

The Table of Contents, the footnotes, and the section and paragraph headings shown in brackets and bold print, are NOT part of the Document, but have been added for the convenience of the reader. This Agreement was the subject of litigation and has been affected by the 1987 Alburdis Subsidy Settlement Agreement, *see* Codified Ordinances ¶ 65-S(2).

AGREEMENT

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THIS AGREEMENT, dated for convenience as of August 1, 1970, between COUNTY OF LEHIGH a Pennsylvania municipal subdivision, on the one hand, party of the first part, and the TOWNSHIPS OF UPPER MACUNGIE and LOWER MACUNGIE and the BOROUGHES OF ALBURTIS and MACUNGIE, all Pennsylvania municipal subdivisions, on the other hand, parties of the second part.

WITNESSETH:

WHEREAS, The area located in the County, North and West of the City, comprising the Municipalities, has become highly developed and presently is experiencing residential, commercial and industrial growth at a rapid rate; and

WHEREAS, The aforesaid area is not presently served with adequate sanitary sewage disposal facilities thus creating a serious public health problem in the area; and

WHEREAS, The prospective further development of said area will aggravate the existing problem and, unless corrected, impede the orderly and economic growth and development of said area and of the County as a whole; and

WHEREAS, The nature of the existing and prospective development of said area is such that the various Municipalities, acting alone within their respective political boundaries, cannot adequately or economically provide the needed sewerage service; and

WHEREAS, All of the parties hereto recognize that approaching the problem on a regional basis presents certain advantages, such as greater economy in construction and operation of facilities, the ability to provide at this time facilities having the capacity to serve future development thus avoiding later duplication of facilities, and the avoidance of a proliferation of separate facilities adding to the pollution of the streams and rivers flowing through the County; and

WHEREAS, The Commissioners of the County have formed the County Authority for the purpose, inter alia, of helping to facilitate regional solutions to such multi-municipality problems; and

WHEREAS, The County Authority, pursuant to authority vested in it by law and pursuant to the request of the Municipalities and the County, has agreed to acquire and construct a system of interceptor sewers and other related and necessary appurtenant facilities for the purpose of receiving Sewage to be collected in the Sewage Collection Systems contemplated to serve the Municipalities and transporting such Sewage to the Allentown Sewer System for treatment and ultimate disposal; and

WHEREAS, The aforesaid facilities to be acquired and constructed by the County Authority will be leased to the County for operation and use pursuant to terms of the County Lease; and

WHEREAS, Upper Macungie Authority has agreed to acquire and construct a Sewage Collection System for rendering sewage collection service, but not sewage treatment or disposal service, in and for a portion of the Township Upper Macungie, Lehigh County, Pennsylvania, and to lease said Sewage Collection System to said Township of Upper Macungie for use and operation, pursuant to terms of the Upper Macungie Lease; and

WHEREAS, Lower Macungie Authority has agreed to acquire and construct a Sewage Collection System for rendering sewage collection service, but not sewage treatment or disposal service, in and for a portion of the Township of Lower Macungie, Lehigh County, Pennsylvania, and to lease said Sewage Collection System to said Township of Lower Macungie for use and operation, pursuant to terms of the Lower Macungie Lease; and

WHEREAS, Alburdis Authority has agreed to acquire and construct a Sewage Collection System for rendering sewage collection service, but not sewage treatment or disposal service, in and for the Borough of Alburdis, Lehigh County, Pennsylvania, and to lease said Sewage Collection System to said Borough of Alburdis for use and operation, pursuant to terms of the Alburdis Lease; and

WHEREAS, Macungie Authority has agreed to acquire and construct a Sewage Collection System for rendering sewage collection service, but not sewage treatment or disposal service in and for the Borough of Macungie, Lehigh County, Pennsylvania, and to lease said Sewage Collection System to said Borough of Macungie for use and operation, pursuant to terms of the Macungie Lease; and

WHEREAS, It has been agreed by the County and the County Authority, on the one hand, and the Municipalities, on the other hand, that the Sewage Collection System for each Municipality will be connected, directly or indirectly, to the Interceptor System for transportation to the Allentown Sewer System for further transportation and for treatment and disposal and, in connection therewith, the parties hereto contemplate the execution and delivery of the Service Agreement, to be dated concurrently herewith; and

WHEREAS, The County and the County Authority, with the consent and joinder of the Municipalities, have provided for transportation, treatment and ultimate disposal of the Sewage to be collected in the Sewage Collection Systems which will serve each Municipality in accordance with the terms and provisions of the Allentown Agreements; and

WHEREAS, The County recognizes that the resources of each of the Municipalities, at their present stage of development, are not sufficient to support in full its proportionate share of the costs related to the Interceptor System, including charges to be made in accordance with the terms and provisions of the Allentown Agreements, together with the costs related to its Sewage Collection System and the County is willing to aid each Municipality in connection therewith upon certain terms and conditions as set forth herein.

