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AMENDMENT TO SEWER AND WATER AGREEMENT

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THIS IS AN AMENDMENT to the Agreement ¹dated June 30, 1969 among THE F. & M. SCHAEFER BREWING CO., (“Schaefer”), on the one part, and the COUNTY OF LEHIGH (“the County”), the LEHIGH COUNTY AUTHORITY (“the Authority”) and the TOWNSHIP OF UPPER MACUNGIE (“the Township”) on the other part, for the supply of Sewer and Water Service to Schaefer (“the Agreement”).

BACKGROUND

- I. On or about June 30, 1969, Schaefer, on the one part, and the County, the Authority and the Township, on the other part, entered into an Agreement for the supply of permanent Sewer and Water Service to a new Schaefer Brewery Facility to be constructed near the intersection of Routes 22 and 100 in Upper Macungie Township, Lehigh County, Pennsylvania.
- II. Schaefer thereafter constructed its new Facility and Sewer and Water Service was provided to the Facility.
- III. From time to time various disputes have arisen among the parties concerning the interpretation of the Agreement.
- IV. In an effort to amicably resolve their disputes and establish a basis for future rate making the parties have entered into this Amendment.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties have agreed to the following Amendment to the Agreement.

1. **Disputed Billings and Schaefer Claims of Overcharge** – Schaefer will be given credit for 50% of the amount of payments withheld from water invoices dated 14 November 1975 to 2 June 1977, in-

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

clusive, and corresponding sewer invoices. The credit will amount to approximately \$88,786 in the case of water and approximately \$56,918 in the case of sewer. Any amounts disputed and withheld by Schaefer in excess of such credit shall be repaid by Schaefer without interest in 24 equal monthly installments, the first three installments being due with the execution of this Amendment, subsequent installments to be due the last day of each month commencing with November 1977, and if the last day is a holiday or non-working day then the first working day thereafter.

2. **Tapping and Assessment Status** – There are no outstanding tapping or assessment charges applicable to Schaefer.

3. **Future Water Rates** – As of 1 July 1977 and continuing to at least 31 December 1978 water charges shall be a maximum of \$.55 per thousand gallons. Thereafter, charges, which must be fair and reasonable based on the cost of service, may be adjusted not more often than annually, with rate justifications to be supplied to Schaefer not less than 90 days prior to the effective date of such new rates. Schaefer shall have the right to comment and state to the Authority any objections, in addition to such rights of appeal as may be provided in law. In determining the debt service to be included in the rates, the actual financing method in force at any given time shall determine the applicable interest charges. Principal payments shall be based upon an amortization schedule in accordance with the terms of any bond indenture; provided that so long as bank financing is employed, amortization shall be calculated on the basis of an assumed term of 30 years.

4. **Acquisitions and Capital Improvements** – In the case of acquisitions of existing water systems and water distribution system improvements, the Authority agrees that costs related to the acquisitions and improvements shall not be recovered by rates imposed upon Schaefer, except to the extent that such additions or improvements are used or useful in providing service to Schaefer.

5. **Future Sewer Rates** – Sewer rates to Schaefer, which must be fair and reasonable, shall be the sum of the Authority's rates to the Township plus Schaefer's pro-rata share of Upper Macungie Township Authority's existing annual debt service, which it is agreed has a maximum cost of \$80,000, and which pro-rata share shall be computed on the basis of distribution to all customers connected to the existing sewer system in proportion to their volumes of sewage flow. This is not to be construed as any agreement by Schaefer as to such proportion being an appropriate basis for otherwise establishing or determining the fairness and reasonableness of sewer and water rates to Schaefer. Until at least 31 December 1978 the aggregate sewer rate to Schaefer shall not exceed \$.61 per thousand gallons, except for BOD and suspended solids surcharges, if any, as may be applicable pursuant to paragraph 7 below. Thereafter, rates for sewer service may be adjusted subject to the limitations and criteria set forth above; provided that such adjustments shall be no more often than annually, with rate justification, notice and right to comment as provided in paragraph 3.

6. **Rules and Regulations** – Water Service shall be in accordance with the Rules and Regulations applicable to large users as may be reasonably adopted from time to time by the Authority; Schaefer shall be given 60 days prior to the effective date of any amendment during which to comment on such amendment and to request modifications in any respect in which it considers them to be inapplicable or inappropriate for service to Schaefer. Rules and Regulations shall not be inconsistent with the provisions of the Agreement, as amended by this and any other amendments thereto.

