

**TOWNSHIP OF LOWER NAZARETH
NORTHAMPTON COUNTY, PENNSYLVANIA**

ORDINANCE NO. 216-10-15

AN ORDINANCE

AMENDING THE CODE OF ORDINANCES OF LOWER NAZARETH TOWNSHIP AUTHORIZING ENTRY INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT KNOWN AS THE "INTERMUNICIPAL COOPERATION AGREEMENT FOR TRANSPORTATION OF SANITARY SEWAGE" BETWEEN THE TOWNSHIP OF LOWER NAZARETH AND THE TOWNSHIP OF HANOVER; ESTABLISHING TERMS AND CONDITIONS WITH RESPECT TO THE TRANSPORTATION OF SANITARY SEWAGE FROM CERTAIN AREAS OF LOWER NAZARETH THROUGH THE PUMP STATION AND EXISTING WASTEWATER COLLECTION SYSTEM OF THE TOWNSHIP OF HANOVER; DESIGNATING SEWER SERVICE AREA; PROVIDING FOR THE PAYMENT OF LOWER NAZARETH TOWNSHIP'S SHARE OF TRANSPORTATION COSTS; AND PROVIDING FOR OTHER RELATED MATTERS RELEVANT THERETO BETWEEN LOWER NAZARETH TOWNSHIP AND HANOVER TOWNSHIP.

NOW, THEREFORE, be it enacted and ordained by the Board of Supervisors of Lower Nazareth Township, Northampton County, Pennsylvania (the "Township"), and it is hereby enacted and ordained by authority of the same, pursuant to the provisions of the Second Class Township Code, Act of May 1, 1933, P.L. 103, as amended, Act of July 11, 1991, P.L. 83, pursuant to the Intergovernmental Cooperation Act, Act of July 12, 1972, No. 180, as amended, and pursuant to Article IX, Section 5 of the Constitution of the Commonwealth of Pennsylvania, and pursuant to the authority granted by law, as follows:

SECTION 1. RATIFICATION OF AGREEMENT

The Board of Supervisors of Lower Nazareth Township hereby ratifies, confirms, and authorizes execution of an agreement for intergovernmental cooperation known as the "Intermunicipal Cooperation Agreement for Transportation of Sanitary Sewage" between the Township of Hanover and the Township of Lower Nazareth. A copy of the Agreement is attached hereto, incorporated by reference herein, and marked Exhibit "A."

SECTION 2. AUTHORIZATION

This Agreement is entered into pursuant to the provisions of the Intergovernmental Cooperation Act, Act of July 12, 1972, No. 180, as amended, 53 Pa. C.S.A. §2303-2307, and pursuant to Article IX, Section 5 of the Constitution of the Commonwealth of Pennsylvania.

SECTION 3. PURPOSES AND OBJECTIVES

The purposes and objectives of this Agreement are to establish terms and conditions under which the municipalities will facilitate transportation of sanitary sewage from certain areas of Lower Nazareth Township through the pump station and existing wastewater collection system of Hanover Township for treatment in the City of Bethlehem pursuant to an existing Agreement, designating sewer service area, providing for the payment of Lower Nazareth Township's share of transportation costs, and providing for other related matters relevant thereto between Lower Nazareth Township and Hanover Township.

SECTION 4. CONDITIONS

The Agreement shall be subject to all the conditions and terms specified and set forth in the "Intermunicipal Cooperation Agreement for Transportation of Sanitary Sewage" which is attached hereto and incorporated by reference herein.

SECTION 5. DURATION

The duration of the Agreement shall be perpetual.

SECTION 6. INVALIDITY AND REPEALER

The invalidity of any section or provision of this Ordinance herein adopted shall not invalidate the other sections or provisions hereof. All Ordinances or parts of Ordinances inconsistent herewith be, and the same are hereby repealed.


SECTION 7. EFFECTIVE DATE

This Ordinance shall become effective upon execution by the appropriate officials on behalf of the Township of Hanover and Township of Lower Nazareth.

BE IT ENACTED AND ORDAINED this 14 day of October, 2015.

LOWER NAZARETH TOWNSHIP

ATTEST:


TIMM TENGES, Secretary

BY: 
JAMES PENNINGTON, Chairman

**INTERMUNICIPAL COOPERATION AGREEMENT FOR
TRANSPORTATION OF SANITARY SEWAGE**

THIS INTERMUNICIPAL COOPERATION AGREEMENT, made this ____ day of _____, 2015, by and between the *TOWNSHIP OF HANOVER*, Northampton County, Pennsylvania, a Second Class Township of the Commonwealth of Pennsylvania with an address of 3630 Jacksonville Road, Bethlehem, PA 18017 (hereinafter "HANOVER") and the *TOWNSHIP OF LOWER NAZARETH*, Northampton County, Commonwealth of Pennsylvania, with an address of 306 Butztown Road, Nazareth, Pennsylvania 18064 (hereinafter "LOWER NAZARETH"). Hanover and Lower Nazareth sometimes referred to as "Parties" or "Party".

