall be committed to the proposed Bell Telephone Laboratories, Incorporated ("BTL") project (the "BTL Commitment"), to be located in Upper Macungie Township, Lehigh County. The City agrees to perpetually treat and dispose of such sewage and wastewater in a manner approved by the State and Federal governments and in accordance with the terms and provisions of the 1969 Agreement, the 1981 Agreement, the 1985 Agreement, and this Agreement. The additional treatment capacity hereby granted to the Authority is in addition to the treatment capacity of 6.15 mgd reserved to the Authority in the 1969 and 1981 Agreements, so that as of the date of this Agreement the Hydraulic Flow Limit of the Authority in the Treatment Plant is 6.55 mgd, with corresponding Allowable Loadings established in accordance with the 1981 Agreement and any amendment thereto. The Authority, and the municipalities it serves, acknowledge that they have no rights to treatment capacity in the Treatment Plant as it now exists other than the Hydraulic Flow Limit of 6.55 mgd referred to in this paragraph 3 and any additional treatment capacity received by them out of the Environmental Reserve pursuant to paragraph 3 of the 1981 Agreement and paragraphs 4 and 5 of this Agreement. Payment for the Initial Capacity shall be made by the Authority in accordance with the provisions of paragraph 6 of this Agreement.

In the event that all or a portion of the BTL Commitment shall not be required by BTL and the capacity has already been purchased by the Authority, such purchased BTL Commitment shall be retained by the Authority.

4. **[Grant of Option to Purchase Additional 0.75 mgd of Capacity; Bell Telephone Laboratories Reserve (0.15 mgd) and Stroh Brewery Reserve (0.5 mgd).]** The City hereby grants to the Authority the right to purchase additional treatment capacity of up to .75 mgd (the "Optional Capacity"), at any time through December 31, 1988, provided such purchase shall be made in minimum amounts of .25 mgd. The terms and conditions related to Optional Capacity purchased by the Authority shall be the same as those related to the Initial Capacity, excluding the BTL Commitment, in paragraph 3 hereof. Any Optional Capacity purchased by the Authority shall be added to the Hydraulic Flow Limit and Allowable Loadings of the Authority in paragraph 3. Payment for Optional Capacity shall be in accordance with the provisions of paragraph 6 of this Agreement.

In addition to the Initial and the Optional Capacities, the City hereby agrees to reserve for ten years from the date of this Agreement .65 mgd of capacity for the Authority, of which .15 mgd shall be committed to BTL (the "BTL Reserve"), and .5 mgd shall be committed to the Stroh Brewery (the "Stroh Reserve"). There shall be carrying fees for the BTL Reserve and the Stroh Reserve as provided in paragraph 6 of this Agreement.

The Stroh Reserve shall not be available or utilized until successful start up ("Successful Start Up") of the County of Lehigh pretreatment plant in Upper Macungie Township ("Plant") has been attained. Successful Start Up shall be considered to be attained when the County's consultant/design engineer has indicated to the County that the construction of the Plant is complete; that all sewage discharges by users tributary to the Plant has been flowing through the Plant for at least thirty (30) continuous days; that each unit process satisfactorily performs independently and in conjunction with the other unit processes; and that during a continuous 30-day period when all sewage discharged by users tributary to the Plant is flowing through the plant, the Authority's discharge to the City at Keck's Bridge has not exceeded the limits of:

230 mg/l Biochemical Oxygen Demand

250 mg/l Suspended Solids

44 mg/l TKN

for at least twenty-seven (27) days during the continuous thirty (30)-day period.

