

ALCOSAN SERVICE AGREEMENT AMENDMENT

THIS ALCOSAN SERVICE AGREEMENT AMENDMENT (this “Agreement”) is made and entered into as of this ____ day of _____, 201__, by, between and among the City of Pittsburgh (hereinafter referred to as “Pittsburgh”), the Pittsburgh Water and Sewer Authority (hereinafter referred to as “PWSA”), Allegheny County Sanitary Authority (hereinafter referred to as “ALCOSAN”), the Western Westmoreland Municipal Authority (hereinafter referred to as “WWMA”), the North Huntingdon Township Municipal Authority (hereinafter referred to as “NHTMA”), the Township of North Huntingdon (hereinafter referred to as “North Huntingdon”), the Penn Township Sewage Authority (hereinafter referred to as “PTSA”) and the Township of Penn (hereinafter referred to as “Penn Township”) and collectively hereinafter referred to as (“the Parties”).

Recitals:

WHEREAS, Pittsburgh, ALCOSAN, WWMA, NHTMA, North Huntingdon, PTSA and Penn Township are the parties to an agreement with an effective date of November 20, 1974 (hereinafter referred to as “ALCOSAN Service Agreement”); and

WHEREAS, although not a party to the ALCOSAN Service Agreement, the PWSA is considered a party to this Agreement and the ALCOSAN Service Agreement as a result of the Capital Lease Agreement between Pittsburgh and the PWSA, effective July 27, 1995, under which Pittsburgh agreed to lease to the PWSA the “Leased Property” consisting of (i) the entire network of water and sewage transmission pipelines, all water storage facilities, and certain land and buildings; (ii) all fixtures relating to the Real Property as defined in the Capital Lease Agreement; (iii) all equipment used in connection with or related to the operation of the System; (iv) all water and sewage pipelines dedicated by the builders or developers after July 27, 1995, and all assets associated with or used in connection with such pipelines; (v) all spare parts wherever located and used in connection with the operation of the Equipment; and (vi) all inventory used in connection with the operation of the Equipment; and

WHEREAS, pursuant to the ALCOSAN Service Agreement the Parties agreed that ALCOSAN would provide “sewage service”, as defined in the ALCOSAN Service Agreement to the “Cavettsville-Ardara Area,” as also defined and depicted in the ALCOSAN Service Agreement, pursuant to the terms and provisions therein; and

WHEREAS, WWMA constructed and installed a pump station and interceptor line (hereinafter the “C-A Facilities”) in 1978 pursuant to the ALCOSAN Service Agreement to transport sewage flows from a portion of Cavettsville-Ardara Area in North Huntingdon Township, which facilities were connected to the ALCOSAN interceptor line to enable ALCOSAN to provide sewage service to the portion of North Huntingdon served; and

WHEREAS, since 1978 the only properties served by the C-A Facilities have been properties in North Huntingdon Township; and

WHEREAS, the parties to this Agreement, with the exception of Pittsburgh and ALCOSAN, and certain other municipalities and municipal authorities (hereinafter collectively referred to as the “WWMA parties”) are parties to a service agreement, as amended, (hereinafter collectively referred to as the “WWMA Service Agreement”); and

WHEREAS, the WWMA parties, pursuant to a Seventh Amendment to the WWMA Service Agreement have agreed that the ownership and responsibilities of the C-A Facilities and the Cavettsville-Ardara Area be transferred and conveyed to NHTMA; and

WHEREAS, there are two project areas depicted on Exhibit “A” to the Seventh Amendment to the WWMA Service Agreement within the Cavettsville-Ardara Area that flow to NHTMA rather than to ALCOSAN and that were the subject of litigation between WWMA and NHTMA but not ALCOSAN; and

WHEREAS, as part of the actions required to effectuate transfer and conveyance of the C-A Facilities from WWMA to NHTMA, the WWMA parties have agreed that the ALCOSAN Service Agreement be amended and supplemented to provide that WWMA be released from and no longer be a party to the ALCOSAN Service Agreement; and further that NHTMA shall assume the responsibilities of WWMA under and pursuant to the ALCOSAN Service Agreement; and

WHEREAS, the parties hereto desire to enter into this Agreement to effectuate the matters set forth in the above recitals.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements, covenants and conditions set forth herein, and for other good and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound hereby, agree as follows:

1. The foregoing recitals are true and correct and are hereby fully incorporated by reference and made a part of this Agreement.

