

The Table of Contents, the footnotes, and the section headings shown in brackets and bold print, are NOT part of the Document, but have been added for the convenience of the reader.

AGREEMENT

TABLE OF CONTENTS

1. Definitions
 - Alburtis Authority*
 - Allentown Agreements*
 - Authorities Act*
 - Authority*
 - City*
 - County*
 - Indenture*
 - Interceptor System*
 - Lease*
 - Lower Macungie Authority*
 - Local Authorities*
 - Macungie authority*
 - Municipality (ies)*
 - Project*
 - Service Agreements*
 - Sewage*
 - Sewage Collection Systems*
 - Trustee*
 - Upper Macungie Authority*
2. Appointment of Authority as Manager of Interceptor System
3. Management Services to be Performed
4. Utilization of Sewer Revenue Account
5. Bonding of Officers and Employees
6. Extraordinary Repairs and Capital Additions
7. Inspection of Records
8. No Management Fee
9. Employment of Consulting Engineer
10. Term
11. Construction and Intent

THIS AGREEMENT, dated as of 15 August, 1978, between LEHIGH COUNTY AUTHORITY, a municipality authority existing under laws of the Commonwealth of Pennsylvania, and the COUNTY OF LEHIGH, Pennsylvania.

WITNESSETH:

WHEREAS, The Authority has been incorporated pursuant to appropriate action of the governing body of the County; and

WHEREAS, The Authority, pursuant to authority vested in it by law and pursuant to request of the County, has constructed the project and financed the same through the Sewer Bond Issue of 1971; and

WHEREAS, The Authority, as lessor, has leased the Interceptor System to the County, as lessee, pursuant to terms and provisions of the lease; and

WHEREAS, The County, the Municipalities and the Local Authorities have agreed, pursuant to terms and conditions of the Service Agreements, that sewage collected in the Sewage Collection Systems, subject to terms and conditions of the Service Agreements, may be discharged into the Interceptor System for transportation and ultimate treatment and disposal; and

WHEREAS, The County and the Authority, with the consent and joinder of the Municipalities, have provided for the discharge of sewage from the Interceptor System to the sewer system presently being operated and maintained by the City for further transportation and for treatment and disposal pursuant to and in accordance with terms and conditions of the Allentown Agreements; and

WHEREAS, The Lease, in Section 11.05, permits the County to employ or appoint the Authority to manage or operate the Interceptor System in behalf of the County and to perform other functions of the County with respect to the Interceptor System and to delegate to the Authority such duties of the County as it shall deem advisable and as it lawfully may delegate; and

WHEREAS, The County and the Authority have decided that the Authority should undertake management and operation of the Interceptor System to the full extent that the duties of the County may be delegated to the Authority; and

WHEREAS, The parties hereto wish to set forth the terms upon which the Authority shall manage and operate the Sewer System.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration paid to each of the parties by the other, the receipt whereof is hereby acknowledged by each party, and of the mutual covenants and agreements hereinafter contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. **[Definitions.]** The terms and phrases used in this Agreement, for all purposes hereof, shall have the meanings specified in this Paragraph 1, unless the context clearly otherwise requires:

“*Alburtis Authority*” means the Borough of Alburtis Sewer Authority, a municipality authority organized and existing under the Authorities Act.

“*Allentown Agreements*” mean collectively, the Agreement¹, dated December 22, 1969, between the City, as party of the first part, and the Authority, as party of the second part, and the Loan Agreement², dated December 22, 1969, 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, including any amendments and/or supplements to either or both of said agreements at any time constituting a part of either or both of said agreements.

“*Authorities Act*” means the Act of the Pennsylvania General Assembly known as the “Municipalities Authorities Act of 1945”, approved May 22, 1945, P.L. 382, as amended and supplemented from time to time.

“*Authority*” means Lehigh County Authority, a municipality authority incorporated as set forth in the Preamble hereof and existing under the Authorities Act.

