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**AMENDMENT NO. 2 TO 1 APRIL 1983**  
**WASTEWATER TREATMENT CAPACITY**  
**ALLOCATION AGREEMENT**  
**(POST-REDEMPTION 1971 BONDS)**

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CONSENT AND JOINDER OF UPPER MACUNGIE TOWNSHIP AUTHORITY

This AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 1993, by and among the LEHIGH COUNTY AUTHORITY (“Authority”), a Pennsylvania municipal authority; COUNTY OF LEHIGH (“County”), a Pennsylvania municipal subdivision; and the Boroughs of ALBURTIS and MACUNGIE, the Townships of LOWER MACUNGIE, LOWHILL, UPPER MACUNGIE, UPPER MILFORD and WEISENBERG, all Pennsylvania municipal subdivisions located in Lehigh County, Pennsylvania (referred to collectively as “Municipalities”).

WITNESSETH:

WHEREAS, the Authority constructed the Western Lehigh Interceptor (“Interceptor”) to serve the Municipalities by issuing its Sewer Revenue Bonds, 1971 Series (“1971 Bonds”) and then leased the facilities to the County; and

WHEREAS, the Interceptor connected to the City of Allentown (“City”) sanitary sewer system for transportation to the City sewer treatment plant; and

WHEREAS, Authority as agent for the Municipalities procured wastewater treatment capacity in the City sewage treatment plant; and

WHEREAS, the County, the Authority, and the Municipalities entered into an Agreement dated 1 April 1983 (“1983 Agreement”)<sup>1</sup> to set forth their understanding regarding the allocation of wastewater treatment capacity obtained up to that time from the City, the means of calculating wastewater rates and charges, and other matters related to sewer service; and

WHEREAS, the parties entered into an amendment agreement dated 1 August 1987 (“1987 Amendment”)<sup>2</sup> to consolidate prior amendments and to establish a means of recouping capital costs of wastewater facilities from those receiving benefits of the capital expenditures in the form of a capital recovery fee called the Interceptor Fee; and

WHEREAS, the Authority decided to redeem all outstanding 1971 Bonds on 1 July 1993 due to changing interest rates; and

WHEREAS, the Trustee Funds of the 1971 Bonds will no longer exist as the repository for the Interceptor Fees collected nor for preserving a maintenance reserve; and

WHEREAS, the parties wish to enter into another amendment agreement to effect modifications to respond to changes arising out of the retirement of the 1971 Bonds;

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

## ARTICLE I

### GENERAL

SECTION 1.01. **[Incorporation of Preambles.]** All of the preambles to this 1993 Amendment No. 2 to 1 April 1983 Wastewater Treatment Capacity Allocation Agreement (Post-Redemption 1971 Bonds) (“1993 Amendment”) above set forth are hereby incorporated into and made a part of this Agreement.

SECTION 1.02. **[Effect on Existing Agreements.]** Nothing in this 1993 Amendment is intended, and nothing in this 1993 Amendment shall be construed any way to amend, modify, or supersede existing agreements between or among any of the parties to this 1993 Amendment nor shall this 1993 Amendment waive, release, surrender or bar any rights, claims, demands or defenses of any of the parties hereto in any issues, transactions or controversies among any of the parties, or to in any other way affect any rights, privileges or obligations, except to the extent specifically set forth in this 1993 Amendment.

## ARTICLE II

### CAPITAL RECOVERY FEES

SECTION 2.01. **[Interceptor Fees to be Deposited in Sub-Account of Sewer Revenue Account.]** The Interceptor Fees established in the 1983 Agreement and the 1987 Amendment were designated for deposit in the Bond Redemption and Improvement Fund of the 1971 Bonds. Since the 1971 Bonds will be redeemed as of 1 July 1993, the Bond Redemption and Improvement Fund will no longer exist. The parties agree that the Authority shall establish a sub-account within the Sewer Revenue Account for deposit of all Interceptor Fees received after 30 June 1993 as well as all interest income earned thereon.

