



**CITY OF BETHLEHEM**  
OFFICE OF THE CITY SOLICITOR

---

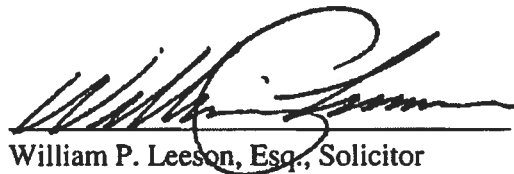
**INTEROFFICE MEMORANDUM**

**To:** Robert G. Vidoni, Esq., City Clerk  
**From:** William P. Leeson, Esq., City Solicitor  
**Re:** Intermunicipal Agreement between City of Bethlehem and Lehigh Township  
Municipal Authority  
**Date:** October 10, 2019

---

Attached is a proposed Ordinance and associated intermunicipal agreement for Council's consideration.

Please place this matter on City Council's agenda for review and appropriate action.



William P. Leeson, Esq., Solicitor

**Cc:** Robert J. Donchez, Mayor  
Edward Boscola

BILL NO. \_\_\_ - 2019

ORDINANCE NO. 2019-\_\_\_

AN ORDINANCE OF THE CITY OF BETHLEHEM, COUNTIES  
OF LEHIGH AND NORTHAMPTON, COMMONWEALTH OF  
PENNSYLVANIA, AUTHORIZING AN INTERMUNICIPAL AGREEMENT  
BETWEEN THE CITY OF BETHLEHEM AND THE LEHIGH TOWNSHIP  
MUNICIPAL AUTHORITY RELATED TO WATER SERVICE TO BE  
PROVIDED AT A RESALE MASTER WATER METER PIT WITHIN  
THE CITY'S FRANCHISE SERVICE TERRITORY.

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

Section 1. There is hereby adopted and ratified an Agreement for intergovernmental cooperation between the City of Bethlehem and the Lehigh Township Municipal Authority known as the "Water Service Agreement" between the City of Bethlehem and the Lehigh Township Municipal Authority ("Agreement"). A copy of the Agreement is attached hereto and incorporated by reference herein. The Mayor and Controller are hereby authorized to execute the Agreement on behalf of the City of Bethlehem.

Section 2. This Agreement is entered into pursuant to the provisions of 53 Pa.C.S.A. §2303-2307:

- A. The purposes and objectives of the Agreement are to: provide for the sale of water by the City of Bethlehem to the Lehigh Township Municipal Authority to be used for resale by the Lehigh Township Municipal Authority to certain customers to be connected to a Water Distribution System to be constructed by Hilltop Center, LLC as well as other potential Lehigh Township Municipal Authority customers; to establish the terms and conditions under which the City of Bethlehem will provide water service to the Lehigh Township Municipal Authority at the resale master water meter pit; and other related matters to be addressed by and between the Lehigh Township Municipal Authority and the City of Bethlehem.
- B. This Agreement shall be subject to all the conditions and terms specified and set forth in the Agreement which is attached hereto, and incorporated by reference herein.
- C. The duration of the Agreement shall be shall be ten (10) years ("Initial Term"), and shall automatically renew for another ten (10) year period ("Extended Term"), and subsequently will automatically renew for ten (10) year periods in perpetuity unless a Party provides written notice to terminate the Agreement at least one (1) year prior to the end of the Initial

Term, Extended Term or any subsequent renewal term. Notwithstanding the preceding summary of the term established under the Agreement, the express terms and conditions of the Agreement shall control over this summary.

Section 3. The Administration is authorized to enter and execute amendments to this underlying Agreement that it deems not inconsistent with the purposes and objectives of said Agreement without further Council approval.

Section 4. Upon proof of execution of this Agreement by all parties thereto, all City officials and employees are authorized to take such actions as are necessary and appropriate to implement the terms and conditions of the said Amendment.

Section 5. The invalidity of any section or provision of this ordinance herein adopted shall not invalidate other sections or provisions thereof.