5. **[City Buffer Capacity of 1.0 mgd; Purchase of Additional Future Capacity.]** The City shall retain 1 mgd of its remaining treatment capacity as a buffer, which shall not be for sale under this Agreement. Exclusive of this buffer capacity, the remainder of the City unused treatment capacity ("Future Capacity"), as set forth in paragraph 3 of the 1981 Agreement, shall be available for sale under this Agreement, provided such availability for sale shall cease on August 1, 2000. City treatment needs will first be met from the Future Capacity. The Authority may not purchase Future Capacity unless it has committed to users all Initial, Optional and Future Capacity previously purchased. Such purchases of Future Capacity shall be made in maximum blocks of .25 mgd. No Future Capacity may be purchased by the Authority if the area served by the Authority shall be under a sewer service moratorium imposed by the Pennsylvania Department of Environmental Resources ("DER"); however, if DER shall allow sewer service connections during such moratorium, the Authority may purchase Future Capacity to the extent of such allowed connections. The terms and conditions related to Future Capacity purchased by the Authority shall be the same as those related to the Initial Capacity, excluding the BTL Commitment, in paragraph 3 hereof. Any Future Capacity purchased by the Authority shall be added to the Hydraulic Flow Limit and Allowable Loadings of the Authority in paragraph 3. Payment for Future Capacity shall be in accordance with the provisions of paragraph 6 of this Agreement.

6. **[Payments for Purchase of Capacity and Holding Fees for Reserves.]** The Authority shall pay \$2.50 per gallon for the Initial Capacity, excluding the BTL Commitment, and \$3.00 per gallon for the BTL Commitment. For Optional and Future Capacity and the Stroh Reserve the Authority shall pay \$2.50 per gallon adjusted in proportion to the change in the Engineering News Record Construction Cost Index (the "ENR Index") from the date of this Agreement to the purchase date of such capacity.

Payment for Initial, Optional and Future Capacity, and the Stroh Reserve (excluding the BTL Commitment) capacity, shall be made in two parts: (1) \$.34 per gallon shall be paid through quarter annual payments based upon the pro rata share of the annual debt service on the Bond Issues, or future refinancings thereof, and (2) the remainder of the payment shall be made in cash to the City at the time of purchase of such capacity. Payment for the Initial Capacity, excluding the BTL Commitment, shall be made at the time of signing of this Agreement. It is specifically understood and agreed that any portion of the aforementioned debt service payments which go to meet the "coverage" or other accumulation or reserve requirements of the aforementioned Bond Issues issued by the City, as well as any interest earned on the funds and/or interest on future refinancings, shall inure to the benefit of, and shall be shared by, the Authority in proportion to its contributions thereof.

Payment for the BTL Commitment, the BTL Reserve and Stroh Reserve shall be made by the Authority to the City upon receipt of payment for same from Upper Macungie Township or its agent, at which time such capacity shall be released to the Authority.

The Authority shall pay annually upon receipt of same from Upper Macungie Township or its agent, \$6,000 per annum to the City, commencing one year from the date hereof, in consideration of the City holding the BTL Reserve. If during the ten-year period BTL shall require any portion of the remaining BTL Reserve, the Authority shall pay, upon receipt of same from Upper Macungie Township or its agent, the consideration of \$3.00 per gallon to the City and the annual fee shall be proportionately reduced.

The Authority shall pay annually, upon receipt of same from Upper Macungie Township or its agent, \$20,000 per annum to the City, commencing at the time of Successful Start Up of the Pretreatment Plant, in consideration of the City holding the Stroh Reserve. If during the ten-year holding period Stroh shall purchase any portion of the Stroh Reserve, the annual fee shall be proportionately reduced.

In the event that BTL or Stroh shall fail to pay the annual holding fee for its respective reserve upon demand of payment by the City, the right to purchase such reserve shall end.

7. **[Sale of Future Capacity to Others.]** At its option, the City may grant the right to purchase Future Capacity to other parties to the 29 December 1981 Agreement provided that such purchases shall be made in accordance with the terms of paragraph 6 and on economic terms no more favorable to the purchaser than those contained herein; however, the City retains the right to sell capacity under different terms when it is necessary to accommodate economic development projects having regional benefits. The City also reserves the right to sell Future Capacity on any terms it deems appropriate, if and when another competing municipal sewage treatment plant (excluding the proposed Plant) is built by any municipality other than the City; served by the City Treatment Plant; or if the proposed Plant is upgraded to a full treatment plant.

