

BOROUGH OF CHURCHILL

ORDINANCE NO. 752

AN ORDINANCE OF THE BOROUGH OF CHURCHILL, COUNTY OF ALLEGHENY, COMMONWEALTH OF PENNSYLVANIA, APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE MUNICIPALITY OF PENN HILLS PURSUANT TO THE INTERGOVERNMENTAL COOPERATION ACT, 53 PA C.S. §§ 2301 ET SEQ., TO PERMIT CERTAIN HOMES IN CHURCHILL TO CONVEY SEWAGE TO THE PENN HILLS SEWAGE SYSTEM IN ORDER TO FACILITATE THE ELIMINATION OF THE COLLINS ROAD PUMP STATION IN CHURCHILL

WHEREAS, the Municipality of Penn Hills ("Penn Hills") and the Borough of Churchill ("Churchill") have been in negotiations to have Penn Hills service sewage customers of Churchill following the elimination of the Collins Road Pump Station in Churchill; and

WHEREAS, the parties reached a tentative agreement on all terms between the parties; and

WHEREAS, the Intergovernmental Cooperation Act, 53 Pa. C.S. §§ 2301 et seq., permits local governments, which pursuant to said Act include political subdivisions, to enter into agreements to cooperate in the performance of their respective functions, powers or responsibilities; and

WHEREAS, the Intergovernmental Cooperation Act provides that any joint cooperation agreement shall be deemed in force as to any local government when the same has been adopted by ordinance by all cooperating municipalities; and

WHEREAS, the Borough Council of the Borough of Churchill desires to enact such an ordinance, together with the Municipality of Penn Hills, and to approve and adopt the Intergovernmental Cooperation Agreement between the parties.

NOW, THEREFORE, BE IT ORDAINED, AND THE SAME IS HEREBY ORDAINED AS FOLLOWS:

Section 1.

The caption of and recitals to this Ordinance as set forth above are incorporated herein by reference.

Section 2.

The Borough of Churchill shall cooperate with the Municipality of Penn Hills in accordance with the Intergovernmental Cooperation Act by entering into the Intergovernmental Cooperation Agreement (the "Intergovernmental Agreement") which is attached hereto as **Exhibit A** and incorporated herein by reference with the same effect as if it had been set out verbatim in this Section, and a copy of which shall be filed with the minutes of the meeting at which this Ordinance was enacted.

Section 3.

The Borough of Churchill is authorized to enter into and execute the intergovernmental Agreement for the purposes contained therein. This action is to be taken by the officials or employees of the Borough designated for this purpose, pursuant to general or specific instructions issued by Borough Council.

Section 4.

As required by the Intergovernmental Cooperation Act, the following matters are specifically found and determined:

- A. The conditions of the agreement are set forth in the Intergovernmental Agreement.

- B. The Intergovernmental Agreement shall remain in effect perpetually unless both parties mutually agree to terminate it or ALCOSAN accepts the sewer line referenced in the Intergovernmental Agreement as part of its system.
- C. The purpose and objectives of the Intergovernmental Agreement are to enter into an intergovernmental agreement for the benefit of both municipalities and to further the health, safety and welfare of their respective residents.
- D. No new organizational structure is proposed by the Intergovernmental Agreement.
- E. All property, real or personal, shall be managed and disposed of by the owner of such property.
- F. Each municipality has the power to enter into contracts for policies of insurance and other employee benefits.

Section 5.

The Borough Council of the Borough of Churchill reserves the right to modify, supplement or amend the Intergovernmental Agreement from time to time by resolution or ordinance.

Section 6. Effective Date / Repealer

This Ordinance shall become effective immediately upon enactment and shall repeal all prior inconsistent ordinances and resolutions to the extent of such inconsistency.

Section 7. Severability

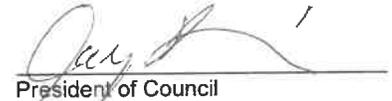
If a final decision of a court of competent jurisdiction holds any provision of this Ordinance or the application of any provision of this Ordinance to any circumstance to be illegal or unconstitutional, the other provisions of this Ordinance and the application of such provisions to other circumstances shall remain in full force and effect.

