

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. The Article headings are part of the Agreement.

**AMENDMENT TO 1 APRIL 1983**  
**WASTEWATER TREATMENT CAPACITY**  
**ALLOCATION AGREEMENT**  
**(6.15 MGD)**

**TABLE OF CONTENTS**

ARTICLE I—*General*

- SECTION 1.01. Incorporation of Preambles
- SECTION 1.02. Effect on Existing Agreements

ARTICLE II—*Committed Allocations*

- SECTION 2.01. Amendment to Allocations: LMT Phase III and UMT Phase II
- SECTION 2.02. Allocation Fees for Above Allocations
- SECTION 2.03. Allocations Conditioned on Contracts for Construction

ARTICLE III—*Capital Recovery Fees*

- SECTION 3.01. Abolition of Allocation Fees
- SECTION 3.02. Interceptor Fee
- SECTION 3.03. Deposit of Interceptor Fee in Bond Redemption and Improvement Fund

ARTICLE IV—*Specific Amendments to the Language of the 1983 Agreement*

- SECTION 4.01. Amendment of Section 2.02
- SECTION 4.02. Amendment of Section 2.07
- SECTION 4.03. Amendment of Section 3.01
- SECTION 4.04. Amendment of Section 3.03
- SECTION 4.05. Amendment of Section 4.01
- SECTION 4.06. Amendment of Section 4.02
- SECTION 4.07. Amendment of Section 5.03

ARTICLE V—*Miscellaneous*

- SECTION 5.01. Severability; Governing Law
- SECTION 5.02. Counterparts
- SECTION 5.03. Succession

CONSENTS AND JOINDERS OF MUNICIPAL AUTHORITIES

CONSENT AND JOINDER OF BOROUGH OF ALBURTIS

This AMENDMENT AGREEMENT made this 1st day of August 1987 by and among LEHIGH COUNTY AUTHORITY (“Authority”), a Pennsylvania municipal authority; COUNTY OF LEHIGH (“County”), a Pennsylvania municipal subdivision; and the Borough of MACUNGIE, 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 County and 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 of Allentown (“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 July 1985<sup>2</sup> to provide allocation for municipal projects to existing development – Lower Macungie Township Phase III and Upper Macungie Township Phase II – and to establish allocation fees and project timetables for such projects; and

WHEREAS, the parties entered into a second amendment agreement, dated 5 December 1985<sup>3</sup>, to abolish the Allocation Fee of the 1983 Agreement, since all wastewater treatment capacity purchased under that agreement had been depleted, and also to establish the Interceptor Fee; and

WHEREAS, the parties desire to establish a means of recouping capital costs of wastewater facilities from those receiving benefits of the capital expenditures in the form of capital recovery fees and have determined that the Interceptor Fee should function as such; and

WHEREAS, the 1983 Agreement recognizes that sewer service to existing developed areas shall have a higher priority than sewer service to new development, which philosophy the parties wish to continue; and

WHEREAS, the parties wish to enter into another amendment agreement to change various aspects of wastewater service provided for in the 1983 Agreement; and

WHEREAS, it would be desirable to combine all of the above amendments into one amendment agreement;

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

ARTICLE I  
GENERAL

SECTION 1.01. **[Incorporation of Preambles.]** All of the preambles to this 1987 Amendment to 1 April 1983 Wastewater Treatment Capacity Allocation Agreement (6.15 mgd) (“1987 Amendment”) above set forth are hereby incorporated into and made a part of this Amendment.

SECTION 1.02. **[Effect on Existing Agreements.]** Nothing in this 1987 Amendment is intended, and nothing in this 1987 Amendment shall be construed to in any way amend, modify, or supersede existing agreements between or among any of the parties to this 1987 Amendment, except for the 1 July 1985 Amendment Agreement and the 5 December 1985 Amendment Agreement, which agreements are incorporated herein and which agreements shall become null and void upon execution of this 1987 Amendment, nor shall this 1987 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 of any of the parties, directly or by implication, except to the extent specifically set forth in this 1987 Amendment.

---

<sup>1</sup> **Cross-Reference:** *see* Codified Ordinances § 65-R(2).  
<sup>2</sup> **Cross-Reference:** *see* Codified Ordinances § 65-R(3).  
<sup>3</sup> **Cross-Reference:** *see* Codified Ordinances § 65-R(3).

