

BOROUGH OF ALBERTIS

Lehigh County, Pennsylvania

ORDINANCE NO. 79

AN ORDINANCE

OF THE COUNCIL OF THE BOROUGH OF ALBERTIS, LEHIGH COUNTY, PENNSYLVANIA, AUTHORIZING AND DIRECTING EXECUTION AND DELIVERY OF AN AGREEMENT OF LEASE, DATED AS OF DECEMBER 1, 1958, FROM ALBERTIS BOROUGH AUTHORITY, AS LESSOR, TO THE BOROUGH OF ALBERTIS, LEHIGH COUNTY, PENNSYLVANIA, AS LESSEE, UNDER WHICH AGREEMENT OF LEASE SAID AUTHORITY WILL LEASE TO SAID BOROUGH, FOR OPERATION AND USE, FOR A TERM OF FOURTEEN (14) YEARS, BEGINNING DECEMBER 1, 1958 AND ENDING NOVEMBER 30, 1972, THE WATER PROPERTY, AS THAT TERM IS DEFINED IN SAID AGREEMENT OF LEASE, OF SAID AUTHORITY, AND UNDER WHICH AGREEMENT OF LEASE SAID BOROUGH WILL AGREE TO PAY CERTAIN RENTALS, TO PAY CERTAIN OTHER SUMS AND TO OBSERVE CERTAIN COVENANTS AND AGREEMENTS, ALL WITH RESPECT TO SAID WATER PROPERTY; APPROVING THE FORM OF SAID AGREEMENT OF LEASE; AND AUTHORIZING CERTAIN OTHER NECESSARY ACTION.

The council of the Borough of Albertis, Lehigh County, Pennsylvania (the "Borough") enacts and ordains as follows:

SECTION 1. The Borough, as lessee, shall enter into an Agreement of Lease, dated as of December 1, 1958 (the "Lease"), with Albertis Borough Authority (the "Authority"), as lessor, under terms of which Lease the Authority covenants and agrees, inter alia, to alter, improve and expand water supply facilities of the Borough Water System (the "Project"), which term "Borough Water System" is defined in the Lease, which Project is to be undertaken on certain land, described in the Lease, which land, together with all improvements and facilities located thereon, from time to time, in the Lease and herein are referred to as the "Water Property", and under terms of which Lease the Water Property shall be leased to the Borough, for operation and use, for a term of fourteen (14) years, commencing on December 1, 1958, and ending on November 30, 1972, and which Lease, among other things, provides for: (a) payment by the Borough to the Authority or its assigns, from current revenues of the Borough or such other funds as legally may be available, of an annual net rental of Four Thousand One Hundred (\$4,100) Dollars, payable in equal installments on or before May 15 and October 15 of each year, beginning May 15, 1959, to and including October 15, 1972; (b) covenants by the Borough to pay the aforesaid annual net rental, without suspension or abatement, irrespective of delays in completion of any construction, alterations or improvements with respect to the Water Property and notwithstanding that any part of the Water Property shall have been wholly or partially destroyed, damaged or injured and shall not have been repaired, replaced or rebuilt, and to pay all charges against or which might diminish said annual net rental; (c) covenants by the Borough to pay any additional amounts which are required to be paid by it under the Lease; (d) a covenant by the Borough to provide in each annual budget during the term of the Lease for sufficient current revenues which, together with such other funds as legally may be available, will enable it to meet all obligations assumed under the Lease;

