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AGREEMENT

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CONSENTS AND JOINDERS OF SUBURBAN MUNICIPALITIES
CONSENT AND JOINDER OF ALBURTIS

THIS AGREEMENT made as of the 27th day of November, 1985, 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

COPLAY-WHITEHALL SEWER AUTHORITY, a municipal authority organized and existing under the Municipality Authorities Act of 1945, as amended, with offices in the Township of Whitehall, Lehigh County, Pennsylvania (hereinafter referred to as “Coplay-Whitehall”), party of the second 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 “County Authority”), party of the third part,

AND

TOWNSHIP OF SALISBURY, a first-class township located in Lehigh County, Pennsylvania, (hereinafter referred to as “Salisbury”), party of the fourth part,

AND

TOWNSHIP OF SOUTH WHITEHALL, a first-class township located in Lehigh County, Pennsylvania (hereinafter referred to as “South Whitehall”), party of the fifth part,

AND

BOROUGH OF EMMAUS, a borough located in Lehigh County, Pennsylvania, (hereinafter referred to as “Emmaus”), party of the sixth part.

WHEREAS, City owns and operates a wastewater treatment system (Publicly Owned Treatment Works, POTW); and

WHEREAS, the parties currently utilize this wastewater treatment system pursuant to Service Agreements between:

City of Allentown and Emmaus dated March 17, 1959.

City of Allentown and Coplay-Whitehall Sewer Authority, South Whitehall Township Authority and Salisbury Township Authority dated April 12, 1965.

City of Allentown and Salisbury Township Authority dated March 1, 1966;

City of Allentown, South Whitehall Township and South Whitehall Township Authority dated January 18, 1967.

City of Allentown, Allentown Authority and Township of South Whitehall and South Whitehall Township dated February 28, 1967.

City of Allentown, South Whitehall Township and South Whitehall Township Authority dated February 28, 1967;

Township of South Whitehall and South Whitehall Township Authority and Township of Salisbury and Salisbury Authority dated May 15, 1967.

City of Allentown and Coplay-Whitehall Sewer Authority, South Whitehall Township Authority, Salisbury Township Authority and the County of Lehigh dated December 22, 1969.

City of Allentown and Lehigh County Authority dated December 22, 1969.¹

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

City of Allentown and Salisbury Township Authority dated December 22, 1969.

Lehigh County Authority, County of Lehigh and the Boroughs of Macungie, Alburtis, Township of Upper Macungie and the Lower Macungie Township Authority dated January 22, 1970.²

County of Lehigh and Townships of Upper Macungie and Lower Macungie and the Boroughs of Alburtis and Macungie dated August 1, 1970.³

Lehigh County Authority and County of Lehigh and Emmaus Municipal Authority and Borough of Emmaus dated April 27, 1972.⁴

City of Allentown, County of Lehigh, Coplay-Whitehall, Lehigh County Authority, Salisbury Township and South Whitehall Township dated December 29, 1981.⁵

City of Allentown and South Whitehall Township dated November 20, 1982; and

WHEREAS, the Federal Government has passed legislation and regulations to promulgate a national policy establishing responsibilities of federal, state and local government, industry and the public to control pollutants which pass through or interfere with treatment processes in POTWs or which may contaminate sewage sludge; and

WHEREAS, the City must develop and implement an industrial pretreatment program pursuant to conditions contained in its discharge permit (NPDES Permit #PA 0026000) issued by EPA; and

WHEREAS, the parties desire to continue to utilize the City's treatment plant and to cooperate with the City in the implementation of a pretreatment program and recognize their industrial waste control obligations under 40 CFR 403.

NOW, THEREFORE, THE PARTIES HERETO IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS THEREIN CONTAINED AND INTENDING TO BE LEGALLY BOUND, AGREE AS FOLLOWS:

1. **[Support for Pretreatment Program.]** The parties, and all municipalities served by them, agree to provide support for the administrative activities necessary for implementation and enforcement of the Pretreatment program including the institution and prosecution of appropriate enforcement litigation within the municipality being served.

2. **[Adoption and Enforcement of Local Ordinances Which Conform to City Ordinance.]** The parties and any municipalities in which they serve shall adopt and diligently enforce legislation which substantially similar to Ordinance No. 12003 as amended, adopted by the City.