ORDAINED AND ENACTED this 12<sup>th</sup> day of August, 2019.

ATTEST:

  
Secretary

**BOROUGH OF CHURCHILL**

  
President of Council

EXAMINED AND APPROVED this 12<sup>th</sup> day of August, 2019.

**BOROUGH OF CHURCHILL**

  
Mayor

**INTERGOVERNMENTAL AGREEMENT**

THIS Agreement is made and entered into this 24<sup>th</sup> day of JULY, 2019, by and between **THE BOROUGH OF CHURCHILL**, a Pennsylvania municipal corporation, created and existing pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located at 2300 William Penn Highway, Pittsburgh, Allegheny County, Pennsylvania 15235 (hereinafter referred to as "CHURCHILL").

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**THE MUNICIPALITY OF PENN HILLS**, a municipal organization organized and existing under the laws on the Commonwealth of Pennsylvania and having its principal place of business located at 102 Duff Road, Penn Hills, Allegheny County, Pennsylvania 15235 (hereinafter "PENN HILLS").

**WHEREAS**, CHURCHILL operates a pump station known as the Collins Road Pump Station which it plans to eliminate due to age, condition and capacity issues; and,

**WHEREAS**, in order to facilitate the elimination of the Collins Road Pump Station, CHURCHILL proposes to transport sewage via gravity flow to PENN HILLS sanitary sewer lines;

**WHEREAS**, presently there are 245 Churchill homes and 5 Penn Hills homes connected to the Collins Road Pump Station; and

**WHEREAS**, these homes would be rerouted to the PENN HILLS sanitary sewer system at a mutually agreed point of connection pursuant to the terms of this Agreement.

**NOW THEREFORE**, for and in consideration of the reciprocal obligations of the parties hereto and as hereinafter set forth and the rates and charges as hereinafter provided for, the parties hereto, each respectively intending to be legally bound hereby, do covenant and agree as follows:

**SECTION 1 – WHEREAS CLAUSES:** The Whereasclauses contained above are incorporated by reference as if more fully set forth herein.

**SECTION 2 – TERM:** CHURCHILL and PENN HILLS hereby covenant and agree that the parties' respective obligations in this Agreement shall be for an indefinite time period subject to termination only upon mutual agreement of the parties or upon acceptance of the Allegheny County Sanitary Authority ("ALCOSAN") of the intermunicipal sewer line described herein as part of the ALCOSAN system.

**SECTION 3 – CONSIDERATION:** CHURCHILL shall pay to PENN HILLS an initial tap-in fee of \$2,600.00 for each of the 245 CHURCHILL current customers for a total amount due of \$637,000.00 to reroute the current customers. This tap-in fee shall be payable in ten (10) annual installments of \$63,700.00. CHURCHILL'S obligation to pay this tap-in fee shall not be extinguished by the termination of this Agreement before the expiration of the ten (10) year repayment period. Future CHURCHILL customers tapping into the PENN HILLS sanitary sewer system shall pay to PENN HILLS the then-applicable tap fee for properties in PENN HILLS as set by PENN HILLS.

**SECTION 4 – ANNUAL MAINTENANCE FEE:** Following the rerouting of CHURCHILL customers to the PENN HILLS sanitary sewer system, CHURCHILL agrees to pay an annual maintenance fee of \$3,425.00 upon receipt of an invoice from PENN HILLS based on CHURCHILL'S share of the annual operation cost as is set forth on the Long Road

Pump Station Operation and Maintenance Cost Comparison attached hereto and incorporated herein by reference as **Exhibit A**. The parties agree to review the Annual Maintenance Fee calculation not less than every three (3) years to ensure that the fee is equitable in light of the maintenance costs applicable to the service area which is the subject of this Agreement. The parties agree to negotiate in good faith any adjustments needed to the Annual Maintenance Fee to ensure equitable allocation of maintenance costs based on the average annual flow from each party.

