

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 Document includes certain amendments made by subsequent agreements, as described in the footnotes.

AGREEMENT

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CONSENT AND JOINDER OF THE TOWNSHIP OF LOWER MACUNGIE
EXHIBIT "A"—*Plan of Little Lehigh Watershed Interceptors*

THIS AGREEMENT made this 22nd day of January, 1970, by and among LEHIGH COUNTY AUTHORITY, a Pennsylvania municipality authority, COUNTY OF LEHIGH, a Pennsylvania municipal subdivision, and the municipalities of the Boroughs of ALBERTIS and MACUNGIE and of the Township of

UPPER MACUNGIE, all Pennsylvania municipal subdivisions located in Lehigh County, Pennsylvania, and LOWER MACUNGIE TOWNSHIP AUTHORITY, a Pennsylvania municipality authority.¹

WITNESSETH:

WHEREAS, Each of the Municipalities contemplates acquisition and construction of a sewage collection system in and for all or a portion of the area of each of the Municipalities; and

WHEREAS, Each Municipality contemplates that the sewage and wastes collected in the sewage collection system serving such Municipality will be transported to the sewer system owned by the Allentown Authority and leased to the City for the purpose of treatment and ultimate disposal; and

WHEREAS, The Municipalities have determined that it is to their mutual advantage to provide for the acquisition and construction of certain facilities to be used jointly by all of the Municipalities and to jointly share in the costs and expenses related to the acquisition, construction and operation of such jointly used facilities and to jointly share in the costs and expenses to be incurred in connection with the receipt, treatment and disposal of sewage and wastes by the Allentown Authority and/or the City; and

WHEREAS, The parties hereto desire to agree on the general terms and conditions upon which they will proceed in accomplishing the purposes and plans hereinbefore set forth.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, represent, covenant and agree as follows:

1. **[Definitions.]** The following terms and phrases, for the purposes of this Agreement, shall have the following meanings, unless the context clearly otherwise requires:

“*Allentown Authority*” means Allentown Authority, a Pennsylvania municipality authority.

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

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

“*County Authority*” means Lehigh County Authority, a Pennsylvania municipality authority.

“*Fiscal Year*” means the fiscal year of the County Authority, as will be set forth in the Trust Indenture of the County Authority which shall secure the bonds of the County Authority to be issued to provide funds for acquisition and construction of the Interceptor System.

“*Interceptor System*” means a system of interceptor sewers, including a trunk sewer or sewers and appurtenances to be acquired and constructed by the County Authority for the purpose of receiving sewage and wastes to be collected in the sewage collection systems serving the Municipalities and transporting such sewage and wastes to the sewer system owned by Allentown Authority and leased to the City.

Notwithstanding the aforesaid general definition the “*Interceptor System*”, as used herein, shall include:

A. The sewers contemplated initially to be constructed by the County Authority in accordance with plans and specifications presently in the process of preparation by A.L. Wiesenberger Associates, and designated as Phase I Interceptors on Exhibit “A” attached

¹ **Cross-Reference:** In addition, the Townships of Upper Milford, Lowhill, and Weisenberg agreed to be bound by this Agreement under Section 5.04 of the April 1, 1983 Wastewater Treatment Capacity Allocation Agreement. See Codified Ordinances ¶ 65-R(2).

hereto and thereby made a part hereof, and all property, real, personal and mixed, acquired or constructed by the County Authority in connection therewith and together with all appurtenant facilities and properties acquired or constructed by the County Authority in connection therewith and including any sewers or other facilities determined by the Consulting Engineers of the County Authority to be required in substitution for the sewers outlined generally on Exhibit "A" or, in the future, required to provide additional capacity for the same purpose and for the same parties as is contemplated for the sewers outlined generally on Exhibit "A"; and

B. The sewers contemplated to be constructed by the County Authority as its second phase of construction in accordance with plans and specifications presently in the process of preparation by A.L. Wiesenberger Associates, and designated as Phase II Interceptors on Exhibit "A" attached hereto and thereby made a part hereof, and all property, real, personal and mixed, acquired or constructed by the County Authority in connection therewith and together with all appurtenant facilities and properties acquired or constructed by the County Authority in connection therewith and including any sewers or other facilities determined by the Consulting Engineers of the County Authority to be required in substitution for the sewers outlined generally on Exhibit "A" or, in the future, required to provide additional capacity for the same purpose and for the same parties as is contemplated for the sewers outlined generally on Exhibit "A"; and

C. Any sewers required to be acquired or constructed by County and/or County Authority as relief interceptor sewers in accordance with terms and provisions of the Loan Agreement, and/or the Treatment Agreement.

