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**WASTEWATER TREATMENT CAPACITY
ALLOCATION AGREEMENT
(POST-1985 ALLOCATION)**

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¹ As added by Section 1 of the April 17, 1991 amendment (*see* Codified Ordinances § 65-R(10)). Addition shown in *italics*.

CONSENT AND JOINDER OF BOROUGH OF ALBURTIS

This AGREEMENT made this 4th day of August, 1987, by and among the LEHIGH COUNTY AUTHORITY (“Authority”), a Pennsylvania municipal authority,

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 the “Municipalities”).

WITNESSETH:

WHEREAS, the Authority heretofore was duly incorporated pursuant to appropriate action of the Board of County Commissioners of Lehigh County, Pennsylvania (“County”), and has the power and authority, inter alia, to acquire, hold, construct, improve, maintain and operate, own and lease, either in the capacity of lessor or lessee, facilities and equipment to provide wastewater service to certain areas in the County; and

WHEREAS, the Authority owns and operates an interceptor system (“Western Lehigh Interceptor”) providing for the transportation of wastewater from certain areas in the County to a wastewater treatment facility (“Treatment Plant”) owned and operated by the City of Allentown (“City”); and

WHEREAS, the Authority has heretofore acquired treatment capacity from the City to provide for the treatment of wastewater transported in the Western Lehigh Interceptor to the Treatment Plant and has conveyed such capacity rights and related rights of access to users of the Western Lehigh Interceptor; and

WHEREAS, the Authority and the Municipalities set forth their understanding regarding allocation of previously acquired treatment capacity, the means of calculating rates and charges, and other matters related to sewer service in a series of agreements, the most recent being the agreement dated 1 April 1983 (“1983 Agreement”)²; and

WHEREAS, as a result of such extensions of service to new users, the Authority has exhausted the previously acquired treatment capacity (6.15 mgd) subject to the 1983 Agreement and its amendments; and

WHEREAS, the Authority has acquired additional treatment capacity from the City (“Post-1985 Allocation”) to provide for its projected needs through an agreement dated 1 August 1986 (“1986 Agreement”)³; and

WHEREAS, the Post-1985 Allocation is separate from all previous allocations and shall not be governed by the 1983 Agreement and its amendments, but instead shall be subject to the terms herein; and

WHEREAS, the Authority and the Municipalities entered into an Agreement dated 6 December 1985 (“6 December 1985 Agreement”)⁴ establishing the necessary fees to pay for the financing of the purchase of additional treatment capacity and an Addendum thereto, dated 29 December 1986 (“29 December 1986 Addendum”)⁵, allowing for allocation of treatment capacity to Bell Telephone Laboratories, Inc.; and

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

³ **Cross-Reference:** *see* Codified Ordinances ¶ 65-Q(5).

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

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

WHEREAS, the Authority has issued Sewer Revenue Notes, 1985 Series C (“1985 Note”) to acquire additional treatment capacity; and

WHEREAS, the parties desire to set forth their understanding regarding allocation of the capacity obtained under the 1986 Agreement and the recovery of costs related thereto through establishment of capital recovery fees, and other matters related to sewer service.

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 Agreement above set forth are hereby incorporated into and made a part of this Agreement.

SECTION 1.02. **[Effect on Existing Agreements.]** Nothing in this Agreement is intended and nothing in this Agreement shall be construed any way to amend, modify, or supersede any existing agreements between or among any of the parties to this Agreement, except for the 6 December 1985 Agreement and 29 December 1986 Addendum which are superseded by this Agreement and incorporated herein, or to 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 Agreement.

SECTION 1.03. **Definitions.**

“Advisory Committee” means a committee with representation from each Municipality which meets monthly to discuss wastewater matters.

“Allowable Loadings” means the amount of 5-day Biochemical Oxygen Demand (BOD), Suspended Solids (SS) and Total Kjeldahl Nitrogen (TKN) allowed to be discharged by a user. Such amounts shall be measured in pounds per day and determined in accordance with Standard Methods for Examination of Water and Wastewater, Current Edition.

“Hydraulic Flow” means the volume of wastewater discharged by a Municipality or individual user, as appropriate, to the Western Lehigh Interceptor.

