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EXHIBIT F61

WHOLESALE WASTEWATER AGREEMENT, DATED  
MARCH 15, 1974, BY AND AMONG  
CITY OF PHILADELPHIA AND DELCORA

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## **AGREEMENT**

THIS AGREEMENT, Made this 15th day of March, A. D. 1974, by and between THE CITY OF PHILADELPHIA, hereinafter called "City," party of the first part and THE DELAWARE COUNTY REGIONAL WATER QUALITY CONTROL AUTHORITY, hereinafter called "DELCORA," party of the second part:

### **W I T N E S S E T H :**

WHEREAS, The City owns and operates the Southwest Wastewater Pollution Control Plant, which has a limited capacity to treat wastewater from DELCORA's Eastern Delaware County Service Area in addition to the wastewater originating within the City;

WHEREAS, Under directives of the Federal government and those of the Delaware River Basin commission and of the Commonwealth, the City is planning to improve, enlarge and operate its plant for its own use and is willing to allocate and reserve in the plant additional capacity to serve DELCORA's Eastern Delaware County Service Area;

WHEREAS, Under like directives, DELCORA is constructing and will operate and maintain the Eastern Delaware County Conveyance System to convey wastewater from its Eastern Delaware County Service Area to the Southwest Plant; and is willing to deliver such wastewater via such conveyance system for treatment and disposal at the City's plant; and

WHEREAS, The facilities which each party proposes to construct, operate and maintain hereunder and the arrangements therefore set forth herein shall be in accordance with:

- (1) the orders, guidelines and regulations of the Delaware River Basin Commission, the Pennsylvania Department of Environmental Resources and the United States Environmental Protection Agency; and
- (2) the funding arrangements provided in the 1972 amendments to the Water Pollution Control Act which provides for seventy-five percentum (75%) Federal funding and twenty-five percentum (25%) local (City and DELCORA) funding of total capital costs eligible.

NOW, THEREFORE, It is mutually covenanted and agreed by and between the parties hereto:

## **ARTICLE 1**

### **Construction, Operation and Maintenance of the Eastern Delaware County Conveyance System and Related Matters**

#### **1.01 Design and Construction**

In order to collect wastewater from the Eastern Delaware County Service Area, as defined below in Section 9.12, DELCORA, at its own cost and expense, shall design, construct, operate and repair the Eastern Delaware County Conveyance System hereinafter called the "Conveyance System."

Initially, the conveyance system shall include a pumping station in the vicinity of the existing wastewater pollution control plant of the Darby Creek Joint Authority and a force main from such point to the Southwest Wastewater Pollution Control Plant, hereinafter called the "Southwest Plant."

The Conveyance System constructed by DELCORA shall terminate beyond the metering and sampling devices monitoring the flow as provided in Section 1.03 herein at the point of entry into the Southwest Plant.

All design and construction of the Conveyance System within the boundaries of the City shall be in accordance with all City ordinances and regulations governing construction of underground structures and facilities, shall be subject to the City's review and approval prior to implementation (which approval shall not be unreasonably withheld), and shall not interfere with any existing surface or sub-surface structures, except as approved by the City.

For this purpose and insofar as it holds title, City grants to DELCORA right of entry upon the land along the approved route of the Conveyance System for the purpose of construction. Other rights of way or easements required for which City does not hold title shall be acquired at the sole cost of DELCORA, the City assisting in such acquisitions where possible.

The City accordingly, hereby grants DELCORA subject to the conditions herein, authorization to construct, operate and maintain the Conveyance System along the route shown on the plan dated February 28, 1972 made by Albright and Friel filed with City, an outline of which plan is attached hereto as Exhibit B.

DELCORA agrees that at any time when the space occupied by the Conveyance System within the City's streets shall be required by the City for any public purpose, within six months following notice thereof by the City, DELCORA at its own cost will either

- (1) commence and promptly thereafter complete the relocation of the Conveyance System and restore the surface of streets to their prior condition; or
- (2) with the City's approval (not unreasonably withheld) pay the City the increased costs of any project being constructed by the City resulting from DELCORA's failure to make such relocation.

DELCORA shall make available to the City at reasonable times and places all information concerning the design and construction of the Conveyance System reasonably requested and the City shall have the right at all reasonable times to inspect construction of said Conveyance System and all records of DELCORA in respect thereof.

## **1.02 Operation and Maintenance**

During the term hereof, DELCORA will at its cost operate maintain and repair the Conveyance System, or cause it to be maintained and repaired so that at all times it is in efficient operating condition and in compliance with standards prescribed by the appropriate regulatory agencies, except that the City will have the option of maintaining and repairing the portion thereof within the boundaries of the City subject to payment of the costs thereof by DELCORA as provided herein. If, at any time, City

forces cannot perform repairs required, the City shall promptly notify DELCORA who will then arrange for such repairs and pay for them directly.