NOW, THEREFORE, The County, on the one hand, and the Municipalities, on the other hand, in consideration of agreements, conditions and covenants herein contained, each intending to be legally bound, covenant and agree as follows:

SECTION 1. **[Definitions.]** The terms and phrases defined in this Section 1, for all purposes of this Agreement, as herein defined, shall have the meanings herein specified, unless the context clearly otherwise requires:

“*Act*” means the Act of the Pennsylvania General Assembly, known as the “Municipality Authorities Act of 1945”, approved May 2, 1945, P.L. 382, as amended and supplemented from time to time.

“*Agreement*” means this document and all modifications, alterations, amendments and supplements hereto made and delivered in accordance with provisions hereof and at such time constituting part hereof, which term sometimes is referred to in this document by use of such words as “hereto”, “hereby”, “herein”, “hereof”, “hereunder”, or other descriptive words or phrases having similar import.

“*Alburdis Authority*” means Borough of Alburdis Sewer Authority, a Pennsylvania municipal authority, incorporated under the Act pursuant to an ordinance of the Borough of Alburdis, Lehigh County, Pennsylvania.

“*Alburdis Lease*” means the Agreement of Lease, by and between Alburdis Authority, as lessor, and the Borough of Alburdis, Lehigh County, Pennsylvania, as lessee, as referred to in the Preamble hereof, and all modifications, alterations, amendments and supplements thereto made and delivered in accordance with provisions thereof and constituting a part thereof.¹

¹ **Cross-Reference:** see Codified Ordinances § 65-N(1).

“*Allentown Agreements*” means, collectively, the Agreement², dated December 22, 1969, between the City, as party of the first part, and the County Authority, as party of the second, part, and the Loan Agreement³, dated December 22, 1969, by and among the City, as party of the first part, and Coplay-Whitehall Sewer Authority, South Whitehall Township Authority and Salisbury Township Authority, as parties of the second part, and the County, as party of the third part, including any amendments and/or supplements to either or both of said Agreements at any time constituting a part of either or both of said Agreements.

“*Allentown Authority*” means Allentown Authority, a Pennsylvania municipality authority, incorporated under the Act pursuant to action of the City.

“*Allentown Sewer System*” means all property and facilities, from time to time, owned by Allentown Authority and/or owned by or leased to the City for the purpose of collection, transportation, treatment and disposition of Sewage, including all property, real, personal and mixed, rights, powers, licenses, easements, rights of way, privileges, franchises and any and all other property or interests in property of whatsoever nature used or useful in connection with such facilities, and together with all additions, extensions, alterations and improvements thereto which may be made or acquired, from time to time.

“*City*” means the City of Allentown, Lehigh County, Pennsylvania, a municipal subdivision of the Commonwealth.

“*Commonwealth*” means the Commonwealth of Pennsylvania.

“*Consulting Engineers*” means a Person, who shall be Independent, appointed by the governing body of a Municipality, qualified to pass upon engineering questions relating to sewage collection systems and having a favorable reputation for skill and experience in supervising construction and operation of sewage collection systems. If such Person shall be an individual, he shall be a professional engineer duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employe or member who is a professional engineer duly registered under laws of the Commonwealth.

“*County*” means the County of Lehigh, Pennsylvania, a municipal subdivision of the Commonwealth.

“*County Authority*” means Lehigh County Authority, a Pennsylvania municipality authority, incorporated under the Act pursuant to a resolution of the County.

“*County Lease*” means the Agreement of Lease, by and between the County Authority, as lessor, and the County, as lessee, as referred to in the Preamble hereof, and all modifications, alterations, amendments and supplements thereto made and delivered in accordance with provisions thereof and constituting a part thereof.

“*Dwelling Unit*” means any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as separate living quarters by a family or other group of persons living together or by a person living alone.

“*Independent*” means, with respect to the Consulting Engineers, a Person who is independent in fact and who is not a member of the Board, officer or employe of the County Authority or an elected or appointed official or employe of the County or any Municipality, or which is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the Board, officer, or employe of the County Authority or an

² **Cross-Reference:** see Codified Ordinances ¶ 65-Q(1).

³ No longer in effect.

elected or appointed official or employe of the County or any Municipality; Provided, however that the fact that such person is retained regularly by the County Authority or the County or any Municipality shall not make such Person an employe within the meaning of this definition.

