

MANAGEMENT AND CONSULTING SERVICES AGREEMENT

THIS MANAGEMENT AND CONSULTING SERVICES AGREEMENT, dated for convenience as of July 1, 1991, but effective as of the date of execution appearing at the end hereof, by and between BOROUGH OF MOUNT HOLLY SPRINGS, Cumberland County, Pennsylvania (the "Borough"), and MOUNT HOLLY SPRINGS BOROUGH AUTHORITY (the "Authority"), a municipality authority existing under laws of the Commonwealth of Pennsylvania.

WHEREAS, The Authority heretofore undertook and completed the acquisition and construction of a sewage collection system for rendering sewage collection services in, adjacent to and for the Borough (the "Sewer System") and a waterworks, water supply works and water distribution system for rendering water supply services in, adjacent to and for the Borough (the "Water System"), which Sewer System and Water System collectively herein are referred to as the "Water and Sewer Systems"; and

WHEREAS, The Authority, as lessor, and the Borough, as lessee, heretofore entered into an Agreement of Lease, dated as of November 1, 1962 (the "Lease"), under which a portion of the Water and Sewer Systems were leased to the Borough for use and operation; and

WHEREAS, The Authority, as lessor, and the Borough, as lessee, heretofore entered into a Termination Agreement, dated as of July 1, 1991, but effective as provided therein, under which Termination Agreement the Lease has been terminated and canceled; and

WHEREAS, The Authority desires to engage the Borough to provide certain services in connection with management and operation of the Water and Sewer Systems and to provide

~~consulting services with respect to the operation and management of the Water and Sewer Systems; and~~

WHEREAS, The Borough is willing to provide such services in connection with management and operation of the Water and Sewer Systems and to provide consulting services with respect thereto pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, That the Borough and the Authority, for and in consideration of the mutual covenants and agreements hereinafter contained, each intending to be legally bound hereby, do covenant and agree as follows:

1. ~~The Authority hereby engages and appoints the Borough to provide general management services for the Water and Sewer Systems, subject to the termination provisions provided in Paragraph 11 hereof, and the Borough hereby accepts such employment on the terms hereafter set forth.~~

2. The terms defined in this Paragraph 2, for all purposes of this Agreement, shall have the meanings herein specified, unless the context clearly otherwise requires:

"Authorities Act" means the Act of the Pennsylvania General Assembly, known as the "Municipality Authorities Act of 1945", approved May 2, 1945, P.L. 382, as amended and supplemented from time to time.

"Board" means the governing body of the Authority.

"Capital Additions" means new and additional property chargeable to plant or equipment account under sound accounting and/or engineering practice, including, without intending to limit the generality of the foregoing, additions, extensions, alterations and improvements of or to the Water and Sewer

Systems, including, without intending to limit the generality of the foregoing, all buildings, basins, machinery, mains, conduits, pipes, pipe lines, interceptor lines, outfall lines, trunklines, service lines, sewer plants and systems, water treatment plants and systems, hydrants, tanks, shops, pumping stations, ejector stations, force mains, fixtures, engines, boilers, pumps, meters and other equipment, all personal property and all franchises, land, rights of way, privileges, easements, licenses, rights and any other interests in real property, in each case made, constructed or acquired after the date hereof and which are used or useful in connection with the Water and Sewer Systems.

"Consulting Engineers" means a Person or Persons, as applicable, who shall be Independent and qualified to pass upon engineering questions relating to water and/or sewer systems, as appropriate, and having a favorable reputation for skill and experience in inspecting construction and operation of water and/or sewer systems, as appropriate. If such Person or Persons, as applicable, shall be an individual, he or they shall be professional engineers duly registered under laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employe or member who is a professional engineer duly registered under laws of the Commonwealth.

"Extraordinary Repairs" means alterations, repairs, renewals, improvements or replacements with respect to the Water System and Sewer System, as applicable, which are necessary or desirable for proper operation and maintenance thereof including emergency work and which are of a type that would not ordinarily be paid as current operating expenses, as determined by a Consulting Engineers' Certificate.