3. **[Explicit Provisions Required in Local Ordinances.]** The parties and any municipalities in which they serve shall explicitly incorporate the following provisions into their legislation:

(a) a provision requiring any industrial user responsible for a significant accidental discharge to notify immediately both the City and the party within whose jurisdiction the user is located;

² **Cross-Reference:** *see* Codified Ordinances ¶ 65-O(1).

³ **Cross-Reference:** *see* Codified Ordinances ¶ 65-O(2).

⁴ **Cross-Reference:** *see* Codified Ordinances ¶ 65-O(5).

⁵ **Cross-Reference:** *see* Codified Ordinances ¶ 65-Q(2).

(b) a prohibition on the use of dilution as a control technique for compliance with discharge limits except as allowed by Federal Pretreatment Standards;

(c) a grant of authority to impose mass discharge limits in lieu of, or in conjunction with, concentration discharge limits;

(d) a prohibition against and penalty for the knowing transmittal of false information by an industrial user to either the City or the party within whose jurisdiction the user is located;

(e) a grant of explicit authority to the party to require the installation of all monitoring and pretreatment facilities.

(f) the parties shall adopt, as part of their ordinance, and assist the City in enforcing specific discharge limits at least as stringent as the specific discharge limits established in the City's ordinance.

(g) the ordinance shall require that categorical pretreatment standards promulgated by the U.S. Environmental Protection Agency (EPA) (promulgated by authority of the Clean Water Act Sections 307(b) and (c)) be automatically incorporated by reference into the ordinance. These standards shall supercede [*sic*] any specific discharge limits in the ordinance which are less stringent than the categorical standards as they apply to the particular industrial subcategory. Nothing herein stated, however, shall preclude any party from challenging EPA on any such federal standard or the City on any local limits now or hereafter promulgated either as to form or substance.

4. **[Periodic Review of Legislation; Local Ordinance Amendments When the City Amends its Ordinance.]** The City and the other parties shall periodically (at least once every three years or as necessary) review their respective legislation and jointly draft and adopt equivalent amendments to their respective legislation when necessary to ensure the effective administration and operation of the pretreatment program in accordance with 40 CFR 403. If the parties have adopted a substantially similar ordinance as the City, then, whenever the City amends its ordinance the parties shall adopt a substantially similar amendment.

5. **[Notification of Municipalities and Industrial Users of Categorical Standards and Monitoring and Reporting Requirements.]** The City shall notify all other parties of pertinent categorical standards and monitoring and reporting requirements contained in 40 CFR 403.12 or included as part of the categorical standard. The parties shall notify all affected industrial users within their jurisdiction of all such requirements.

6. **[Classification of Significant Industrial Users; Industrial Discharge Permits.]** The parties shall adopt an industrial classification identical to those considered to be by definition a significant industrial user adopted by the City. The City may make an objective final determination as to whether a particular industrial user is a significant industrial user pursuant to 40 CFR 403 and based on information the City may have or request from the parties. The parties shall control, through industrial discharge permits, industrial waste discharges from each industrial user discharging into the sewerage system. All applications for industrial discharge permits shall be submitted to the party serving the jurisdiction in which the discharge is located. The parties shall transmit a duplicate copy of all applications to the City. It is agreed that the conditions of the connection of any new industrial user must be reviewed within 60 days of the submission of a complete application and approved jointly by the party and the City to insure that any increased burden placed upon the wastewater treatment system can be met. All permits shall be issued by the party within whose jurisdiction the industrial user is located.

7. **[No Industrial Connections Without a Permit.]** No party shall authorize any industrial user located within its jurisdictional boundaries to connect to any sewer line, pipe or other conveyance which carries wastewater to the City's treatment plant before the user has received a permit for discharge from that party. Failure to obtain a permit a reasonable length of time prior to connection may result in disconnection of the industrial user.

8. **[Procedures to Document and Identify Significant Industrial Users.]** Any party may, if applicable, certify and document that there are no significant industrial users connected to its sewer system. This certification and documentation shall be based on an industrial waste survey performed according to procedures established by the City. Any such party shall designate an appropriate official or employee to review, on a quarterly basis, all pertinent records (e.g., connection permits, business licenses, water use records), to determine whether an industrial user will be locating within its service area. If a prospective industrial user is identified, the party shall report this fact to the City, and the provisions of paragraph 6 will be invoked. The other parties shall provide the City access to these records for independent verification of both review procedures and records.