"Loan Agreement" means a proposed Agreement, 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, pursuant to which, inter alia, the County and/or the County Authority, for the use of the Municipalities, will be granted the right to discharge sewage and wastes into the sewer system owned by Allentown Authority and leased to the City for the purpose of treatment and ultimate disposal on a temporary basis.²

"Municipality" or *"Municipalities"* means, individually or collectively, as appropriate, the Boroughs of Alburtis and Macungie and the Township of Upper Macungie, all Pennsylvania municipal subdivisions located in Lehigh County, Pennsylvania, and Lower Macungie Township Authority, a Pennsylvania municipality authority or, if and whenever appropriate, in the place and stead of Lower Macungie Township Authority, the Township of Lower Macungie, a Pennsylvania municipal subdivision located in Lehigh County, Pennsylvania, if and whenever such substitution is necessary and appropriate in accordance with the Consent and Joinder executed by said Township of Lower Macungie and attached hereto or whenever necessary or appropriate to give effect to any provision contained herein.

"Treatment Agreement" means a proposed Agreement, by and between the City, as party of the first part, and the County Authority, as party of the second part, pursuant to which, inter alia, County Authority and/or the County, for the use of the Municipalities, will be granted the right to discharge sewage and wastes into the sewer system owned by Allentown Authority and leased to the City for the purpose of treatment and ultimate disposal on a permanent basis.³

² The Loan Agreement is no longer in effect.

³ **Cross-Reference:** see Codified Ordinances § 65-Q(1).

2. **[Municipal Collection Systems.]** Each Municipality will be solely responsible for all costs and expenses related to the acquisition, construction and operation of the respective sewage collection system serving such Municipality.

Each of the Municipalities agrees, to the extent possible and economically practicable, to cooperate with the other Municipalities in timing the construction and financing of their respective sewage collection systems.

3. **[Interceptor System—Role of County Authority and County.]** The Municipalities, jointly and severally, do hereby designate the County Authority as the agency to plan, finance and supervise the acquisition and construction of the Interceptor System and do hereby agree that said Interceptor System shall be leased by the County Authority to the County for use and operation and as security for retirement of indebtedness to be incurred by the County Authority for such purpose.

The County Authority and the County agree that the County Authority will undertake the planning, financing and supervision of the acquisition and construction of the Interceptor System and will lease the same to the County on such terms and conditions as shall be required or shall be desirable in connection with the financing of the Interceptor System.

The parties hereto agree that the Agreement of Lease from the County Authority to the County shall be for an initial term of forty years.

4. **[Interceptor System—Planning and Construction.]** The parties agree that the initial construction of the Interceptor System shall be in accordance with plans and specifications prepared and/or to be prepared by A.L. Wiesenger Associates, Consulting Engineers, Allentown, Pennsylvania, or properly approved changes and modifications thereto. County Authority agrees to reimburse each Municipality, from the proceeds of its bond issue to finance the acquisition and construction of the Interceptor System, for any expenditure made by such Municipality which was directly related to planning, acquiring, constructing or financing the Interceptor System, as certified to by A.L. Wiesenger Associates.

