

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 491

(Duly Adopted October 27, 2010)

AN ORDINANCE AUTHORIZING A MEMORANDUM OF UNDERSTANDING—ALLOCATION OF DEVELOPMENT FLOW CREDITS FOR CONVEYANCE WITH LEHIGH COUNTY AUTHORITY, UPPER MACUNGIE TOWNSHIP AUTHORITY, BOROUGH OF ALBURTIS SEWER AUTHORITY, THE BOROUGH OF MACUNGIE, AND THE TOWNSHIPS OF UPPER MILFORD, WEISENBERG, LOWER MACUNGIE, UPPER MACUNGIE, AND LOWHILL TO SPECIFY HOW THE DEVELOPMENT FLOW CREDITS FOR CONVEYANCE CAPACITY WHICH ARISE IN ACCORDANCE WITH THE SEWER CAPACITY ASSURANCE AND REHABILITATION PROGRAM ADOPTED BY THE BOROUGH AND OTHER MUNICIPALITIES AS A REVISION AND/OR AMENDMENT TO THEIR OFFICIAL SEWAGE FACILITIES PLANS, SHALL BE ALLOCATED AMONG THE SIGNATORIES TO THE MEMORANDUM OF UNDERSTANDING AND DEVELOPMENTS WITHIN THEIR JURISDICTIONS.

WHEREAS, the Sewer Capacity Assurance and Rehabilitation Program has been adopted by all the municipality partners of the Western Lehigh Sewerage Partnership (including the Borough of Alburdis) as a revision and/or amendment to their Official Sewage Facilities Plans, in accordance with the Pennsylvania Sewage Facilities Act (Act 537); and

WHEREAS, the Western Lehigh Sewerage Partnership has prepared a Memorandum of Understanding—Allocation of Development Flow Credits for Conveyance, to complement the existing Development Flow Credits Agreement throughout the Sewer Capacity Assurance and Rehabilitation Program; and

WHEREAS, the Borough of Alburdis finds that the Memorandum of Understanding—Allocation of Development Flow Credits for Conveyance conforms to the Sewer Capacity Assurance and Rehabilitation Program and the intent of the Western Lehigh Sewerage Partnership;

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

SECTION 1. Chapter 65, Article XVI of the Alburtis Codified Ordinances (relating to Sanitary Sewer—Authorization of Agreements, Etc.) is amended by adding the following new Section 65-1608 after existing Section 65-1607:

**§ 65-1608 Sewer Capacity Assurance and Rehabilitation Program
Memorandum of Understanding—Allocation of Development Flow Credits for Conveyance**

The Borough of Alburtis hereby approves the Memorandum of Understanding—Allocation of Development Flow Credits for Conveyance for the Sewer Capacity Assurance and Rehabilitation Program in the form attached to Ordinance 491 as **Exhibit A**, which is incorporated into this Article by reference, and authorizes the President of Borough Council to sign the Memorandum of Understanding—Allocation of Development Flow Credits on behalf of the Borough, and the Executive Secretary of the Borough to attest such signature.

SECTION 2. The attached **Exhibit A** is incorporated into this Ordinance by reference.

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DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 27th day of October, 2010, in lawful session duly assembled.

**BOROUGH COUNCIL
BOROUGH OF ALBURTIS**

Steven R. Hill, President

Attest:

Sharon Trexler, Executive Secretary

AND NOW, this 27th day of October, 2010, the above Ordinance is hereby AP-
PROVED.

Robert W. Mader, Mayor

EXHIBIT A

MEMORANDUM OF UNDERSTANDING
WESTERN LEHIGH SEWER PARTNERSHIP
SEWER CAPACITY ASSURANCE AND REHABILITATION PROGRAM –
ALLOCATION OF DEVELOPMENT FLOW CREDITS FOR CONVEYANCE

This Memorandum of Understanding (MOU) is made the _____ of _____, 2010, between the following municipal parties, herein after referred to as Partners:

1. LEHIGH COUNTY AUTHORITY (LCA)
2. UPPER MILFORD TOWNSHIP
3. WEISENBERG TOWNSHIP
4. LOWER MACUNGIE TOWNSHIP
5. UPPER MACUNGIE TOWNSHIP
6. UPPER MACUNGIE TOWNSHIP AUTHORITY
7. LOWHILL TOWNSHIP
8. BOROUGH OF ALBURTIS
9. BOROUGH OF ALBURTIS SEWER AUTHORITY
10. BOROUGH OF MACUNGIE.