2. ALCOSAN hereby acknowledges and agrees that WWMA has fulfilled all of its duties and responsibilities under the ALCOSAN Service Agreement; and, except for the final payments of any currently outstanding billings from ALCOSAN to WWMA, paid all sums due to ALCOSAN. In consideration of the mutual covenants set forth herein, ALCOSAN does hereby knowingly, willingly, irrevocably, fully, finally and forever release, remise, acquit, settle and discharge WWMA from any and all past, present and future liabilities, claims, actions, causes of action, rights, demands, suits, contracts, obligations, promises, controversies, damages, costs, expenses, fines, penalties, losses, fees and all other claims whatsoever in nature and kind, character or description, direct or indirect, actual or alleged, that ALCOSAN ever had or now has against WWMA; and further, ALCOSAN and the other parties here acknowledge and agree that WWMA has discussed and disclosed to ALCOSAN any and all connections to NHTMA, Penn Township, Trafford and/or WWMA sewage facilities within the Cavettsville-Ardara Area, and, after the effective date of this Agreement, WWMA shall no longer be a party to the ALCOSAN Service Agreement.

3. In consideration of the mutual covenants set forth herein, WWMA does hereby knowingly, willingly, irrevocably, fully, finally and forever release, remise, acquit, settle and discharge ALCOSAN from any and all past, present and future liabilities, claims, actions, causes of action, rights, demands, suits, contracts, obligations, promises, controversies, damages, costs, expenses, fines, penalties, losses, fees and all other claims whatsoever in nature and kind, character or description, direct or indirect, actual or alleged, whether known or unknown, that WWMA ever had, now has or may have against ALCOSAN.

4. The parties covenant and agree that any provisions and terms of the ALCOSAN Service Agreement which placed an obligation, responsibility or duty of or by WWMA, whether individually, jointly or severally, are hereby transferred to and accepted and assumed by NHTMA.

5. Upon the Effective Date of this Agreement, the “Cavettsville-Ardara Area” as described and depicted in the ALCOSAN Service Agreement is hereby modified such that the “Cavettsville-Ardara Area” shall be as depicted on the map attached hereto as **Exhibit “1”** and incorporated herein. ALCOSAN shall continue to be the sole and exclusive agency to provide sewage treatment and disposal services to the Cavettsville-Ardara Area and to all water users therein who or which discharge sewage or wastes into municipal or authority sewers in accordance with the ALCOSAN Service Agreement.

6. Other than as specifically set forth herein, nothing contained in this Agreement is intended to affect, impair, change, alter or amend any of the terms or provisions of the ALCOSAN Service Agreement by, between and among the parties and such agreement shall remain in full force and effect and shall remain fully binding on ALCOSAN and the others parties, except WWMA, in accordance with the terms of the ALCOSAN Service Agreement. This Agreement is based upon the specific circumstances between NHTMA and WWMA and shall not be used by any of the Parties as a precedent to resolve any future service area or similar disputes. Notwithstanding the foregoing, at ALCOSAN’s sole discretion the penalty for any party’s breach of the exclusive provider provision in this Agreement shall be a charge equivalent to ALCOSAN’s applicable capital fee plus an additional 10%, which shall be payable by the

party in breach within 45 days of written notification by ALCOSAN, in addition to all costs related to further modifying the Cavettsville-Ardara Area.

7. Each of the parties acknowledges, represents, warrants, confirms, covenants and agrees as follows:

- i. Each party has carefully read and understood the effect of this Agreement.
- ii. Each party has obtained or had full and fair opportunity to obtain the assistance of separate legal counsel in carefully reviewing, discussing and considering all terms of this Agreement.
- iii. Each party's execution of this Agreement is not based upon reliance on any representation, understanding or agreement not expressly set forth herein.
- iv. The other parties have made no representations, warranties, covenants or agreements not expressly set forth herein.
- v. Each party executes this Agreement as a free and voluntary act, without any duress, coercion or undue influence exerted by or on behalf of any other party.
- vi. This Agreement constitutes the entire settlement and release agreement of and between and among the parties and is a final and complete release of those matters set forth herein.
- vii. This Agreement constitutes the legal, valid and binding obligation of each party and is fully enforceable against each party in accordance with its terms.