5. **[Sewage Treatment and Disposal—County Authority to Negotiate with City.]** The Municipalities acknowledge that they have designated the County Authority as their agent to negotiate with the City and/or Allentown Authority with respect to securing an allocated capacity in the sewer system being operated by the City in order to provide for treatment and disposition of the anticipated volume of sewage and wastes to be collected in the proposed sewage collection systems to serve the Municipalities and to draft for submission to the Municipalities for review and approval a proposed agreement or agreements setting forth the rates and charges and/or the basis for computing rates and charges to be imposed by the City and/or Allentown Authority relative to providing allocated capacity in said sewer system and for transportation, treatment and disposition of sewage and wastes emanating from the sewage collection systems to serve the Municipalities. The aforementioned designation and authority is to extend to negotiations with any other municipality or party having any interest in the sewer system being operated by the City.

6. **[Surcharges for Wastes of Unusual Strength or Character.]** The Municipalities contemplate and agree that any surcharges made by the City and/or Allentown Authority for treatment of wastes of unusual strength or character which shall be in addition to normal volume charges applicable to wastes emanating in the sewage collection system serving any of the Municipalities shall be borne by the Municipality rendering sewage collection service to the user discharging such waste. If such charges are paid to the City or Allentown Authority by the County or the County Authority, the applicable Municipality nevertheless shall remain solely responsible for reimbursement or prepayment of the same without contribution of any of the other Municipalities.

7. **[Service Agreement Between Municipalities and County.]** The Municipalities hereto agree that they will enter into a service agreement with the County⁴ whereby the Municipalities will be

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

obligated to pay to the County such sums as shall be necessary to permit the County to meet all of its obligations under the proposed Agreement of Lease⁵ to be entered into between the County Authority and the County, subject, however, to the provisions of Paragraph 8 hereof. Such obligations shall include, without intending in any way to limit the same, all lease rentals specified in said Agreement of Lease and all costs of operation and maintenance of the Interceptor System, including any rates, charges or other payments required to be made to the City and/or the Allentown Authority and/or any other party relative to the receipt, transportation, treatment and disposition of sewage and wastes through the sewer system being operated by the City or the allocation of any capacity in said sewer system for the benefit of the Municipalities on a collective basis.⁶

It is contemplated by the Municipalities and the Municipalities agree that all such costs, expenses, charges and payments mentioned in the immediately preceding paragraph shall be paid by or in behalf of the County; Provided, however, that the funds therefor shall be made available to the County by the Municipalities at such time as the same shall be required by the County to meet its obligations, subject, however, to the provisions of Paragraph 8 hereof. Except for the payments provided for in Paragraph 6 hereof, the Municipalities shall share in all such payments on the basis of the ratio that the volume of sewage and wastes discharged into the Interceptor System from the sewage collection system which serves each Municipality bears to the volume of sewage and wastes discharged into the Interceptor System from the sewage collection systems which serve all of the Municipalities in the applicable Fiscal Year as computed by the Consulting Engineers of the County Authority, and, if applicable, by Consulting Engineers of the Municipalities as hereinafter provided. Each Municipality agrees, to the extent reasonable and permitted by law, to collect a minimum charge or standby charge from any industrial, commercial or other large user of the sewage collection system serving such Municipality. For the purpose of computing, in the manner hereinbefore set forth, the formula for the sharing by the Municipalities of such costs, expenses, charges and payments mentioned in the immediately preceding paragraph, each Municipality shall be charged with the volume of sewage and wastes which would be permitted to be discharged by any such industrial, commercial or other large user by reason of payment of any such minimum charge or standby charge actually collected by such Municipality pursuant to the schedule of rates and charges then in effect in the area served by such Municipality.

The Municipalities agree that the method of sharing set forth in this Paragraph 7 shall be applicable to all obligations of the County related to the Interceptor System, including obligations to the City or Allentown Authority relative to receipt, transportation, allocation of capacity, treatment and disposition of sewage and wastes discharged from the Interceptor System into the sewer system operated by the City excluding only payments provided for in Paragraph 6 hereof, regardless of the method used to compute the total amount of such obligations of the County, subject, however, to the provisions of Paragraph 8 hereof.

8. [Municipal Payments During Construction of Collection and Interceptor Systems.] It is understood and agreed between the parties hereto that the provisions of Paragraph 7 hereof will be subject to exceptions during the estimated period of construction of the initial Interceptor System and the estimated period of construction of the sewage collection systems to serve each of the Municipalities.