8. **[City Responsible for Necessary Upgrading Costs Associated with Capacity Purchased Under This Agreement; Treatment Plant Design Deficiencies.]** The purchase price for the additional capacity is based on the premise that the Treatment Plant is capable of meeting any applicable governmental regulations or permit requirements in effect as of the date of the execution of this Agreement. However, the City and the Authority recognize that capital expenditures may be required to upgrade certain unit processes to make the Treatment Plant capable of meeting the applicable governmental regulations or permit requirements at the time of design of the Treatment Plant. Therefore, the City shall be solely responsible for payment of the upgrading costs applicable to any capacity purchased under this Agreement. The design deficiencies for which upgrading work may be required include, but are not limited to, the items listed in Exhibit "A".

It is also recognized that there are several design deficiencies at the Treatment Plant which create operational and maintenance difficulties, which deficiencies the City does not plan to correct and for which the Authority shall have no responsibility. They are (1) lack of yard piping flexibility to permit proper bypassing of treatment unit processes, (2) lack of a bypass around the aerated grit chambers, and (3) inability to take the chlorine contact chamber out of service for maintenance purposes.

9. **[Municipality Support for County Real Estate Tax Reassessment System.]** All municipalities having access to capacity purchased pursuant to this Agreement shall agree to join in support of a request to Lehigh County to conduct a real estate tax reassessment system which keeps pace with changing market values in future years. Such support shall take the form of official municipal resolutions requesting County of Lehigh to proceed expeditiously with this effort.

10. **[Municipality Cooperation in Formation and Implementation of Regional Stormwater Management Plans.]** All municipalities having access to any capacity pursuant to this Agreement shall agree to fully and completely cooperate in formation and implementation of regional stormwater plans under the Commonwealth Stormwater Management Act of 1978, 32 P.S. §680.1 et seq. It is agreed that the increase in stormwater run-off in the Little Lehigh Basin and the resultant flooding is a serious regional problem in need of immediate action. Pursuant to the Department of Environmental Resources (DER) Stormwater Management Guidelines dated July 1984, a Stormwater Management Scope of Study for the Little Lehigh Creek Watershed was prepared and has been approved by DER. A watershed stormwater plan for the Little Lehigh Drainage Basin, in accordance with the approved scope of study, shall be completed, adopted by the County of Lehigh, and submitted to DER by 30 June 1987 for review and approval. Within four months following approval of the watershed stormwater plan by DER, each municipality having access to any capacity pursuant to this Agreement shall adopt or amend such ordinances and regulations as are necessary to implement the plan. Any municipality which fails to adopt the required ordinances and regulations shall not have access to additional capacity.

All new development within the Little Lehigh Drainage Basin shall be subject to the standards contained in the plan and, where required by the plan, must make a contribution to the proper management of stormwater run-off in proportion to the additional run-off which will be created by the development within the drainage basin. These contributions may take the form of on-site improvements, the construction of off-site stormwater management facilities, or a fee to fund off-site facilities. Task D.1. of the Scope of Study states that an important aspect of the technical plan will be the delineation of areas which should (and areas which should not) use stormwater detention to reduce peak flows. A minimum

basic standard of the plan shall be that in those areas where stormwater detention should be used, the peak rate of stormwater run-off is not greater after development than prior to development in all storm events from two-year storms to one hundred-year storms.

The City and the municipalities having access to the additional capacity shall agree to work cooperatively to implement inter-municipal solutions to stormwater drainage problems when such solutions represent the most efficient and cost-effective stormwater control techniques available. The Watershed Plan Advisory Committee shall continue in existence to make recommendations, particularly in matters related to necessary intermunicipal cooperation.

