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ADDENDUM TO 10 FEBRUARY 1981
RELIEF INTERCEPTOR AGREEMENT

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PLANS AND SPECIFICATIONS

THIS ADDENDUM, dated for convenience as of 4 June, 1985, (hereinafter referred to as "Addendum") by and between the CITY OF ALLENTOWN, a third class city located in Lehigh County, Pennsylvania (hereinafter referred to as "City"), party of the first part,

AND

LEHIGH COUNTY AUTHORITY, a municipal authority organized and existing under the Municipality Authorities Act of 1945, as amended, with offices located in Lower Macungie Township, Lehigh County, Pennsylvania (hereinafter referred to as "Authority"), party of the second part.

WITNESSETH:

WHEREAS, the City owns and operates a wastewater treatment system; and

WHEREAS, numerous suburban municipalities and their authorities (hereinafter referred to as "Suburbs") collect sewage within their corporate boundaries and deliver it to the City wastewater treatment plant through two interceptors known as the Allentown/Emmaus Interceptor and the Little Lehigh Interceptor; and

WHEREAS, Suburbs and City, have various responsibilities for wastewater conveyance through the above named interceptors under numerous interjurisdictional agreements; and

WHEREAS, Suburbs entered into an agreement dated 10 February 1981 (hereinafter referred to as "Agreement")¹ to resolve the problems with capacity limitations of the above named interceptors; and

WHEREAS, a system of relief interceptors and pumping stations to be constructed in two phases (hereinafter referred to as "Relief Interceptor System") was approved in the Agreement; and

WHEREAS, the Phase I Relief Interceptor and Park Pumping Station have been financed and constructed to eliminate restrictions in the Little Lehigh Interceptor; and

WHEREAS, the City has responsibility under previous interjurisdictional agreements to provide increased capacity in the Allentown/Emmaus Interceptor; and

WHEREAS, the Suburbs require additional capacity in the Allentown/Emmaus Interceptor beyond that required to be provided by the City; and

WHEREAS, a considerable cost saving could be achieved if the City and the Suburbs participate in a joint project; and

WHEREAS, Suburbs designated the Authority as the entity which would be responsible for the financing, acquisition, and construction of all phases of the Relief Interceptor System; and

WHEREAS, Authority engaged, with City concurrence, the consulting engineering firm of Malcolm Pirnie, Inc. which has prepared a Study Report dated July 1984 (which is attached hereto, made a part hereof and known as Exhibit "A"), and an Updated Report dated November 1984 (which is attached hereto, made a part hereof and known as Exhibit "B"), which evaluate seven options for providing additional capacity in the Allentown/Emmaus Interceptor (hereinafter referred to as "Phase II"); and

WHEREAS, The Large Gravity Sewer Alternative (G-42/48) in the November 1984 Updated Report is the recommended project to provide additional capacity in the Allentown/Emmaus Interceptor.

NOW, THEREFORE, the City and the Authority, as designated representative for the suburban municipalities by the Agreement, in consideration of agreements, conditions and covenants herein contained, each intending to be legally bound, covenant and agree as follows:

1. **[Approval of Report; Approval of Large Gravity Sewer Alternative as Phase II; Approval to Construct Stage 1.]** The parties hereby approve the *Report on Allentown/Emmaus Interceptor, Project: 247-39-1100, July 1984, and Updated Report on Allentown/Emmaus Interceptor, November 1984* prepared by the engineering firm of Malcolm Pirnie, Inc., and approve the Large Gravity Sewer Alternative (G-42/48) as the Phase II project, which is more specifically detailed in the November 1984 Updated Report, including all stages of the Alternative. This approval shall also include approval to construct Stage 1 of the project (hereinafter referred to as "Project").

2. **[Participation of City in Construction Costs of Stage 1 Project.]** The City will share in the costs of the construction of the Project in an amount equal to 12% of the project cost of Stage 1 not to exceed SIX HUNDRED THOUSAND (\$600,000.00) DOLLARS. Said project cost shall include engineering, legal, administrative, financing and construction costs. The City agrees to make monthly payments to the Authority calculated at 12% of all Project expenditures up to the specified limit based on billing statements provided by the Authority.

3. **[Construction of Project by Authority; Required Approvals by City.]** The Authority is hereby authorized to perform all design, bidding, contracting and construction functions necessary to complete the Project. The City hereby approves the construction plans and specifications for Stage 1-A dated January, 1985 and attached hereto and retains the right to approve the construction plans and specifications

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

for Stage No. 1-B prior to the Authority placing the project out to bid. The City also retains the right to approve change orders during construction:

- (a) having environmental impact on the City parkway;
- (b) affecting the structural integrity of the Existing Allentown/Emmaus Interceptor; or
- (c) which are not classified in (a) and (b) above and exceed \$10,000 in additional costs.