It is agreed that all minimum fixed dollar payments not affected by volume of sewage and wastes discharged through the Interceptor System which may be required to be paid to the City and/or Allentown Authority under the Loan Agreement or the Treatment Agreement during the aforesaid estimated period of construction of the initial Interceptor System and the estimated period of construction

⁵ **Cross-Reference:** *see* Codified Ordinances ¶ 65-O(3).

⁶ **Cross-Reference:** Under Article III of an Amendment applicable after June 30, 1993 (*see* Codified Ordinances ¶ 65-R(11)), the Municipalities agree to the establishment of Working Capital Reserves to replace similar reserves in the 1971 Trust Indenture for the County Interceptor, which were charged through in the Lease to the County Interceptor and passed through to the Municipalities under this Section 7.

of the sewage collection systems to serve each of the Municipalities will be capitalized in the bond issue of the County Authority issued to pay the costs of construction of the initial Interceptor System and paid from the proceeds of said bond issue.

It is also agreed that interest on the aforesaid bond issue of the County Authority will be capitalized during the estimated period of construction of the initial Interceptor System and the estimated period of construction of the sewage collection systems to serve each of the Municipalities and principal payments on said bond issue will not commence within the period of the first five years from the date of said bond issue unless otherwise agreed to by all of the parties hereto.

9. **[Additions and Improvements to the Interceptor System.]** In the event additions and improvements are required to the Interceptor System to accommodate increased flow of sewage and wastes from the sewage collection system serving any Municipality, the same shall be acquired and constructed by the County Authority and leased to the County in the same manner as is contemplated for the initial Interceptor System and all costs and expenses related thereto shall be shared by the Municipalities in the manner set forth in Paragraph 7 hereof regardless of which Municipality or Municipalities require such increased capacity in the Interceptor System.

10. **[Time for Payments.]** The Municipalities agree to make payments to the County as required hereunder at such times as to permit the County to meet its obligations as described herein at the time required. Such payments initially shall be based upon estimated obligations of the County in each Fiscal Year and on the basis of estimated volume of sewage and wastes to be discharged into the Interceptor System from each of the sewage collection systems serving the Municipalities as determined by or approved by the Consulting Engineers of the County Authority. Appropriate adjustments shall be made within sixty days of the close of each Fiscal Year based upon actual payments by the County and actual volume of discharge of sewage and wastes from the sewage collection system serving each of the Municipalities adjusted, if necessary, as provided in Paragraph 7, as determined by or approved by the Consulting Engineers of the County Authority and the Consulting Engineers of the applicable Municipality or Municipalities.

11. **[Allocation of Capacity Among Municipalities.]** The Municipalities agree among themselves that each Municipality shall be assured of the right to discharge into the sewage treatment plant owned by Allentown Authority and leased to the City a minimum specified volume of sewage and wastes as follows:

A. The Borough of Alburtis shall be assured the right to discharge from the sewage collection system serving such Municipality into the aforementioned sewage treatment plant sewage and wastes in the volume of 100,000 average gallons per day.⁷

B. The Borough of Macungie shall be assured the right to discharge from the sewage collection system serving such Municipality into the aforementioned sewage treatment plant sewage and wastes in the volume of 160,000 average gallons per day.⁸

C. The Township of Upper Macungie shall be assured the right to discharge from the sewage collection system serving such Municipality into the aforementioned sewage treatment plant sewage and wastes in the volume of ~~3,400,000~~ 3,194,000 average gallons per day.⁹

⁷ Revised in Section 2.01 of the April 1, 1983 Wastewater Treatment Capacity Allocation Agreement (*see* Codified Ordinances ¶ 65-R(2)). Moreover, additional capacity purchased in 1986 from the City is allocated under the 1987 Post-1985 Allocation Agreement (*see* Codified Ordinances ¶ 65-R(7)).