"Independent" means, with respect to the Consulting Engineers, a Person who is not a member of the Board, officer or

employee of the Authority or an elected or appointed official or employee of the Borough, or which is not a partnership, corporation or association having a partner, directors, officer, member or substantial stockholder who is a member of the Board, officer or employee of the Authority or an elected or appointed official or employee of the Borough; Provided, however, that the fact that such Person is retained regularly by the Authority or the Borough shall not make such Person an employee within the meaning of this definition.

"Municipal Building" means the Municipal Building of the Borough.

"Person" means an individual, a partnership, an association, a corporation, a joint stock company, a trust, an unincorporated association, a governmental body, a political subdivision, a municipality, a municipality authority or any other group or entity.

"Sewer Revenue Fund" means the separate and distinct fund of the Authority, as described in Paragraph 4 hereof.

"Sewer Revenues" means:

- a. All moneys realized from collection of sewer rates and other charges imposed pursuant to a resolution or resolutions of the Authority, in effect at the time;
- b. All interest and income received, from time to time, by or on behalf of the Authority from investment of moneys in the Sewer Revenue Fund; and
- c. All other moneys received by the Borough on account of operation of the Sewer System.

"Water Revenue Fund" means the separate and distinct fund of the Authority, as described in Paragraph 4 hereof.

"Water Revenues" means:

a. All moneys realized from collection of water rates and other charges imposed pursuant to a resolution or resolutions of the Authority, in effect at the time;

b. All interest and income received, from time to time, by or on behalf of the Authority from investment of moneys in the Water Revenue Fund; and

c. All other moneys received by the Borough on account of operation of the Water System.

"Year" means January 1 to December 31.

3. Subject to the supervision, direction and control of the Authority in the exercise and discharge of its duties under the Authorities Act, the Borough shall manage the Water and Sewer Systems and shall, acting in cooperation with the Board, render to the Authority all services in connection therewith including the following:

a. The Borough shall provide labor and materials for the efficient operation and maintenance of the Water and Sewer Systems and for the furnishing of adequate and satisfactory service to users.

b. The Borough shall employ and supervise such Persons as are required to properly operate and maintain the Water and Sewer Systems; such Persons may be the employees of the Borough or of the Authority, as the parties shall from time to time agree.

c. The Borough shall provide and supply the necessary utilities, materials, supplies and equipment for the operation and maintenance of the Water and Sewer Systems.

d. The Borough shall keep and maintain all books, accounts and records required in connection with the proper and businesslike operation of the Water and Sewer Systems, and as may be reasonably required by the Authority.

e. The Borough shall maintain adequate insurance against fire and such other risks as are usually and generally included in extended coverage endorsements and any other proper insurance as may be reasonably required by the Authority and shall report on the extent of such insurance coverage to the Authority on or before July 1, of each year; Except, that the Borough shall make an initial report no later than 10 days after the date of this Agreement.

f. The Borough shall bill and collect for service in accordance with the sewer rates and other charges and water rates and other charges, as established and imposed by the Authority, and shall handle all matters arising from such billing and collecting.

g. The Borough shall keep the Authority informed of the amount of collections made and, if necessary, shall advise the Authority of the necessity of any change in rates and shall consult with the Authority in establishing any such new rates.

h. The Borough shall provide for performance of all services, and the purchase of such equipment in connection with the making of repairs, subject to the provisions of Paragraph 6 hereof.

i. The Borough shall provide such consulting services as may be appropriate, including advice with regard to the management of moneys and recommendations with regard to annual budgets and present and future management and operation of the Water and Sewer Systems.

In general, the Borough shall render all reasonable assistance to the Authority in order to enable the Authority to perform and fulfill its obligations under the Authorities Act, to secure efficient and economical administration and operation of the Water and Sewer Systems and to assure adequate and efficient service at reasonable rates and charges to users.

4. The Borough shall deposit all Sewer Revenues in a sewer revenue fund (the "Sewer Revenue Fund") to be established and maintained in the name of the Authority with such depository or depositories as may be satisfactory to the Authority. As part of the Sewer Revenue Fund, such accounts as may be required in connection with any financings or as may be deemed desirable, proper and in accordance with accepted accounting practices, shall be established by the Borough in behalf of the Authority. Proper officers or employees of the Borough, with the approval of the Authority, shall be authorized to make payment or transfer, as appropriate, with respect to costs properly chargeable to the Sewer Revenue Fund.