ARTICLE II  
COMMITTED ALLOCATIONS

SECTION 2.01. **[Amendment to Allocations: LMT Phase III and UMT Phase II.]** The purpose of this section is to amend the allocation of the 6.15 million gallons per day (“mgd”) of treatment capacity in the 1983 Agreement, which amendment shall not include changes to the allocation made to Lower Macungie Township for its Phase II. 50,000 gallons per day (“gpd”) of treatment capacity shall be allocated to Lower Macungie Township for Phase III from the residential pool. 200,880 gpd shall be allocated to Upper Macungie Township for Phase II from the residential pool. These allocations shall include a corresponding allowable loading calculated in accordance with the allowable loading limits established in the 1983 Agreement. Accordingly, the allocations made to Lower Macungie and Upper Macungie Townships for the Phase III and Phase II projects, respectively, are shown in Table I.

**TABLE I**  
**ALLOCATIONS SUMMARY**

<u>Project</u>	<u>Flow</u> (gal./day)	<u>BOD</u> (lb/day)	<u>SS</u> (lb/day)	<u>TKN</u> (lb/day)
Phase III (LMT)	50,000	88	96	17
Phase II (UMT)	200,880	352	385	67

SECTION 2.02. **[Allocation Fees for Above Allocations.]** Lower Macungie and Upper Macungie Townships shall pay allocation fees of \$805/1000 gpd for the above allocations of capacity made pursuant to this 1987 Amendment, except for 117,000 gpd of Upper Macungie Township allocation which has been reserved by Upper Macungie Township since construction of the Authority Interceptor. Such fees shall be paid as the individual customers are connected to the respective Township projects. In addition to the allocation fees set out above, Lower Macungie and Upper Macungie Townships shall pay the annual debt service cost attributable to City facilities and the Authority Interceptor, in accordance with the provisions of Section 3.02 of the 1983 Agreement and Section 4.04 of this 1987 Amendment.

SECTION 2.03. **[Allocations Conditioned on Contracts for Construction.]** The allocation of capacity for the Phase II and Phase III projects is conditioned upon entering into binding contracts for construction of the facilities no later than 1 July 1987. In the event that these conditions are not met, the allocations made hereunder shall be returned to the Authority as capacity for use of all parties to this 1987 Amendment.

In the event that any capacity remains unused from these allocations, said unused capacity shall be returned to the Authority as capacity for use of all parties to this 1987 Amendment.

In the event that additional allocation is required for new construction in the Phase II or Phase III areas, each such request for allocation shall be obtained from the Authority in accordance with the then current allocation procedure.

ARTICLE III  
CAPITAL RECOVERY FEES

SECTION 3.01. **[Abolition of Allocation Fees.]** The Allocation Fee established in Section 2.04 of the 1983 Agreement is hereby abolished, with the exception of those allocation fees owed by Lower and Upper Macungie Township for their respective Phase III and Phase II allocations as set forth in Sections 2.01 and 2.02 herein, since the wastewater treatment capacity governed by that 1983 Agreement has been depleted. Any new allocation fee shall be established under future agreements.

SECTION 3.02. **[Interceptor Fee.]** The Interceptor Fee established in Section 2.04 of the 1983 Agreement shall apply to applicants from all Municipalities, unless specifically identified as an unused allocation commitment below.

UNUSED ALLOCATION COMMITMENT  
(As of 30 June 1987)

Lower Macungie Township	
Millbrook Farms III	6,600 gpd
Shepherd Hills Office Center	300 gpd
Upper Macungie Township	
Iron Run Industrial Park	99,250 gpd
Kraft Foods	77,170 gpd
Phase II Project	200,880 gpd
Stroh Brewery	701,000 gpd
Applewood	37,740 gpd
Cameo Woods	7,700 gpd
Briarwood	8,400 gpd
Oakland Park	710 gpd
Upper Milford Township	
Colebrook Farms	11,500 gpd
Borough of Macungie	
Hillcrest Manor	18,730 gpd

The Interceptor Fee shall be changed to \$350/1000 gallons, effective 1 January 1986. The Interceptor Fee shall be adjusted annually to reflect capital costs of the Western Lehigh Interceptor and cumulative interest cost on the related financing.