“Municipality” or “Municipalities” means individually or collectively, as appropriate, the Borough of Macungie and the Townships of Lower Macungie, Lowhill, Upper Macungie, Upper Milford and Weisenberg, all Pennsylvania municipal subdivisions located in Lehigh County, Pennsylvania.

ARTICLE II
[ALLOCATIONS]

SECTION 2.01. **Hydraulic Flow.** The purpose of this section is to provide the basis for allocation of the treatment capacity available to the Authority as a result of the 1986 Agreement.

An allocation of 300,000 gpd of treatment capacity shall be available to Upper Macungie Township for the proposed Bell Telephone Laboratories, Inc. (“BTL”) project, to be located in Upper Macungie Township. The initial 150,000 gpd of said allocation (“BTL Commitment”) shall be released upon receipt of payment from Upper Macungie Township for the allocation, provided that such payment shall not be made until such times as Upper Macungie Township receives a corresponding payment from BTL and executes a binding sewer service agreement with BTL. The remaining 150,000 gpd shall be held in reserve (“BTL Reserve”) through 1 August 1996. BTL shall purchase all of its capacity in accordance with the terms of §2.05.

An allocation of 500,000 gpd of treatment capacity ("Stroh Reserve") shall be available to Upper Macungie Township for the Stroh Brewery ("Stroh"), provided that the Stroh Reserve shall not be available until the Successful Start Up of the Lehigh County Pretreatment Plant, as specified in paragraph 4 of the 1986 Agreement ("Successful Start Up"), has been attained. The Stroh Reserve shall be available through 1 August 1996. The purchase of the Stroh Reserve or any portion thereof shall be in accordance with the terms of §2.06.

The remaining treatment capacity shall be placed in a single pool ("General Pool") available to all residential and nonresidential users in the Municipalities, except as provided below. Treatment capacity in the General Pool shall be allocated in accordance with the procedures described in §2.04.

The parties to this Agreement recognize that a planning period of 5 years is required to analyze, select and implement any one of the several alternative methods of providing future sewage treatment capacity. In anticipation of this planning period and to provide orderly development of the service area, the parties agree that the allocation of treatment capacity from the General Pool shall be conditioned as provided below.

At such time as treatment capacity available to the Authority under the 1986 Agreement equals 105% of the total allocation made by the Authority during the immediately preceding 5 years, the Authority and the Municipalities shall review alternative methods of allocating treatment capacity to users. In the event that the parties cannot reach an agreement on the method of allocating treatment capacity within 90 days, the allocation method under this Agreement shall lapse and a method selected by a vote of 80% of the Municipalities shall be implemented. Such method shall be selected at a special meeting of the Municipalities called by the Authority within 15 days after the end of the 90 day period, with each Municipality having one vote. Until such time as an alternative method of allocating treatment capacity is approved, any allocation request which would reduce the treatment capacity available to the Authority under the 1986 Agreement to an amount less than 100% of the total allocation made by the Authority during the immediately preceding 5 years shall not be granted.

At such time as treatment capacity available to the Authority under the 1986 Agreement equals 100% of the total allocation made by the Authority during the immediately preceding 5 years, the Authority and the Municipalities shall begin reviewing alternative methods of obtaining and/or providing additional treatment capacity over and above the treatment capacity available to the Authority under the 1986 Agreement.

SECTION 2.02. **Allowable Loadings.** The design capacity of the City Treatment Plant with respect to the loading criteria is:

BOD	210 mg/l
SS	230 mg/l
TKN	40 mg/l

Whenever an allocation is granted, corresponding Allowable Loadings using the above criteria, or such future criteria as may be established by agreement of the Authority and the City, shall be issued.

SECTION 2.03. **Allocation Fees.** Whenever a user applies for an allocation, the user shall pay an allocation fee ("Allocation Fee") to the Authority. Effective 1 January 1986, the Allocation Fee shall be \$2500 per thousand gallons per day and shall be updated annually by the Authority to reflect the original treatment capacity cost and cumulative carrying costs of said treatment capacity. The Authority shall deposit all Allocation Fees collected pursuant to this Agreement in the Revenue Account of the 1985 Note, or any corresponding account of any future refinancing thereof.