7. **Basis of Sewage Quality Measurements** – BOD₅ and suspended solids shall be determined on the basis of pounds per day and not parts per million. The BOD₅ limits shall be 16,760 pounds per day, with a maximum strength of 1320 milligrams per liter (mg/l), to be determined by the average of 7 consecutive 24-hour composite samples to be collected monthly by the Authority, with the samples to be split three ways and analyzed by the Authority, Schaefer and an independent laboratory mutually agreed upon, the charges for which shall be divided equally between Schaefer and the Authority. The average of the results of such analyses shall be deemed to represent average conditions for the month during which they are taken for all computations under this paragraph, and such average shall be conclusive, provided that, in the event that the difference of any analytical result and the average of the other two shall exceed

three times the difference between the other two, such deviant value shall be rejected. Suspended solids shall be similarly determined, with the limit being 4570 pounds per day. The governmental parties will in good faith consider increasing the allowable strength limits by no later than 15 months after activation of the additions to the Allentown Sewer Plant. It is further agreed that, in addition to the sewer rates based upon quantity, as provided above in paragraph 5, there shall be an additional charge of \$0.178 per million gallons for each milligram per liter, if any, by which the BOD₅ shall exceed 1100 milligrams per liter. In the same manner there shall be an additional charge of \$0.658 per million gallons for each milligram per liter, if any, by which the suspended solids shall exceed 300 milligrams per liter. Payment of such additional charges, if any, for BOD₅ and/or suspended solids shall not be deemed as a waiver of the limits herein prescribed. The surcharges stated above have been calculated on the basis of 1977 cost levels, and nothing herein contained shall prevent the adjustment of such surcharges to reflect changes in the cost of disposing of wastes of having BOD in excess of 1100 milligrams per liter and/or suspended solids content in excess of 300 milligrams per liter. Any such adjustment shall be fair and reasonable based on cost of service and shall be not more frequent than annually, with rate justification, notice and right to comment and object as provided in paragraph 5.

8. **Diatomaceous Earth** – Schaefer may discharge diatomaceous earth with its wastewater.

9. **Protection of Sewers** – Any time that the sulfide level in the wastewater, measured at the first manhole upstream from the junction manhole in which the interceptors serving Schaefer and Kraft join, shall exceed 0.5 milligram per liter by virtue of Schaefer discharge for three days out of any seven-day period, Schaefer shall immediately take steps to correct this condition by the introduction of oxidizing chemical or by other reasonable means approved by the Authority; such corrective measures shall be accomplished within ten days of notification of the conditions by the Authority or, if not correctable in such amount of time, such longer period as may be required in the exercise of due diligence.

10. **Pretreatment** – The County of Lehigh shall remain responsible for the pretreatment of the wastes from Schaefer, to the extent required.

11. **Permanent Public Water and Sewer Service** – The responsibility to provide permanent public water and sewer service under this agreement, as amended, shall be the obligation, joint and several, of the County, the Authority and the Township. The division of these responsibilities among the County, the Authority and the Township in regard to ownership, financing and operation of the facilities shall be pursuant to agreements among, inter alia, the County, the Authority, and the Township; provided that any such division or agreements shall not modify the joint and several obligation of the parties as set forth above. In the event Schaefer expands its Lehigh Valley facility so as to require additional water and/or sewer service the governmental parties agree to use their best efforts to attempt to provide such service.

12. **Effect of Amendment** – All other terms and conditions of the Agreement shall remain in full force and effect except to the extent specifically modified by the above Amendments. The paragraph headings are for convenience only and are not intended to be made part of any term or interpretation of the Agreement or this or any subsequent amendment. The Agreement and this Amendment are binding on the parties, their successors and assigns.

13. **Applicable Law** – This Agreement and Amendment shall be construed and interpreted under the law of Pennsylvania.

14. **[Termination of Litigation.]** Upon execution hereof, Schaefer will withdraw and terminate its Complaint in Equity pending before the Court of Common Pleas of Lehigh County at No. 15 June Term, 1977 in Equity. The withdrawal and termination will be with prejudice with respect to the rates charged and billed and without prejudice with respect to the service and service interruption aspects. The County, the Authority and if applicable, the Township, agree not to join, voluntarily, Schaefer or Kraft as a party to the litigation instituted by the City of Allentown and pending before the Court of Common Pleas of Lehigh County, at No. 27 September Term, 1977, in Equity.

INTENDING TO BE LEGALLY BOUND and having the power and authority to so do, the parties have entered into this Amendment to Agreement as of the 29th day of December 1977.

{Signed and Attested by Officers of the County of Lehigh, Lehigh County Authority, Upper Macungie Township, and The F. & M. Schaefer Brewing Co.}