⁸ Revised in Section 2.01 of the April 1, 1983 Wastewater Treatment Capacity Allocation Agreement (*see* Codified Ordinances ¶ 65-R(2)). Moreover, additional capacity purchased in 1986 from the City is allocated under the 1987 Post-1985 Allocation Agreement (*see* Codified Ordinances ¶ 65-R(7)).

D. Lower Macungie Township Authority or the Township of Lower Macungie, as applicable, shall be assured the right to discharge from the sewage collection system serving the Township of Lower Macungie into the aforementioned sewage treatment plant sewage and wastes in the volume of ~~340,000~~ *546,000* average gallons per day.¹⁰

In order to assure the financial feasibility and financial integrity of the sewage collection system to serve each of the Municipalities, each Municipality agrees that it will not permit to be discharged to the aforesaid sewage treatment plant sewage and wastes in such a volume as to jeopardize the volume of sewage and wastes assured the other Municipalities, as set forth above, determined on the basis of the total volume of sewage and wastes permitted to be discharged to the aforementioned sewage treatment plant collectively by all of the Municipalities pursuant to terms of the Loan Agreement and the Treatment Agreement.

12. **[Determination of Volume Discharged by Each Municipality.]** It is contemplated that volumes of discharge of sewage and wastes from the sewage collection system of each of the Municipalities, whenever required to be determined hereunder, shall be determined as follows:

A. The volume of discharge of sewage and wastes from the sewage collection system serving the Borough of Alburts shall be measured by a meter to be located at the point of connection of said sewage collection system to the Swabia Interceptor, which meter is designated as Meter Chamber #1 on Exhibit "A" attached hereto, adjusted, if necessary, as provided in Paragraph 7.

B. The volume of discharge of sewage and wastes from the sewage collection system serving the Borough of Macungie shall be measured by subtracting the volume of sewage and wastes measured by a meter located at the point along the Swabia Interceptor where the same enters the Borough of Macungie at the Western boundary line of the Borough of Macungie, which meter is designated as Meter Chamber #2 on Exhibit "A" attached hereto from the volume of sewage and wastes measured by a meter located at the point along the Swabia Interceptor where the same enters Lower Macungie Township at the Eastern boundary line of the Borough of Macungie, which meter is designated as Meter Chamber #3 on Exhibit "A" attached hereto, adjusted, if necessary, as provided in Paragraph 7.

C. The volume of discharge of sewage and wastes from the sewage collection system serving the Township of Upper Macungie shall be measured by a meter to be located at a point along the Little Lehigh Interceptor at the boundary lines of the Townships of Upper Macungie and Lower Macungie, which meter is designated as Meter Chamber #4 on Exhibit "A" attached hereto, adjusted, if necessary, as provided in Paragraph 7.

D. The volume of discharge of sewage and wastes from the sewage collection system serving the Township of Lower Macungie shall be measured by subtracting the total volume of sewage and wastes attributable to the sewage collection systems of the Boroughs of Alburts and Macungie and the Township of Upper Macungie, measured as provided in Subparagraphs A, B and C above, from the volume of sewage and wastes to be measured by a meter to be located at

⁹ As amended by Section 2 of the February 1973 Addendum (*see* Codified Ordinances ¶ 65-O(7)), which changed the amount shown ~~stricken through~~ to the amount shown in *italics*. Further revised in Section 2.01 of the April 1, 1983 Wastewater Treatment Capacity Allocation Agreement (*see* Codified Ordinances ¶ 65-R(2)). Moreover, additional capacity purchased in 1986 from the City is allocated under the 1987 Post-1985 Allocation Agreement (*see* Codified Ordinances ¶ 65-R(7)).

¹⁰ As amended by Section 1 of the February 1973 Addendum (*see* Codified Ordinances ¶ 65-O(7)), which changed the amount shown ~~stricken through~~ to the amount shown in *italics*. Further revised in Section 2.01 of the April 1, 1983 Wastewater Treatment Capacity Allocation Agreement (*see* Codified Ordinances ¶ 65-R(2)). Moreover, additional capacity purchased in 1986 from the City is allocated under the 1987 Post-1985 Allocation Agreement (*see* Codified Ordinances ¶ 65-R(7)).

the point of connection of the Interceptor System to the sewer system operated by the City at Kecks Bridge, which latter meter is designated as Meter Chamber #5 on Exhibit "A" attached hereto, adjusted, if necessary, as provided in Paragraph 7.