8. This Agreement constitutes the full and complete understanding and agreement of the parties and terminates and supersedes all other or prior written or oral agreements or understandings between the parties. There are no unwritten oral agreements between or among the parties to this Agreement. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless in writing and signed by the party against whom it is sought to be enforced.

9. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective representatives, successors, assigns, successors in interest, predecessors in interest, members, managers, employees, officers, directors, and anyone else claiming by, through or under any one of the undersigned parties.

10. This Agreement shall take effect as of the date of the last signature hereto (the "Effective Date").

11. This Agreement is considered to be drafted jointly by WWMA, NHTMA, and ALCOSAN, and no uncertainty or ambiguity found in the terms hereof shall be construed for or against any party based upon an attribute of drafting by any one party.

12. This Agreement is made and entered into in the Commonwealth of Pennsylvania and shall in all respects be interpreted, constructed, enforced and governed by and under the laws of the Commonwealth of Pennsylvania without regard to its conflict of law provisions.

13. Each party to this Agreement agrees to cooperate fully, to undertake any and all actions; and to execute any and all additional documents that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

14. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or electronic mail and shall become effective and binding upon the Parties at such time as all the signatories hereto have signed the original or a counterpart of this Agreement.

15. By signing below, each signatory to this Agreement expressly warrants and agrees that he or she is authorized to sign on behalf of the respective Party. PWSA is authorized to enter into this Agreement by Resolution No. ____, adopted at a regular meeting of its Board of Directors held on _____, 201_, attached hereto as **Exhibit "2"** and incorporated herein.

PITTSBURGH is authorized to enter into this Agreement by Pittsburgh City Council Resolution No. ____, effective ____, 201__, attached hereto as **Exhibit “3”** and incorporated herein.

16. Each party represents and warrants to the other that it has taken any and all actions required and necessary in order to enter into this Agreement; that all such actions have not been revoked, altered, modified or invalidate; and that all such actions remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, by their respective authorized officials, acknowledge to have carefully read this Agreement, understand, accept and agree to all of the provisions contained herein, and, intending to be legally bound hereby, have signed this Agreement as each’s own free act and deed, being fully aware of its final and binding effect.

ATTEST:

CITY OF PITTSBURGH

Secretary to the Mayor

By: _____
Mayor

By: _____
Director, Department of Public Works

Approved as to form:

City Solicitor

Countersigned:

Controller

ATTEST:

**PITTSBURGH WATER AND SEWER
AUTHORITY**

Name: _____
Title: _____

(SEAL)

By: _____
Name: _____
Title: _____

ATTEST: (SEAL)

**ALLEGHENY COUNTY
SANITARY AUTHORITY:**

By: _____
Print: _____
Date: _____
Title: _____

By: _____
Print: _____
Date: _____
Title: _____

ATTEST: (SEAL)

By: _____

Print: _____

Date: _____

Title: _____

ATTEST: (SEAL)

By: _____

Print: _____

Date: _____

Title: _____

ATTEST: (SEAL)

By: _____

Print: _____

Date: _____

Title: _____

ATTEST: (SEAL)

By: _____

Print: _____

Date: _____

Title: _____

**WESTERN WESTMORELAND
MUNICIPAL AUTHORITY:**

By: _____

Print: _____

Date: _____

Title: _____

**NORTH HUNTINGDON
TOWNSHIP MUNICIPAL AUTHORITY:**

By: _____

Print: _____

Date: _____

Title: _____

TOWNSHIP OF NORTH HUNTINGDON:

By: _____

Print: _____

Date: _____

Title: _____

PENN TOWNSHIP SEWAGE AUTHORITY:

By: _____

Print: _____

Date: _____

Title: _____

ATTEST:

(SEAL)

TOWNSHIP OF PENN:

By: _____

By: _____

Print: _____

Print: _____

Date: _____

Date: _____

Title: _____

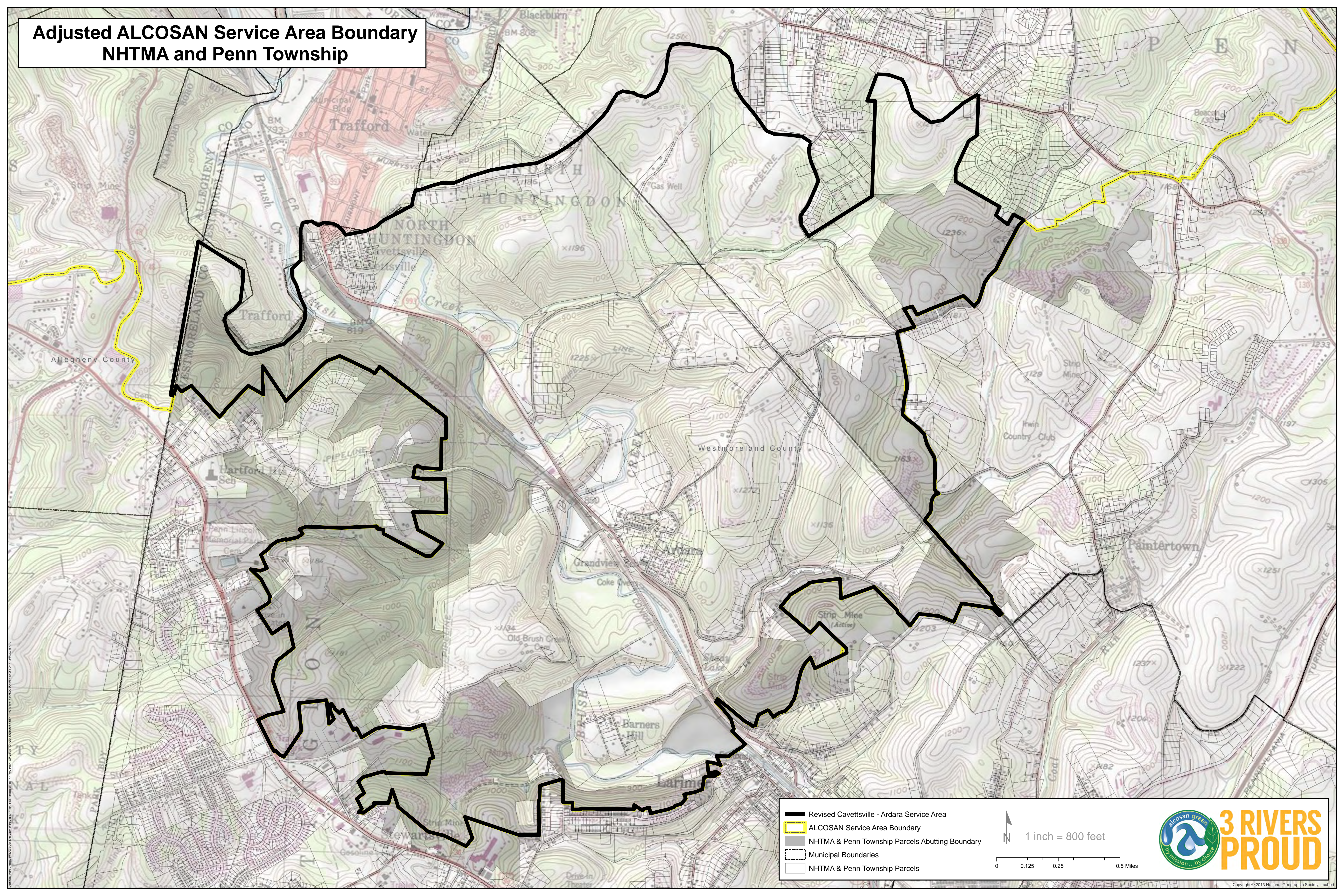
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EXHIBIT “1”

ALCOSAN Service Agreement Amendment

Cavettesville – Ardara Area

Adjusted ALCOSAN Service Area Boundary
NHTMA and Penn Township



- Revised Cavettsville - Ardara Service Area
- ALCOSAN Service Area Boundary
- NHTMA & Penn Township Parcels Abutting Boundary
- Municipal Boundaries
- NHTMA & Penn Township Parcels

