

ORDINANCE # 3 OF 1986

BOROUGH OF HARRISVILLE, BUTLER COUNTY, PENNSYLVANIA

AN ORDINANCE ADOPTING AND RATIFYING AN AGREEMENT WASTEWATER
TREATMENT SERVICE ENTERED INTO MARCH 18, 1985, AND AN
AMENDMENT TO WASTEWATER TREATMENT SERVICE AGREEMENT DATED
FEBRUARY 3, 1986, RATIFYING AND CONFIRMING THE SAME, PROVIDING
FOR CONNECTIONS, REGULATIONS, PERTAINING THERETO, CHARGES AND
COSTS AND REGULATIONS THEREOF, CONSTRUCTION OF THE SYSTEM,
MAINTENANCE AND RESPONSIBILITY OF THE SYSTEM, TERMINATION OF
SERVICE, TERMS OF AGREEMENT, ASSIGNABILITY OF THE AGREEMENT,
INNOVATIVE ALTERNATIVE SYSTEMS AND AMENDMENTS.

AGREEMENT

WASTEWATER TREATMENT SERVICE

This Agreement is made and entered into this 18th day of March, 1985, by and between THE BOROUGH OF GROVE CITY, Mercer County, Pennsylvania, hereinafter referred to as "Grove City" and THE BOROUGH OF HARRISVILLE, Butler County, Pennsylvania, hereinafter referred to as "Harrisville".

WHEREAS, the Borough of Grove City owns and operates a wastewater sewage treatment system including facilities for the collection and treatment of wastewater; and

WHEREAS, Grove City has recently upgraded and expanded the wastewater sewage treatment facilities in accordance with State and Federal requirements and regulations; and

WHEREAS, Grove City's wastewater treatment facility currently has adequate capacity to accept and treat wastewater sewage generated from surrounding municipalities including Harrisville; and

WHEREAS, it is the intent of Grove City and Harrisville to enter into this Agreement to set forth the terms and conditions for the treatment of wastewater sewage generated in the Harrisville service area at the Grove City treatment facility; and

WHEREAS, pursuant to the Borough Code, 53 P. S. Section 47031, the parties hereto are authorized to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, to be fully kept and performed by the respective parties hereto, their successors and assigns, it is agreed by and between the parties as follows:

ARTICLE I

PROVISIONS FOR CONNECTIONS

A. Grove City agrees to accept for treatment and Harrisville agrees to deliver for treatment all wastewater sewage generated from Harrisville's initial project and future extensions of its system up to a peak of 575,000 gallons/day and 230,000 gallons/day average flow. Peak flow as set forth herein is defined as the maximum rate of discharge as averaged over any one (1) hour. Average flow as set forth herein is defined as the total annual flow divided by three hundred sixty-five (365) days.

B. All residential, institutional, commercial and industrial connections to Harrisville's sewers will be made in accordance with the requirements and limitations of Grove City's present or future ordinances governing such connections within Grove City. In particular, these ordinances are and will be concerned with, among other matters, limitations on the type of water discharged and the exclusion of surface water and ground water from the sewers. Harrisville will, upon its own initiative, or upon the recommendation of Grove City, adopt ordinances and resolutions comparable to ordinances and resolutions passed by Grove City with the exception that this provision shall not apply to any rate ordinances or resolutions.

C. Harrisville agrees, at its expense, to monitor and prohibit the discharge of any toxic or incompatible residential, institutional, commercial or industrial waste generated within the Harrisville service area in the Grove City's wastewater treatment facility unless such waste is properly pretreated in accordance with present and/or future State or Federal pretreatment regulations and the consent of Grove City and/or any other governmental agency is obtained in writing prior to the discharge of said waste into the sewage

treatment system.

D. Harrisville hereby agrees to give Grove City at least six (6) months notice of introduction of any toxic, incompatible or significant industrial waste prior to discharge into the sewage system provided further that said discharge shall not occur if Grove City gives Harrisville written notice that said discharge is in violation of its ordinances or State and Federal laws or regulations.

E. Upon the request of Grove City, Harrisville shall, at its expense, submit to Grove City a reasonable number, depending upon the nature and purpose of the request by Grove City, of certified laboratory analyses of wastewater samples taken from wastewater generated within the Harrisville service area provided further that any such test performed by Grove City within its own municipal boundaries shall not be considered part of the total cost of Grove City's Wastewater Treatment Plant operation as set forth in the formula hereafter in Article II, Section F.