The background of this Memorandum of Understanding is as follows:

1. The Western Lehigh Sewer Partnership (WLSP or Partners) have previously entered into various agreements, including the January 22, 1970 Agreement and the Wastewater Treatment Capacity Allocation Agreement (Post-1985 Allocation) (all jointly referred to as the WLI Agreements) establishing details of the Western Lehigh Interceptor System and the conditions under which wastewaters shall be conveyed to the City of Allentown (City) Kline's Island Treatment Plant.
2. The collection systems of those portions of the Weisenberg Township and Upper Milford Township sewer system connected to the Western Lehigh Interceptor are owned and operated by LCA, therefore LCA is signing this Memorandum of Understanding in regard to those collection systems.

3. Peak flow issues in the Western Lehigh Interceptor System Service Area, which includes the Lehigh County Authority sewer conveyance systems and the collections systems connected to it (namely Upper Milford Township, Weisenberg Township, Lower Macungie Township, Upper Macungie Township, Lowhill Township, Borough of Alburdis, and Borough of Macungie) have caused the Pennsylvania Department of Environmental Protection (PADEP) to more closely review sewer system extensions in each of these communities. Pursuant to communications with PADEP and in accordance with Chapter 94 requirements, the Partners and, where applicable, their wastewater authorities, have formed the WLSP as an extension of the relationship established between LCA and the municipal parties in the various WLI Agreements for the purposes of jointly developing and implementing a corrective action plan to collectively address the problems within each of these sanitary sewer systems.
4. Since initial formation of the WLSP, the United States Environmental Protection Agency (USEPA) has issued a Compliance Order (USEPA Compliance Order CWA-03-2009-0313DN) to all municipal dischargers to the City of Allentown's Klines Island wastewater treatment plant, including all Partners.
5. A plan, called the Sewer Capacity Assurance and Rehabilitation Program (SCARP), addressing both PADEP and USEPA concerns and other related long-term wastewater needs for the Partners, has been jointly prepared and adopted as part of their respective Act 537 Plans by the Partners.
6. The Partners have executed a Memorandum of Understanding regarding their commitments during implementation of the SCARP Investigation and Evaluation Phase.
7. The SCARP Program Approach Outline defines how improvements in flow capacity shall result in PADEP allowing new connections to the WLSP systems, but that document does not specifically describe how the resulting development flow credits shall be allocated to the various Partners. The Partners recognize that to support economic growth and development for western Lehigh County, development flow credits must be distributed in a reasonable manner across all municipalities. These development flow credits for conveyance capacity are

separate and apart from the treatment allocation that must be purchased in accordance with the existing WLI Agreements.

8. The purpose of this MOU is to document agreement by all Partners regarding distribution of resulting development flow credits between Partners during the period of time that PADEP limits new connections, which is expected to last a number of years.

ARTICLE 1 – CALCULATION AND OWNERSHIP OF DEVELOPMENT FLOW CREDITS

The Partners agree that:

1. Each Partner shall inform the other Partners of planned rehabilitation, storage, or capacity improvement work within their collection system at the time of authorization of design in order to provide adequate time for collection of pre-work flow data to support the calculation of flow credits, and in no case less than 7 months prior to initiation of construction. However, if sufficient flow data are available or in the event of an emergency or extreme leakage situation, construction may proceed more quickly.
2. LCA shall conduct all required monitoring, modeling, and calculation to determine the development flow credits accrued by any given project.
3. Calculation of development flow credits shall be done in accordance with the SCARP Program Approach Outline or other method proposed and agreed upon by the Partners and approved by PADEP.
4. LCA shall tabulate all development flow credits accrued and report them monthly to all Partners.
5. All development flow credits, whether generated through the financing or work efforts of an individual Partner or through common financing or work effort provided by LCA or some other group, shall be held jointly and belong to all Partners jointly without regard to their funding source or by whom the work effort was accomplished that generated the development flow credits.

ARTICLE 2 –ALLOCATION AND DISBURSEMENT OF DEVELOPMENT FLOW
CREDITS

The Partners agree that:

1. For planning purposes only, each Partner shall report to the other Partners all PADEP approved planning modules proposed within the municipal boundaries of each Partner since January 1, 2009, and the resulting proposed flow demand. Information regarding new developments receiving PADEP planning module approval, including development name, location, proposed flow demand, and anticipated timing of construction shall be reported to LCA within 30 days of said approval.
2. Municipal approval of planning module and/or subdivision and/or land development plans at the preliminary plan and/or final plan stages shall contain a written statement that approval of said plans does not constitute commitment of wastewater treatment and/or conveyance capacity.
3. A development which receives PADEP planning module approval on or after January 1, 2009, shall not be permitted to connect to and utilize any of the WLSP collection systems unless it receives an allocation of sufficient development flow credits in accordance with this Article. This requirement is in addition to all other requirements for connection and utilization, such as the purchase of treatment/interceptor capacity, the purchase of municipal collection system capacity, necessary permits, etc.