SECTION 2.04. **Allocation from General Pool.** Treatment capacity in the General Pool will be available to each Municipality on a first come, first served basis. As a condition of allowing any user to connect to a wastewater collection system discharging to the Western Lehigh Interceptor, the Municipalities agree to require such user to first obtain an allocation from the Authority. An application

shall be submitted to the Authority through a Municipality, which application shall include a request for a specific treatment capacity requirement determined by the applicant and approved by the Municipality. The Authority shall approve such applications except that applications for 50,000 gpd or more of allocation shall be reviewed with the Municipalities prior to approval of the application.

A user shall file an allocation application following final subdivision approval. Except as noted below, if substantial effort is not achieved or if any allocation or portion thereof is not used by the applicant at the end of a five-year period, the allocation shall be lost, with no reimbursement of fees, and the treatment capacity will be returned to the General Pool.

For purposes of new development and construction, substantial effort shall have two deadlines:

- a) Within eighteen (18) months from the date allocation was received, infrastructure improvements, including without limitation, roads, utilities and storm sewers, must be completed within the property for which the allocation has been obtained; and
- b) Within five (5) years from the date allocation was received, the unit(s) on the property for which the allocation was purchased shall be under roof.

For purposes of municipal construction of sanitary sewer facilities to serve existing development, awarding construction contracts within eighteen (18) months and completion of the project within five (5) years from the date allocation was received, shall constitute substantial effort.

For purposes of additional use by an existing user, substantial effort shall be defined as having utilized at least 80% of the additional allocation and all allocation previously held by the user within five years from the date the allocation was received.

If the user can show that noncompliance with the deadlines was the result of force majeure, the fees, excluding any interest that may be earned thereon, shall be returned to the user in the amounts originally paid for the allocation, upon return of the allocation to the pool. For purposes of this section, force majeure shall be defined as any act of God, war, civil unrest, natural disaster, natural physical defect, governmental regulation or condemnation by a governmental entity or public utility which precludes development of the tract substantially as approved in the final subdivision plans.

The Municipalities, in accordance with the provisions of §2.09 herein, may waive a deadline if just cause is shown. For processing the waiver, there shall be a fee of \$100 per thousand gallons of treatment allocation, with a minimum fee of \$100.

Any treatment allocation purchased pursuant to this Agreement shall attach to the land or unit for which the application was filed and cannot be transferred to any other parcel of land or unit.

No applicant shall receive any additional allocation from the pool until the applicant has committed all allocations under the 1983 Agreements and amendments thereto.

Capacity for Weisenberg and Lowhill Townships shall be subject to prior allocation limits, specifically 160,000 gpd and 100,000 gpd, respectively.

Upper Milford Township shall be subject to an allocation limit of 225,000 gpd which limit will continue to 1 August 2000. Allocations necessary for municipal projects providing service to existing development shall not be counted against the Upper Milford allocation limit. At the option of Upper Milford, discussions shall be initiated regarding revising the allocation limit; such option may be exercised only between 1 January and 30 June 1995.

In the event that there shall be insufficient capacity to meet all allocation requests, those requests for capacity that will provide service to existing developed areas will be given priority over requests that will provide service to new development. There shall be a penalty of \$10 per EDU of im-

proper connection per day assessed against any Municipality which allows a connection to a wastewater collection system discharging to the Western Lehigh Interceptor without obtaining an allocation from the Authority. This penalty shall continue from the date a permit is improperly issued by a Municipality until allocation is granted to the Municipality for the connection, which allocation must be approved by the Municipalities in accordance with §2.09.

SECTION 2.05. Allocation to Upper Macungie Township for BTL. In lieu of the Allocation Fee, Upper Macungie Township shall pay \$3.00 per gallon to the Authority for both the BTL Commitment and BTL Reserve. Payment for the BTL Commitment shall be made in five installments of Ninety Thousand Dollars (\$90,000) with the first payment to be made by 15 January 1987. The remaining payments shall be made on 15 December 1987 and annually thereafter until 15 December 1990. Interest shall accrue on the unpaid balance from the date of the BTL/Upper Macungie Agreement at the interest rate the Authority pays on the indebtedness financing the acquisition of capacity from the City and shall be payable with each principal payment. These payments shall be made by Upper Macungie Township to the Authority by the above dates. Upper Macungie Township may prepay all payments, or any payment or number of payments of either principal or interest, without penalty, upon receipt of such payment from BTL.