Section 6. All Ordinances and parts of Ordinances inconsistent herewith be, and the same are hereby repealed.

Sponsored by \_\_\_\_\_  
\_\_\_\_\_

Passed finally in Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
President of Council

ATTEST:

\_\_\_\_\_  
City Clerk

This Ordinance approved this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor

## WATER SERVICE AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the CITY OF BETHLEHEM, a third class City, organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 10 East Church Street, Bethlehem, Northampton County, Pennsylvania 18018 (hereinafter referred to as “City”),

AND

The LEHIGH TOWNSHIP MUNICIPAL AUTHORITY, a Municipal Authority organized and existing under the Pennsylvania Municipal Authorities Act, with its principal place of business located at 1069 Municipal Road, Walnutport, PA 18088 (hereinafter referred to as “LTMA”). The City and LTMA are sometimes referred to as “Party” or “Parties”.

WITNESSETH:

WHEREAS, the Parties are desirous of entering into an Agreement relative to the good faith sale of a sufficient quantity of water by City to LTMA to be used for resale by LTMA to certain customers to be connected to a Water Distribution System (“Water Distribution System”) to be constructed by Hilltop Center, LLC, the developer of a project known as Hilltop Properties, as well as other potential LTMA customers.

WHEREAS, LTMA will require the design of the Water Distribution System to include an interconnection with its existing water supply for fire service to be available to the existing LTMA water supply system.

NOW, THEREFORE, in consideration of their mutual promises and covenants herein contained, and with the intent of being legally bound hereby, the parties hereto agree as follows:

1. The City hereby covenants and agrees to supply and sell to LTMA, in good faith, at the resale master water meter pit, during the term of this Agreement and any renewal or extension thereof, a sufficient supply of drinking water, for distribution and to fill the needs of all customers and users in the area

defined as Hilltop Properties plus other potential LTMA customers. The resale allocation quantity shall not exceed an average daily water demand at full build-out of Hilltop Properties of 200,000 gallons per day (GPD) plus other potential LTMA customers at 25,000 GPD, for a total of 225,000 GPD with a peak hourly flow rate equivalent to 900,000 GPD. For this Agreement, the term “resale allocation quantity” shall mean the total of actual resale water usage and estimated resale water commitments made by LTMA by any means: for example, by means of allocation, water main extension agreements, building permits, water permits or similar means. The parties acknowledge that the allocation quantity for Hilltop Properties includes water service to a portion of the project anticipated to be located in Allen Township.

2. As herein used, the term “drinking water” shall mean water which meets applicable purity standards of the Pennsylvania Department of Environmental Protection (PA DEP), United States Environmental Protection Agency (or other cognizant agency) and shall be the same processed water as that supplied to customers of the City water system.
3. The City agrees to furnish water, from its Water Filtration Plant Clearwell which has a storage capacity of 7,660,000 gallons and a hydraulic grade line ranging from 635 feet to 655 feet, at the resale master water meter pit at a location to be mutually agreed by the Parties. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake, drought, or other catastrophes shall excuse the City from this provision for such reasonable period of time as may be necessary to restore service.
4. In the event of an emergency or catastrophe causing a temporary failure or limit of supply of water, the City agrees that it will supply water to LTMA under this Agreement on the same basis that it serves all of its own customers and LTMA agrees that it will impose upon its own customers such restrictions in the use of water as the City imposes upon its own customers. The City will use commercially reasonably best efforts to get the supply and pressure of

water back online, using the same efforts for water provided to LTMA as it does for its own customers.