SECTION 3.03. **[Deposit of Interceptor Fee in Bond Redemption and Improvement Fund.]** The Interceptor Fee established herein shall be deposited in the Bond Redemption and Improvement Fund of the Lehigh County Authority Sewer Revenue Bonds, Series of 1971, for any allowable purposes under the Trust Indenture.<sup>4</sup>

ARTICLE IV

[SPECIFIC AMENDMENTS TO THE LANGUAGE OF THE 1983 AGREEMENT]

SECTION 4.01. **[Amendment of Section 2.02.]** The date provided in Section 2.02 of the 1983 Agreement establishing a deadline by which compliance with allowable loadings limits must be met by Upper Macungie Township shall be changed from 29 December 1986 to the Successful Start Up of the County's new pretreatment plant, as specified in paragraph 4 of the 1 August 1986 Agreement<sup>5</sup> between the City and the Authority.

---

<sup>4</sup> **Cross-Reference:** After June 30, 1993, an Amendment to this Agreement provides that Interceptor Fees are to be deposited in a sub-account of the Sewer Revenue Account, and their use is limited as set forth in Section 2.02 of the Amendment. *See* Codified Ordinances ¶ 65-R(11).

<sup>5</sup> **Cross-Reference:** *see* Codified Ordinances ¶ 65-Q(5).

SECTION 4.02. **[Amendment of Section 2.07.]** The language of Section 2.07 of the 1983 Agreement shall now read, "If existing committed allocation (shown on Exhibit A) is relinquished, such capacity shall be returned to the Authority as capacity for use of all parties to this Agreement."

SECTION 4.03. **[Amendment of Section 3.01.]** The language of Section 3.01 of the 1983 Agreement shall now read, "The parties agree to establish user charges following substantially identical rate-making methodology to that outlined in the Authority's *Report on Wastewater User Charges* dated July 1985, revised October 1985, or any subsequent revision thereto which complies with the provisions of this Agreement. No later than October 1 of each year, the Authority shall review user charges for the following calendar year."

SECTION 4.04. **[Amendment of Section 3.03.]** The minimum annual carrying charge established in Section 3.03 of the 1983 Agreement shall be changed from \$65/1000 to \$73/1000 gallons on any unused allocation, effective 1 January 1986.

SECTION 4.05. **[Amendment of Section 4.01.]** Section 4.01 of the 1983 Agreement related to exceptional strength charges shall be deleted.

SECTION 4.06. **[Amendment of Section 4.02.]** Section 4.02 of the 1983 Agreement related to hydraulic flow penalties shall be deleted.

SECTION 4.07. **[Amendment of Section 5.03.]** The annual inflow and infiltration report of each Municipality, as provided in Section 5.03 of the 1983 Agreement, shall be submitted to the Authority by 1 March each year.

ARTICLE V  
MISCELLANEOUS

SECTION 5.01. **[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 5.02. **[Counterparts.]** This 1987 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 one and the same instrument.

SECTION 5.03. **[Succession.]** This Amendment shall be binding upon the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized officers as of the day and year indicated above.

{Signed and Attested by Officers of Lehigh County Authority, County of Lehigh, Borough of Macungie, Lower Macungie Township, Lowhill Township, Upper Macungie Township, Upper Milford Township, and Weisenberg Township.}

**CONSENT AND JOINDER**

{Separate consents and joinders in the following form were signed and attested by officers of Upper Macungie Township Authority (dated December 10, 1987); Lower Macungie Township Authority (dated November 18, 1987):}

{Name of 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 \_\_\_\_\_1987, by and among Lehigh County Authority, County of Lehigh, Borough of 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 duly bound by the terms of said Agreement.

IN WITNESS WHEREOF, {Name of Authority} has caused this Consent and Joinder to be executed and attested by its proper officers, pursuant to proper action taken this \_\_\_ day of \_\_\_\_\_, 1987.

### **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 1 August 1987 by and among Lehigh County Authority, County of Lehigh, Borough of 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 and be bound by the terms of said Agreement.

A stipulation dated December 30, 1987<sup>6</sup> was executed in settlement of civil suit 81-C-1947, Borough of Alburtis 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 Alburtis 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 Alburtis' 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 Alburtis.}

---

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