If the watershed stormwater plan for the Little Lehigh Drainage Basin is not completed, adopted by the County of Lehigh, and submitted to DER by 30 June 1987, no additional sewage treatment capacity will be sold under this agreement until such time as the plan is completed, adopted and submitted to DER.

11. **[Applicability of 1981 Agreement to Capacity Acquired Under This Agreement.]** Except to the extent amended herein, the provisions in Paragraphs 7, 8, 11 and 14 of the 1981 Agreement shall apply to any capacity granted to the Authority hereunder.

12. **[Severability; Governing Law.]** If any provision hereof shall be held to be invalid, such invalidity will not affect any other provision hereof, and the remaining provisions hereof shall be construed and enforced as if such invalid provisions had not been contained herein. The laws of the Commonwealth of Pennsylvania shall govern construction hereof.

13. **[Counterparts.]** This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and attested by its proper officers, pursuant to proper action of its governing body, all as of the day and year first above written.

{Signed and Attested by Officers of the City of Allentown and Lehigh County Authority.}

## **EXHIBIT A**

### TREATMENT PLANT DESIGN DEFICIENCIES

1. The inability of the Treatment Plant to produce an effluent meeting the 3 mg/l ammonia level during the summer period if the influent ammonia concentration approaches 30 mg/l.
2. Insufficient total surface area for intermediate settling basins;
3. Inability of the rock media filter dosing chamber to function at a flow rate in excess of 34 mgd;
4. Insufficient total sludge thickener area based on the estimated solids loading to the thickeners;
5. Insufficient total primary sludge digestion volume based on initial design parameters.
6. Odor problems resulting from the lack of odor control equipment on the following unit process facilities:

Elutriation Tanks  
Aerated Grit Chamber

**CONSENT AND JOINDER**

{Separate consents and joinders in the following form were signed and attested by officers of Lower Macungie Township (dated August 21, 1986); Borough of Macungie (dated September 2, 1986); Upper Macungie Township (dated September 5, 1986); Upper Milford Township (dated August 6, 1986); Weisenberg Township (dated August 7, 1986):}

{Name of Municipality}, a municipality located in Lehigh County, Pennsylvania, for value received, and intending to be legally bound hereby, does join in and consent to the foregoing Agreement, dated for convenience as of 1 August 1986, by and between the City of Allentown and Lehigh County Authority, and to the extent applicable to it, agrees to abide by the terms of and be duly bound by the terms of said Agreement.

IN WITNESS WHEREOF, {Name of Municipality} has caused this Consent and Joinder to be executed and attested by its proper officers, pursuant to proper action taken this \_\_\_\_ day of \_\_\_\_\_, 1986.

**CONSENT AND JOINDER**

The BOROUGH OF ALBURTIS, a borough located in Lehigh County, Pennsylvania, for value received, and intending to be legally bound hereby, does hereby join in the consent to the foregoing Agreement, dated for convenience as of 1 August 1986 by and among the City of Allentown and Lehigh County Authority, and to the extent applicable to it, agrees to abide by the terms and be bound by the terms of said Agreement.

A stipulation dated December 30, 1987<sup>5</sup> was executed in settlement of civil suit 81-C-1947, Borough of Alburdis vs. County of Lehigh et al. This Consent and Joinder shall not be interpreted to waive, alter, or contradict the terms of that December 30, 1987 stipulation; however, that stipulation shall not be interpreted to give the Borough of Alburdis any rights in this Agreement different from those of the other parties to this Agreement, except that nothing contained herein shall be interpreted to waive Alburdis' right to receive payments from the County of Lehigh as provided in the December 30, 1987 Settlement Stipulation.

IN WITNESS WHEREOF, the BOROUGH OF ALBURTIS has caused this Consent and Joinder to be duly executed and attested by its proper officers, pursuant to proper action taken this 13 day of Jan., 1988.

Effective Date: 19 June 1987

{Signed and Attested by Officers of the Borough of Alburdis.}

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<sup>5</sup> **Cross-Reference:** see Codified Ordinances ¶ 65-S(2).