The BTL Reserve shall be held in reserve through 1 August 1996 for future BTL purchase, provided that, commencing 1 August 1987, a reservation fee of Six Thousand Dollars (\$6,000) shall be paid annually (the "Reservation Fee"). In the event that BTL purchases a portion of the BTL Reserve, the Reservation Fee shall be reduced on a pro rata basis.

There shall be no obligation by Upper Macungie Township, or any of the other parties to this Agreement, to make any payments for the BTL Commitment or BTL Reserve until BTL makes a corresponding payment. Should BTL fail to make any such payment to Upper Macungie in a timely fashion, BTL shall forfeit its rights to the BTL Reserve.

In the event that all or a portion of the BTL Commitment or BTL Reserve shall not be required by BTL and the capacity has been purchased from the City by the Authority, such capacity shall be retained by the Authority and transferred to the General Pool.

SECTION 2.06. Allocation to Upper Macungie Township for Stroh. When Stroh wishes to purchase the Stroh Reserve or any portion thereof, Upper Macungie shall pay the then current Allocation Fee established in accordance with §2.03 to the Authority upon receipt of payment from Stroh.

The Stroh Reserve shall be held in reserve through 1 August 1996 for future Stroh purchase provided that commencing at the time of Successful Start Up of the Pretreatment Plant, a reservation fee of Twenty Thousand (\$20,000) Dollars shall be paid annually (the "Stroh Reservation Fee") by Upper Macungie to the Authority. In the event that Stroh purchases a portion of the Stroh Reserve, the Stroh Reservation Fee shall be reduced on a pro rata basis. There shall be no obligation by Upper Macungie or any other party to this Agreement to make any payments for the Stroh Reserve unless and until Stroh makes a corresponding payment to Upper Macungie or any other party. If such payment is not made on a timely basis, all rights to the Stroh Reserve shall be forfeited.

In the event that all or a portion of the Stroh Reserve shall not be required by Stroh and the capacity has been purchased from the City by the Authority, such capacity shall be transferred to Lehigh County for use of Pretreatment Plant customers only, except in the event that Stroh shall not require the Stroh Reserve as a result of utilizing an alternative means of transporting and treating its wastewater, then said capacity shall be returned to the Authority without reimbursement of any fees paid.

SECTION 2.07. Administration. The parties acknowledge that the pool is owned by the Authority, and allocation therefrom shall be administered by the Authority. The Authority shall be responsible for record-keeping and administration pursuant to procedures established under this Article II.

The Authority shall tabulate industrial/commercial and residential growth data for the area and project future sewer capacity needs, giving consideration to total EDU's, existing allocations, approved

subdivision plans, and proposed developments. The Authority shall advise the Municipalities monthly of the allocation pool status and quarterly of the projected sewer needs.

SECTION 2.08. **Additional Allocations.** Any additional capacity obtained from Allentown, or from recognized removal of infiltration and inflow from the Western Lehigh Interceptor or Municipality collector system, or any other source, will be allocated to the General Pool.

The decision as to the amount of recognized infiltration and inflow which will be allocated to the General Pool shall be made by the Municipalities in accordance with the provisions of §2.09.

SECTION 2.09. **[Vote of Municipalities.]** Actions requiring approval of the Municipalities under this Agreement, unless otherwise noted, shall be by a majority of the Municipalities in attendance at the monthly Advisory Committee meeting, provided that in order to take action, representatives from a majority of the Municipalities shall be in attendance. Each Municipality shall have one vote. Action on any issue hereunder must be taken at the first Advisory Committee meeting following at least three weeks' written notice of the issue by the Authority to the Municipalities. The written notice shall be accompanied by information necessary to evaluate the request.