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<sup>1</sup> **Cross-Reference:** *see* Codified Ordinances ¶ 65-R(2).

<sup>2</sup> **Cross-Reference:** *see* Codified Ordinances ¶ 65-R(6).

SECTION 2.02. **[Use of Interceptor Fees.]** Use of the Interceptor Fees shall be limited to:

- 1) Payment for capital improvements and additions to the Interceptor; and
- 2) Retirement of any indebtedness issued by the Authority to finance improvements and additions to the Interceptor.

### ARTICLE III

#### WORKING CAPITAL RESERVE

SECTION 3.01. **[Establishment and Maintenance of Working Capital Reserve.]** There were various funds established in connection with the 1971 Bonds, some of which provided a reserve for maintenance and repair of the Interceptor. With the redemption of the 1971 Bonds, these funds will cease; yet the need for such a reserve still exists. The parties agree to establish and maintain a working capital reserve in the amount of Two Hundred, Fifty Thousand (\$250,000) Dollars to be kept by the Authority within the Sewer Revenue Account. In both 1994 and 1995, One Hundred Twenty-five Thousand (\$125,000) Dollars shall be budgeted in the Interceptor user charges and paid by the Municipalities to establish the Working Capital Reserve, or if after retiring the 1971 Bonds there are residual funds which are placed in the Reserve, then such lesser amounts as are necessary to fund the 1994 and 1995 Reserve installments. If the Working Capital Reserve is reduced or depleted due to appropriate expenditures, monies shall be budgeted and paid by the Municipalities to maintain the reserve at Two Hundred, Fifty Thousand (\$250,000) Dollars.

SECTION 3.02. **[Use of Working Capital Reserve.]** The monies maintained in the Working Capital Reserve may be used by the Authority for alterations, repairs, renewals, improvements or replacements with respect to the Interceptor which are necessary or desirable for proper operation and maintenance thereof and which are of a type that would not ordinarily be made by the Authority as a current operating expenses *[sic]* as well as to retire any indebtedness issued by the Authority to finance improvements and additions to the Interceptor. Any interest income on the Reserve when the balance is grater than Two Hundred, Fifty Thousand (\$250,000) Dollars shall be used to offset Interceptor costs.

### ARTICLE IV

#### MISCELLANEOUS

SECTION 4.01. **[Severability; Governing Law.]** If any provision hereof shall be held to be invalid such invalidity shall not affect any other provision hereof, and the remaining provisions hereof shall be construed and enforced as if such provision had not been contained herein. The Laws of the Commonwealth of Pennsylvania shall govern interpretation hereof.

SECTION 4.02. **[Counterparts.]** This 1993 Amendment may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but on and the same instrument.

SECTION 4.03. **[Succession.]** This Amendment shall be binding upon the parties and their respective successors and assigns.

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

{Signed and Attested by Officers of Lehigh County Authority, County of Lehigh, ~~Borough of Alburdis,~~ Borough of Macungie, Township of Lower Macungie, Township of Lowhill, Township of Upper Macungie, Township of Upper Milford, and Township of Weisenberg. *Not yet signed by the Borough of Alburdis.*}

**CONSENT AND JOINDER**

Upper Macungie Township Authority, an authority located in Lehigh County, Pennsylvania, for value received, and intending to be legally bound hereby, does join in and consent to the foregoing Agreement, dated for convenience as of \_\_\_\_\_ 1993, by and among Lehigh County Authority, County of Lehigh, Boroughs of Alburdis and Macungie, and the Townships of Lower Macungie, Lowhill, Upper Macungie, Upper Milford and Weisenberg, 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, Upper Macungie Township Authority has caused this Consent and Joinder to be duly executed and attested by its proper officers, pursuant to proper action taken this \_\_\_\_ day of \_\_\_\_\_, 1993.

{Signed and Attested by Officers of Upper Macungie Township Authority.}