### **1.03 Metering and Sampling Devices**

DELCORA's construction of the Conveyance System shall include at DELCORA's cost metering and sampling devices approved by the City to be installed at the point of entry into Southwest Plant.

The meters shall measure the quantity of wastewater discharged from the Conveyance System into the Southwest Plant. The sampling devices shall sample the incoming wastewater flow for the purpose of analyses, including measurement of the pounds of BOD and of suspended solids in the flow. The City shall record at least weekly the meter readings of wastewater flowing through the said meters and shall analyze said samples and shall report on the readings and results of its analyses of BOD and of suspended solids to DELCORA at least quarterly.

The City will own the meters and sampling devices and will inspect, calibrate, maintain and repair such meters and sampling devices as part of its Operating Costs.

The City shall perform the analyses of samples according to standard methods as prescribed in the latest edition of "Standard Methods for the Examination of Water and Wastewater" and the City's findings in such analyses shall be binding on both parties to this Agreement.

DELCORA shall have right of access to the meters and sampling devices for the purpose of reading or otherwise checking them in place at its cost. Prior notice

of such intended action shall be required and the City shall have the option of having a representative present during such inspections.

In the case of missing or inaccurate flow records due to faulty meter operation or otherwise, the City shall estimate flow on the basis of the records past flows as applied to current conditions for use in place of regular meter readings.

## **ARTICLE 2**

### **Expansion, Operation and Maintenance of the Southwest Plant and Related Matters**

#### **2.01 Design and Construction; Reception, Treatment and Disposal of Wastewater**

The City will plan, design, and construct the expansion of the Southwest Plant and will thereafter operate, maintain and repair such expanded plant.

The City shall include and reserve in the planning and design of such expansion of the Southwest Plant capacity for the reception, treatment and disposal of fifty million gallons of wastewater per twenty-four hour day (50 m.g.d.) for DELCORA. This wastewater shall be delivered via the Conveyance System up to a maximum rate of one hundred fifty-five cubic feet per second (155 c.f.s.) and a total maximum flow of fifty million gallons per twenty-four hour day (50 m.g.d.).

This capacity is reserved herein and will be available on the completion of the expanded plant.

The City shall receive, treat and dispose of the wastewater delivered via the Conveyance System up to the maximum rates allowed.

The City pursuant to the guidelines and with the cooperation of the Delaware River Basin Commission, the Commonwealth's Department of Environmental

Resources and the United States' Environmental Protection Agency, will endeavor to complete expansion of the Southwest Plant by December, 1975.

## **2.02 Operation and Maintenance**

During the term hereof, City will operate, maintain and repair its expanded Southwest Plant, its equipment and related facilities so that it will be in efficient operating condition and in compliance with standards prescribed by the appropriate regulatory agencies.

## **2.03 Metering and Sampling Devices**

The City will install metering and sampling devices to measure the total flow into the Southwest Plant except as provided in Section 1.03 and to provide wastewater samples for analyses, including measurement of the pounds of BOD and of suspended solids in the flow. The City shall record meter readings of wastewater flowing into the Southwest Plant from all sources and shall analyze said samples and record the findings of such analyses in the regular course of business.

The City shall perform the analyses of samples according to standard methods as prescribed in the latest edition of "Standard Methods for the Examination of Water and Wastewater" and the City's findings in such analyses shall be binding on both parties to this Agreement.

## **ARTICLE 3**

### **Interim Delivery of Wastewater Via the Conveyance System**

#### **3.01 Interim Limits**

DELCORA shall begin delivering its wastewater as soon as practicable after the Conveyance System is sufficiently complete to permit such delivery as certified by DELCORA's Consulting Engineers. However, for the period from such beginning date to the completion of the expansion of the Southwest Plant, the wastewater delivered shall not exceed a rate of forty-three cubic feet per second (43 c.f.s.) or a flow fourteen million gallons per twenty-four hour day (14.0 m.g.d.). After termination of the temporary connection by the Darby Creek Joint Authority (which is covered by an existing Agreement) at 75<sup>th</sup> Street and Grays Avenue, the wastewater delivered shall not exceed a rate of forty-eight cubic feet per second (48 c.f.s.) or a flow of fifteen and one-half million gallons per twenty-four hour day (15.5 m.g.d.).

#### **3.02 Temporary Plant Operation**

From the date of completion of the Conveyance System until the date of completion of the expansion of Southwest Plant, DELCORA shall continue to operate, or cause to be operated, the existing treatment plant of the Darby Creek Joint Authority to treat all wastewater discharged from the Eastern Delaware County Service Area into the Conveyance System in excess of the interim limits specified above, subject to the order of the regulatory agencies having jurisdiction over said plant.

## **ARTICLE 4**

### **DELCORA's Capital Contributions**

#### **4.01 Components of Capital Contributions**

DELCORA shall pay to the City two capital contributions to reimburse the City for the reservation of plant capacity in the expanded Southwest Plant to accept, treat and dispose of fifty million gallons daily from DELCORA's Conveyance System.

