

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 311

(Duly Adopted October 12, 1994)

AN ORDINANCE AUTHORIZING THE EXECUTION OF A SEWER TRANSMISSION AGREEMENT WITH THE TOWNSHIP OF LOWER MACUNGIE AND THE BOROUGH OF ALBURTIS SEWER AUTHORITY.

WHEREAS, the Borough of Alburdis Sewer Authority owns, and the Borough of Alburdis leases and operates, a sanitary sewage collection and transmission system within the Borough of Alburdis (the “**Alburdis Sewer System**”); and

WHEREAS, the Township of Lower Macungie owns and operates a sanitary sewage collection and transmission system within the Township of Lower Macungie (the “**Lower Macungie Sewer System**”); and

WHEREAS, both the Alburdis Sewer System and the Lower Macungie Sewer System discharge sanitary sewage into both the Western Lehigh Interceptor and the City of Allentown interceptor for ultimate treatment at the City of Allentown’s sewage treatment plant; and

WHEREAS, portions of each municipality are in the drainage basin served by the other municipality’s sewer system; and

WHEREAS, it may be convenient and/or cost-effective, now or in the future, for sewage generated within one municipality to be transported to or towards the Western Lehigh Interceptor via transmission lines or mains of the other municipality’s sewer system; and

WHEREAS, Borough Council is willing to enter into a Sewage Transmission Agreement with Borough of Alburdis Sewer Authority and the Township of Lower Macungie in the form attached hereto;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburdis, Lehigh County, Pennsylvania, as follows:

SECTION 1. The President of Borough Council and the Borough Secretary are authorized to execute on behalf of the Borough of Alburdis a Sewer Transmission Agreement among the Borough of Alburdis, Borough of Alburdis Sewer Authority, and the Township of Lower Macungie in the form attached to this Ordinance as **Exhibit A**, and incorporated herein by reference.

SECTION 2. The conditions of the agreement, the duration of the term of the agreement, the purpose and objectives of the agreement (including the relative rights and duties of the parties), the manner and extent of financing the agreement, and the manner in which property shall be acquired, managed, licensed, or disposed of, are set forth in **Exhibit A**. No special organizational structure is necessary to implement the Agreement other than as set forth in **Exhibit A**, and no new entity is being created in connection with the agreement.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Alburdis, this 12th day of October, 1994, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURDIS

Carlton R. Raines, President

Attest:

Louise Staub, Secretary

AND NOW, this 12th day of October, 1994, the above Ordinance is hereby
APPROVED.

Ronald J. DeIaco, Mayor

EXHIBIT A
SEWER TRANSMISSION AGREEMENT

This Agreement is made as of the ____ day of _____,

1994, by and among:

The **Borough of Alburdis**, a municipal corporation organized and existing as a borough and political subdivision of the Commonwealth of Pennsylvania, with principal offices located at 260 Franklin Street, Alburdis, Pennsylvania 18011 (“**Alburdis**”);

The **Borough of Alburdis Sewer Authority**, a municipal authority organized and existing under the Pennsylvania Municipality Authorities Act of 1945, as amended, with principal offices located at 260 Franklin Street, Alburdis, Pennsylvania 18011 (“**Alburdis Sewer Authority**”); and

The **Township of Lower Macungie**, a municipal corporation organized and existing as a second class township and political subdivision of the Commonwealth of Pennsylvania, with principal offices located at 3400 Brookside Road, Macungie, Pennsylvania 18062 (“**Township**”).

(Hereinafter, Alburdis and Alburdis Sewer Authority may be referred to jointly as the “**Borough Parties**”).