SECTION 2.10⁶. ***Allocation to Upper Macungie Township for the County Pretreatment Plant.*** *If the County decides to expand the operation of the Pretreatment Plant to allow liquid waste haulers ("Haulers") to discharge within the Pretreatment Plant, sufficient allocation shall be purchased through Upper Macungie Township ("Hauler Allocation") as enabled by Section 6 of the Amendment to the 1 April 1983 Wastewater Treatment Capacity Allocation Agreement, dated 17 April 1991.⁷ Such allocation shall be purchased at the then current Authority rate for allocation.*

In the future, if the General Pool is reduced to 25,000 gallons per day or less and no additional allocation is available, the County agrees to return all Hauler Allocation purchased to the General Pool, with a refund of the original purchase price to be made to the County.

The County agrees that it will not enter into any treatment contracts with Haulers for a term longer than one (1) year.

Upon notification to the County by the Authority of the need to have the Hauler Allocation returned, all return of such allocation shall be completed no later than one year from the date of said notification. Further, upon said notification, the County agrees that it will not enter into any new contracts with Haulers nor will it purchase any additional Hauler Allocation for such treatment contracts.

ARTICLE III
[MISCELLANEOUS]

SECTION 3.01. **Municipality Charges to Customers.** In addition to the usage charges by the Municipality to its customers, each Municipality shall charge any holder of unused capacity a minimum annual carrying charge of \$73/1000 gallons on any unused allocation, except for the BTL Reserve and the Stroh Reserve, prior to the time such capacity is purchased by BTL or Stroh, respectively. A Municipality may, at its option, add additional costs to this carrying charge.

⁶ As added by Section 1 of the April 17, 1991 amendment (*see* Codified Ordinances § 65-R(10)). Addition shown in *italics*.

⁷ **Cross-Reference:** *see* Codified Ordinances § 65-R(9).

Said carrying charge shall be reviewed annually by the Authority and the Municipalities considering all relevant factors, and may be adjusted accordingly upon consent of the Municipalities in accordance with §2.09.

SECTION 3.02. **[Detection and Removal of Inflow and Infiltration.]** The Municipalities and the Authority agree to cooperate in the institution of a coordinated program for inflow and infiltration (I/I) detection and removal. Any Municipality which fails to comply with the provisions of this program shall not have access to **the** allocation available under this Agreement. Determination of failure to comply shall be by vote of the Municipalities, excluding the accused Municipality, as provided in §2.09.

SECTION 3.03. **[Additional Fees for Allocation.]** Any allocation purchased herein is also subject to the Authority's Interceptor Fee, Relief Interceptor Fee and any other Authority, County or Municipality user charges, late charges, penalties, or any other fees for use of the wastewater treatment and transmission systems.

SECTION 3.04. **[Municipal Cooperation in Regional Stormwater Management Plan.]**⁸ ~~The Municipalities agree to cooperate in the institution of a regional stormwater plan in accordance with Section 11 of the 1986 Agreement. Any Municipality which fails to comply with the provisions of Section 11 shall not have access to the allocation available under this Agreement.~~ *The Municipalities agree to cooperate in the institution of a regional stormwater plan in accordance with Section 10 of the 1986 Agreement and to adhere to that plan. Any Municipality which fails to comply with the provisions of Section 10 or which exhibits willful and repeated violations of the approved stormwater management plan shall not have access to the allocation available under this agreement.*

SECTION 3.05. **[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 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.

SECTION 3.06. **[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 one and the same instrument.

SECTION 3.07. **[Effective Dates.]** The effective date of §2.03 shall be retroactive to 6 December 1985; the BTL provisions of §§2.01 and 2.05 shall be retroactive to 29 December 1986; and the remainder shall be the date of this agreement, or as otherwise indicated.

SECTION 3.08. **[Succession.]** This Agreement 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 as first stated.

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

⁸ As amended by Section 1 of the February 1, 1988 amendment (*see* Codified Ordinances ¶ 65-R(8)), which replaced the language ~~stricken through~~ with the language indicated in *italics*.

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 4 August 1987 by and among Lehigh County Authority, 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, 1987⁹ 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.}

⁹ **Cross-Reference:** *see* ¶ 65-S(2).