Subject to limitations hereinafter provided, DELCORA shall pay to the City

- (1) a capital amount in two payments of DELCORA's proportionate share of the depreciated replacement cost of the existing Southwest Plant which will become part of the expanded plant and continue in use after completion of the expansion, as determined in Section 4.04; and
- (2) a capital amount in a series of payments of (a) DELCORA's proportionate share of "total project costs" as hereinafter defined of planning, design and construction of the expansion of Southwest Plant and of (b) a management fee.

DELCORA shall pay such amounts from a Capital Reimbursement Fund, set up by DELCORA by depositing with its indenture trustee, a bank in Pennsylvania, in irrevocable escrow the capital amounts in (1) and (2) above.

#### **4.02 Capital Amounts Required**

(1) On determination of the estimated capital amounts due from DELCORA for those parts of the existing Southwest Plant which will become part of the expanded plant serving DELCORA and continue in use after completion of the

expansion, the City shall inform DELCORA of the amounts applicable, DELCORA will then remit the amounts applicable to its indenture trustee for deposit in the Capital Reimbursement Fund for reimbursement to the City, as hereinafter provided.

(2) After determination of DELCORA's estimated capital share of Total Project Costs deducting committed grants, of the expansion of the Southwest Plant as defined hereinafter, and after the date of the receipt of the bids on the first contract for the actual construction of the expansion of the Southwest Plant, on formal requisition by the City itemized within reasonable detail. DELCORA shall pay within thirty (30) days its full share of the funding of the expansion of the Southwest plant as then determined to its indenture trustee for deposit in the Capital Reimbursement Fund and payment to the City, as hereinafter provided.

#### **4.03 Capital Reimbursement Fund**

The indenture trustee of DELCORA shall deposit the capital amounts to be paid by DELCORA to the City in a separate fund, hereinafter called the Capital Reimbursement Fund, which shall be held and invested by it. To the extent not insured by the Federal Deposit Insurance Corporation or other Federal agency, or invested as hereinafter provided, this Fund shall be continuously secured by the pledge of securities as required by law having an aggregate market value exclusive of accrued interest at all times at least equal to the amount of such moneys. Such moneys may be wholly or partially invested by said trustee only in direct obligations of the United States of America and certificates of deposit which shall mature or shall be subject to redemption at the option of the holder not later than the estimated date when proceeds will be required. Any securities purchased shall be a part of this Fund. The interest and

income received from time to time upon investments and any profit realized or loss sustained from the sale of such securities shall be added or charged to the Capital Reimbursement Fund.

#### **4.04 Capital Payments Applicable to Existing Plant Continuing in Use**

The cost of the real estate and depreciated replacement costs of the existing facilities at the Southwest Plant which will continue in use after completion of the expansion of the plant will be promptly determined by an appraiser or appraisers agreed on by both parties. Total appraisals shall be net of any Federal or State grants or reimbursements received.

If this appraisal becomes a “total eligible cost” funded by the Federal or State government, it shall be funded and paid as such. If it does not become such a “total eligible cost,” DELCORA and the City shall pay equal shares of the cost.

Upon completion of the expansion of the Southwest Plant, DELCORA’s capital share of the costs of the real estate and the depreciated replacement costs as appraised, shall be based on the proportion of plant capacity reserved to DELCORA, 50 million gallons daily (50 m.g.d.), to the total capacity of the expanded plant, two hundred and ten million gallons daily (210 m.g.d.) as currently estimated.

This payment shall be made in two parts as follows:

- (a) For the interim period between completion of the Conveyance System and completion of the expansion of the Southwest Plant, DELCORA shall pay a share based on the proportion of DELCORA’s interim reserved capacity of fifteen and half million gallons daily (15.5 m.g.d.) to present design capacity of the

Southwest Plant of one hundred thirty-six million gallons a day (136 m.g.d.). This payment shall be due and payable within ninety (90) days of the date that wastewater is first delivered through the Conveyance System.

- (b) Upon completion of the expansion of the Southwest Plant, DELCORA shall pay the difference between the amount based on the proportion of the new capacity reserved to DELCORA to the total capacity of the expanded Southwest Plant as finally designed, and the amount previously paid under (a) above.

#### **4.05 Capital Payments Applicable to Expansion of Southwest Plant**

Payments from the Capital Reimbursement Fund shall be made only upon requisition by the City upon the trustee. The City will pay its contractors in full in proper form accompanied by certificates of the City's engineers. As the City vouchers such payments, it will requisition DELCORA's trustee for DELCORA's share of the expenditures. From time to time, the City shall also requisition the trustee for reimbursement of DELCORA's share of other expenses, detailing such expenses as part of the requisition.

The City shall requisition for reimbursement only that part of construction costs paid or due and payable at the time of requisition.

Requisitions will be due and payable in ten (10) calendar days. Copies of bills as paid by the City and requisitions issued thereon shall be sent to DELCORA.

