**MEMORANDUM OF UNDERSTANDING**

**FOR SEWER IMPROVEMENT PROJECT**

**IN THE [INSET POC NAME] SEWERSHED**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2013 by and between [list the names of the municipalities or authorities] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (individually a “Party” or “Municipality” and collectively the “Parties” or “Municipalities”).

RECITALS:

WHEREAS, the Municipalities [if applicable remove “the Municipalities” and list those municipalities that have a COA or ACO] entered into a Consent Order and Agreement (“COA”) with the Commonwealth of Pennsylvania Department of Environmental Protection (“PADEP”) and/or an Administrative Consent Order (“ACO”) with the Allegheny County Health Department (“ACHD”); and

[include this WHEREAS if applicable and list the municipalities that do not have a COA or ACO] WHEREAS, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ do not have an executed COA or ACO with the PADEP or the ACHD, [it has/they have] and continues to perform all related activities as outlined in a typical COA or ACO and is in compliance with all requirements contained therein and because the completed PROJECT (defined below) will benefit it/them, it has/they have agreed to cooperate in the resolution of certain deficiencies; and

WHEREAS, the development, construction, acquisition and equipping of certain improvements, extensions, upgrades and expansion of the various sewer systems owned and operated by [list the owners and facilities by name & Segment], consisting of [insert number of Segments] separate works will be proposed to provide the system improvements required by the COA and/or ACO; and

WHEREAS, the Municipalities [if this does not apply to all of the parties, list the parties to which it does apply] are required to prepare a Feasibility Study and submit it to the PADEP and/or ACHD by July 31, 2013; and

WHEREAS, the Municipalities must agree on certain aspects of the PROJECT for a Feasibility Study to be prepared and submitted; and

WHEREAS, the preparation of such a Feasibility Study will require the coordination and cooperation of the Municipalities;

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE I**

**DEFINITION OF TERMS**

Whenever the following terms are used in this Memorandum of Understanding they shall have the following meaning unless otherwise specifically indicated by the context in which they appear:

* 1. ALCOSAN model means the model used by ALCOSAN, 3 Rivers Wet Weather, and the municipal engineers to calculate the peak flow capacity rates cited in the provisions set forth herein.
  2. Feasibility Study means the study which the PADEP and/or ACHD require from the Municipalities or from some of them.
  3. Host Municipality means the municipality where a Segment or a portion of a Segment is geographically located.
  4. Lead Entity means [municipality name to be inserted if applicable].
  5. Total Cost means the total of all costs associated with the design, financing, development, engineering, capital construction, inspection, permitting, legal, and land or right-of-way acquisition of/for a Segment or PROJECT.
  6. PROJECT means the complete work required to provide the system improvements required by the COA and/or ACO.
  7. Segment or Segments means a separate portion of the work of the overall PROJECT as defined below.

**ARTICLE II**

**RESPONSIBILITIES & DUTIES**

* 1. The purpose of this Memorandum of Understanding is for the Municipalities to coordinate, complete and submit a Feasibility Study for the [insert POC name] sewershed.
  2. [include if applicable for the purpose of submitting the feasibility study] At the end of PROJECT, the applicable Municipality is to take ownership of any Segments contained within its municipal boundaries.
  3. [include if applicable] The division of responsibilities for the Feasibility Study shall be as follows:
     1. The Lead Entity will be responsible for the coordination, assembly and preparation of the Feasibility Study.
     2. Each of the other Municipalities will be responsible for providing the Lead Entity the detailed information for their Segments and other municipality-specific information and improvements required to be included within the Feasibility Study. The Lead Entity shall have the right to rely upon the accuracy and completeness of the information provided by the other Parties. Should any Municipality fail to provide the Lead Entity with its information by a date set in advance, then the Lead Entity may submit the Feasibility Study without such information or with the best available information.