Whereas, the Borough Parties own and operate a sanitary sewage collection and transmission system within the Borough of Alburdis (hereinafter, the “**Alburdis Sewer System**”); and

Whereas, the Township owns and operates a sanitary sewage collection and transmission system within Lower Macungie Township (hereinafter, the “**Lower Macungie Sewer System**”); and

Whereas, both the Alburdis Sewer System and the Lower Macungie Sewer System discharge sanitary sewage into both the Western Lehigh Interceptor and the

City of Allentown interceptor for ultimate treatment at the City of Allentown's sewage treatment plan; and

Whereas, portions of Lower Macungie Township are in the drainage basin served by the Alburtis Sewer System; and

Whereas, portions of the Borough of Alburtis are in the drainage basin served by the Lower Macungie Sewer System; and

Whereas, it may be convenient and/or cost-effective, now or in the future, for sewage generated within Lower Macungie Township to be transported to or towards the Western Lehigh Interceptor via transmission lines or mains of the Alburtis Sewer System, and it may be convenient and/or cost-effective, now or in the future, for sewage generated within the Borough of Alburtis to be transported to or towards the Western Lehigh Interceptor via transmission lines or mains of the Lower Macungie Sewer System; and

Whereas, the Borough Parties and the Township are each willing to permit the other to transport sewage through their lines and mains in accordance with the terms and conditions stated below;

Now, therefore, the parties, for and in consideration of their mutual promises, covenants, and forbearances, and intending to be legally bound, do hereby agree as follows:

§ 1 Transmission Services.

(a) Request for Service.

(1) By Township. If, at any time, whether or not as part of a subdivision review process, the Township shall be willing to provide public sewer service to a particular tract of land in Lower Macungie Township, and shall determine that it is preferable that sewage generated and discharged from such

tract of land be transported to or towards the Western Lehigh Interceptor via transmission lines or mains of the Alburtis Sewer System, the Township shall submit a written request to the Borough Parties for approval to connect to or flow through the Alburtis Sewer System. (Hereinafter, with respect to any request under this paragraph (1) and any services provided as a result of such a request, the Township may be referred to as the “**Requesting Party**” and the Borough Parties, collectively, may be referred to as the “**Transmission Party**”.)

(2) By Borough. If, at any time, whether or not as part of a subdivision review process, the Borough Parties shall be willing to provide public sewer service to a particular tract of land in the Borough of Alburtis, and shall determine that it is preferable that sewage generated and discharged from such tract of land be transported to or towards the Western Lehigh Interceptor via transmission lines or mains of the Lower Macungie Sewer System, the Borough Parties (or one of them) shall submit a written request to the Township for approval to connect to or flow through the Lower Macungie Sewer System. (Hereinafter, with respect to any request under this paragraph (2) and any services provided as a result of such a request, the Borough Parties may be referred to collectively as the “**Requesting Party**” and the Township may be referred to as the “**Transmission Party**”.)

(3) Capacity. All requests under this subsection (a) shall identify the specific tract(s) of land to be served and the maximum volume of flow to be permitted with respect to those tracts. If it should ever be desired to increase the maximum volume of flow to be permitted with respect to any tract, the Requesting Party shall submit a new written request to the Transmission Party.

(b) Approval or Denial of Transmission Service. A request for service under subsection (a) may be approved or denied by the Transmission Party in its sole discretion. No sewage generated or discharged from a tract of land in the Borough of Alburtis shall be transmitted through any part of the Lower Macungie System without the approval of the Township, and no sewage generated or discharged from a tract of land in Lower Macungie Township shall be transmitted through any part of the Alburtis System without the approval of the Borough Parties. No connection shall be made to the Lower Macungie System without the approval of the Township, and no connection shall be made to the Alburtis System without the approval of the Borough Parties. If any unapproved sewage or any

volume of sewage in excess of that permitted shall flow into the system of the Transmitting Party, the Transmitting Party shall be entitled to an injunction and all damages, costs, or expenses arising out of the violation. Upon approval of a request for service, sewage from the affected tract of land in the approved volume of flow may be discharged into the system of the Transmission Party in perpetuity, *subject to* the provisions of § 3(a) of this Agreement.