The amount of each reimbursement shall be fixed in the same proportion as DELCORA's proportionate share of the "total projects costs" as hereinafter defined.

#### **4.06 Total Project Costs**

“Total Project Costs” for the purpose of reimbursement shall initially consist of the capital estimates by the City’s consulting engineers of the costs of planning, designing and constructing the total expansion of the Southwest Plant. Such estimates will take into account:

- (a) All engineering costs and the costs of the appraisal referred to in Section 4.04 of surveys, estimates, plans and specifications, and for supervising construction as well as for the performance of all other duties of such engineers required by or consequent upon the proper performance of any such construction;
- (b) the costs of acquiring by purchase, or by condemnation such lands, property rights, rights of way, franchises and other interest in land and such personal property as may be deemed necessary or convenient in connection with such project;
- (c) obligations incurred for labor and to contractors, builders and material men in connection with construction;
- (d) the cost of contract bonds and insurance of all kinds which may be required or necessary during the course of any such construction and which are not paid by the contractor or contractors or otherwise provided for; and
- (e) any sums required to reimburse the City for advances made for any of the above items, and for work done by it which is properly chargeable to such construction.

There shall be deducted from these capital costs at appropriate times the grants received from the Commonwealth of Pennsylvania or the United States of America or agencies of either that are applicable to the said costs as defined herein or other costs found applicable to the project.

The net "total project costs" shall be apportioned between the City and DELCORA in the proportion of the Southwest Plant capacity reserved to DELCORA to the total designed capacity of the Southwest Plant.

The City shall apply the resulting percentage to the City's vouchered payments in its requisitions to DELCORA's trustee for reimbursement.

#### **4.07 Change in Project Costs and Reimbursement**

In the event, after the receipt of construction bids for each part of the construction of the expansion, the estimated "total project costs" of the project is increased, whether upon receipt of construction bids for subsequent work or otherwise (except by reason of adding facilities or enlarged capacity for the City's use), the City shall deliver an itemized revision of said project cost to DELCORA and any supporting material reasonably requested by DELCORA. Within one hundred and twenty (120) days thereafter DELCORA will pay to its trustee for deposit in the Capital Reimbursement Fund its proportionate share of such increase (based upon the method of computation specified above).

Changes in Project Costs shall not be revised more often than once every twelve months.

#### **4.08 Payment of Management Fee**

Besides payments made in reimbursement of its proportionate share of “total project costs,” DELCORA shall pay to the City a management fee of one hundred and fifty thousand (150,000) dollars. The City shall requisition DELCORA’s trustee for this fee when the City’s engineers report the expansion of the Southwest Plant seventy-five percent (75%) complete.

If this fee becomes a “total eligible cost” funded by the Federal or State government, DELCORA shall pay that portion of the fee not funded by the Federal or State government.

#### **4.08 Audit of Project Cost**

The said certificate of the City’s engineers as to actual “total project costs” and the records from which it is compiled shall be audited within six months after completion of construction by a certified public accountant selected by the City and approved by DELCORA (approval not to be unreasonably withheld) and the expense of such audit shall constitute part of such project cost. A Federal audit may satisfy this requirement, such determination being made by DELCORA in advance of actual audit.

#### **4.09 Final Adjustment of Capital Payments**

Upon completion of construction of the expansion of the Southwest Plant the City will deliver to DELCORA a certificate of its engineers stating (a) the fact of such completion and (b) in reasonably itemized form, the actual total project costs of said construction, after deducting the amount of any applicable Federal or State grants paid or payable against such costs.

If DELCORA's share of the actual net "total project cost" is less than the total amount paid by it as required by this Agreement, the excess of such payments shall forthwith be refunded by the City to DELCORA's trustee within one hundred and twenty (120) days after receipt of said certificate and of the audit provided for herein, or if either party has requested a recalculation it shall be paid promptly after the matter is resolved.

A deficiency, if any, in the Capital Reimbursement Fund to pay DELCORA's share of the actual "total project costs" shall be paid by DELCORA within one hundred and twenty (120) days of notice to pay, accompanied by the audit referred to above, or if either party has requested a recalculation, it shall be paid promptly when the matter is resolved.

After such actions any balance in the fund will be returned to DELCORA.

## **ARTICLE 5**

### **Governmental Grants, Subsidies and Permits**

#### **5.01 Applications**

The City will make proper and timely applications to the Commonwealth of Pennsylvania and to the United States of America and their appropriate agencies, for all available grants, subsidies or other payments and for all permits and approvals in the respect of the planning, design, acquisition, construction, operation and maintenance of the expansion of the Southwest Plant, and DELCORA will cooperate therein.

## **5.02 City as Agent**

Where permitted by law, DELCORA hereby appoints the City as its agent to apply, in its name or otherwise, to the Commonwealth of Pennsylvania and to the United States of America and their appropriate agencies and to receive the proportionate share of DELCORA of all available grants, subsidies or other payments in respect of the construction, acquisition, operation and maintenance of the Southwest Plant.