13. **[Exclusive Use of System by the Municipalities.]** County Authority and County agree that it will not permit any municipality, municipality authority or other person or party other than the Municipalities to discharge sewage and wastes into the Interceptor System unless prior written approval thereof shall be given by each of the Municipalities and unless each of the Municipalities agrees upon the terms and conditions upon which such additional sewage and wastes shall be accepted into the Interceptor System.

14. **[Advisory Committee.]** County agrees that, as lessee of the Interceptor System, it will, upon written request of the Municipalities, appoint an advisory committee consisting of one member of the County Authority and one member to be designated by each of the Municipalities. This committee will consider all problems pertaining to the operation and management of the Interceptor System and make recommendations with respect thereto. This committee, of course, will have access to all financial statements, books and records and will be expected to consider all costs, financial reports and engineering surveys and recommendations and, to the extent that it deems the same necessary or desirable, to make recommendations with respect thereto.

15. **[Conveyance of Interceptor System to Municipalities.]** The County and County Authority agree that, upon written request of all of the Municipalities and subject to payment of any and all obligations of the County and County Authority related to the Interceptor System, the County and County Authority will take all action necessary to cause conveyance to the Municipalities or to any of them or to any municipality authority organized by the Municipalities or any of them the Interceptor System for the purpose of taking over the ownership and operation of said Interceptor System. In the event of any such conveyance, County and County Authority agree to transfer all rights and privileges then owned or held by the County or County Authority and assign all agreements to which the County or County Authority is a party which are in any way related to the ownership and operation of said Interceptor System to the transferee of the Interceptor System.

16. **[Permitted Assignment to Municipal Authorities.]** Any of the Municipalities may assign all of its rights and interest hereunder to any municipality authority created by such Municipality, provided such assignee municipality authority agrees in writing to assume all of the obligations and duties hereunder of the assignor Municipality. The Municipalities, however, always shall remain responsible for their duties hereunder regardless of any such assignment.

Whenever any party hereunder is obligated to perform any act or thing said party, to the extent permitted by law, may cause the same to be done.

17. **[Counterparts.]** This Agreement may be executed in any number of counterparts, each of which shall be considered an original, but such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and attested by its proper officers, pursuant to appropriate action of its governing body, all as of the day and year first above written.

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

CONSENT AND JOINDER

TOWNSHIP OF LOWER MACUNGIE, a Pennsylvania municipal subdivision located in Lehigh County, Pennsylvania, for value received, and intending to be legally bound hereby, as the incorporating municipality of Lower Macungie Township Authority, party to the foregoing Agreement, does hereby consent to the execution of the foregoing Agreement by Lower Macungie Township Authority and does hereby agree to be bound by the terms and conditions set forth therein. Township of Lower Macungie does further agree, to the extent any action by it is legally required or deemed necessary or desirable in order to permit Lower Macungie Township Authority fully to comply with its obligations and commitments as set forth in the foregoing Agreement, that it will take such action, perform such acts, and otherwise cooperate to accomplish the purpose and intent of the foregoing Agreement.

Township of Lower Macungie further agrees that if it at any time comes into possession as owner or lessee of the sanitary sewage collection system to be constructed by Lower Macungie Township Authority, it will perform and be bound by all of the terms and conditions of the aforementioned Agreement and shall be entitled to receive all rights thereunder to the same extent as if it were named therein in the place and stead of Lower Macungie Township Authority.

IN WITNESS WHEREOF, Township of Lower Macungie has caused this Consent and Joinder to be duly executed by the Chairman or Vice Chairman of its Board of Township Supervisors and affixed hereunto its official seal, duly attested by its Secretary or Assistant Secretary, this 22nd day of January, 1970, pursuant to an ordinance of its Board of Supervisors enacted at a meeting of said Board held on November 6, 1969.

