

BOROUGH OF MONROEVILLE

ORDINANCE NO. 194

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH THE TOWNSHIP OF PENN, WESTMORELAND COUNTY, AND THE PENN TOWNSHIP SEWAGE AUTHORITY, WESTMORELAND COUNTY PROVIDING FOR THE ACCEPTANCE, BY THE BOROUGH OF MONROEVILLE, OF CERTAIN SEWAGE FROM THE TOWNSHIP OF PENN THROUGH A SEWER LINE TO BE CONSTRUCTED BY THE BOROUGH OF MONROEVILLE, THE PAYMENT TO MONROEVILLE BY THE TOWNSHIP OF PENN AND THE PENN TOWNSHIP SEWAGE AUTHORITY WESTMORELAND COUNTY IN CONSIDERATION OF SUCH ACCEPTANCE OF SEWAGE, THE SETTING OF A COMPLETION DATE FOR THE CONSTRUCTION OF A SEWER, AND PROVIDING FOR LIQUIDATED DAMAGES IN THE EVENT THAT THE COMPLETION DATE IS NOT MET.

Be it ordained and enacted by the Council of the Borough of Monroeville and it is hereby ordained and enacted by authority of the same:

Section 1. That the Burgess and the President of Council are hereby empowered and directed for and in behalf of the Borough to execute and deliver; and that the Secretary is hereby directed to attest an agreement with the Township of Penn, Westmoreland County and the Penn Township Sewage Authority, Westmoreland County in substantially the following form:

AGREEMENT

THIS AGREEMENT, made and entered into as of the first day of April, A.D. 1960, by and between

BOROUGH OF MONROEVILLE, Allegheny County, Pennsylvania, herein called the "Borough",

AND

TOWNSHIP OF PENN, A first Class Township in the County of Westmoreland, Commonwealth of Pennsylvania, herein called the "Township",

AND

PENN TOWNSHIP SEWAGE AUTHORITY, WESTMORELAND COUNTY, PENNSYLVANIA, a municipal Authority organized by the said Township of Penn and herein called the "Authority",

WITNESSETH:

WHEREAS, The Authority has undertaken the project of providing sewers and other sanitary sewage facilities in the village of Level Green (which is a part of the Township bordering on Turtle Creek opposite the upper portion of the Borough), such sewage project being financed by certain sewer revenue bonds of the Authority dated as of November 1, 1959, and

WHEREAS, The Township has entered into a leaseback rental agreement with the Authority, wherein the Authority has leased said sewage project to the Township for the life of the aforesaid Authority bond issue; and

WHEREAS, The Borough entered into a long-term agreement dated as of August 1, 1955 with the Allegheny County Sanitary Authority (herein called the "Sanitary Authority") and the City of Pittsburgh (herein called the "City") for sewage treatment service from the Sanitary Authority's Sewage Disposal System which is serving municipalities including the City and the Borough but not the Township; and

WHEREAS, Under the said service agreement with the Borough the Sanitary Authority provided capacity in its Turtle Creek intercepting sewer for the sewage of 50,000 population equivalent from the Borough, for which the Borough paid the Sanitary Authority; and

WHEREAS, The Sanitary Authority's said intercepting sewer had reserve capacity for an additional 4,000 population equivalent over and above the capacity required to accommodate all contracting municipalities, including the said 50,000 population equivalent for the Borough; and

WHEREAS, In order to carry to the Sanitary Authority's Sewage Disposal System the sewage from portions of the Borough lying upstream of Trafford, the Borough is planning to construct a trunk sewer along Turtle Creek which will begin at the northeast end of the Borough and extend down to a connection with the terminus of the Sanitary Authority's intercepting sewer at Forbes Avenue in Trafford, and

WHEREAS, the Borough is willing to provide capacity in its projected trunk sewer, in addition to that required for its own use, adequate to accommodate the sewer of the Level Green portion of the Township to the extent of 10,000 population equivalent, and to relinquish 6,000 of the 50,000 population equivalent allocated to it by the Sanitary Authority in the Sanitary Authority's intercepting sewer, in order that such sewage of Level Green may reach the Sanitary Authority's Sewage Disposal System for treatment and disposal as required by law, provided the Township contributes toward the cost of such Borough trunk sewer and performs the other obligations hereinafter set forth; and

WHEREAS, It is intended that this Agreement shall be subject to an additional written agreement of even date herewith between the parties herein and the Allegheny County Sanitary Authority and the City of Pittsburgh.