**SECTION 5 – AVERAGE & PEAK FLOW:** The parties agree that this Agreement is based upon an average flow of 49,000 gallons per day for CHURCHILL customers with a peak volume of 0.5 million gallons per day from a 10-year/24-hour design storm distributed over a 72-hour return period. CHURCHILL agrees that it is required to reduce the peak flow to 0.25 million gallons within five (5) years. In the event CHURCHILL is unable to accomplish this reduction, CHURCHILL agrees that it will install an EQ facility or perform infiltration and inflow removal in order to reach this reduction.

The CHURCHILL flows will be evaluated by performing a bi-annual flow monitoring study to be performed during the months of March, April and May. An Engineering Analysis performed on the data to verify the volume of flow resulting from a 10-year / 24-hour design storm during the 72 hours following the beginning of the storm event will be used to determine compliance with this section. The frequency of the flow monitoring evaluation may be reduced based on a mutual agreement of the parties after the first five (5) years.

**SECTION 6 - POINT OF CONNECTION:** CHURCHILL shall, at its own cost, construct a new sanitary sewer line to connect the homes currently served by the Collins

RoadPump Station to a point of connection at Penn Hills manhole located off of Country Club Drive within PENN HILLS as depicted in the drawing attached hereto as **Exhibit B**.

**SECTION 7 – PENN HILLS RESIDENT TAP-INS:** CHURCHILL and PENN HILLS acknowledge that there are five (5) existing Penn Hills homes connected to the Churchill Borough collection system contributing to the Collins Road Pump Station. Upon completion of the connection to the Penn Hills sewer system as contemplated by this Agreement, additional Penn Hills customers may be connected upstream of CHURCHILL upon submission of a tap application and payment to CHURCHILL of the current Churchill Tap Fees. No additional tap fees will be paid to PENN HILLS from CHURCHILL for these customers.

**SECTION 8– DISPUTES:** In the event of the breach of this Agreement by either party, the non-breaching party may pursue any appropriate remedy at law or in equity before any court of competent jurisdiction.

Should the parties hereto be unable to agree as to the interpretation of any item in this Agreement, then, upon written demand of either party, the matter shall be submitted to mediation prior to either party seeking court intervention.

**SECTION 9– ASSIGNMENTS:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and to the respective successors or assigns thereof. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to any person, firm, corporation, or association other than the parties hereto, any right, remedy or claim, under or by reason of this Agreement or any covenant, condition or stipulation thereof; and this Agreement and the covenants, conditions and stipulations set forth herein are and shall be for the sole and exclusive benefit of the parties hereto, their respective successors and assigns. None of

the parties hereto shall assign or sublet this Agreement of any of its rights hereunder without the prior written consent of all the parties hereto.

**SECTION 10- INDEMNIFICATION**: Each party shall indemnify the other party, its subsidiaries, elected officials, officers, directors, employees, and hold said party harmless from any and all losses, claims, damages, liabilities, and related expenses including professional fees incurred by said party or asserted against said party by a third party, arising out of, or in connection with, or as a result of performance under any of the terms of this Agreement when it is determined that said indemnifying party has been negligent or otherwise failed to perform under the terms of this Agreement.

**SECTION 11- SEVERABILITY**: If any sentence, clause, section or part of this Agreement is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Agreement. It is hereby declared as the intent of the parties that this Agreement would have been adopted had such unconstitutional, illegal, or invalid clause, section, or part thereof not been included herein.

**SECTION 12- ENTIRE AGREEMENT**: The parties hereto hereby covenant and agree that this Agreement constitutes the entire Agreement between the parties hereto and that no amendment or modification hereof shall be effective unless agreed to in writing by both of the parties hereto and approved by their respective governing bodies.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, CHURCHILL has caused this Agreement to be signed and executed by its Council President, attested to by its Secretary and the corporate seal to be hereunto affixed and PENN HILLS has cause this instrument to be executed by its Mayor and its corporate seal to hereunto affixed, all the day and year first above written.

ATTEST:

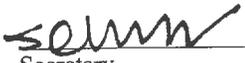
THE BOROUGH OF CHURCHILL

  
Secretary

  
JAY D. WORIN, President of Council

ATTEST:

MUNICIPALITY OF PENN HILLS

  
Secretary

  
SARA J. KUHN, MAYOR