Those developments which received PADEP planning module approval prior to January 1, 2009, do not need an allocation of development flow credits, and there shall be no reduction in the Development Flow Credit Account related to any of those developments.
4. An allocation of development flow credits must be obtained at the same time as treatment/interceptor capacity is purchased from LCA, and in an equivalent amount. LCA shall report all purchases of treatment/interceptor capacity and allocations of development flow credits to the other Partners on a monthly basis.

The amount of required development flow credits shall be calculated using the current LCA average daily flow standard of 223 gpd/EDU for residential development and average daily flow in gallons per day for commercial/industrial development.

5. Except as provided in paragraph 6, the purchase of treatment/interceptor capacity and the allocation of development flow credits shall be on a first come, first serve basis.
6. Reserves.
 - a. Per Article 1.5, the parties agree upon joint ownership of the development flow credits. Various reserves are created as an alternative to each municipality separately owning the development flow credits generated as a result of projects financed by the municipality. Under joint ownership, any single municipality could utilize all or most of the development flow credits, leaving none for development in other municipalities. To address these concerns, certain reserves of development flow credits are set aside for specific purposes.
 - b. For purposes of this Agreement-
 - i. The term “Reserves” shall mean the four reserves established under this paragraph 6—the Small Municipality Reserve, the Upper Macungie Reserve, the Lower Macungie Reserve, and the Failing Systems Reserve;
 - ii. The term “Unreserved Account” shall mean the portion of the Development Flow Credit Account outside of the Reserves;
 - iii. The term “Small Municipality” shall mean each of the following: the Borough of Alburtis, the Borough of Macungie, Lowhill Township, Upper Milford Township, and Weisenberg Township;
 - iv. The term “Target Amount” shall mean—
 - a. 10,000 gallons per day for the Small Municipality Reserve, the Upper Macungie Reserve, and the Lower Macungie Reserve; and

- b. 2,000 gallons per day for the Failing Systems Reserve.
- v. The term “Remaining Restoration Amount,” with respect to one of the Reserves for a particular calendar year, shall mean (A) the Target Amount for that Reserve, less (B) the balance in that Reserve as of the end of the preceding calendar year, less (C) the amount allocated to that Reserve on January 1 of that calendar year under paragraph 6(j)(i) below.
- c. Upon the execution of this Agreement, development flow credits from the Development Flow Credit Account shall be credited to the Reserves so that the balance in each Reserve is equal to the Target Amount for that Reserve.
- d. Development flow credits shall be allocated from one of the Reserves only at a time when there are no unallocated development flow credits remaining in the Unreserved Account.
- e. A development shall only be entitled to receive an allocation of development flow credits from the Small Municipality Reserve if the development is located within one of the Small Municipalities. Allocation of development flow credits from the Small Municipality Reserve shall be on a first-come, first-served basis.
- f. A development shall only be entitled to receive an allocation of development flow credits from the Upper Macungie Reserve if the development is located within Upper Macungie Township and the allocation is approved by the governing body of Upper Macungie Township. Use and allocation of development flow credits from the Upper Macungie Reserve shall be at the sole discretion and control of Upper Macungie Township.
- g. A development shall only be entitled to receive an allocation of development flow credits from the Lower Macungie Reserve if the development is located within Lower Macungie Township and the allocation is approved by the governing body of Lower Macungie

Township. Use and allocation of development flow credits from the Lower Macungie Reserve shall be at the sole discretion and control of Lower Macungie Township.

- h. A development shall only be entitled to receive an allocation of development flow credits from the Failing Systems Reserve if the development flow credits are to be used to provide sewer service for existing structures served by failing septic systems, and there are no unallocated development flow credits remaining in—
 - i. the Small Municipality Reserve, in the case of a development in a Small Municipality;
 - ii. the Upper Macungie Reserve, in the case of a development in Upper Macungie Township; or
 - iii. the Lower Macungie Reserve, in the case of a development in Lower Macungie Township.

Allocation of development flow credits from the Failing Systems Reserve shall be on a first-come, first-served basis.