NOW, THEREFORE, The parties, intending to be legally bound hereby agree as follows:

1. The Borough, in consideration of the covenants and agreements hereafter contained on the part of the Authority and the Township to be kept and performed, does hereby assign, set over, transfer and grant, subject to the conditions, stipulations and agreements herein set forth, unto the Authority and the Township, their successors and assigns, the right to empty into the Borough's projected trunk sewer to be constructed along Turtle Creek, and thence into the Sanitary Authority's intercepting sewer at Trafford, Pennsylvania, as more particularly hereinafter set forth, the sewage from a maximum of 10,000 population equivalent. Of said 10,000 population equivalent, 6,000 shall form part of the quota of 50,000 population equivalent allocated to the Borough in the aforesaid service agreement by and among the Borough, the City and the Sanitary Authority, and as to said 6,000 population equivalent, this Agreement shall operate as an assignment of the said contractual rights of the Borough in the Sanitary Authority's Turtle Creek intercepting sewer; the additional 4,000 population equivalent being the aforesaid reserve capacity that was allowed for by the Sanitary Authority in the design of its Turtle Creek intercepting sewer.

2. For the right and privilege to empty the sewage of a maximum of 10,000 population equivalent into the Sanitary Authority's intercepting sewer at Trafford, Pennsylvania, through the Borough's said trunk sewer, the Authority and the Township shall pay to the Borough a total of three hundred twenty-two thousand five hundred dollars (\$322,500.00).

3. It is understood and agreed that said sum of \$322,500.00 is to constitute the total and entire payment and consideration to the Borough for such right and privilege, with the single exception of destruction or substantial damage of the Borough's said trunk sewer by an act of God, as hereinafter provided.

4. Said sum of \$322,500.00 is to be paid by the Authority and the Township as follows: The Authority shall pay to the Borough a sum of one hundred thirty-five thousand dollars (\$135,000.00) and said right of the Authority and the Township to discharge any sewage into the Borough's trunk sewer shall be conditioned upon the payment by the Authority into an escrow account of the said sum of \$135,000.00 contemporaneous with the signing of this Agreement, to the Irwin Savings and Trust Company at Irwin, Westmoreland County, Pennsylvania, as Escrow Agent.

5. Said Escrow Agent shall pay the Borough said \$135,000.00 in five (5) equal installments, with payment of each installment of \$27,000.00 upon certification by the Engineers for the Authority and the Borough to said Escrow Agent and to the Borough and the Authority, respectively, that construction work equal to at least 20% in cost of the entire construction cost of the portion of the Borough's sewer line between the Sanitary Authority's intercepting sewer at Trafford and the point where the Authority sewer line shall tap into the Borough's trunk sewer has been completed.

6. The initial payment of \$135,000.00 to be paid to the Borough by the Authority and the Township as aforesaid shall be the total payment to the Borough until the sewage from 4,000 population equivalent is being discharged into the Borough's trunk sewer from the Township and the Authority. From and after the time that the Authority and the Township are utilizing the Borough's trunk sewer to the extent of 4,000 population equivalent, the Authority and the Township shall pay to the Borough an additional sum of \$1,000.00 for each eight single family residences or their equivalent which are connected in excess of the initial 4,000 population equivalent. Said payments at the rate of one thousand dollars (\$1,000.00) for each eight single family residences or their equivalent are to be made at the time said eight single family residences are connected until such time as the Authority and the Township are discharging into the Borough's trunk sewer sewage from a total of 10,000 population equivalent.