(c) Evaluation of Request. The Requesting Party shall reimburse the Transmission Party for all reasonable salary expenses and engineering fees related to the consideration of a request for service under subsection (a), including, without limitation, estimates of present and future use of capacity in the sewer system of the Transmission Party, and evaluation of designs. If requested by the Requesting Party, the Transmission Party shall provide the Requesting Party with estimates of the cost of such review and consideration before incurring any such expenses; in that case, the Transmission Party shall not exceed such estimates without the consent of the Requesting Party.

(d) Customers. All persons or entities using tracts of land located entirely within the Borough of Alburytis shall be served by and shall be customers of the Borough Parties with respect to sewer service for such tracts. All persons or entities using tracts of land located entirely within Lower Macungie Township shall be served by and shall be customers of the Township with respect to sewer service for such tracts. In the case of tracts of land which lie partly within the Borough of Alburytis and partly within Lower Macungie Township, the location of the point at which sewage is discharged from the tract shall determine which parties shall provide service: the Alburytis Parties shall have the right to provide sewer service if the discharge point is within the Borough of Alburytis, and the Township shall have the right to provide sewer service if the discharge point is within Lower Macungie Township.

(e) Inspection or Construction of Connection Facilities. The Transmission Party shall have the right to construct or inspect facilities which connect the system of the Requesting Party to the system of the Transmission Party. The Requesting Party shall reimburse the Transmission Party for all reasonable salary expenses and engineering fees related to such construction or inspection. If requested by the Requesting Party, the Transmission Party shall provide the Requesting Party with estimates of the cost of such inspection or construction

before incurring any such expenses; in that case, the Transmission Party shall not exceed such estimates without the consent of the Requesting Party.

(f) Emergency System Failures. In the event of an emergency or catastrophe causing a temporary failure or limit of flow of sewage, the Transmission Party agrees to treat the customers of the Requesting Party on the same basis as the customers of the Transmission Party, and the Requesting Party agrees to impose upon its customers the same restrictions that the Transmission Party has imposed upon its own customers.

§ 2 Charges.

(a) Operation and Maintenance Expenses.

(1) In General. The Requesting Party shall pay the Transmission Party the Requesting Party's pro rata share of the operation and maintenance expenses (including reasonable salaries and fees for services) incurred by the Transmission Party with respect to transmission lines or mains through which sewage generated or discharged by customers of the Requesting Party flows. Such expenses shall be paid within thirty (30) days after they are billed by the Transmission Party.

(2) Expenses. For purposes of this subsection (a), the term "operation and maintenance expenses" is intended to include, without limitation, reasonable costs and expenses associated with sewer line inspection, infiltration/inflow analyses or studies, sewer line flushing, removal of roots, removal of deposits such as detergent, sediment or grease, sewer line elevation inspection, excavation and repair of isolated sewer line fractures or breaks, manhole rehabilitation, adjustment or resetting of manhole frames and covers, and installation of water-tight manhole inserts, and any abnormal operation or maintenance expenses.

(3) Pro Rata. For purposes of this subsection (a), the pro rata share of the parties shall be determined by a reasonable estimate of the relative volumes of average daily flow (over the course of a full year) in any given line at any given point which is generated by customers of the Transmission Party versus

customers of the Requesting Party. If the parties cannot agree on such an estimate, they shall select a neutral engineer to make the estimate, or, if they cannot agree on a neutral engineer, either party may request the Court of Common Pleas of Lehigh County to appoint a neutral engineer to make the estimate. The costs of the neutral engineer shall be divided equally by the Transmission Party and the Requesting Party. Any final estimate under this paragraph (3) shall remain binding on all of the parties for a period of two (2) years, unless any party can present data from which a reasonable person could conclude that the percentage of flow from the customers of the Transmission Party has increased or decreased by more than five (5) percentage points since the last estimate.

(4) Notice. Except in emergency situations, the Transmission Party shall notify the Requesting Party that it intends to incur expenses covered under this subsection (a) at least thirty (30) calendar days before such expenses are incurred. The notice shall provide an estimate of the amount of such expenses, and shall permit the Requesting Party to make comments and suggest alternatives.