4. **[City Inspector.]** Recognizing that construction will be taking place in an environmentally sensitive area of the Lehigh Parkway, the City shall retain the right of approval that all final surface restoration within the Parkway has been accomplished in accordance with the specifications and there shall be a City inspector on the site, paid for actual time during construction work with Project funds, in addition to the Authority's resident engineer, who shall verify the presence of the inspector during such construction work.

5. **[Ownership of Facilities by Authority; Contribution of City to Debt Service and Operation and Maintenance Costs.]** The Authority shall retain ownership and maintenance of all facilities constructed as part of the Project. The Authority will upon completion of each Section assume responsibility for initial response to problems within the parallel Allentown/Emmaus Interceptors except that any maintenance, modification, repairs, or physical changes to the Allentown/Emmaus Interceptors will be the responsibility of the owner of the respective interceptor. The parties agree to inspect annually their respective facilities. The parties agree to discuss a mutual approach to future allocation of responsibilities for the parallel interceptors. The City shall not participate in debt service or operating costs for Stages 1, 2 and 3 of Phase II, provided the wastewater discharged by the City into said Allentown/Emmaus Interceptor shall not exceed 150,000 gpd, measured by a method approved by the City Engineer and the Authority's Chief Engineer, as peak flow, in the 24-inch, 27-inch and 30-inch sections of the Allentown/Emmaus interceptor or shall not exceed 800,000 gpd, similarly measured as peak flow, in the 36-inch section of the Allentown/Emmaus interceptor; otherwise the City shall pay a pro-rata share of both debt service and operating and maintenance costs on such excess flow.

6. **[Grant of Easements by City.]** The City and any of its authorities or agencies, hereby agree to grant all necessary easements and rights-of-way, whether temporary or permanent in nature, subject to conditions to protect environmental and aesthetic concerns, without additional cost to the Authority, for construction, operation, and maintenance of Phase II facilities.

7. **[Limitation on Obligations of City.]** The responsibilities and obligations of the City are specifically restricted to the terms of this Addendum and shall not obligate the City to any terms of the Agreement, except as they are included herein.

8. **[Indemnification of City by Authority.]** The Authority does hereby for itself and for its successors and assigns agree to indemnify and hold harmless the City, its employees, agents, officials, representatives, attorneys and assigns from any and all liability arising out of all activities conducted in connection with this agreement and/or the performance hereof, including but not limited to payment of all fees for its/their attorneys and all incidental litigation expenses in the event the City, or any of its employees, agents, officials, representatives, attorneys, and assigns are sued upon a claim emanating or supposedly emanating from the execution and/or performance hereof, whether or not the City or any of its employees, agents, officials, representatives, attorneys, and assigns are held liable; however, the Authority shall not be responsible for any judgment or litigation expenses ultimately determined to be the result of the negligence of the City or any of its employees, agents, officials, representatives, attorneys or assigns.

The Authority agrees to indemnify the City for any damage to City property, including but not limited to utility lines, or injury to City personnel, which may result from the Authority's above-described activities.

9. **[City to be Additional Insured on Authority Insurance Policies.]** The Authority agrees to require that all policies of insurance provided by the contractor shall name the City of Allentown, its

officers, agents, and employees as additional insureds. This coverage shall be reflected on the Certificates of Insurance.

10. **[Joint Study of Relief Sewer for 54" Interceptor.]** The City and the Authority agree to cooperate and jointly engage an Engineer to study the possible need for a relief sewer for the 54-inch interceptor from its junction with the Authority's existing relief force main to the Kline's Island Treatment Plant. The costs of both the study and said relief interceptor shall be divided between the parties in proportion to the peak flows of the respective parties as determined by said engineer.

11. **[Erosion Control.]** The parties recognizing the need for avoiding the deposition of silt on the stream floor, agree to the following means of monitoring the erosion control specifications contained in the sewer construction contract:

11.1. Compliance may be monitored by the City by collecting and analyzing for turbidity samples drawn above, within, and approximately 200 feet down stream from the discharge from any of the Contractor's dewatering operations.

11.2. While it is recognized that there are no generally accepted standards for stream protection from pumping operations associated with pipeline construction and that the values set forth below are, therefore, arbitrary and subject to possible modifications, it is the initial intent of the parties that the turbidity measurement downstream of the point of discharge shall be no greater than 200% of that of the upstream sample, as averaged over two days of construction, with not less than three samples at minimum intervals of two hours each day.