5. LTMA shall cause the installation of the Hilltop Properties Water Distribution System, for which the City hereby agrees to furnish drinking water, through the developer of Hilltop Properties. The term “Water Distribution System” shall include all mains, fire hydrants, shut off valves, pumping stations, pressure reducing valves and fixtures and other appurtenances normally associated with a water distribution system. The Water Distribution System shall be the sole and exclusive property of LTMA.
6. LTMA shall furnish and install at its own expense and cause the installation of a master water meter setup, of a type approved by the City, which will adhere to the City’s design and specifications, at the location shown in “Exhibit A”. The master water meter setup shall be the sole and exclusive property of LTMA, except for the compound master meter, and LTMA will be responsible for the operation and maintenance of the master water meter setup, except for the compound master meter. The setup will include a concrete meter pit, backflow preventer, valving, piping, appurtenances, and a compound master meter. The City shall, at its own expense, conduct exploratory digging, as needed, to determine the precise location and orientation of its existing line and valve, to which the City’s compound master meter and LTMA’s master water meter setup will be installed; “Exhibit A” depicts an approximate location only.
7. The City will provide the compound master meter at its sole cost and expense. The meter(s) will be used to monitor and bill LTMA for the amount of water passing through the meter. The City shall read or cause to be read on a monthly basis the compound master meter. Said meter readings shall be forwarded to LTMA after each monthly meter reading. The compound master meter shall be maintained in good working order and repair by the City and shall be checked for accuracy every year. The City shall be responsible for calibration of the compound master meter. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be

accurate. In the case of faulty master meter registration, an estimate of flows will be made for billing purposes, said estimate being based on an evaluation of past consumption records subject to approval by both the City and LTMA, or shall be corrected in accordance with the percent of inaccuracy found by such tests. If the master meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period during the previous calendar year unless the City and LTMA agree upon a different amount. All costs for maintenance, calibration, and/or replacement of metering equipment are the responsibility of the City. The master meter(s) will be maintained by the City but may be inspected or verified for accuracy at any reasonable time by LTMA.

8. The Parties agree that the mandatory monthly meter charge will commence following installation of both the City's compound master meter and the master water meter pit. Consumption charges shall commence following completion of all required water testing to ensure proper water quality and pressure.
9. The City agrees to furnish LTMA not later than the 20<sup>th</sup> day of each month, with a bill for water furnished to LTMA during the preceding month.
10. LTMA agrees to pay the City, not later than the due date shown on the bill, for water delivered through the resale master water meter pit in accordance with the City's PA PUC then current applicable prevailing resale water rate contained in the City's PA PUC approved tariff provisions, Schedule G – "Meter Rates – Sales for Resale". Bills not paid within the above-mentioned time shall be subject to the City's PA PUC approved then current applicable prevailing monthly penalty on the full unpaid and overdue balance of the bill. The rate and penalty is subject to modification by the PA PUC and any such modification shall then constitute the then current applicable prevailing resale water rate and monthly penalty. A copy of the City's current resale water rate and penalty is attached as Exhibit "B".

11. The Parties agree that there is no minimum monthly usage volume. The parties understand that LTMA water purchases shall increase slowly with time, subject to the terms and limitations of this Agreement. The parties agree that the only mandatory charge under this Agreement is the aforementioned monthly meter charge.
12. LTMA agrees that at no time shall the resale allocation quantity of water exceed 225,000 gallons per day (GPD), averaged over a period of three (3) consecutive billing periods, with a peak hourly flow rate equivalent to 900,000 GPD. Should LTMA desire, during the term of this Agreement, to increase the above resale allocation quantity of water, written approval of the City must be obtained by LTMA. It is expressly understood that said approval by the City shall not be unreasonably withheld. It is understood that it is LTMA's obligation to obtain, maintain, and keep current, its PA DEP Water Allocation Permit and to obtain the necessary PA DEP Water Allocation Permit required for such an increased allocation.
13. LTMA will be found in violation of this Agreement if it is taking, in three consecutive monthly billing periods, water in excess of the product of (a) the total number of days in the three-month billing period times (b) 225,000 gallons per day, including estimated water commitments made by LTMA by any means. Emergency usage due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake, drought, or other catastrophes shall excuse LTMA from this provision for such reasonable period of time as may be necessary to restore normal service conditions. Should LTMA exceed the foregoing resale allocation quantity of water limit, it shall take corrective action in a reasonable period of time, but there will be no penalty imposed by the City.
14. **Term of Agreement** - The initial term of this Agreement shall be for 10 years (the "Initial Term"). This Agreement will automatically renew for another 10 year period unless a Party provides written notice to terminate the Agreement at least 1 year prior to the end of the Initial Term (the "Extended Term"). Subsequent to the Extended Term, the Agreement will automatically renew