9. **[Industrial Users Located Outside of the Jurisdiction of the Serving Municipality.]** If there exists any industrial user discharging to any party's sewer system but located outside the jurisdictional limits of that party, then that party shall negotiate and enter into an agreement with this outside jurisdiction. Such agreement shall be substantially equivalent to this Agreement, and shall be jointly executed by that party, the City and the outside jurisdiction. If the outside jurisdiction refuses to negotiate and execute an agreement, then that party shall enter into a contract with the industrial user which contains terms and conditions substantially equivalent to the City's industrial discharge permits. Failure by any party or Industrial User to comply with the terms and conditions of these requirements will be sufficient reason for termination of the connection to the sewerage system.

10. **[Copies of Certain Documents to be Filed with City; Access to Industrial Information.]** Each party shall file with the City a certified copy of its ordinance and any amendments thereto or those of any municipality or municipal authority it serves by agreement, other interjurisdictional agreements, any industrial waste discharge permit issued, and any contract entered into for the purposes of industrial waste control. The parties shall provide each other access to and copies of, if requested, any industrial information kept by the parties regarding the discharges of the parties or their industrial users which would directly or indirectly affect the pretreatment program.

11. **[Inspections by City.]** When required by the terms of this agreement, any authorized officer or employee of the City may enter and inspect at any reasonable time any part of the sewer system of any party, when accompanied by or upon prior arrangement with an authorized officer or employee of that party. The right of entry and inspection shall extend to public streets, easements, and property within which the system is located. Additionally, the City shall be permitted, when accompanied by or upon prior arrangement with an authorized officer or employee of that party, to enter onto private property to inspect industrial waste dischargers. The parties shall cooperate in any necessary legal and administrative arrangements to carry out these inspections. The right of inspection shall include on-site inspection of pretreatment and sewer facilities, observation, measurement, sampling, testing, and access to (with the right to copy) all pertinent compliance records located on the premises of the industrial user. All reasonable expenses incurred by the City in performing any of these functions shall be assessed upon the other party. The City agrees to provide the other party with a detailed accounting of expenses incurred for scheduled and unscheduled events and discharge quality determination prior to their assessment.

12. **[Supplemental Contracts with the City to Provide Technical and Administrative Services.]** The City and any of the other parties may enter into agreements providing the City with the legal authority and responsibility for performance of certain technical and administrative activities necessary for implementation of the pretreatment program within a party's jurisdiction. These activities may include: 1) updating the industrial waste survey when necessary; 2) providing technical services, including sampling and process chemical analysis; 3) permitting; 4) compliance monitoring. Where pretreatment delegation occurs, the party shall reimburse the City for the costs incurred by the City in conjunction with the administration of the assigned pretreatment activities on behalf of that party. The City shall provide that other party with a detailed accounting of the pretreatment costs billed.

13(A). **[Contests of Monitoring Results.]** Should any party contest the results of the monitoring, including measuring, sampling, analyzing, inspecting and reporting of industrial waste discharges accomplished by another party, which results indicate a violation, the contesting party may request additional monitoring as the case may be.

13(B). **[Arbitration for Contests of Measuring or Sampling Procedures.]** Should any party contest the measuring or sampling procedure utilized by any other party, the contesting party may invoke the arbitration process delineated in paragraph eighteen (18) hereof.

14. **[City Review of Local Ordinances, Agreements, and Enforcement.]** The City shall review the other parties' ordinances and amendments thereto, and those of any municipality or municipal authority served by agreement, and any interjurisdictional agreements for conformance with 40 CFR Part 403, and to ensure inclusion of all other legal provisions mandated by this Agreement. The City shall periodically review the enforcement efforts of the parties and any other jurisdiction to ascertain whether pretreatment requirements are being diligently enforced.

15. **[Noncompliance by Industrial Users.]** If any industrial user or party has failed or has refused to fulfill any obligations under this pretreatment program, the City may develop and issue a reasonable remedial plan to the parties containing a description of the nature of the pretreatment deficiencies, a suggested enumeration of steps to be taken by that industrial user or party, and a time schedule for attaining compliance with all requirements. Where the industrial user fails to remedy by some method the pretreatment deficiencies within the time schedule, the City may, upon thirty days written notice, refuse to accept any industrial waste discharges from that industrial user.

