

LAW OFFICES
BINDER, KALIS, LINDERMAN & PROCTOR, P.C.
13 ARMAND HAMMER BOULEVARD
P.O. BOX 519
POTTSTOWN, PA 19464-0519

HOWARD E. KALIS, III
RICHARD D. LINDERMAN
STEVEN J. PROCTOR
DAVID G. GARNER
STEPHEN H. KALIS

(610) 323-6200
FAX (610) 970-2082

CARL M. BINDER
(1941-1988)
HAROLD E. BINDER
(1941-1971)

March 29, 1994

Lower Pottsgrove Township Authority
2199 Buchert Road
Pottstown, PA 19464

ATTN: Gregory E. Prowant, Manager

RE: Upper Pottsgrove Township/Lower Pottsgrove Township
Authority Joint Sewage Transportation Agreement

ORIGINAL

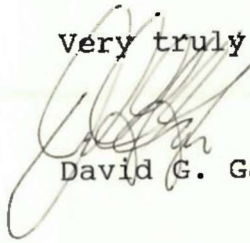
Dear Greg:

I am pleased to deliver to you an original of the above referenced Agreement and, more importantly, a check from Upper Pottsgrove Township to the Authority in the amount of \$350,000.00. This check represents the payment referenced in Article I, Section 4 of the Agreement. You will note that we still need to come up with an Exhibit "A" which depicts the location of the manhole into which the Upper Pottsgrove lines are to be connected. A copy of this exhibit should be attached to the original which you have and I would ask that you provide me with two copies of the same so that I may have one for our records and also forward one to Hank Zale for Township's records.

With the delivery of the Agreement and the check, I believe that this matter is complete for the time being. Obviously, you will want to monitor the situation in Upper Pottsgrove so that you are aware of when the first connection is made to the Sprogel's Run System. This will start the time table for billing, for operation and maintenance as well as the requirement of the installation of a flow meter.

If you have any questions or comments in this matter, please let me know.

Very truly yours,


David G. Garner

DGG/hk
Enclosures

LAW OFFICES
O'DONNELL, WEISS & MATTEI, P. C.

41 HIGH STREET

P. O. BOX 1050

POTTSTOWN, PENNSYLVANIA 19464-0285

(610) 323-2800

FAX (610) 323-2845

ALVIN L. WEISS
JOHN A. KOURY, JR.
DAVID S. KAPLAN
HENRY T. ZALE
JOSEPH A. SUCHOZA
GEORGE GERASIMOWICZ, JR.
DAVID A. MEGAY
PATRICK J. KOCKS

WM. A. O'DONNELL, JR.
(1914-1971)

EMIDIO J. MATTEI
(1924-1981)

IN REPLY
PLEASE REFER TO:

March 29, 1994

David G. Garner, Esquire
BINDER, KALIS, LINDERMAN & PROCTOR, P.C.
13 Armand Hammer Boulevard
P.O. Box 519
Pottstown, PA 19464

HAND DELIVERED

RE: Upper Pottsgrove Township/Lower Pottsgrove Township Authority
Joint Sewage Transportation Agreement

Dear Dave:

I am pleased to advise that the two original copies of the Joint Sewage Transportation Agreement, bearing original signatures of the Authority, were executed by Upper Pottsgrove Township and dated March 28, 1994. I note that the Agreement contains the revisions consistent with those indicated in my letter to you of March 15, 1994.

Enclosed is one of the two original copies of the Agreement. The Township is retaining the other original for its files.

I further note that Exhibit "A" to the Agreement is still missing. Accordingly, please provide me with a copy of the exhibit at your earliest convenience.

Lastly, enclosed is check no. 10033 of Upper Pottsgrove Township, dated March 28, 1994, payable to the Authority, in the amount of \$350,000.00. The check is in payment of the amount due under Section 4 of Article I of the Agreement.

Best wishes.

Sincerely yours,



Henry T. Zale
For O'DONNELL, WEISS & MATTEI, P.C.

HTZ:pr
Enclosures
cc: Upper Pottsgrove Township

JOINT SEWAGE TRANSPORTATION AGREEMENT
BETWEEN UPPER POTTS GROVE TOWNSHIP
AND LOWER POTTS GROVE TOWNSHIP AUTHORITY

THIS AGREEMENT, made this *28th* day of *March*, 1994, by and between UPPER POTTS GROVE TOWNSHIP, a first class township in the Commonwealth of Pennsylvania (hereinafter referred to as "Township"), and

LOWER POTTS GROVE TOWNSHIP AUTHORITY, a municipal authority duly organized under the Municipality Authorities Act of 1945, as amended, serving Lower Pottsgrove Township (hereinafter referred to as "Authority").

WITNESSETH:

WHEREAS, Authority maintains and operates a waste water collection and conveyance system, a portion of which is referred to in this Agreement as the Sprogel's Run System; and

WHEREAS, Township proposes to connect to the Sprogel's Run System certain new waste water collection lines to provide for waste water collection service in a portion of the Township; and

WHEREAS, Authority desires to accept the flows from Township and convey them through the Sprogel's Run System to the Borough of Pottstown Waste Water Treatment Plant which is the central waste water treatment facility for both Lower Pottsgrove and Upper Pottsgrove Townships.