“*Interceptor System*” means all facilities to be acquired and/or constructed by the County Authority, as set forth in the Preamble hereof, together with all appurtenant facilities and properties which the County Authority has acquired or hereafter shall acquire in connection therewith, including all property, real, personal and mixed, rights, powers, licenses easements, rights of way, privileges, franchises and any and all other property or interests in property of whatsoever nature used or useful in connection with such facilities, and together with all additions, extensions, alterations and improvements which may be made or acquired, from time to time, for the purpose of receiving Sewage to be collected in the Sewage Collection Systems contemplated to serve the Municipalities and transporting such Sewage to the Allentown Sewer System for treatment and ultimate disposal.

“*Lower Macungie Authority*” means Lower Macungie Township Authority, a Pennsylvania municipality authority, incorporated under the Act pursuant to an ordinance of the Township of Lower Macungie, Lehigh County, Pennsylvania.

“*Lower Macungie Lease*” means the Agreement of Lease, by and between Lower Macungie Authority, as lessor, and the Township of Lower Macungie, Lehigh County, Pennsylvania, as lessee, as referred to in the Preamble hereof, and all modifications, alterations, amendments and supplements thereto made and delivered in accordance with provisions thereof and constituting a part thereof.

“*Macungie Authority*” means Borough of Macungie Sewer Authority, a Pennsylvania municipality authority, incorporated under the Act pursuant to an ordinance of the Borough of Macungie, Lehigh County, Pennsylvania.

“*Macungie Lease*” means the Agreement of Lease, by and between Macungie Authority, as lessor, and the Borough of Macungie, Lehigh County, Pennsylvania, as lessee, as referred to in the Preamble hereof, and all modifications, alterations, amendments and supplements thereto made and delivered in accordance with provisions thereof and constituting a part thereof.

“*Municipality*” or “*Municipalities*” means, individually or collectively, as applicable and appropriate, the Townships of Lower Macungie and Upper Macungie and the Boroughs of Alburtis and Macungie, all Pennsylvania municipal subdivisions located in Lehigh County, Pennsylvania.

“*Person*” means an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipality, a municipality authority or any other group of [*sic*] entity, including the Commonwealth and Federal Governments.

“*Sewage*” means domestic sewage and/or industrial wastes, as such terms usually and customarily are used by sanitary engineers.

“*Sewage Collection System*” or “*Sewage Collection Systems*” means, individually or collectively, as applicable and appropriate, the sewage collection facilities to be acquired and/or constructed by Alburtis Authority and/or Lower Macungie Authority and/or Macungie Authority and/or Upper Macungie Authority, as applicable and appropriate, for use and operation by a Municipality or the Municipalities, as applicable, together with all appurtenant facilities and properties which have been acquired or hereafter shall be acquired in connection therewith, including all property, real, personal and mixed, rights, powers, licenses, easements, rights of way, privileges, franchises and any and all other property or interests in property of whatsoever nature used or useful in connection with such facilities, and together with all additions, extensions, alterations

and improvements which may be made or acquired, from time to time, used or useful in connection with collection and transportation of Sewage by the applicable Municipality.

“*Service Agreement*” means the Agreement⁴, dated concurrently herewith, between the County, on the one hand, and the Municipalities, on the other hand, providing, inter alia, for: (1) acquisition and construction of the Sewage Collection Systems and the Interceptor System; (2) connection of the Sewage Collection Systems to the Interceptor System; (3) the method of computing the charges to be made by the County against the Municipalities to pay for costs related to the acquisition, construction, operation and maintenance of the Interceptor System and the charges under the Allentown Agreements; and (4) additional covenants and agreements of the County and the Municipalities related to the Interceptor System and the Sewage Collection Systems.

“*Upper Macungie Authority*” means Upper Macungie Township Authority, a Pennsylvania municipality authority, incorporated under the Act pursuant to an ordinance of the Township of Upper Macungie, Lehigh County, Pennsylvania.

“*Upper Macungie Lease*” means the Agreement of Lease, by and between Upper Macungie Authority, as lessor, and the Township of Upper Macungie, Lehigh County, Pennsylvania, as lessee, as referred to in the Preamble hereof, and all modifications, alterations, amendments and supplements thereto made and delivered in accordance with provisions thereof and constituting a part thereof.

SECTION 2. **[Concurrent Execution of Service Agreement.]** The parties hereto agree that, subject to approval and execution of this Agreement, the parties concurrently will approve and execute the Service Agreement, the terms and conditions of which are incorporated herein by reference and thereby made a part hereof.