## **5.03 Application of Grant Proceeds**

The City will apply the Capital grants, subsidies or other payments received by it in respect of the expansion of the Southwest Plant in reduction of “total project costs,” and will apply operating grants, subsidies or other payments to the reduction of operating costs.

## **5.04 Compliance With Conditions for Grants**

Each party hereto will take all such action, within its legal powers, as may be required to comply with all applicable laws, guidelines, and regulations relating to Federal and State grants and subsidies, to the end that such grants and subsidies may be obtained for the Southwest Plant in maximum amounts, and each party will use its best efforts to obtain similar compliance from others.

## **ARTICLE 6**

### **Operating Service Charges and Payments**

#### **6.01 The Service Charge and Management Fee**

DELCORA shall pay quarterly to the City a service charge for the treatment and disposal of its wastewater delivered to the Southwest Plant.

This service charge will be based on DELCORA's proportionate share of operating costs at the Southwest Plant in terms of proportionate shares of the gallons of wastewater flow treated and disposed of and of the pounds of BOD and of the suspended solids in that flow.

This service charge shall be calculated on past and estimated future operating experience and shall be fixed in rates applicable to gallons of wastewater flow delivered, pounds of BOD delivered, and pounds of suspended solids delivered.

Such rates shall be reviewed from time to time, but not less often than five years, with a view of their revision on the same time basis as the service charges to regular customers in Philadelphia are reviewed.

The City shall inform DELCORA of any change in rates accompanied by supporting material in reasonable detail at least ninety days (90) in advance of their becoming effective.

The City shall complete the billing by adding to the service charge a management fee equal to ten percent (10%) of the service charge.

#### **6.02 Operating Costs Defined**

Operating costs used in computation of the rates shall include all of the costs and expensed of the operation, maintenance, repairs, replacements and renewals

of the Southwest Plant and its equipment and facilities including for the Southwest Plant:

- (1) salaries and wages of the administrative, supervisory, operating and maintenance personnel at the Southwest Plant, together with their fringe benefits, including but not limited to pensions, social security taxes, life insurance, medical and hospital insurance and workmen's compensation;
- (2) materials, supplies and equipment;
- (3) maintenance, repairs, replacements and renewals;
- (4) debt service for replacements and renewals funded from bond proceeds;
- (5) premiums for insurance, if any, and
- (6) all other costs and expenses, including overhead, incurred and allocable under sound accounting principles consistently applied to the operation, maintenance, repairs, replacements and renewals of Southwest Plant.

### **6.03 Costs of Maintaining and Repairing Conveyance System Within the City**

In addition, when the City maintains and repairs that part of the Conveyance System located within the boundaries of the City, it shall bill DELCORA for the costs of such maintenance and repairs allocable on the same basis as the items covered in operating costs.

#### **6.04 Operating Payments**

Billings to be made to DELCORA for wastewater treated and disposed of shall commence with DELCORA's delivery of wastewater to the Southwest Plant hereunder.

The City will render billings to DELCORA on a quarterly basis. These billings may be based on actual or estimated quantities. If billings are based on estimates, they shall be adjusted to actual recorded quantities at least annually.

Billings will be payable within thirty (30) days. If billings are unpaid thereafter interest thereon shall be added at the rate of one percent (1%) a month.

The City on request will furnish DELCORA on or before the month of the fiscal year preceding the first year's operation of the expanded Southwest Plant an estimate approved by the City's Water Commissioner of the first annual charge to DELCORA. The City will in no way be obligated by this estimate. In subsequent years, the previous year's total bills may serve as the basis of the budget estimate.

#### **6.05 Payment Bond**

DELCORA shall at the execution of the Agreement furnish the City its bond in a sum equal to one and one-half (1 1/2) times the estimated annual charge payable to DELCORA hereunder for receipt, treatment and disposal of wastewater delivered by DELCORA with the provisions of this Agreement and also contain a confession of judgment clause, and the said bond be executed by DELCORA. The term of the bond shall commence from the date hereof and continue for a term of thirty (30) years and thereafter for as long as this Agreement remains in effect. The City shall not

proceed against DELCORA on the confession of judgment under said bond without giving thirty (30) days' written notice to DELCORA of its intention to do so.

#### **6.06 Maintenance of Records**

The records and accounts of the City shall be kept in a manner which will permit verification of the charges payable hereunder and will be accessible for the purposes of inspection by DELCORA or its representatives.

### **ARTICLE 7**

#### **Future Service Requirements at the Southwest Plant**

##### **7.01 Changing Future Service Requirements and Related Matters**

The City and DELCORA shall from time to time review plant performance and the City's and DELCORA'S current and future requirements, both in terms of additional future flows of wastewater and higher standards of wastewater treatment and disposal.

Governmental agencies regulating wastewater pollution control may also fix additional requirements on the Southwest Plant either in terms of providing for additional future flows or meeting higher standards of wastewater treatment and disposal.