NOW, THEREFORE, the parties hereto, intending to be legally bound on behalf of themselves, their successors and assigns, represent that each has the proper legal authority to enter into this contract and each, intending to be legally bound hereby, do hereby represent, covenant and agree as follows:

ARTICLE I

TERMS OF AGREEMENT

Section 1. This Agreement shall come into effect immediately upon its execution by the parties hereto and shall continue indefinitely unless it is terminated with the written approval of both parties.

Section 2. Authority does hereby agree to transport municipal waste water flows from Township up to a total amount of 192,000 gallons

per day as calculated per the definition set forth herein. Said flows are to enter the Authority's lines by way of a manhole located near Sprogel's Run off of Charlotte Street (Pa. Route 663) as further identified in Exhibit "A" attached hereto and made a part hereof.

Section 3. Following the 1st of January of the year immediately subsequent to the year, in which the flow meter (provided at Section 5) is first installed and working, and each succeeding January, Authority shall submit to Township an invoice, with supporting documentation, indicating the total annual costs for the preceding calendar year for the operation and maintenance (O & M) of the Sprogel's Run pump station, interceptor and force main, and requesting payment from Township for its share of the annual O & M costs in an amount equal to the percentage of flows through the Sprogel's Run System applicable to Township based on meter flows. Subject to the right of Township to dispute all or part of the invoice, Township shall pay Authority the total invoiced amount of Township's share of the O & M costs within forty-five (45) days of receipt.

Section 4. Township shall pay to Authority the amount of \$350,000.00 as of the signing date of this Agreement, with time being of the essence, said payment representing costs previously incurred by Authority to provide for the necessary capacity within the Sprogel's Run System to accept the Township flows. Except for O & M costs as defined in Section 3 and Article II herein, no other payment shall be required of Township for the transportation of the 192,000 gallons per day.

Section 5. Township or its designee shall purchase and install a flow meter that meets the specifications as delineated in the definitions section herein and which will allow Authority to monitor the waste water flows in regard to the annual billing for O & M for the Sprogel's Run System and to determine total flows, either the average daily flow or the instantaneous peak flow used including flows from infiltration and inflow. The flow meter shall be installed and working no later than the date of the first new connection of a dwelling in Township to the Sprogel's Run System. If the flow meter is not installed and working by this date, Authority shall have the right to install the appropriate meter and bill Township. Township shall be responsible for maintenance of the flow meter and shall allow Authority access to the flow meter from time to time to confirm the information submitted by Township.

Section 6. Should total flows as defined herein be achieved, Township shall be prohibited from further connections which would add additional flows to the Sprogel's Run System until either existing flows have been reduced below the 192,000 gallon per day threshold or this Agreement has been amended in writing. Authority reserves the

right to surcharge Township for each gallon of flow in excess of the threshold herein defined at 2½ times the rate, on a per gallon basis, utilizing the information from the then most immediately preceding billing period, charged to Township for O & M for the Sprogel's Run System.

Section 7. Any fines or surcharges assessed by a governmental entity based on flows will be allocated between Township and Authority in accordance with the pro rata share of each for O & M for the Sprogel's Run System from the then most immediately preceding billing period; however, if the cause for the surcharge can be identified and responsibility for the situation which gave rise to the surcharge is properly allocable on other than a pro rata basis, the adjusted allocation will be used.

Section 8. Township agrees that all new sewer lines, laterals and appurtenances, which will be located in Township and connected to the Sprogel's Run System, shall be properly constructed and inspected to insure that excessive infiltration and inflow (I & I) of water shall not occur. Excessive I & I for the lines, laterals and appurtenances located in Township shall be promptly corrected by Township.

Section 9. Township will only utilize capacity in the Borough of Pottstown Waste Water Treatment Plant which it has purchased per the Joint Sewage Treatment Contract involving the Borough of Pottstown, Authority and Township and not capacity purchased by the Authority. If Township wishes to purchase any treatment capacity of Authority, that shall be the subject of a separate agreement.

Section 10. The bulk of the flows from Township will be non-industrial users. Any flows from industrial users will be allowed only in strict conformance with Lower Pottsgrove Township Ordinance No. 166B, as amended, and the duly adopted rules and regulations of the Borough of Pottstown Waste Water Treatment Facility.

Section 11. This Agreement is contingent on the approval of Act 537 Plan Amendments of the Lower Pottsgrove Township Waste Water Plan and the Upper Pottsgrove Township Waste Water Plan by the Pennsylvania Department of Environmental Resources and the Board of Commissioners of each municipality. Each party agrees to take the steps necessary to obtain these approvals in a timely manner.