- i. Upon the allocation of development flow credits from a Reserve, the balance in that Reserve shall be reduced accordingly.
- j. Each January 1, development flow credits shall be transferred from the Unreserved Account to the Reserves in such amounts as are needed to reset the balance in each Reserve to its Target Amount. However, if the unallocated development flow credits in the Unreserved Account on a January 1 is not sufficient to reset each Reserve to its Target Amount, then:
 - i. On January 1, the unallocated development flow credits in the Unreserved Account shall be transferred to the Reserves in the following order of priority, until the Unreserved Account shall be exhausted:
 - a. First to the Failing Systems Reserve, until it shall reach its Target Amount;

- b. Second to the Small Municipality Reserve, until it shall reach its Target Amount;
 - c. Any remaining unallocated development flow credits in the Unreserved Account shall be divided equally between the Upper Macungie Reserve and the Lower Macungie Reserve until one of those Reserves shall reach its Target Amount, and thereafter shall be credited to the other one of those Reserves; and
- ii. As new development flow credits are added to the Development Flow Credit Account in the calendar year beginning that January 1, they shall be transferred to the Reserves in the following order of priority, until all of the following have been satisfied:
 - a. First to the Failing Systems Reserve, if it shall have any Remaining Restoration Amount, until the total development flow credits credited to the Failing Systems Reserve in that calendar year under this clause (ii)(a) is equal to its Remaining Restoration Amount;
 - b. Second to the Small Municipality Reserve, if it shall have any Remaining Restoration Amount, until the total development flow credits credited to the Small Municipality Reserve in that calendar year under this clause (ii)(b) is equal to its Remaining Restoration Amount;
 - c. Thereafter –
 - i. if the Remaining Restoration Amount for the Upper Macungie Reserve is less than the Remaining Restoration Amount for the Lower Macungie Reserve, then the new development flow credits shall be divided

equally between the Upper Macungie Reserve and the Lower Macungie Reserve, until the total development flow credits credited to the Upper Macungie Reserve in that calendar year under this clause (ii)(c) is equal to its Remaining Restoration Amount, and thereafter all the new development flow credits shall be credited to the Lower Macungie Reserve until the total development flow credits credited to the Lower Macungie Reserve in that calendar year under this clause (ii)(c) is equal to its Remaining Restoration Amount;

- ii. if the Remaining Restoration Amount for the Lower Macungie Reserve is less than the Remaining Restoration Amount for the Upper Macungie Reserve, then the new development flow credits shall be divided equally between the Upper Macungie Reserve and the Lower Macungie Reserve, until the total development flow credits credited to the Lower Macungie Reserve in that calendar year under this clause (ii)(c) is equal to its Remaining Restoration Amount, and thereafter all the new development flow credits shall be credited to the Upper Macungie Reserve until the total development flow credits credited to the Upper Macungie Reserve in that calendar year under this clause (ii)(c) is equal to its Remaining Restoration Amount;

- d. Any remaining new development flow credits earned after each of the Reserve's Remaining Restoration Amounts are satisfied shall accrue to the Unreserved Account.
- k. The Partners may, from time to time by unanimous agreement, transfer development flow credits from the Unreserved Account to one of the Reserves, from one of the Reserves to the Unreserved Account, or from one of the Reserves to another one of the Reserves, increase or decrease the Target Amount for any Reserve, or eliminate one or more of the Reserves entirely.
- l. If, at any time, treatment capacity purchased for a development is lost or otherwise returned to the General Pool under the 4 August 1987 Wastewater Treatment Capacity Allocation Agreement (Post-1985 Allocation) as amended, all associated development flow credits shall be returned to the Development Flow Credit Account as if they were never allocated, and the portion (if any) of such development flow credits which were allocated from one of the Reserves shall be credited back to that Reserve, except to the extent the Reserve has since been replenished under paragraph 6(j) above, in which case such development flow credits shall revert back to the Unreserved Account.

ARTICLE 3

The terms of this agreement shall continue until PADEP and/or USEPA removes all restrictions on connection of new flows to the Western Lehigh Interceptor system or until superseded by a revised Allocation Agreement or Memorandum of Understanding.

ARTICLE 4

This Agreement was executed by an authorized representative of each Partner pursuant to the attached resolutions of the Governing Board.

ARTICLE 5

1. This Agreement was approved pursuant to resolutions/ordinances of the governing body of each of the Partners, except that the LCA signature shall cover the Upper Milford and Weisenberg Township collection systems, as evidenced in the attached resolutions/ordinances.

LEHIGH COUNTY AUTHORITY _____

(On its behalf and as owner of the sewer collection systems in
Upper Milford and Weisenberg Townships)

LOWER MACUNGIE TOWNSHIP _____

UPPER MACUNGIE TOWNSHIP _____

UPPER MACUNGIE TOWNSHIP AUTHORITY _____

LOWHILL TOWNSHIP _____

BOROUGH OF ALBURTIS _____

BOROUGH OF ALBURTIS SEWER AUTHORITY _____

BOROUGH OF MACUNGIE _____