F. Upon connection being made to Harrisville's sewage system by an appropriate person or entity therein, the said person or entity shall not thereafter disconnect from said system without the express written consent of Harrisville and Grove City.

G. Final connection of the Harrisville sewage treatment system, at Harrisville's expense, shall not be completed and operative until Harrisville has given Grove City thirty (30) days notice of its intent to make final connection and Harrisville certifies that it has complied with all terms and conditions of this Agreement.

H. As Harrisville customers are permitted to connect to the Harrisville sewage line collection system, notice thereof and copies of all

permits issued shall be given to Grove City and in the case of industrial or commercial users specific information as to the type of sewage or waste to be discharged into the disposal system shall be furnished by Harrisville to Grove City at least ten (10) days in advance of the date of the actual connection to permit Grove City to inspect and observe, if it so desires, any such connection or to challenge the right of Harrisville to discharge said waste into the system.

I. If, as the result of any sewage discharge from the Harrisville sewage system, Grove City incurs any damage to its real or personal property, including its sewage line system and sewage treatment plant, Harrisville shall be solely liable to Grove City for all of said damage including, but not limited to, clean-up costs, maintenance, repair and replacement costs, and reasonable attorneys fees incurred by Grove City to recover for said damages.

J. If, as the result of any sewage discharge from the Harrisville sewage system, any third party incurs any personal injury or damage of real or personal property, Harrisville shall be solely liable for the same and, in this regard, Harrisville shall hold Grove City harmless for the same and shall indemnify Grove City for all liability related thereto including, but not limited to, any judgment, joint or otherwise, settlement, fine, penalty, clean-up costs, maintenance, repair or replacement costs and reasonable attorneys fees imposed upon or incurred by Grove City.

K. If, as the result of any sewage discharge from the Harrisville sewage system, any liability of any nature is imposed upon Grove City, Harrisville shall be solely liable for the same and, in this regard, Harrisville shall hold Grove City harmless for the same and shall indemnify Grove City for all liability related thereto including, but not limited to,

any judgment, joint or otherwise, settlement, fine, penalty, clean-up costs, maintenance, repair or replacement costs and reasonable attorneys fees imposed upon or incurred by Grove City.

L. If, as the result of the malfunction of the Grove City Wastewater Treatment Plant, unrelated to any sewage discharge or negligence of Harrisville, Harrisville incurs any damage to its real or personal property, including its sewage line system, Grove City shall be solely liable to Harrisville for all of said damage including, but not limited to, clean-up costs, maintenance, repair and replacement costs, and reasonable attorneys fees incurred by Harrisville to recover for said damages.

M. If, as a result of the malfunction of the Grove City Wastewater Treatment Plant, unrelated to any sewage discharge or negligence of Harrisville, any third party incurs any personal injury or damage of real or personal property, Grove City shall be solely liable for the same and, in this regard, Grove City shall hold Harrisville harmless for the same and shall indemnify Harrisville for all liability related thereto including, but not limited to, any judgment, joint or otherwise, settlement, fine, penalty, clean-up costs, maintenance, repair or replacement costs and reasonable fees imposed upon or incurred by Harrisville.

ARTICLE II

CHARGES

A. Harrisville agrees to pay Grove City for the use of Grove City's wastewater sewage treatment facilities.

B. Harrisville's payments to Grove City will be based on the actual amount of wastewater sewage Harrisville delivers to Grove City and on a percentage share of Grove City's actual cost of wastewater sewage treatment

and debt service.

C. The amount of wastewater sewage delivered to Grove City's Wastewater Treatment Plant will be determined based on pumping records of Harrisville's pump station. The records will be available for full inspection by Grove City at all reasonable times. Grove City may also check the accuracy of the pump station meter as frequently or at any time it desires and, in this regard, Harrisville guarantees Grove City's access to the pump station for this purpose. Harrisville shall make every effort to insure accurate metering of flow and adopt appropriate and reasonable measures to insure the same.

D. The amount of wastewater sewage treatment at Grove City's Wastewater Treatment Plant will be determined based on the main flow meter at the Plant. The records will be available for full inspection by Harrisville at all reasonable times. Harrisville may also check the accuracy of the flow meter as frequently or at any time it desires and, in this regard, Grove City guarantees Harrisville's access to the Wastewater Treatment Plant for this purpose. Grove City shall make every effort to insure accurate recording of the flow and adopt appropriate and reasonable measures to insure the same.