¹ **Cross-Reference:** *see* Modified Ordinances ¶ 65-Q(1).

² No longer in effect.

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

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

“*Indenture*” means the Trust Indenture, dated as of January 1, 1971, between the Authority and the Trustee, including all modifications, alterations, amendments and supplements thereto made and delivered in accordance with provisions thereof.³

“*Interceptor System*” means all facilities acquired and/or constructed by the Project, together with all appurtenant facilities and properties which the Authority has acquired or hereafter shall acquire in connection therewith, including all property, real, personal and mixed, rights, powers, licenses, easements, rights of way, privileges, franchises and any and all other property or interests in property of whatsoever nature used or useful in connection with such facilities, and together with all additions, extensions, alterations and improvements which may be made or acquired from time to time.

“*Lease*” means the Agreement of Lease, dated as of January 1, 1971, between the Authority, as Lessor, and the County, as Lessee, with respect to the Interceptor System, and any amendments and supplements thereto made and delivered in accordance with terms thereof and/or hereof and at any time constituting part thereof.⁴

“*Lower Macungie Authority*” means Lower Macungie Township Authority, a municipality Authority organized and existing under the Authorities Act.

“*Local Authorities*” means, collectively, Alburdis Authority, Lower Macungie Authority, Macungie Authority and Upper Macungie Authority.

“*Macungie Authority*” means Borough of Macungie Sewer Authority, a municipality authority organized and existing under the Authorities Act.

“*Municipality*” or “*Municipalities*” means, individually or collectively, as applicable and appropriate, all municipal entities within the County of Lehigh, PA. that may be served by the Interceptor System.

“*Project*” means the undertakings of the Authority in connection with the construction and acquisition by the Authority of a system of interceptor sewers, including trunk sewers and other related and necessary appurtenant facilities for the purpose of receiving sewage to be collected in the Sewage Collection Systems of the Municipalities and transporting such sewage to the sewer system presently being operated and maintained by the City, subject to the terms and conditions of the Service Agreements.

“*Service Agreements*” means, collectively, the Agreement⁵, dated January 22, 1970, by and among the Authority, the County, the Borough of Alburdis, the Borough of Macungie, the Township of Upper Macungie, all located in Lehigh County, PA, and Lower Macungie Authority, in which Agreement the Township of Lower Macungie, Lehigh County, PA, has joined and has agreed to be bound by the terms and conditions thereof by execution of a Consent and Joinder

³ **Cross-Reference:** *see* Modified Ordinances ¶ 65-O(4).

⁴ **Cross-Reference:** *see* Modified Ordinances ¶ 65-O(3).

⁵ **Cross-Reference:** *see* Modified Ordinances ¶ 65-O(1).

thereto, and the Service Agreement⁶, dated as of August 1, 1970, between the County, on the one hand, and the Municipalities, on the other hand, in which Service Agreement the Authority and the Local Authorities have joined and have agreed to be bound by terms and conditions thereof by execution of consents and joinders thereto, including any Amendments and/or supplements to either or both of said Agreements at any time constituting a part of either or both of said Agreements or any future Service Agreements with any municipal entity within the County of Lehigh, PA that may be served by the Interceptor System.

“*Sewage*” means domestic sewage and/or industrial wastes, as such terms usually and customarily are used by environmental engineers.

“*Sewage Collection Systems*” means, collectively, the sewage collection facilities to be acquired and/or constructed by municipalities or their Authorities, as applicable and appropriate, for use and operation by the applicable Municipality, together with all appurtenant facilities and properties which have been acquired or hereafter shall be acquired in connection therewith, including all property, real, personal and mixed, rights, powers, licenses, easements, rights of way, privileges, franchises and any and all other property or interests in property of whatsoever nature used or useful in connection with such facilities, and together with all additions, extensions, alterations and improvements which may be made or acquired, from time to time.