**ARTICLE III**

**DESIGN**

* 1. The PROJECT consists of [enter number of Segments] Segments as shown on the attached Exhibit A. [or alternatively insert a description of each of the Segments in detail by length, location and point to point information].
  2. [revise as appropriate]The proposed level of sewage control for all Segments, both internal to each Municipality and shared are a “2-year design storm” for the separate sanitary system Segments and “no annual overflows” for [insert combined system municipalities’ names] combined system.
  3. The conceptual design and cost estimates are based on the following percentages of peak flow capacity for each Municipality within each Segment [list each Segment below]:
     1. Segment 1: [list each municipality with the corresponding % of peak flow capacity for Segment 1].
     2. Segment 2: [list each municipality with the corresponding % of peak flow capacity for Segment 2, etc.].
  4. If work is done by a Municipality to reduce flow below the flows predicted by the current ALCOSAN model and the Municipality wants to revise the percentages in Article III, Paragraph C, then prior to the commencement of design that Municipality shall be responsible for demonstrating that flows have been reduced to the satisfaction of the other Parties to this Memorandum of Understanding.
  5. [revise or delete as appropriate for the purpose of submitting the feasibility study] It is agreed that the design of the Segments, responsibility for construction of the Segments, and the details of the construction contract(s) will be determined by the Municipalities at a future time when the scope of the Segment(s) is better understood.

**ARTICLE IV**

**FINANCING OF PROJECT**

* 1. For the purpose of submitting the feasibility study, the Municipalities agree that the preliminary estimated Total Cost to be expended on the PROJECT is $[insert current estimate of the total cost of the PROJECT]. Each Municipality shall have the right to void this Memorandum of Understanding if the Total Cost of the PROJECT exceeds $[insert dollar amount if applicable].
  2. [revise as necessary to indicate the agreed-upon method of allocating costs among the parties] For the purpose of submitting the Feasibility Study, the Municipalities agree that the basis of allocation for costs of each Segment is based on percentage of peak flow contributed to each Segment at the time of the Memorandum of Understanding, multiplied by the awarded Total Cost of each Segment agreed to by the Municipalities that will share in such costs. The cost of each Segment shall be adjusted for changes in cost made during construction.
  3. For the purpose of submitting the Feasibility Study, the Municipalities agree that the Total Cost for the overall PROJECT will be allocated according to the following percentages for each Municipality as indicated below:
     1. [list each Municipality with the corresponding % of responsibility for the costs of the overall PROJECT].
     2. [list each Municipality with the corresponding dollar amount of the Total Cost for the overall PROJECT for which they are responsible].

**ARTICLE V**

**OPERATION AND MAINTENANCE**

* 1. [revise as appropriate] For the purpose of submitting the Feasibility Study, the Municipalities agree that the basis of allocation for future operation and maintenance costs (the “O&M costs”) is [as follows or to be determined at a future time].
  2. The affected Municipalities agree to enter into an Inter-Municipal O&M Agreement at a future time to provide for the allocation and payment of O&M costs, insurance, labor, equipment, repair, and upkeep of the applicable Segment.

**ARTICLE VI**

**MISCELLANEOUS**

* 1. It is understood and agreed that, except as otherwise expressly provided in this Memorandum of Understanding, nothing in this Memorandum of Understanding shall be construed so as to in any way alter or affect existing responsibilities and/or maintenance responsibilities of the parties for any streets, roads, alleys, vehicular bridges, pedestrian bridges, sewer and water facilities or other public ways or utilities.
  2. Any notice, request, demand, approval or consent given or required to be given under this Memorandum of Understanding shall, except as otherwise expressly provided herein, be in writing and shall be deemed to have been given when mailed by United States registered or certified mail, postage prepaid, to the other Parties at their respective principal offices, directed to the chief executive officer of each Party.
  3. This Memorandum of Understanding shall be subject to and governed by the laws of the Commonwealth of Pennsylvania.
  4. This Memorandum of Understanding may not be amended except by writing executed by each of the Parties.
  5. If any section of this Memorandum of Understanding or any part of any section of this Memorandum of Understanding shall be held unlawful, invalid, or unenforceable, that section or part shall be deemed deleted and without prejudice to the lawfulness, validity and enforceability of the remaining sections and parts of this Memorandum of Understanding.
  6. This Memorandum of Understanding may be executed in several counterparts, each of which shall be deemed and original, and all such counterparts together constitute one and the same instrument.
  7. Except as specifically provided herein, any and all disputes shall be subject to the jurisdiction of the Court of Common Pleas of Allegheny County (subject to right of appeal), unless otherwise required by law.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed all as of the day and year first above written.

**[provide signature lines for each of the parties to the Memorandum of Understanding]**