E. If, upon any accuracy test, a percentage of inaccuracy is established, then such meter shall be adjusted at once to register the correct flow for a period extended back to the time when such inaccuracy began if such time is ascertainable. If such time is not ascertainable, then the meter shall be adjusted for a period extending back one-half (1/2) of the time elapsed since the date of the last accuracy test to a maximum adjustment time of one (1) year. In that regard, once adjustment has been completed, the financial obligations hereunder shall also be correspondingly adjusted.

F. Harrisville's share of the cost of wastewater sewage treatment and

debt service shall be recalculated at the end of each calendar year based on actual audited Grove City costs. The calculation shall be as follows:

- A = Harrisville's total annual flow
- B = Total annual flow at Grove City's Wastewater Treatment Plant
- C = Harrisville's percentage
- D = Total cost of Grove City's Wastewater Treatment Plant operation, including maintenance and current and future debt service provided that said future debt service is related in same manner or method to treatment or disposal of Harrisville's sewage
- E = Sum of Grove City's collection system cost, postage, Act 339, and 12% of annual debt service until said debt service has been retired
- F = Harrisville's cost for calculation

$$A \div B = C$$

$$D - E = F$$

$$C \times F = \text{Harrisville's annual cost}$$

G. If any Harrisville customers connect to Harrisville's sewage transmission system without going first through the main pump station to be metered, their contribution will be estimated and added to the metered flow based on typical wastewater generation factors as determined by actual contributions of the metered customers in the Harrisville service area.

H. High strength surcharges can be imposed by Grove City on Harrisville's flow if the concentration of BOD and/or suspended solids in Harrisville's metered and unmetered wasteload exceeds 200 mg/liter as an average for any given quarter, and, in this regard, Harrisville shall be continually required to provide a twenty-four (24) hour composite sample on a

quarterly time schedule based upon direct proportion to the flow, provided that such monetary surcharges are imposed on other Grove City individual or municipal customers and provided that such surcharges equitably reflect the added cost of treating the high strength waste of Harrisville. In this regard, subject to the reasonable limitations set forth herein, Grove City has the right and discretion to set forth the amount of said surcharge.

Furthermore, if any governmental agency other than Grove City sets forth a standard upon which surcharges must be imposed or the monetary amount to surcharge for treating high strength waste at a more stringent standard than what is set forth herein, the parties hereto agree that this provision shall be amended to reflect the more stringent standard.

I. Harrisville's actual sewage treatment charge for a given year will be determined as soon as practical by Grove City after January 1 of the following year. Harrisville will pay estimated quarterly payments to Grove City with payments to be made on or before the last day of the month following the preceding calendar quarter. For the initial year, estimated payments will be established based on negotiations between Grove City and Harrisville. In subsequent years, the estimated quarterly bill will be the bill in the quarter one year earlier plus five percent. Any shortfall or overcharge in the combined Harrisville payments for a year will be corrected as of the first quarterly payment of the following year.

J. Harrisville shall annually on or before the last day of the month following the preceding year certify to Grove City the number of Harrisville's domestic users and the number, type and description of Harrisville's commercial and industrial users served by Grove City's wastewater treatment plant. As to all industrial or commercial users, Grove City may require

Harrisville, at Harrisville's expense, to provide specific information on the volume and contents of the wastewater such users contribute. Harrisville agrees to make every effort to assure the information they provide to Grove City is accurate and correct. Harrisville hereby grants to Grove City the right to perform tests and inspections, at Grove City's expense, to investigate the validity of such information.

K. Grove City shall retain the sole and absolute right and authority to establish the rates that shall be charged to its own residents and industries.

L. Harrisville agrees to enact, keep in effect and to enforce a schedule of sewer rental rates or charges sufficient to enable Harrisville to make all payments to Grove City as required by this Agreement and, upon the collection of said money, Harrisville shall maintain said money in an escrow account restricted solely to the payment of Harrisville's obligations herein.

M. Harrisville covenants that payments required under this Agreement shall be made when due and owing and that interest shall be charged and paid at eighty (80%) per cent of Mellon Bank prime rate on any amount of any default after said due date.

ARTICLE III

CONSTRUCTION OF HARRISVILLE SEWAGE SYSTEM

A. Harrisville shall be solely responsible for all construction of sewer lines from the Harrisville service area to the connection point located on Pennsylvania Route 158 at Manhole No. 51, Harrisville Blueprint Drawing No. 147-27 and in that regard, Harrisville shall be responsible for obtaining all necessary easements and permits allowing for the construction, maintenance and repair of the said sewer system and, in that regard, if just compensation is

due any landowner as a result of the acquisition of the said easement, Harrisville shall be responsible for payment of the same.