##### **7.02 Future Expansion**

To accommodate additional flows from its source areas other than DELCORA's at the Southwest Plant, the City may expand the Southwest Plant at no cost to DELCORA.

The City agrees to undertake any future expansion of the Southwest Plant needed:

- (1) to accommodate additional flows from the Eastern Delaware County Service Area and upon completion thereof to increase the limits set forth in Section 2.01 hereof; or
- (2) to meet higher levels of wastewater treatment and disposal;

Provided, that DELCORA agrees in writing to pay the total project costs of such expansion in its reserve capacity or such increase in the treatment and disposal of wastewater and deposits the estimated amount thereof prior to the commencement of construction for disbursement in the manner provided in Article 4 hereof, and

Provided, further, that DELCORA will pay its share of the operating costs of the expanded or improved Southwest Plant as provided in Article 6 hereof.

## **ARTICLE 8**

### **Sewage Quality Restrictions**

#### **8.01 Uniform Standards**

DELCORA shall adopt rules, regulations and resolutions governing sewer connections and the admission of wastewater into the sewers of DELCORA, which rules, regulations and resolutions shall bar from the sewers of DELCORA such substances as are barred by the City from its sewers according to the rules, regulations, resolutions and ordinances of the City, existent or adopted in the future, copies of which will be delivered promptly to DELCORA by the City.

## **8.02 Barring of Harmful Substances**

No substances deleterious or detrimental to sewers or to the treatment of wastewater, including oils, greases, acids or wastes of the nature and quantity barred by the City from its sewers shall be discharged by DELCORA into the Southwest Plant.

Failure to comply with a notice in writing from the City's Water Commissioner to cease and discontinue the delivery of any such substance or substances, shall be sufficient cause for the suspension of this Agreement pending prompt remedy by DELCORA.

## **8.03 Damages Due to Barred or Harmful Substances**

Any additional costs or damages incurred by the City as a result of discharges barred above or due to improper maintenance of DELCORA's facilities will be billed to DELCORA and will be paid to the City by DELCORA within thirty (30) days of such billing by the City.

# **ARTICLE 9**

## **Miscellaneous**

### **9.01 Rebuilding Upon Casualty**

Immediately upon the occurrence of any loss or damage to any part of the Southwest Plant and upon receipt by the City of monies from DELCORA sufficient to pay DELCORA's share of repair costs based on the respective reserved capacities, the City will commence and promptly complete, or cause to be so commenced and promptly completed the repairing, replacement or reconstruction of the damaged or destroyed property according to plans and specifications prepared by its engineers.

## **9.02 Inspection and Audit**

Each party shall provide the other from time to time all information relevant to the proper administration or their responsibilities under this Agreement, or in respect to the interpretation hereof, as, and in such form and detail as may be reasonably requested, and each shall at all reasonable times and from time to time permit their representatives to examine and inspect their respective records and physical facilities and audit their respective accounts relevant to the subject matter of this Agreement.

## **9.03 Arbitration**

In the event of any dispute between the parties such dispute may be referred by either party to an impartial arbitrator to be appointed by mutual agreement of the parties.

In the event that the parties are unable to agree upon such impartial arbitrator within fifteen (15) days, either party may make application to the Philadelphia Office of the American Arbitration Association for the sole purpose of selecting an arbitrator in accordance with the rules of that Association. If any party to the dispute shall be dissatisfied with the Award of the Arbitrator from the American Arbitration Association, such dissatisfied party shall have the right to resort to the Court of Common Pleas of Philadelphia in accordance with the provision of the Act of April 25, 1972, P.L. 381, as amended.

It is specifically understood and agreed that all of the provisions of the said Act of April 25, 1972, P.L. 381, as amended, shall apply and both parties hereto shall have all rights provided thereunder except only with respect to the selection of an

impartial arbitrator from the American Arbitration Association if one cannot be agreed upon by the parties as aforesaid.

#### **9.04 Mutual Release**

Each party hereto does hereby release the other from any and all claims for damages or suits therefore, by reason of the inability of the other, not due to gross negligence on its part, to carry out its obligations hereunder.

#### **9.05 Term**

This Agreement shall continue in force and effect for a full term of thirty (30) years, commencing on the date hereof and shall thereafter continue until terminated by either of the parties hereto. Either party may terminate this Agreement by five (5) years' written notice of its intention to do so; which notice may be served at any time after the expiration of twenty-five (25) years from the date hereof.

#### **9.06 No Joint Ownership**

No provision of the Agreement shall be construed to create any type of joint ownership of any property, any partnership or joint venture, or create any other rights or liabilities except as expressly set forth herein.

#### **9.07 Severability**

Should any provision hereof for any reason be held illegal or invalid, no other provision of this Agreement shall be affected; and this Agreement shall then be construed and enforced as if such illegal or invalid provision had not been contained herein.