SECTION 3. **[Agreement to Provide Subsidy; Amount of Subsidy.]** In order that costs to the Municipalities related to providing sewage collection, treatment and disposal services to the public may be economically feasible, the County is willing to aid the Municipalities or any of them in providing such service and meeting their financial obligations as set forth in the Service Agreement until such time as the number of connections to the Sewage Collection System of the respective Municipality or Municipalities increase sufficiently to make such aid unnecessary by appropriating moneys to be paid to the Municipalities or any of them sufficient to permit the average annual residential rate to be maintained in each Municipality at not more than \$100 per Dwelling Unit, subject to the conditions set forth herein. The County covenants to provide in each of its annual budgets, beginning with the budget for the fiscal year beginning January 1, 1971, for sufficient current revenues to permit payments to be made to the Municipalities or any of them in amounts sufficient to accomplish the purposes set forth herein; Provided, however, that:

A. **[1971-1980.]** The total payments to be made hereunder by the County to all or any of the Municipalities, to accomplish the stated purposes during the period beginning with the calendar year of 1971, to and including the calendar year of 1980, shall not average more than \$150,000 per calendar year, with such average to be computed each year any payments are made, based upon the payments required in the then current calendar year and all calendar years previous thereto divided by the number of years expiring since January 1, 1971; and

B. **[1981 and following years.]** Any payments required to be made hereunder by the County to all or any of the Municipalities to accomplish the stated purposes subsequent to the calendar year of 1980, shall not exceed in any calendar year the larger of: (1) \$150,000, or (2) 110%

⁴ **Cross-Reference:** see Codified Ordinances ¶ 65-O(2).

of the amount required to be paid to all of the Municipalities to accomplish the stated purposes during the calendar year of 1980.⁵

SECTION 4. **[Sewer Rentals Greater than \$100/Year.]** In the event the amounts appropriated by the County and available for payment to the Municipalities pursuant to the terms hereof, together with other moneys available to each respective Municipality for the purpose, are not sufficient in any year to permit all of the Municipalities to meet their financial obligations under the Service Agreement and still maintain an average annual residential sewer rental or charge at the rate of not more than \$100 per Dwelling Unit the County and the Municipalities jointly shall determine the lowest average annual residential sewer rental or charge above \$100 per Dwelling Unit which, together with other available sources of revenues (including moneys available under terms hereof), will produce total moneys available to each Municipality sufficient to meet such obligations. Payments by the County to the Municipalities in any such year shall be apportioned among them in such amounts as to permit each of the Municipalities to maintain a residential sewer rental or charge of not more than such higher average annual rate per Dwelling Unit as so determined jointly by the County and the Municipalities.

SECTION 5. **[Requirements for Subsidy.]** Each Municipality, in order to qualify for payments to be made by the County hereunder, unless otherwise agreed to by the County, will be required:

A. **[Assessment Revenue Bonds; Minimum Assessments.]** To issue or cause to be issued Sewer Assessment Revenue Bonds in connection with the financing of the acquisition and construction of its Sewage Collection System in an amount recommended by its financial advisor as being customary and supportable by the revenues anticipated to be received by a charge of assessments against properties benefited, improved or accommodated by such construction according to the foot front rule at a rate of not less than \$8.00 per foot front to the extent permitted by law; Provided, however, that each Municipality may provide or cause to be provided equitable adjustments of the foot front rate of assessment applicable to corner properties and properties of irregular shape and provided further, however, that each Municipality will provide or cause to be provided for the charge of assessments by the benefit or board of view method against properties benefited, improved or accommodated by such construction where the foot front method of assessment is deemed legally inapplicable or would not adequately measure the benefit to a property or properties or would result in an inequitable assessment or, in settlement of any such assessment by the benefit or board of view method, will enter into or cause to be entered into an agreement in lieu of assessment.

B. **[Minimum Tapping Fee.]** To charge or cause to be charged a tapping fee or connection fee against the owner of any property who connects such property to the Sewage Collection System serving such Municipality at a rate of not less than \$100 per connection.

C. **[Sewer Rentals for Non-Residential Properties.]** To impose or cause to be imposed reasonable and uniform sewer rentals or charges for service to all classes of customers other than residential at rates which are determined by the Consulting Engineers of the applicable Municipality to be equitable when compared with the residential rate at the time in effect in the applicable Municipality and the use made of the Sewage Collection System and the services rendered by the applicable Municipality in connection therewith and in connection with the Interceptor System.