{Signed and Attested by Officers of the Township of Lower Macungie.}

PLAN OF LITTLE LEHIGH
WATERSHED INTERCEPTORS

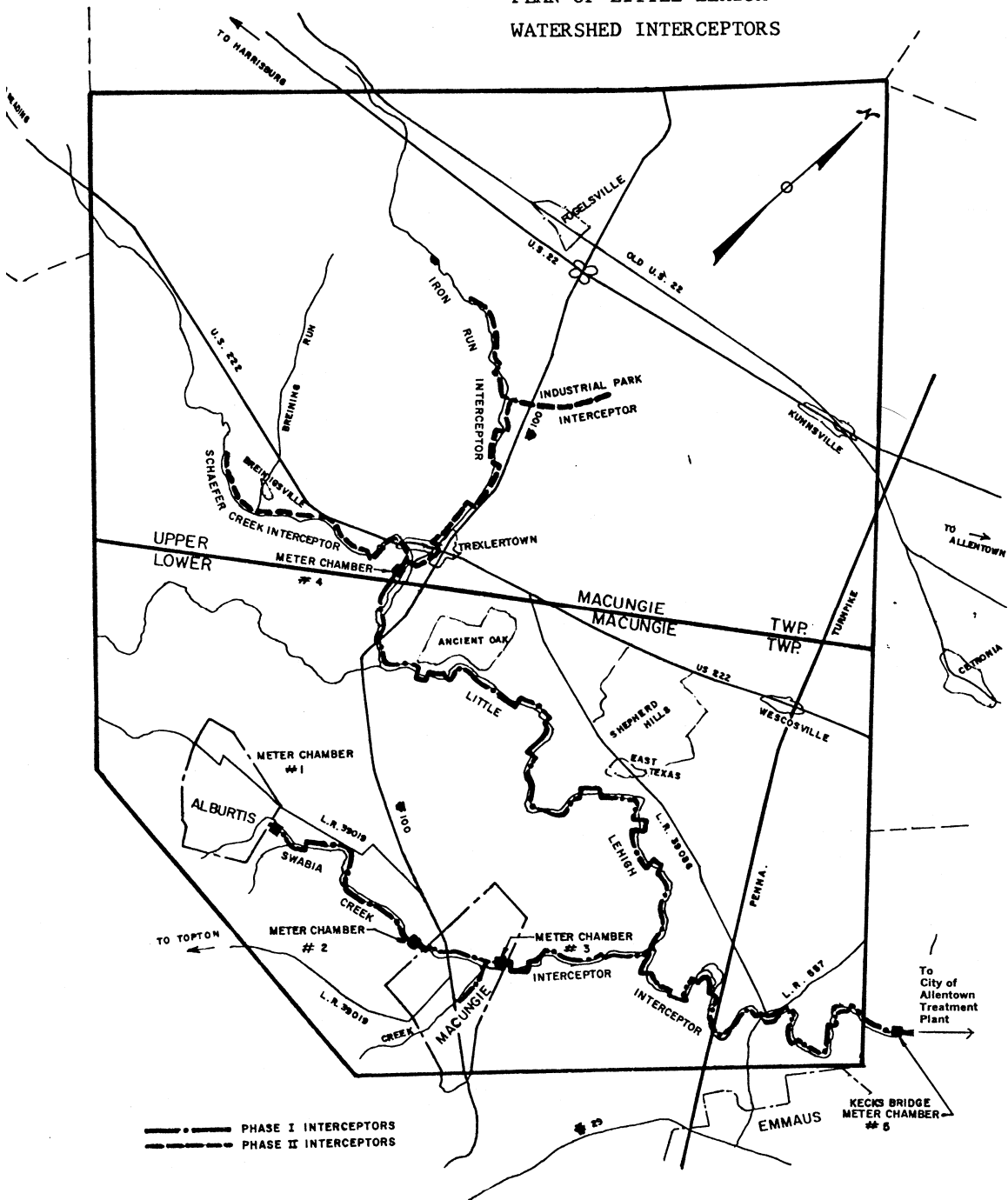


Exhibit "A"