## **9.08 Headings**

The headings in this Agreement are solely for convenience and shall have no effect in the legal interpretation of any provision hereof.

## **9.09 Successors and Assigns**

All the covenants contained in the Agreement shall extend to and bind the respective successors and assigns of the parties hereto with the same effect as if the words “successors and assigns” had, in each case, been specifically mentioned.

## **9.10 Waiver**

The failure of a party hereto to insist upon strict performance of the Agreement or of any of the terms or conditions hereof shall not be construed as a waiver of any of its rights hereunder.

## **9.11 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as an original, but such counterparts shall together constitute but one and the same instrument.

## **9.12 Definitions**

- (a) “Eastern Delaware County Service Area” shall mean that portion of said County within the boundaries shown on Exhibit A attached hereto, which may be expanded by DELCORA only with the approval of the City.
- (b) “m.g.d.” shall mean million of gallons of wastewater in any given twenty-four (24) hour period.

(c) "Wastewater" shall mean the normal domestic wastewater from households, business and commercial establishments and from industries, and shall also include water borne wastes from manufacturing, processing, refining, packaging, cleaning or assembling all types of raw materials and industrial, consumer and agricultural products or from any other industrial utility or commercial operations which are permitted to be treated in the City Plant pursuant to applicable ordinances and regulations of the City in force from time to time.

IN WITNESS WHEREOF, The City of Philadelphia has caused this Agreement to be executed by its Water Commissioner, and the Delaware County Regional Water Quality Control Authority, by its Chairman who have hereunto set their hands and seals, the day and year above written.

Attest Jama F. Dillon

Attest M. F. Blessing  
Secretary

CITY OF PHILADELPHIA  
By: Armen G. Suetens  
Water Commissioner

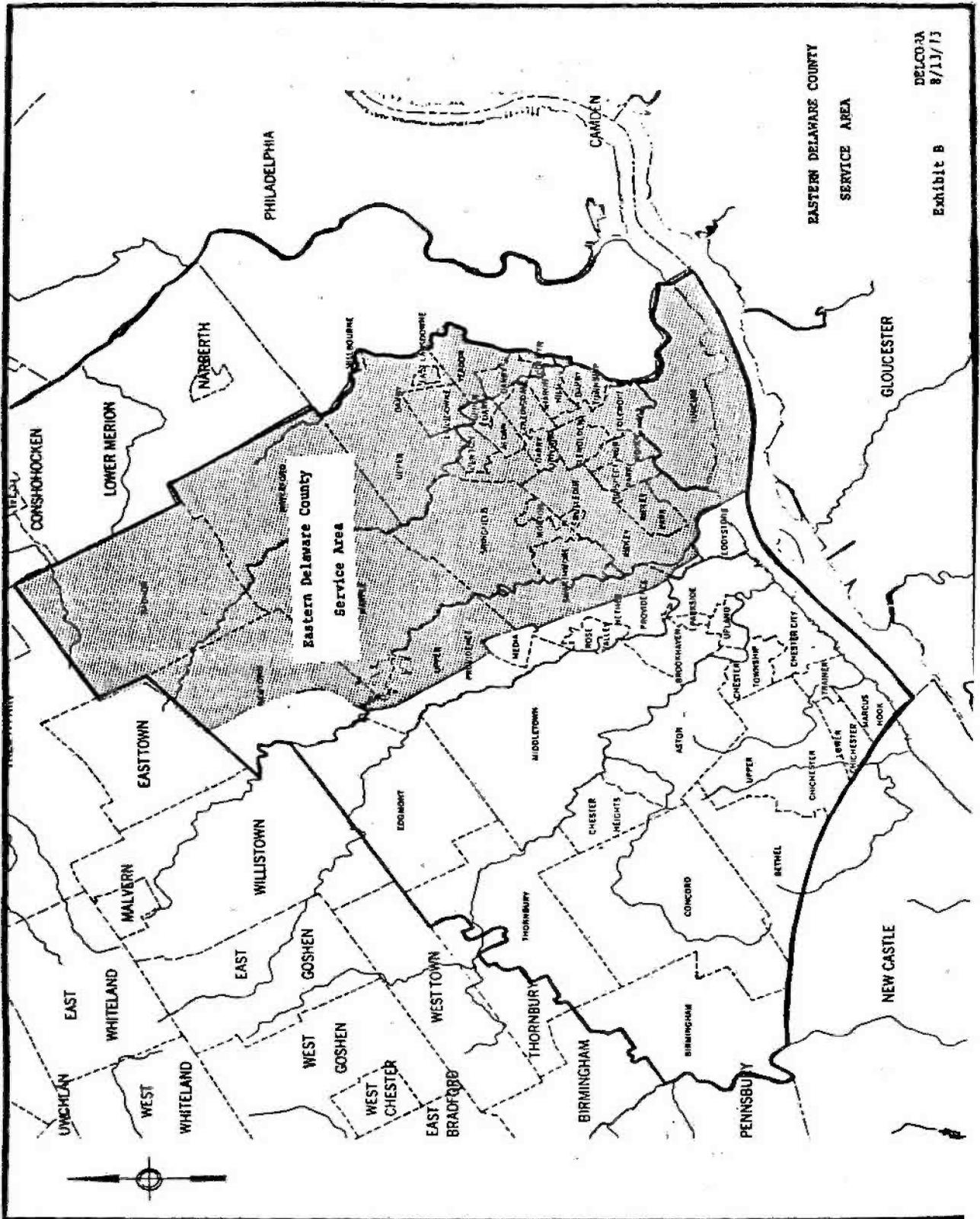
DELAWARE COUNTY REGIONAL WATER  
QUALITY CONTROL AUTHORITY  
By: Joseph L. Salmeron  
Vice Chairman  
Approved as to form