B. The said sewer system being constructed by Harrisville shall meet all requirements of State and Federal laws and regulations.

C. Harrisville agrees to hold Grove City harmless for any damage caused to any person or property as a result of the construction, maintenance or repair of said sewage line system being constructed by Harrisville and, in this regard, Harrisville shall indemnify Grove City Borough for any liability that may attach to Grove City as a result of Harrisville's construction, maintenance and repair of said sewage line system including, but not limited to, any judgment, joint or otherwise, settlement, fine, penalty, clean-up costs, maintenance, repair or replacement cost and reasonable attorneys fees imposed upon or incurred by Grove City.

D. Harrisville shall obtain its own right of ways and permits necessary for sewers that extend within the Borough limits in order to effect the completion of the said sewage service line and will assume Grove City's inspection costs for the same. Grove City agrees to execute any documents necessary to acquire said permits, agrees to grant all required easements and rights of way in streets, roads and alleys within Grove City as required, and agrees to institute and complete eminent domain proceedings pursuant to law to acquire private easements, if necessary, as the law may allow, if the same cannot otherwise be acquired by Harrisville. Any and all costs related to this section, including, but not limited to, permits, easement acquisitions, repair and maintenance work of property, public or private, attorneys fees and court costs shall be the sole expense of Harrisville. ✓

ARTICLE IV

MAINTENANCE AND RESPONSIBILITY

A. Harrisville shall be responsible for the maintenance and repair of the said sewage line system being constructed from the Harrisville sewage service area to, and including, Manhole No. 51 located on Pennsylvania Route 158, Harrisville Blueprint Drawing No. 147-27, and, in that regard, Harrisville agrees to hold Grove City harmless for any liability or responsibility for the said construction, maintenance and repair of said sewage line system and shall indemnify Grove City for all liability related thereto, including but not limited to, any judgment, joint or otherwise, settlement, fine, penalty, clean-up costs, maintenance, repair or replacement costs and reasonable attorneys fees imposed upon or incurred by Grove City.

B. If the sewer system being constructed by Harrisville permits excess infiltration of surface or ground water or said system does not function properly at anytime during the period of this Agreement, Harrisville will, at its own expense, determine the nature, extent and location of the system defect and will rebuild such sewer lines to correct any defects thereof.

C. Harrisville hereby authorizes, but Grove City is not required nor obligated to perform, Grove City's inspection and testing of the Harrisville sewage lines and, if upon such testing and inspecting maintenance or repair work is required, or if maintenance or repair work is required by State or Federal law or regulations, Harrisville shall be obligated, at its expense, to properly perform said maintenance and repair work to the said system.

D. Grove City shall not be responsible nor liable in any way for acts

beyond the control of Grove City which may in any way cause an interruption or discontinuance of sewage service.

E. Each party hereto shall immediately notify the other in writing of any emergency or condition that may adversely affect the operation of the sewage lines and Sewage Treatment Plant.

F. Harrisville agrees at its expense to conduct reasonable periodic inspection of its sewage collection system in accordance with generally accepted standards for the purpose of determining infiltration/inflow. Provided there is a reasonable basis for the request, Grove City may also require Harrisville at its expense to perform additional inspections of the said system for determining infiltration/inflow. It is agreed that Harrisville will immediately take any and all proper corrective action at its expense to eliminate any defects or violations so discovered.

G. Harrisville shall be responsible to establish permanent inspection procedures to assure compliance with this Agreement and any local, State or Federal laws and regulations and to faithfully prosecute offenders for any violation hereof.

ARTICLE V

TERMINATION OF SERVICE

A. Subject to Federal and State laws and regulations, Grove City Borough shall have the right to terminate the sewage service to Harrisville if Harrisville defaults under the terms and conditions of this Agreement or if Grove City is so ordered to terminate service by any other governmental agency for any reason required by law.

B. Harrisville shall not permit any further connections to the sewage line system being constructed, maintained and repaired by Harrisville except

residents and occupants of the Borough of Harrisville and, in this regard, no individual or entity outside the municipal boundaries of Harrisville shall connect thereto without the express written consent of Grove City.