for 10 year periods in perpetuity unless a Party provides written notice to terminate the Agreement at least 1 year prior to the end of the Extended or any renewed Term. The Parties agree that this Agreement may be terminated by a Party for the material breach of this Agreement by any Party prior to the expiration of any Term of the Agreement. The existence of the breach may have to be determined by Dispute Resolution as hereinafter set forth, however, if a party is found to be in a material breach, the Agreement may be terminated at that time.

15. **Opt Out** - LTMA has the right, in its sole discretion, to opt out and terminate this Agreement entirely and without penalty if Hilltop Center, LLC does not develop its Lehigh Valley Resort & Spa project. The City shall have no further obligations to LTMA if LTMA terminates this Agreement.
16. **Dispute Resolution** - The parties agree that any disputes arising under or pursuant to this Agreement shall be resolved by a Court of competent jurisdiction, except for disputes or litigation subject to PA PUC statutory jurisdiction and its applicable rules and regulations.
17. The City will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish water to LTMA. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the City is otherwise diminished over an extended period of time, the supply of water to LTMA customers shall be reduced or diminished in the same ratio or proportion as the supply to City customers is reduced or diminished, and that any restriction imposed on the City users shall also apply to LTMA users. In the event the City intentionally fails or declines to provide minimum water service to LTMA, as required by the terms of this Agreement, LTMA may immediately terminate this Agreement without further obligation or liability to the City hereunder by providing the City with written notice that LTMA is terminating the Agreement.
18. The Parties hereby agree that this contract is subject to such rules, regulations, or laws as may be applicable in the Commonwealth of Pennsylvania, and

LTMA will obtain such permit(s), certificates, or the like, as may be required to comply therewith.

19. LTMA agrees to avoid any and all Cross-Connections as a safeguard to the City's water distribution system. A Cross-Connection is defined as an arrangement allowing either a direct or indirect connection through which backflow, including back-siphoning, can occur between a system containing a source or potential source of contamination and the drinking water in a public water system. A direct cross-connection is subject to backflow by backpressure and an indirect cross-connection is subject to backflow by back-siphoning.
20. LTMA shall provide the City with its plans for the Water Distribution System on or before the execution of this Agreement. Plans shall show the general location of the water mains and area serviced. Similarly, thereafter LTMA shall annually provide the City with its plans of all extensions, alterations and additions made to said system, along with an updated map of its Water Distribution System. The City will not be responsible for design inadequacies in LTMA's Water Distribution System.
21. If any Party is rendered incapable or is no longer obligated to perform under this Agreement, whether the result of legal process, agreement, assignment, or otherwise, any heirs, executors, administrators, successor or assigns shall succeed to the same rights as well as the same duties of the said Party.
22. The Parties agree that upon request of either entity, they will meet and discuss any issues relating to this Agreement or the providing of water service within the LTMA water system as concerns both entities. The parties shall endeavor on at least an annual basis to have one meeting to discuss the current status of the operation of the water systems and any problems or situations which the Parties must address.
23. The Parties agree that in the event of an alleged default of any term of this Agreement, the City shall provide prompt written notice to LTMA. LTMA shall have a reasonable time in which to cure any alleged default.