(b) Tapping and Connection Fees. The Transmission Party may charge the Requesting Party a tapping fee for each equivalent dwelling unit (or portion thereof) of sewage flow which is newly authorized to flow through facilities of the Transmission Party. The tapping fee (per EDU) shall not exceed that portion of the “capacity part” and the “distribution part” of the “tapping fee” (per EDU) then imposed by the Transmission Party (or one of them) in accordance with the provisions of Act 203 of 1990 (or of that Act as applied to municipalities through the Municipalities Planning Code), which is attributable to the facilities through which the sewage of the Requesting Party flows. The Requesting Party, not the Transmission Party, shall charge any Act 203 tapping, connection, and other charges to the customers of the Requesting Party in accordance with the ordinances and resolutions of the Requesting Party. The Requesting Party may take any charges imposed on them under this subsection (b) into account in determining the Act 203 charges it imposes on its own customers.

(c) Downstream Charges and Allocations. The Requesting Party shall pay all charges imposed by owners of downstream transmission, treatment, or disposal facilities with respect to sewage generated and discharged by customers of the Requesting Party, regardless of whether such sewage has passed through the sewer system of the Transmission Party. The volume of sewage discharged

from the system of the Requesting Party into the system of the Transmission Party shall be attributed to the capacity allocations of the Requesting Party in downstream facilities, and shall not be charged against the capacity allocations of the Transmission Party in the downstream facilities.

(d) Provision of Data; Meters. The parties agree to provide each other, upon request, with any relevant sewage flow data which is available (and any water consumption data which is available for properties which are not metered for sewage discharge). The Requesting Party may, and at the request of the Transmission Party shall, install and maintain, at its own expense, a sewage metering facility acceptable to the Transmission Party to record the actual sewage flow from the system of the Requesting Party into the system of the Transmission Party.

§ 3 Replacement or Relief Facilities.

(a) Replacement.

(1) In General. In the event that it may become necessary, as a result of age, deterioration, normal “wear and tear,” Act of God, negligence, intentional misconduct, or otherwise, to replace or undertake major reconstruction of any sewer lines of the system of the Transmission Party through which sewage generated by customers of the Requesting Party flows, the project costs shall be shared by the Requesting Party and the Transmission Party in proportion to their respective flows at that time through the lines to be reconstructed or replaced, unless the need for replacement or repair was caused by the direct or indirect negligence or intentional misconduct of one of the parties. The proportion shall be determined in the same manner as the estimate under § 2(a)(3) of this Agreement. Project costs shall include construction costs, engineering costs, legal costs, right-of-way acquisition costs, financing costs, and other costs directly related to the project. After the completion of such a project, no tapping fees shall be charged by the Transmission Party under § 2(b) of this Agreement with respect to the new facilities included in such project, or the facilities replaced by such project.

(2) Determination of Need by Transmission Party; Opposition by Requesting Party. The Transmission Party shall have the right to determine the necessity for replacement or reconstruction and to undertake the project, *provided* that the Requesting Party is given sufficient notice of the design and costs of the project, as they develop, to permit the Requesting Party to make comments at all stages. Further, if the Requesting Party does not accept the replacement or reconstruction project as finally proposed by the Transmission Party, the Transmission Party shall continue to accept and transport sewage from customers of the Requesting Party through the affected lines or alternative lines for at least one (1) calendar year after the rejection by the Requesting Party. In that event, the Requesting Party shall discontinue, before the end of said one (1) year period, all flow of sewage from customers of the Requesting Party through the lines of the Transmission Party which are to be replaced or reconstructed, and the Requesting Party shall not be obligated under paragraph (1) to contribute to the cost of replacement or reconstruction.

(b) Relief Facilities. In the event that a sewer line of the Transmission Party through which sewage generated by customers of the Requesting Party flows shall be used at full capacity or all of the flow capacity of such line has been allocated, and some or all of the parties hereto desire to provide additional transmission capacity by way of sewer relief facilities, the parties may initiate negotiations to determine whether such relief facilities shall be constructed and the parties' proportionate share of the costs of such facilities.