“*Trustee*” means THE FIRST NATIONAL BANK OF ALLENTOWN, a national banking association, organized and existing under laws of the United States of America and having its principal office in the City of Allentown, PA, a party to the Indenture, and any successor thereto in the trust under the Indenture.

“*Upper Macungie Authority*” means Upper Macungie Township Authority, a municipality authority organized and existing under the Authorities Act.

2. **[Appointment of Authority as Manager of Interceptor System.]** The County engages and appoints the Authority to be manager and operator of the Interceptor System for the remainder of the term of the Lease, subject to the termination provisions provided in Paragraph 10 below, and the Authority agrees to manage and operate the Interceptor System on the terms and conditions hereinafter set forth.

3. **[Management Services to be Performed.]** In its capacity as manager and operator, the Authority shall render to the County the following services during the term hereof:

a. The Authority shall provide for continuous efficient management, operation and maintenance of the Interceptor System and for the furnishing of adequate and satisfactory service to the Municipalities and to any other parties permitted to be connected to the Interceptor System.

b. The Authority shall employ such persons as are required to properly manage, operate and maintain Interceptor System.

c. The Authority shall provide and supply the necessary services, materials, supplies and equipment for the operation and maintenance of the Interceptor System.

d. The Authority shall keep and maintain all books, accounts and records required in connection with the operation of the Interceptor System in accordance with applicable provisions of the Lease, the Indenture and the Service Agreements and report thereon quarterly to the County Executive and County Commissioners.

e. The Authority shall maintain adequate insurance against fire and such other risks as are usually and generally included in extended coverage endorsements and any other proper insurance, all as required by Section 8.01 of the Lease and by Section 8.04 of the Indenture. The

⁶ **Cross-Reference:** see Modified Ordinances ¶ 65-O(2).

County shall be named as a co-insured in all such policies, and the Authority shall by September 30 of each year present to the County a schedule of insurance coverage proposed for the next ensuing year; the County shall either approve or modify such proposed coverage by November 30 of such year.

f. The Authority shall render bills to the Municipalities for all sewer charges contemplated by terms and provisions of the Service Agreements and shall collect the same from the Municipalities and shall handle all matters arising from such billing and collecting.

g. The Authority shall provide for performance of all services, the expense of which can properly be paid from the Sewer Revenue Account established in the Lease, including, inter alia, the making of provision for all Operating Expenses, as defined in the Lease, which Operating Expenses includes, inter alia, sums payable periodically under the Allentown Agreements.

h. Whenever the County shall be required, by the provisions of the Lease and/or the Service Agreements, to take any action, the Authority, if such action shall be delegable to the Authority, shall take such action on behalf of the County in such manner and within such time as to comply with such provisions of the Lease and/or the Service Agreements. If such action shall not be delegable to the Authority, the Authority shall give written notice to the County of the requisite action so required by the Lease and/or the Service Agreements. In general, the Authority shall render all reasonable assistance to the County in order to enable the County to perform and fulfill its obligations under the Lease and/or the Service Agreements and, to the extent necessary, to enforce all rights and remedies of the County against the Municipalities under the Service Agreements and all rights and remedies of the County or the Authority against any other party who may be permitted to be connected to the Interceptor System under any future agreement which may be executed in connection therewith, to secure efficient and economical administration and operation of the Interceptor System, and to assure adequate and efficient service to users of the Interceptor System. In particular, the Authority shall prepare, for action thereon by the appropriate County officials, all certificates, resolutions and other documents required by the Lease or Indenture to be prepared by the County and/or such officials.

4. **[Utilization of Sewer Revenue Account.]** The Authority shall deposit all Sewer Revenues, as defined in the Lease, in the Sewer Revenue Account established under the Lease, as required by the Lease. Proper officers or employees of the Authority shall be authorized to make payments of costs properly chargeable to the Sewer Revenue Account.