MARTIN WEINBERG  
City Solicitor

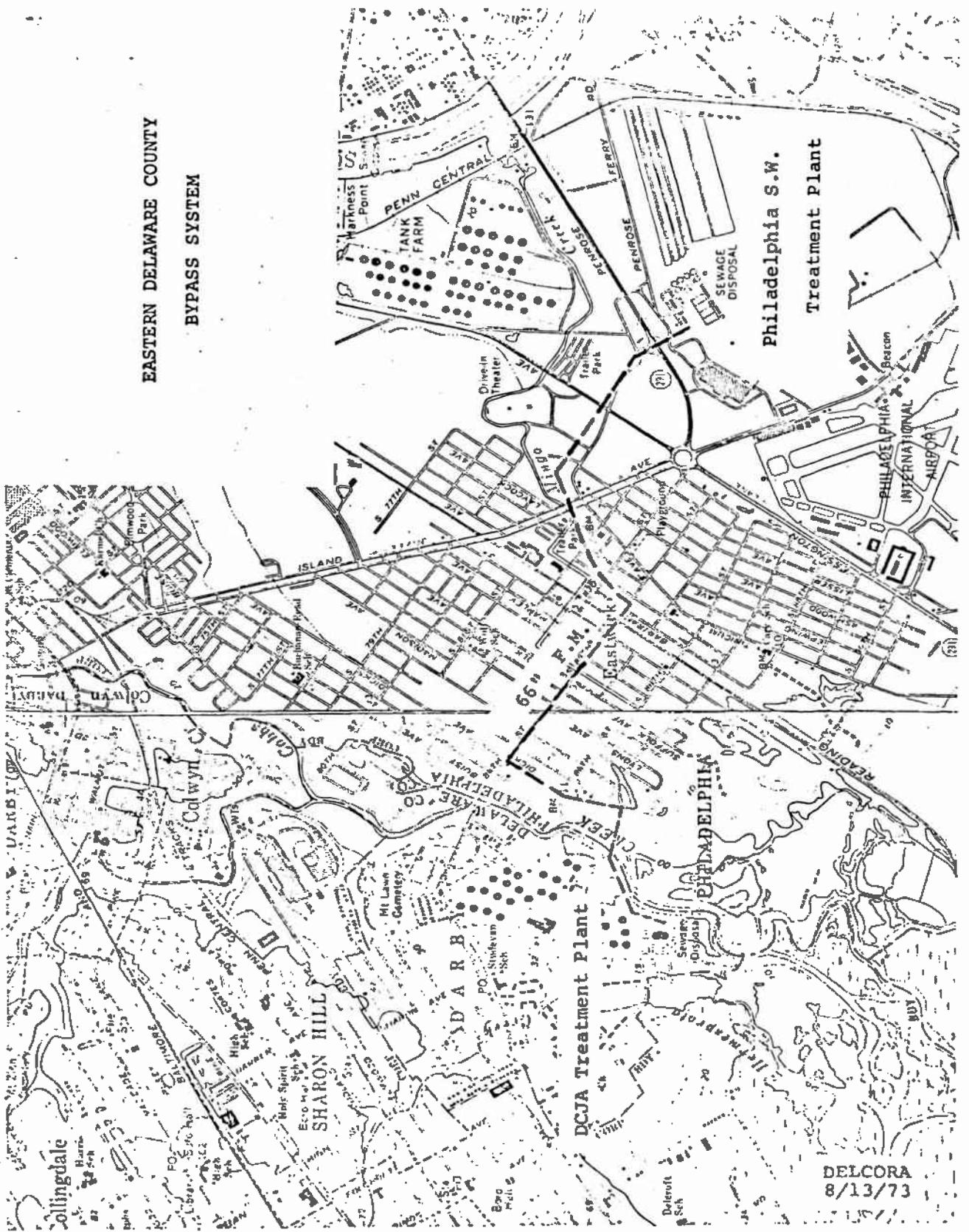
Per Sandra Breen  
Assistant City Solicitor 2/20/01







**EASTERN DELAWARE COUNTY  
BYPASS SYSTEM**



DELCORA  
8/13/73