The Borough shall deposit all Water Revenues in a water revenue fund (the "Water Revenue Fund") to be established and maintained in the name of the Authority with such depository or depositories as may be satisfactory to the Authority. As part of the Water Revenue Fund, such accounts as may be required in connection with any financings or as may be deemed desirable, proper and in accordance with accepted accounting practices, shall be established by the Borough in behalf of the Authority. Proper officers or employees of the Borough, with the approval of

the Authority, shall be authorized to make payment or transfer, as appropriate, with respect to costs properly chargeable to the Water Revenue Fund.

The Borough may invest such moneys in the Sewer Revenue Fund and the Water Revenue Fund, on behalf of the Authority, in such amounts and for such periods of time as it deems appropriate, taking into consideration the moneys available and anticipated expenditures.

All such moneys which shall not be invested by the Borough, to the extent not insured by the Federal Deposit Insurance Corporation or other Federal agency, shall be secured continuously for benefit of the Authority, as shall be required, from time to time, by laws of the Commonwealth of Pennsylvania. Obligations pledged as such security shall be deposited with a Federal Reserve Bank, or with the trust department of some other bank, trust company or depository, as shall be authorized by law with respect to trust funds in the Commonwealth of Pennsylvania and satisfactory to the Authority.

5. The Borough agrees to cause all officers and employes of the Borough handling funds relating to the Water and Sewer Systems to be bonded at all times in adequate amounts by a responsible surety company or surety companies duly qualified to do business in the Commonwealth of Pennsylvania and satisfactory to the Authority. Copies of such bonds shall be delivered to the Authority.

6. The Borough is authorized to make Extraordinary Repairs, without further approval of the Authority, to the extent that funds shall be available to it for such purposes without depleting available funds below the amounts needed for adequate reserves in connection with the operation and maintenance of the Water and Sewer Systems.

7. The Borough shall not undertake nor commit to undertake Capital Additions without first requesting and receiving the approval of the Authority as evidenced by a resolution of the Board duly adopted, which approval shall not be unreasonably withheld.

The request by the Borough shall be accompanied by a certificate of the Borough's engineer, or in the event the estimated cost exceeds \$250,000, a certificate by the Consulting Engineers of the Authority that such Capital Additions are necessary and desirable for the proper operation and maintenance of the Water and Sewer Systems.

8. The books, records and accounts of the Borough, as manager, related to the management of the Water and Sewer Systems and conduct of the business in connection therewith shall be open for inspection by the Authority or its authorized agents at any reasonable time.

9. In consideration of the services rendered by the Borough under this Agreement, the Authority agrees to pay the Borough the following amounts:

a. Any direct costs incurred by the Borough for labor, materials or services provided for the Water and Sewer Systems; and

b. For services rendered by the Borough's Administrative Office (the "Office"), an allocated share of the costs and expenses of such personnel, and an allocated share of the Municipal Building costs in accordance with cost allocation factors as shall be agreed upon by the Authority and Borough.

Payments to the Borough pursuant to this paragraph shall be made at such intervals and in such manner as the Borough and the Authority may agree.

10. The Consulting Engineers shall be retained by the Authority and shall be acceptable to the Borough. The Consulting Engineers shall act as consulting engineers to the Borough and the Authority in all matters relating to operation of the Water and Sewer Systems pursuant to this Agreement.

11. This Agreement shall continue in effect for the term beginning with the date hereof, to and including July 30, 1992, and from Year to Year thereafter, unless either party shall give written notice of its desire to terminate or amend the Agreement at the expiration of any term thereof, such notice to be given at least 120 days before the expiration of such term.

IN WITNESS WHEREOF, MOUNT HOLLY SPRINGS BOROUGH AUTHORITY has caused this Agreement to be executed by its Chairman or Vice Chairman and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Secretary, and BOROUGH OF MOUNT HOLLY SPRINGS has caused this Agreement to be executed by its President of Council and Mayor and its seal to be hereunto affixed and attested by its Secretary, this ____ day of July, 1991.