ARTICLE VI

MISCELLANEOUS PROVISIONS

A. The parties hereto agree and acknowledge that this Agreement has been signed and executed in the Borough of Grove City and, in that regard, the parties hereto agree that jurisdiction and venue for any question of interpretation or request for relief or damage hereunder shall be solely addressed to the Mercer County Court of Common Pleas unless exclusive venue and/or jurisdiction rests within the Pennsylvania Commonwealth Court or any State or Federal administrative body.

B. This Agreement shall continue for a term of forty-five (45) years from the date hereof unless terminated in writing by agreement of both parties hereto.

C. Although it is recognized that Harrisville may transfer or assign this Agreement to an appropriate municipal authority, Harrisville shall always remain primarily liable for any obligations, rights, responsibilities, or duties required under this Agreement.

D. This Agreement contains the complete understanding of the parties hereto, shall not be amended by any prior or written correspondence, and shall only be subsequently amended by a written document dated hereafter.

E. Prior to this Agreement becoming effective and binding between the parties hereto, it shall be submitted to the appropriate State and/or Federal administrative bodies for their approval, and upon their approval of this entire Agreement, it shall become effective and binding upon the parties

hereto.

F. Harrisville shall not install an innovative alternative system under which septage (septic tank effluent) would be admitted to the sanitary sewer system without the express written consent of Grove City.

G. This Agreement shall be duly amended to reflect any terms and conditions of State and Federal law or regulation that may be mandated upon either or both of the parties hereto provided further that if any such requirement of Federal or State law or regulation shall adversely affect the rates herein, including any requirement upon Grove City to repair or replace the Sewage Treatment Plant, this Agreement shall be subject to further negotiation as to the rate charge set forth herein and if the parties cannot agree to an equitable rate adjustment, the issue of equitable rate adjustment shall be submitted to arbitration in accord with the rules and regulations of the American Arbitration Association.

IN WITNESS WHEREOF, and intending to be legally bound, the respective parties, after due consideration and deliberation and approval thereof by borough councils at a lawfully held meeting set their hands and corporate seals this 18th day of March, 1985.

ATTEST:

Nancy S. Albright
Borough Secretary

BOROUGH OF GROVE CITY

By James H. Montgomery
James H. Montgomery
Grove City Borough Council President

ATTEST:

Linda J. Wegner
Borough Secretary

BOROUGH OF HARRISVILLE

Frank Sabin
Frank Sabin
Harrisville Borough Council President

AMENDMENT TO WASTE WATER TREATMENT SERVICE AGREEMENT

Made and entered into this 3rd day of February, 1986, by and among the BOROUGH OF GROVE CITY, a municipal corporation of Mercer County, Pennsylvania, hereinafter referred to as "Grove City",

A N D

THE BOROUGH OF HARRISVILLE, a municipal corporation of Butler County, Pennsylvania, hereinafter referred to as "Harrisville",

A N D

PINE-HARRISVILLE AUTHORITY, a municipal authority, hereinafter referred to as the "Authority".

WHEREAS, the Borough of Grove City and the Borough of Harrisville, have previously entered into a Waste Water Treatment Service Agreement dated March 18, 1985, providing for the terms and conditions under which the Borough of Grove City is to receive and treat sewage from the Borough of Harrisville, and

WHEREAS, the parties hereto desire to amend said Waste Water Treatment Service Agreement to include the Authority as a party.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed as follows:

1. The Pine-Harrisville Authority is hereby made a party to said Waste Water Treatment Service Agreement dated March 18, 1985.
2. The Authority shall have all of the rights and obligations of the Borough of Harrisville under the Agreement in the event that the Authority takes over the operation of the Harrisville Borough

portion of the Authority's sewer system upon default by the Borough of Harrisville under its Lease with the Authority dated January 1, 1986, the Borough of Harrisville's Guaranty Agreement dated January 1, 1986, or the Trust Indenture dated January 1, 1986, securing the Authority's issuance of its guaranteed Sewer Revenue Bonds, SERIES of 1986.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their officials, duly authorized by proper resolutions or ordinances as referenced to the minutes of the meetings of said parties shall disclose, each intending to be legally bound hereby.

ATTEST:

BOROUGH OF GROVE CITY

Secretary

President

SEAL

ATTEST:

BOROUGH OF HARRISVILLE

Linda J. Wegner

Secretary

John S. Fabri

President

SEAL

ATTEST:

PINE-HARRISVILLE AUTHORITY

Secretary

Chairman

SEAL