11.3. All turbidities shall be measured in standard turbidity units in accordance with the latest edition of *Standard Methods for the Analysis of Water and Waste Water*, as published by the American Public Health Association, American Water Works Association and Water Pollution Control Federation.

In the event that the turbidity measurements fail to meet the standards set forth in Paragraph 11.1 above, the Authority shall immediately convene a progress meeting, to which the City and the Contractor shall be invited, in an effort to improve turbidity control. The City retains the right to demand arbitration if it is not satisfied with such improvements as the Contractor provides. The Board of Arbitration shall consist of one person designated by the City, one person designated by the Authority and a third person chosen by the first two designees. The question for the arbitrators to decide shall be limited to whether the Contractor's methods are adequately protecting the stream and, if decided in the negative, precisely what changes in construction methods shall be employed. It is the intent of this paragraph that any arbitration shall proceed promptly, with a decision rendered within 72 hours of the convening of the Arbitration Board, which shall operate under its own rules. The work shall proceed during such arbitration. The cost of any arbitration shall be equally divided between the parties. Nothing herein contained shall change the contractual relationship between the Authority and the Marona Construction Company.

12. **[Conflicts with Other Agreements.]** In the event any provision contained in this Addendum shall be determined to be inconsistent with any provision of any other existing agreement between or among the two parties or any of the Suburbs and the two parties, the provisions of this Addendum shall be deemed to be controlling to the extent permitted by law.

13. **[Severability; Construction.]** If any provision hereof shall be held to be invalid, such invalidity shall not affect any other provision hereof, and remaining provisions hereof shall be construed and enforced as if such invalid provision had not been contained herein. Laws of the Commonwealth of Pennsylvania shall govern construction hereof.

IN WITNESS WHEREOF, each of the parties, for themselves, their assigns and successors, hereto has caused this Addendum to be truly executed and attested by its proper officers, pursuant to proper actions of its governing body, all as of the day and year first above written.

{Signed and Attested by Officers of the City of Allentown and Lehigh County Authority.}

CONSENT AND JOINDER

{Separate consents and joinders in the following form were signed and attested by officers of the Township of Lower Macungie (dated August 1, 1985), Borough of Macungie (undated), Township of South Whitehall (undated), Township of Upper Milford (dated December 4, 1985), Township of Lowhill (undated), Township of Upper Macungie (undated), Township of Weisenberg (dated August 1, 1985):}

The {NAME OF MUNICIPALITY}, a township {borough} located in Lehigh County, Pennsylvania, for value received, and intending to be legally bound hereby, does hereby join in and consent to the foregoing Addendum, dated for convenience as of 4 June 1985, (the "Addendum"), by and between the City of Allentown and Lehigh County Authority, and to the extent applicable to it, agrees to abide by the terms of and be bound by the terms of said Addendum.

IN WITNESS WHEREOF, the {NAME OF MUNICIPALITY} has caused this Consent and Joinder to be duly executed and attested by its proper officers, pursuant to proper action taken by its proper officers this ___ day of _____, 198__.

CONSENT AND JOINDER

The BOROUGH OF ALBURTIS, a borough located in Lehigh County, Pennsylvania, for value received, and intending to be legally bound hereby, does hereby join in and consent to the foregoing Agreement, dated for convenience as of 4 June 1985, (the "Addendum"), by and among the City of Allentown and Lehigh County Authority, and to the extent applicable to it, agrees to abide by the terms of and be bound by the terms of said Agreement.

A stipulation dated December 30, 1987² was executed in settlement of civil suit 81-C-1947, Borough of Alburdis vs. County of Lehigh et al. This Consent and Joinder shall not be interpreted to waive, alter, or contradict the terms of that December 30, 1987 stipulation; however, that stipulation shall not be interpreted to give the Borough of Alburdis any rights in this Agreement different from those of the other parties to this Agreement, except that nothing contained herein shall be interpreted to waive Alburdis' right to receive payments from the County of Lehigh as provided in the December 30, 1987 Settlement Stipulation.

IN WITNESS WHEREOF, the BOROUGH OF ALBURTIS has caused this Consent and Joinder to be duly executed and attested by its proper officers, pursuant to proper action taken by its Board this 13 day of Jan., 1988.

Effective Date: 19 June 1987

{Signed and Attested by Officers of the Borough of Alburdis.}

{Exhibit A.}³

{Exhibit B.}⁴

{Construction Plans and Specifications for Stage 1-A.}⁵

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

³ Not reproduced.

⁴ Not reproduced.

⁵ Not reproduced.