7. It is further understood and agreed that when the Authority and the Township are discharging into the Borough's trunk sewer sewage from 4,000 population equivalent it shall be the duty of the Authority and the Township to immediately notify the Borough of said fact. From and after the time that the Authority and the Township are discharging into the Borough's sewer lines the sewage from 4,000 population equivalent, it shall be the duty of the Authority and the Township to notify the Borough in writing upon each and every occasion when the Borough's trunk sewer is being utilized to an extent of eight additional single family residences or their equivalent over and above the initial 4,000 population equivalent aforesaid. At the time that the Authority and the Township notify the Borough of each increase of eight single family residences or their equivalent as aforesaid, it shall be the duty of the Authority and the Township to pay promptly to the Borough a sum of \$1,000.00.

8. If sewer connection charges are levied by the Township, the proceeds thereof shall promptly be turned over to the Authority which shall in turn make the payments to the Borough required by the terms of this Agreement, but in any event, the sum hereinabove set forth shall be paid whether or not sewer connection fees are levied and whether or not they are paid.

9. It is understood and agreed between the parties hereto that for the purpose of this Agreement, the term "population equivalent" shall mean a total average daily flow in the out fall sewer, of ninety (90) gallons per day per person, and that the term "single family residence" shall constitute a population equivalent of four. It is further understood and agreed that there shall be one sewer connection for each single family residence and that 2,500 single-family residence sewer connections shall equal 10,000 population equivalent, subject to a maximum of 900,000 gallons average daily flow, on an annual basis, as measured at the point where the Level Green outfall sewer enters the Borough's trunk sewer and further subject to a maximum of 2,074,500 gallons average daily flow, on

an annual basis, as measured at the point where the Borough's trunk sewer enters the Allegheny County Sanitary Authority intercepting sewer at Trafford, Pennsylvania; provided, however, that sewage elimination from industrial, institutional and commercial type buildings shall not be considered a single-family residence sewer connection but shall be considered the equivalent of that many connections which results from dividing the estimated annual gallonage of water consumption of the building by 42,000 for the first year in which said building is discharging sewage. From and after the first year in which such building is discharging sewage the number of connections shall be determined by dividing the actual gallonage of water consumption of said building for the preceding year by 42,000.

10. The Township shall submit to the Borough and the Sanitary Authority on or before February 1st of 1961 and of each year thereafter, a statement of the cumulative number and types of sewer connections. The Borough and the Sanitary Authority shall have the right to inspect the Township and the Authority's books and records relative to the sewer system leased by the Township from the Authority at reasonable intervals.

11. It is agreed that under no circumstances is the Borough liable to accept sewage in excess of 10,000 population equivalent from either the Authority or the Township under the terms of this Agreement with the single exception and unless the Authority or the Township exercises its first right of refusal as provided for in Paragraph 20 of this Agreement.

12. The sewage rates and charges due to the Allegheny County Sanitary Authority by the Township or the Authority form no part of the total consideration of \$322,500.00 to be paid by the Township and the Authority to the Borough, but said rates and charges shall be paid directly by the Township and the Authority to the Sanitary Authority, in such manner as is set forth in the separate agreement of even date herewith by and among the City, the Sanitary Authority, the Borough, the Township; and the Authority.

13. The Borough agrees to construct a trunk sewer along or near the bed of Turtle Creek, consistent with good engineering practices, from the terminus of the Sanitary Authority's intercepting sewer in Trafford, Pennsylvania for a distance of approximately 7,400 feet in a generally northwardly direction to the point where the Authority's outfall sewer will tap into the Borough's trunk sewer, said trunk sewer to be laid and ready for operation no later than September, 1960. The precise location of this portion of the Borough's trunk sewer along or near the bed of Turtle Creek shall be determined by the engineers for the Borough, subject to approval by the Sanitary Authority, the Township and the Authority.

14. The parties hereto agree that the Borough shall be liable to pay the Authority and the Township, at their option, liquidated

damages in the amount of \$100.00 for each and every day from and after the 1st day of October, 1960 that said trunk sewer is not completed and ready for operation, providing, however, that no liquidated damages shall be assessed against the Borough unless the Authority and Township have fulfilled their obligations under this Agreement.