(c) No Obligation to Change System. Notwithstanding anything to the contrary in this Agreement, neither the Borough Parties nor the Township shall be required by this Agreement to construct, extend, modify, or change any portion of its sewer system to accommodate the other parties.

§ 4 Miscellaneous.

(a) Ownership and Operation of Systems. The ownership of the systems of the respective parties shall not be affected as a result of this Agreement. Both the Borough Parties and the Township covenant and agree to maintain their systems in good repair and operating condition; to operate the same continuously

in an economical fashion, efficient manner, and in compliance with all regulatory and statutory requirements. If, however, any part of a system is in any way damaged by any cause originating in the system of another party, or is damaged by reason of the acts or omissions of the customers, users or agents of the other party, then the cost of repairing such damage shall be paid by the other party within 60 days after receiving an invoice therefor.

(b) System Standards. The Requesting Party agrees that sewage discharged into the system of the Transmission Party shall comply with all ordinances, rules, and regulations of the Transmission Party regarding sewage. The Requesting Party also agrees, upon notice, to comply with and not in any way violate or cause the Transmission Party to violate, any terms or provisions of any sewer agreement to which the Transmission Party (or any one of them) is directly or indirectly a party, including without limitation, sewer agreements with the City of Allentown for the use of its treatment plant, dated December 22, 1969, December 20, 1981, and August 1, 1986.

(c) Inflow and Infiltration. The Requesting Party agrees to control, at its own expense, the amount of inflow/infiltration entering the portion of the system of the Requesting Party which discharges into the system of the Transmission Party, to a level equal to the *lesser* of—

(1) the then current standards established by the U.S. Environmental Protection Agency or its successors for allowable infiltration/inflow; *or*

(2) 500 gallons / inch diameter of pipe / mile of pipe / day.

(d) Decision by Borough Parties. Unless otherwise agreed by Alburdis and Alburdis Sewer Authority, whenever any action hereunder is to be approved by the Borough Parties or a determination is to be made by the Borough Parties, it shall only be deemed to be approved or made if it is approved or made by the governing bodies of both Alburdis and Alburdis Sewer Authority.

(e) Waivers and Indulgences. A party shall not by any act of omission or commission be deemed to waive any of its rights or remedies under this Agreement unless such waiver be in writing and signed by the party, and then only to the extent specifically set forth in the writing. Further, a waiver on one event

shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event.

(f) Headings. All section, subsection, and other headings in this Agreement are included solely for reference purposes, are not considered a part of this agreement, and shall not control or affect the construction or interpretation of this agreement in any respect.

(g) Modification. This Agreement shall only be amended by a written document executed by all of the parties hereto.

(h) Succession. This Agreement, and all the rights and obligations hereunder, shall inure to the benefit of and be binding upon the successors and assigns of the parties. No party may assign any of its rights, obligations, or duties under this Agreement without the prior consent of the other parties.

(i) Integration. The parties acknowledge and agree that this Agreement sets forth all the agreements and understandings between the parties relating to the matters contained herein. They agree that this Agreement supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, express or implied, oral or written, relating to such matters which are not contained herein, and that all such agreements, understandings, inducements, and conditions shall become null and void upon the execution of this Agreement.

(j) Severability. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereby waive any provision of law which renders any provision of this Agreement prohibited or unenforceable in any respect.

(k) Governing Law. This Agreement shall be interpreted under and governed by the laws of the Commonwealth of Pennsylvania.

(l) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party

whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written, intending to be legally bound.

Attest:

BOROUGH OF ALBURTIS

By: _____

{Corporate Seal}

Attest:

BOROUGH OF ALBURTIS SEWER
AUTHORITY

By: _____

{Corporate Seal}

Attest:

TOWNSHIP OF LOWER MACUNGIE

By: _____

{Corporate Seal}