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(e) covenants by the Borough to take out, pay for and maintain adequate fire and extended coverage insurance upon physical structures and improvements constituting part of the Water Property at not less than 80% of the insurable value of such physical structures and improvements and to take out, pay for and maintain adequate public liability, property damage and workmen's compensation insurance with respect to the Water Property and providing for disposition of insurance moneys collected in the event of fire or similar casualty; (f) covenants by the Borough to continuously operate the Water Property, to keep and maintain the same in good repair, working order and condition, to pay all costs necessary for such maintenance and repair, to replace all equipment as may be necessary, to pay all charges for utilities and services furnished and supplied to and upon the Water Property, to pay all levies, taxes, assessments and other charges which may be levied upon the Authority, the Water Property or the aforesaid annual net rentals and to comply with all valid acts, rules, regulations, orders and directives of any legislative, executive, administrative or judicial body applicable to the Water Property; (g) a covenant by the Borough to retain a reputable engineering firm or engineer, appointed by the Authority, to inspect the Water Property at least once every three (3) years and to make a written report on the condition thereof, together with an estimate of the insurable value of physical structures and improvements; (h) covenants by the Borough not to assign the Lease, sublet any part of the Water Property, make or permit to be made any alterations, additions or improvements to the Water Property or remove any part of the Water Property without approval of the Authority; (i) a covenant by the Borough to assume all liability and responsibility for any injury or damage to persons or property caused, directly or indirectly, by the Borough's occupancy, maintenance and operation of the Water Property; (j) a covenant by the Borough to furnish to the Authority copies of its proposed annual budget for each fiscal year during the term of the Lease prior to adoption thereof and also copies of each annual budget as adopted; (k) a covenant by the Borough to surrender, without notice, quiet and peaceable possession of the Water Property to the Authority at the termination of the Lease in the same good order and condition in which the same was received, except as specifically provided in the Lease; (l) waiver by the Borough of all exemption laws; (m) appointment of a receiver of the Water Property in the event of default under the Lease on the part of the Borough; (n) a covenant by the Borough to allow the Authority to enter upon and inspect the Water Property; (o) covenants by the Borough in the event the Authority shall determine to issue additional bonds; (p) conveyance to the Borough or release from operation of the Lease of part of the Water Property; (q) assignment by the Authority of the Lease to The First National Bank of Allentown, Allentown, Pennsylvania, as Trustee, in order to secure payment of Water Revenue Bonds of the Authority; (r) the option of the Borough to employ a person, partnership, corporation, association or other instrumentality, including the Authority, to manage operation of the Water Property; (s) covenants by the Authority to furnish to the Borough a copy of each annual statement prepared by its certified public accountant and to allow the Borough to examine its records; (t) termination of rental payments upon certain conditions; and (u) other terms and provisions.

SECTION 2. The Lease, in the form presented to this meeting, is approved and a copy thereof is directed to be filed with the Secretary of the Borough for inspection by any interested party.

SECTION 3. The Burgess, President of Council and Secretary of the Borough are directed to execute the Lease in behalf of the Borough, substantially in the form presented to this meeting, subject to such changes and modifications, if any, as may be approved by the Borough Solicitor; and proper officers of the Borough are authorized and empowered

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to execute all such other papers and documents and to do all such other acts as may be necessary or proper in order to carry out covenants and agreements of the Borough as contained in the Lease.

SECTION 4. This Ordinance shall become effective immediately.

SECTION 5. In the event any provisions, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provisions, section, sentence, clause or part of this Ordinance, it being the intent of the Borough that such remainder shall be and shall remain in full force and effect.

SECTION 6. All other ordinances and parts of ordinances inconsistent herewith shall be and the same expressly are repealed.

DULY ENACTED AND ORDAINED this 5th day of January, 1959, by the Council of the Borough of Alburtis, Lehigh County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF ALBURTIS,
Lehigh County, Pennsylvania

By: George K. Scherer
President of Council

ATTEST:

Joyce Schaller
Secretary

(SEAL)

Examined and approved this 5th day of January, 1959.

Richard Bond
Burgess of the Borough of Alburtis,
Lehigh County, Pennsylvania.

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CERTIFICATE

We, George Scherer and Joyce Schadler, President of Council and Secretary, respectively, of the Borough of ALBURTIS, Lehigh County, Pennsylvania (the "Borough"), certify that the foregoing is a true and correct copy of an Ordinance of the Council of the Borough which was duly enacted by affirmative vote of a majority of all members of said Council at a meeting thereof duly held on the 5th day of January, 1959; that said Ordinance was examined and approved on the same date by the Burgess of the Borough; that said Ordinance has been duly recorded in the Ordinance Book of said Borough; that said Ordinance was duly published, as required by law, in the Allentown Morning Call, on January , 1959; and that said Ordinance remains in full force and effect, unaltered and unamended, as of the date of this Certificate.

IN WITNESS WHEREOF, we set out hands and the Secretary affixed the official seal of the BOROUGH OF ALBURTIS, Lehigh County, Pennsylvania, this 5th day of January, 1959.

George K. Scherer
President of Council

Joyce Schadler
Secretary

(SEAL)