16. **[Emergencies.]** Where a discharge to the wastewater treatment system reasonably appears to present an imminent danger to the health and welfare of persons, or presents or may present an imminent danger to the environment, or threatens to interfere with the operation of the wastewater treatment system, the City may immediately initiate steps to identify the source of the discharge, and to halt or prevent said discharge. The City may seek injunctive relief against any party and/or any industrial user contributing to the emergency condition, and/or may pursue other self-help remedies.

17. **[Required Indemnification of City and Other Parties.]** The parties shall incorporate into their legislation and permit a provision that any industrial user shall indemnify the City of Allentown Sewer Fund and any other party for all damages, fines, and costs incurred by the City as a result of industrial waste discharge from that user. The industrial user shall be required to reimburse the Sewer Fund for fines or costs stemming from injury to personnel of the parties, damages to sewerage facilities, disruption of treatment processes or operations, degradation of sludge quality, NPDES permit violations, and other air, water, and sludge quality violations attributable to an identifiable user. The City where the violating user is located inside City, and the City and permitting party jointly where the violating user is located outside the City shall attempt with all due diligence to collect such damages, fines and costs from the violating user. Any party may seek relief against any other party who fails to enforce the provisions of this paragraph.

18. **[Arbitration.]** Any dispute or claim arising out of or relating to the provisions of this agreement shall be settled or determined by arbitration conducted in accordance with the provisions of this paragraph eighteen (18). The arbitration shall be conducted and decided by a single arbitrator chosen by the unanimous consent of the parties to the dispute by written designation executed by those parties within thirty (30) days of the date when any party notifies all of the other parties in writing that it desires to have a dispute or claim arbitrated. If the parties to the dispute are not able within said thirty (30) day period to agree unanimously on an arbitrator, any party shall have the right upon ten (10) days prior written notice given to all of the other parties to the dispute, to Petition the Court of Common Pleas of Lehigh County, Pennsylvania to have said Court appoint an arbitrator to arbitrate the dispute or claim. The arbitration conducted by the arbitrator so selected or appointed shall be conducted in accordance with the procedural rules of the American Arbitration Association and judgment may be entered upon the award rendered by the said arbitrator in any Court having jurisdiction thereof.

19. **[Modification and Review.]** The terms of this Agreement may be amended only by written agreement of the parties. In any event, this Agreement shall be reviewed and revised, as necessary, at least every three years.

20. **[Effect on Existing Service Agreements.]** This Agreement modifies only those provisions of the existing Service Agreement between the parties which conflict with the terms of this Agreement.

21. **[Term.]** This Agreement will remain in effect so long as the Service Agreements remain in effect. Termination of the Service Agreements shall also result in the termination of this agreement.

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

23. **[Counterparts.]** This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts 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 proper officers, pursuant to proper action of its governing body, all as of the day and year first above written.

{Signed and Attested by Officers of the City of Allentown, Coplay-Whitehall Sewer Authority, Lehigh County Authority, Township of Salisbury, Township of South Whitehall, and Borough of Emmaus.}

CONSENT AND JOINDER

{Separate consents and joinders in the following form were signed and attested by officers of the Township of Upper Macungie (undated); Borough of Macungie (dated February 18, 1985); Township of Lower Macungie (dated January 10, 1985); Township of Whitehall (undated); Borough of Coplay (undated); Township of Upper Milford (undated); Township of Weisenberg (undated); and Township of Lowhill (undated).}

The {NAME OF MUNICIPALITY}, a municipality 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 _____, 1985 (the "Agreement"), by and among the City of Allentown, Coplay-Whitehall Sewer Authority, Lehigh County Authority, and the Townships of Salisbury and South Whitehall, and the Borough of Emmaus, and to the extent applicable to it, agrees to abide by the terms of and be bound by the terms of said Agreement.

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 _____, 1985.

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 the consent to the foregoing Agreement, dated for convenience as of 27 November 1985 (the "Agreement"), by and among the City of Allentown, Coplay-Whitehall Sewer Authority, Lehigh County Authority, and the Townships of Salisbury and South Whitehall and the Borough of Emmaus, and to the extent applicable to it, agrees to abide by the terms and be bound by the terms of said Agreement.

A stipulation dated December 30, 1987⁶ 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 this 13 day of Jan., 1988.

Effective Date: 19 June 1987

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

⁶ **Cross-Reference:** *see* Codified Ordinances ¶ 65-S(2).