24. **Amendments** – No amendment to or modification to this Agreement shall be effective unless it shall be in writing and signed by all of the Parties hereto.
25. **Authorization** – There are two parties to this Agreement, the City of Bethlehem and the Lehigh Township Municipal Authority. Each party has had an opportunity to review the same and certifies that the signatures that have been placed hereon were done so by its authorized representative after approval of the appropriate governing body.
26. **Incorporation** - All terms, conditions, provisions and understandings between the Parties concerning the provision of water services are contained in this Agreement. There are no other understandings, oral or otherwise, between the Parties with respect to water service, except those contained herein.
27. **Selection of Law and Forum** - This Agreement shall be interpreted only under the laws of the Commonwealth of Pennsylvania. Any and all disputes shall be litigated in the Northampton County Court of Common Pleas except for disputes or litigation subject to PA PUC statutory jurisdiction and its applicable rules and regulations.
28. **Effective Date** - This Agreement shall become effective as of the date that the final signatures of the two parties are placed on the Agreement.
29. **No Third-Party Beneficiary** – This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity, other than the Parties hereto and such assigns, any legal or equitable rights hereunder.
30. **Interpretation** - Any headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The Parties acknowledge and agree that (a) each Party and its counsel have reviewed the terms and provisions of this Agreement and have contributed to its drafting, (b) the normal rule of construction, to the effect that any ambiguities are resolved against the drafting Party, shall not be employed in the interpretation of it, and (c) the terms and provisions of this Agreement shall be constructed fairly as to all Parties hereto and not in favor of or against

any Party, regardless of which Party was generally responsible for preparation of this Agreement.

- 31. **Waiver** - Waiver of any term or condition of this Agreement by a Party shall be effective if in writing and shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other term of this Agreement. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 32. **Counterparts** - This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each Party and delivered to the other Party or Parties.
- 33. **PA PUC Powers** - LTMA recognizes that the City's provision of water service to LTMA is regulated by the PUC which sets its rates and conditions of service. The City shall provide notice to LTMA of any proposed change in rates or conditions of service proposed by City or filed by the City with the PUC.
- 34. All attached exhibits to this Agreement are incorporated herewith and shall be deemed part of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have hereto set their hands and seals the day and year first above written.

ATTEST:

CITY OF BETHLEHEM

\_\_\_\_\_

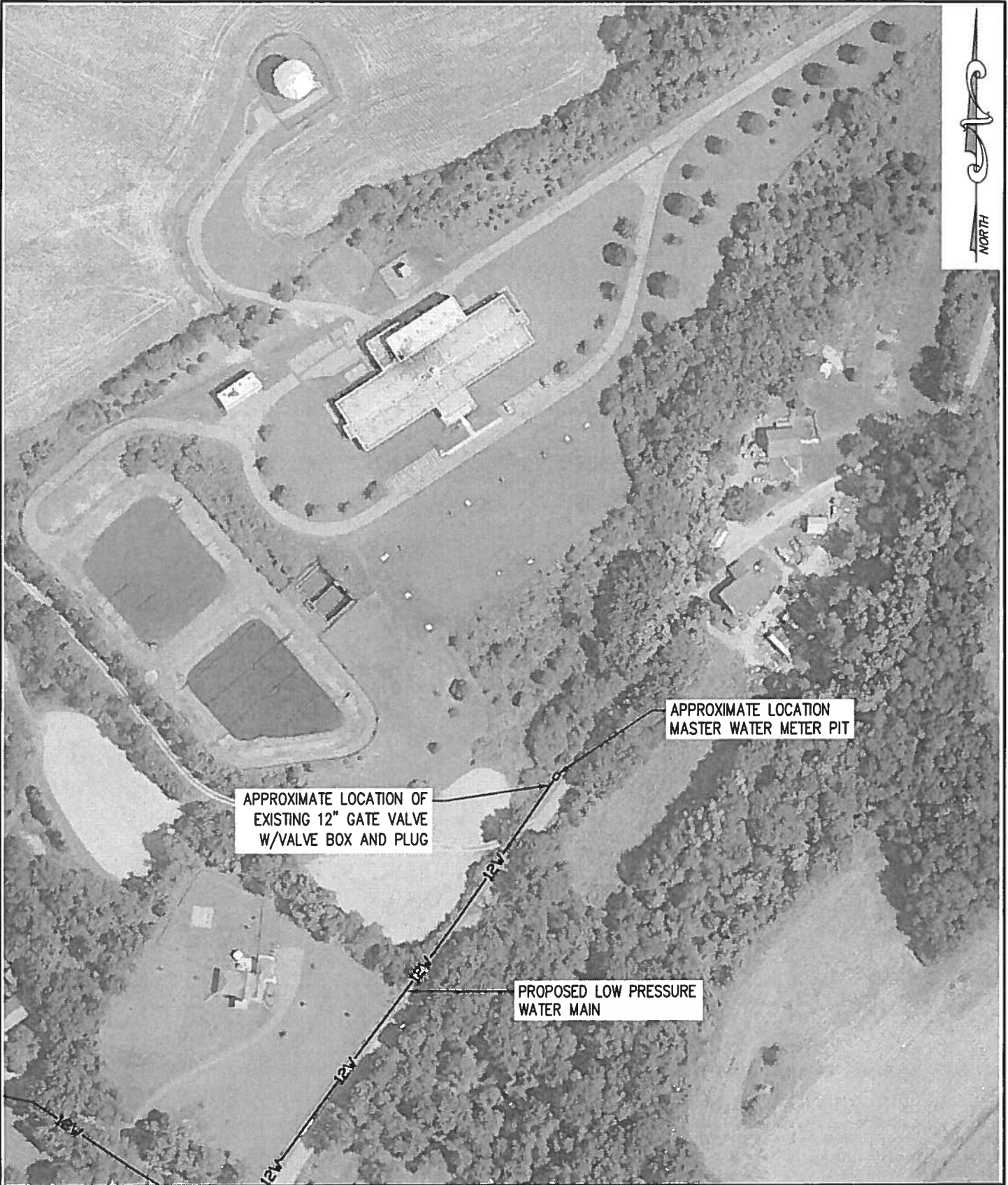
By \_\_\_\_\_

ATTEST:

LEHIGH TOWNSHIP MUNICIPAL  
AUTHORITY

\_\_\_\_\_

By \_\_\_\_\_



**EXHIBIT "A"**  
 FOR THE  
**CITY OF BETHLEHEM SERVICE WATER AGREEMENT**  
 1"=200'

**Ebert Engineering, Inc.**  
**Water and Wastewater Engineering**  
 PO Box 540  
 4397 Skippack Pike  
 Skippack, PA 19474  
 Phone (610) 584 6701  
 Fax (610) 584 6704  
 E-mail febert@ebertengineering.com

**SCHEDULE OF RATES**

**Schedule G**

**Meter Rates – Sales for Resale**

**APPLICATION**

This schedule applies to all sale of water to other water utilities or public authorities for resale.

**CUSTOMER CHARGES**

All metered sales for resale customers shall pay the following customer charge based on the required size of meter to render adequate service. Also applicable for unmetered sales in honor system areas until such time that meters are installed.

<u>Size of Meter</u>	<u>Customer Charge</u>			<u>Size of Meter</u>	<u>Customer Charge</u>	
	<u>Per Month</u>	<u>Per Quarter</u>			<u>Per Month</u>	<u>Per Quarter</u>
5/8"	\$ 8.25	\$ 24.75	(I)	3"	\$ 174.80	\$524.40
3/4"	13.98	41.94		4"	273.56	820.68
1"	27.14	81.42		6"	547.11	1,641.33
1-1/2"	53.04	159.12		8" or Larger	1,098.37	3,295.11
2"	85.28	255.84		Lower Saucon Honor Sys.	1,098.37	3,295.11

**CONSUMPTION CHARGES**

In addition to the customer charge all water consumption will be billed at the following rates:

	<u>Rate Per</u> <u>1,000 Gallons</u>	
For all usage monthly or quarterly	\$ 3.969	(I)

Customer water meter bills will be subject to a penalty of one and one-half percent (1.5%) interest per month on the full unpaid and overdue balance of the bill if not paid within twenty calendar days from the date the bill is mailed. All customers will be given the option of being billed monthly.

(I) Indicates Increase