15. It is further agreed that the trunk sewer to be laid by the Borough shall be constructed according to regulations imposed by the Commonwealth of Pennsylvania and the Sanitary Authority and to those of other bodies having jurisdiction. Said trunk sewer shall be constructed of pre-cast reinforced concrete pipes having steel end rings and joints of the type used by the Sanitary Authority in its Turtle Creek intercepting sewer, and shall have an inside diameter of 24 inches.

16. The Borough agrees that it shall never empty into its said trunk sewer sewage from the Borough in such a quantity as to diminish the capacity of said trunk sewer beyond the point where the Authority or the Township could not immediately discharge sewage from 10,000 population count or its equivalent thereinto.

17. It shall be the duty and obligation of the Borough to obtain and pay for all rights of ways necessary for the laying of that portion of its trunk sewer between the points where said trunk sewer intercepts the outfall sewer of the Authority and the Trafford terminus of the intercepting sewer of the Sanitary Authority. The Township shall, at the expense of the Borough, obtain for the Borough by condemnation or otherwise, easements in the Township which are required for the construction, maintenance and operating of the Borough's trunk sewer. The Township shall not be required to advance its own funds nor shall it purchase any easement, or institute condemnation proceedings thereafter, without the prior approval in writing of the Borough.

18. The Authority and the Township shall have no duty of maintenance of the Borough's trunk sewer, nor shall the Authority or the Township be chargeable with any further duties, payments or costs under any circumstances other than those payments hereinbefore set forth, with the single that if the portion of the Borough's trunk sewer used by the Township and the Authority be destroyed or substantially damaged by an act of God, then the Township and the Authority shall be liable for 20% of the costs of repairing or replacing the damaged or destroyed portion of the Borough's trunk sewer.

19. The Borough agrees that it shall not enter into any agreements with any municipalities, authorities or political subdivisions other than the Township and the Authority, for the discharge of sewage by any other municipalities, authorities or political subdivisions through the Borough's sewer lines under the 50,000 (now reduced to 44,000) population equivalent contracted for between the Sanitary Authority and the Borough without first giving to the

Authority and the Township sixty (60) days written notice of the Borough's intention to enter into such an agreement. Any such permission given by the Borough shall further reduce the Borough's own capacity allowance below the 44,000 population equivalent.

20. It is further agreed between the parties hereto that the Authority and the Township shall have a first right of refusal enabling them or either of them to contract with the Borough for the discharge of additional sewage over and above the 10,000 population equivalent provided for in this Agreement under the same terms and conditions as shall be obtained in a firm bona fide offer received from any other municipality, authority, or political subdivision. The Authority and/or the Township shall have thirty (30) days in which to exercise its first right to so contract after being so notified by the Borough.

21. The terms of this agreement shall be perpetual and no change in the terms of this agreement shall be binding on any of the parties hereto unless endorsed hereon in writing and assented to by the parties hereto.

22. It is clearly understood that all of the provisions of this Agreement are subject to the execution of a separate agreement of even date herewith executed by all of the parties hereto and the Allegheny County Sanitary Authority and the City of Pittsburgh.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals the day and year first above written:

Arthur H. Curtis, Secretary
 Anthony J. Martin, Burgess
 Thomas Harter, President of Council

Donald H. Lauzer, Secretary
 PENN TOWNSHIP SEWAGE AUTHORITY
 WESTMORELAND COUNTY, PENNSYLVANIA
 John V. Stude, Chairman

Dolores Laughner, Secretary
 TOWNSHIP OF PENN
 Tarcisio Onder
 President of Board of Commissioners

Section 2. All ordinances or parts of ordinances conflicting with this ordinance are hereby repealed.

Ordained and enacted into law in Council this 19th day of April, 1960.

ATTEST:

s/ Arthur H. Curtis
 Secretary

BOROUGH OF MONROEVILLE

s/ Thomas Harter
 President of Council

Examined and approved by me this 19th day of April, 1960.

Anthony J. Martin, Burgess