5. **[Bonding of Officers and Employees.]** The Authority agrees to cause all officers and employees of the Authority handling funds relating to the Interceptor System to be bonded at all times in adequate amounts by a responsible surety company or surety companies duly qualified to do business in the Commonwealth of Pennsylvania and satisfactory to the County. Copies of such bonds shall be delivered to the County.

6. **[Extraordinary Repairs and Capital Additions.]** The Authority is authorized to make Extraordinary Repairs and/or Capital Additions, as such terms are defined in the Indenture, which indenture shall apply to such terms whenever the same are used in this Agreement, without further approval of the County, to the extent that funds shall be available to it for such purposes without issuance of additional bonds under the Indenture. For such purposes, the County authorizes the Authority, as manager, to use any available monies in the Sewer Revenue Account, as provided in Section 11.06 of the Lease.

If the Authority chooses to make Extraordinary Repairs from a fund or funds as provided in Article V of the Indenture, or from funds borrowed as provided in Section 11.01 of the Lease, or from funds borrowed as provided in Section 3.07 of the Indenture, the County hereby approves such application of monies and waives any further right to approve specific applications of monies to Extraordinary Repairs. If the proposed Capital Additions consist of the acquisition of an existing sewer system, the Authority shall secure the approval of the County, as provided in Section 5.06 of the Indenture. The Authority shall inform

the County Executive and the Board of Commissioners of any Extraordinary Repairs and any Capital Additions as soon as practicable.

In addition to the authorization given hereby, the Authority shall retain any rights provided in the Lease and Indenture to make Extraordinary Repairs or Capital Additions to the Interceptor System.

7. **[Inspection of Records.]** The books, records and accounts of the Authority, as manager, shall be open for inspection by the County or its authorized agents at any reasonable time.

8. **[No Management Fee.]** The Authority shall charge no fee or commission for the management and operation of the Interceptor System; provided, however, that all proper expenses incurred in such management and operation shall be paid, as provided herein, from the Sewer Revenue Account or such other account established under the Lease or Indenture, as shall be appropriate.

9. **[Employment of Consulting Engineer.]** The Authority agrees to employ a consulting engineer who shall not be unacceptable to the County and who shall act as consulting engineer to the Authority in all matters relating to operation of the Interceptor System pursuant to this Agreement.

10. **[Term.]** This Agreement shall continue in effect for one (1) year from the date hereof, and for one (1) year terms thereafter, unless the County shall give written notice of its desire to terminate the Agreement at the expiration of any term thereof, such notice to be given at least six (6) months before the effective date of termination.

11. **[Construction and Intent.]** This Agreement shall be construed by the parties in conformity with the following express agreement of the parties hereto:

a. The Authority and the County desire to have the Authority undertake the entire management and operation of the Interceptor System so far as permissible under the terms of the Lease and Indenture and any applicable law.

b. The County shall not be relieved of its ultimate responsibility for obligations imposed on the County by the Lease. The County's obligation to pay rentals as provided in the Lease, to pay Operating Expenses, as defined in the Lease, and to meet all other Obligations of the County under the Lease shall not be altered in any way.

c. The Authority shall retain, independent of this Agreement, all of the rights, powers, obligations and duties provided in the Lease and Indenture.

d. In the event of any conflict between the provisions herein set forth and the provisions of the Lease or Indenture, the provisions of the Lease and Indenture shall prevail in all respects.

IN WITNESS WHEREOF, LEHIGH COUNTY AUTHORITY has caused this Agreement to be executed in its name and in its behalf by its Chairman or Vice Chairman and its corporate seal to be affixed hereunto and attested by its Secretary or Assistant Secretary, and the COUNTY OF LEHIGH has caused this Agreement to be executed in its name and in its behalf by the County Executive and its official seal to be affixed hereunto and attested by the Chief Clerk of the Board of County Commissioners, all as of the day and year first above written.

{Signed and attested by officers of Lehigh County Authority and the County of Lehigh.}