Section 12. There are approximately thirty (30) existing equivalent dwelling units ("EDUs") in Township currently providing flows to the Sprogel's Run System by connections with the Borough of Pottstown. For purposes of this Agreement, those thirty (30) EDUs shall be included for the calculation of shared O & M costs and for the total flows purchased. For calculation purposes, each present or

future EDU shall be estimated at 300 gallons per day. Township shall make the same assurances as referred to herein to Authority with regard to correction of I & I problems in this area. Authority may request that Township perform certain metering of flows from time to time to determine that no excessive flows are occurring. Within one hundred eighty (180) days of this Agreement, Township shall prepare and submit to Authority a list of all such connections and the amount of EDUs therein.

ARTICLE II

DEFINITIONS

For purposes of this Agreement, the following definitions are hereby identified:

EQUIVALENT DWELLING UNIT ("EDU"). For purposes of this Agreement an EDU is equal to 300 gallons per day of flow.

TOTAL FLOWS PURCHASED. This Agreement provides for the purchase of 192,000 gallons per day of waste water flow transportation capacity by the Township from Authority through the Sprogel's Run System. This shall be based upon a thirty (30) day average of flows as recorded by flow meter as provided for in this Agreement. The instantaneous peak flow rate shall not exceed 480,000 gallons per day.

FLOW METER. The flow meter shall be installed at a point in Township where flows from Township can be accurately measured. The flow meter will be installed by Township, or its designee, and may be recalibrated on a regular basis. Township shall be responsible for the maintenance thereof. Authority shall have access to the flow meter and records thereof on a regular basis but not less than once every ninety (90) days.

OPERATION AND MAINTENANCE (O & M) COSTS. These costs shall include the total costs which shall be reasonable and directly related to the operation, maintenance and repair of the Sprogel's Run System: (1) actual allocated salaries and wages of administrative, supervisory, operating and maintenance personnel and employees of the Authority and Lower Pottsgrove Township engaged in operating and maintaining the Sprogel's Run System and administrative functions associated therewith, together with the social security and unemployment taxes, workmen's compensation, insurance premiums and pension benefits or any other similar benefits or costs applicable thereto; (2) power, supplies and equipment or tools used or employed for the Sprogel's Run System; (3) costs of routine maintenance and minor repairs including minor replacements; (4) major repairs and/or capital construction improvements to the Sprogel's Run System as necessary to continue

operation; (5) fees and expenses of consulting engineers, attorneys or certified public accountants for services performed in connection with the management, operation and maintenance of the Sprogel's Run System; and (6) such other costs and expenses consistent with the maintenance and operation of the system. Authority shall document all such costs to Township during the invoice process.

INDUSTRIAL USER (non-municipal flows). As defined per the provisions of Lower Pottsgrove Township Ordinance No. 166B and its amendments.

SPROGEL'S RUN SYSTEM. The system shall include the existing Sprogel's Run (also referred to as Porter Road) Pumping Station first constructed in 1971, present and future improvements.

ARTICLE III

MISCELLANEOUS

Section 1. This writing and the attachments hereto shall constitute the entire agreement between the parties and there are no other representations or agreements, verbal or written, other than those contained herein.

Section 2. Any revision or modification to this Agreement shall be set forth in a writing signed by both parties.

Section 3. If any provision of this Agreement is found to be invalid or unenforceable, the parties agree that they will continue to observe and abide by the intent of the Agreement as set forth herein.

Section 4. All notices sent in connection with this Agreement shall be sent by first class mail or delivered to the following addresses:

Upper Pottsgrove Township Board of Commissioners
1420 Heather Place
Pottstown, PA 19464

Lower Pottsgrove Township Authority
2199 Buchert Road
Pottstown, PA 19464

Section 5. This Agreement may be signed in multiple counterparts each of which shall be treated as an original.

Section 6. Each of the signatories represents that he is authorized to execute this document and bind the legal entity to the

terms set forth herein.

Section 7. This document shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be executed the day and year first above written.

UPPER POTTS GROVE TOWNSHIP
BOARD OF COMMISSIONERS

BY: *James D. Toth*
President

ATTEST: *Sandra K. Fritz*
Secretary

LOWER POTTS GROVE TOWNSHIP
AUTHORITY

BY: *James D. Toth*
(Vice) Chairman

ATTEST: *R. K. Halloway*
(Assistant) Secretary

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF MONTGOMERY : SS.

On the _____ day of _____, 1994,
before me, a Notary Public, personally appeared _____,
who acknowledged himself/herself to be the _____ of
the Upper Pottsgrove Township Board of Commissioners, and that he/she,
being authorized so to do, executed the foregoing document on behalf of
the Upper Pottsgrove Township Board of Commissioners.

WITNESS my hand and Notarial Seal the day and year aforesaid.

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF MONTGOMERY : SS.

On the _____ day of _____, 1994,
before me, a Notary Public, personally appeared _____,
who acknowledged himself/herself to be the _____ of
the Lower Pottsgrove Township Authority, and that he/she, being
authorized so to do, executed the foregoing document on behalf of the
Lower Pottsgrove Township Authority.

WITNESS my hand and Notarial Seal the day and year aforesaid.

Notary Public