D. **[Refund of Bonds When Interest Rates Fall More Than 0.25%.]** Upon written request of the County, and within six months of receipt of such request, to refund any sewer revenue bonds secured by rentals payable under the Alburtis Lease or the Lower Macungie Lease or the Macungie Lease or the Upper Macungie Lease, as applicable; Provided, however, that no

⁵ **Cross-Reference:** *see* Section 13 of the December 29, 1981 Allentown Sewer Service Agreement (Codified Ordinances § 65-Q(2)) for a renunciation of subsidies by all parties other than Alburtis. Subsidies for Alburtis were the subject of lengthy litigation, which was settled in 1987. *See* Codified Ordinances § 65-S(2).

such obligation shall exist if such Municipality is advised, in writing, by its financial advisor that such refunding bonds could not be issued during such time under then current market conditions at an average net interest cost of at least 1/4 of 1% less than the average net interest cost which was applicable to any series of bonds to be refunded, computed as of the time of issuance of such series of bonds to be refunded.

SECTION 6. **[Subsidy Is a Grant, Not a Loan.]** The Municipalities shall incur no obligation here under to return to the County any appropriations or payments made by the County pursuant to terms hereof.

SECTION 7. **[Subsidy Restricted to Sewer Purposes.]** Each Municipality covenants and agrees to deposit in its Sewer Revenue Account created in Section 5.01 of the Service Agreement, all moneys paid to it pursuant to terms hereof and to use such moneys solely for purposes authorized in the Service Agreement.

SECTION 8. **[Transfer of Collection Systems from Municipality to Authority or Others.]** If Albutis Authority or any successor thereof or any trustee, receiver, officer, board, commission, agency, instrumentality or other Person to whom or which any right, power or duty of Albutis Authority may be transferred, voluntarily or involuntarily, shall come into possession of the Sewage Collection System leased to the Borough of Albutis under the Albutis Lease, then all covenants herein by, in behalf of or for the benefit of the Borough of Albutis, to the extent permitted by law, shall bind or inure to the benefit of such successor in possession of such Sewage Collection System.

If Lower Macungie Authority or any successor thereof or any trustee, receiver, officer, board, commission, agency, instrumentality or other Person to whom or which any right, power or duty of Lower Macungie Authority may be transferred, voluntarily or involuntarily, shall come into possession of the Sewage Collection System leased to the Township of Lower Macungie under the Lower Macungie Lease, then all covenants herein by, in behalf of or for the benefit of the Township of Lower Macungie, to the extent permitted by law, shall bind or inure to the benefit of such successor in possession of such Sewage Collection System.

If Macungie Authority or any successor thereof or any trustee, receiver, officer, board, commission, agency, instrumentality or other Person to whom or which any right, power or duty of Macungie Authority may be transferred, voluntarily or involuntarily, shall come into possession of the Sewage Collection System leased to the Borough of Macungie under the Macungie Lease, then all covenants herein by, in behalf of or for the benefit of the Borough of Macungie, to the extent permitted by law, shall bind or inure to the benefit of such successor in possession of such Sewage Collection System.

If Upper Macungie Authority or any successor thereof or any trustee, receiver, officer, board, commission, agency, instrumentality or other Person to whom or which any right, power or duty of Upper Macungie Authority may be transferred, voluntarily or involuntarily, shall come into possession of the Sewage Collection System leased to the Township of Upper Macungie under the Upper Macungie Lease, then all covenants herein by, in behalf of or for the benefit of the Township of Upper Macungie, to the extent permitted by law, shall bind or inure to the benefit of such successor in possession of such Sewage Collection System.

SECTION 9. **[State Approval of Collection Systems.]** Each Municipality, as a condition precedent to receiving any payments hereunder from the County, shall secure approval of its Sewage Collection System by the Sanitary Water Board of the Pennsylvania Department of Health in the manner provided by law.

SECTION 10. **[Amendments to Comply With Law.]** The parties hereto covenant and agree to enter into modifications, alterations, amendments or supplements to this Agreement which are not inconsistent with the purposes hereof, if any such modifications, alterations, amendments or supplements are required in order to comply with applicable law.

SECTION 11. **[Severability; Governing Law.]** If any provision hereof shall be held to be invalid, such invalidity shall not affect any other provision hereof, and the remaining provisions hereof shall be construed and enforced as if such invalid provision had not been contained herein. Laws of the Commonwealth shall govern construction hereof.

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 the governing body, all as of the day and year first above written.

{Signed and Attested by Officers of the County of Lehigh, Borough of Alburtis, Borough of Macungie, Township of Upper Macungie, and Township of Lower Macungie}