BACKGROUND

A. LOWER NAZARETH and the City of Bethlehem ("COB") have entered into a certain Lower Nazareth Sewer Service Agreement dated April 29, 2015, with respect to the treatment of certain sanitary sewage originating in the service area (as hereinafter defined) located in LOWER NAZARETH.

B. HANOVER and LOWER NAZARETH now desire to set forth their mutual understandings and agreements with respect to the transportation of sanitary sewage from certain areas of Lower Nazareth, more particularly set forth in the map attached hereto and made a part herein and marked *Exhibit "A"* (the "Service Area") through the pump station and existing waste water collection system of HANOVER (the "Hanover Facilities").

C. Based on the foregoing, and in order to better serve the health and welfare in both LOWER NAZARETH and HANOVER, the Parties have reached an understanding regarding the way to transport the sanitary sewage from Lower Nazareth to and through the Hanover Facilities is by an intermunicipal cooperation agreement, the terms of which are hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties, intending to be legally bound, agree as follows:

1. All "BACKGROUND" paragraphs are incorporated herein by reference as if the same were set forth here at length.

2. HANOVER and LOWER NAZARETH agree that for the purposes of this Agreement, the following definitions shall apply:

(a) Annual Average Daily Flow. (AADF) means the sum of all gallons of flow over a continuous twelve (12) month period divided by 365;
and

(b) Peak Flow (PF) means the maximum number of gallons of flow in any minute of any day expressed as gallons per minute.

- (c) Maximum Flow ("MF") means AADF of 28,000 gallons of sanitary sewage daily or PF of eighty-seven (87) gallons of sanitary sewage per minute, and provided that the PF of eighty-seven (87) gallons per minute is not exceeded for more than thirty (30) minutes in any twenty-four (24) hour period.

3. HANOVER hereby grants to LOWER NAZARETH the right to discharge the sanitary sewage, collected within the area located in the Service Area, into Hanover Facilities for ultimate treatment and disposal at the COB wastewater treatment facility ("COB WTF") under the terms and conditions contained herein.

4. HANOVER shall permit LOWER NAZARETH to make a connection to the Hanover Manhole CCS112, located at the intersection of Jaiindl Boulevard and Township Line Road, in order to receive not more than the Maximum Flow from the Service Area under the following conditions:

- (a) That PROGOLIS LAND III LLC, A Delaware Limited Liability Company and HANOVER have entered into Pump Station/Force Main Upgrade Agreement whereby PROGOLIS LAND III LLC agrees to construct certain improvements to the pump station and force main owned and operated by HANOVER, located on Hanoverville Road, in order to accept the total projected sewage flows from the Service Area;
- (b) HANOVER agrees to keep and maintain the Hanover Facilities at all times in good repair and operating condition and of sufficient capacity for the purposes of this Agreement;
- (c) LOWER NAZARETH covenants and agrees at all times to use reasonable methods and due diligence to prevent the discharge into the Hanover Facilities of any waste; industrial or otherwise, which is dangerous to the public health and safety, damaging to the Hanover Facilities or in violation of the terms of this Agreement, or all regulations and ordinances of HANOVER currently in existence or hereafter adopted or modified by HANOVER;
- (d) LOWER NAZARETH agrees to enact and enforce ordinances, rules and regulations governing sewer connection and the admission of sanitary sewage into the Hanover Facilities, which ordinances, rules and regulations shall conform with existing ordinances, rules and regulations of HANOVER and the COB and further agrees

to enact and enforce additional ordinances, rules and regulations to conform with future reasonable ordinances, rules and regulations adopted by HANOVER and/or the COB;

- (e) LOWER NAZARETH covenants and agrees to install, maintain and operate a recording meter and sampling manhole at its sole cost and expense (the "Meter"). The Meter and sampling manhole shall be approved by HANOVER, in advance of installation, and at a location approved by HANOVER. Meter records and access to Meter and sampling manhole installation shall be, at all times, made available to HANOVER, upon request. The record of sewage flow through the Meter shall be forwarded to HANOVER on or about the fifth (5th) day of every month showing total and daily flows and peak flow discharge into the Hanover Facilities during the previous month. Continuous data shall be made remotely available to HANOVER showing daily flows and peak flow discharge into HANOVER'S facilities. In the event of failure of the Meter, repairs will be made as soon as practicable by LOWER NAZARETH. In the case of missing flow records from the Meter, for any reason, an estimate of flows will be made for the purposes of determining charges by HANOVER. This estimate will be based on an evaluation of past flow records for the Meter as applied to present conditions and subject to the review and approval of HANOVER;
- (f) LOWER NAZARETH covenants and agrees to cooperate with HANOVER in every respect in fulfilling the terms of this Agreement and will, whenever reasonably requested by HANOVER, obtain samples of sanitary sewage discharged into the Hanover Facilities for the purpose of analysis by HANOVER or the COB; and
- (g) LOWER NAZARETH shall pay to HANOVER for the rights, privileges and benefit hereinafter provided as follows:
 - (i) A Tapping Fee of Two Hundred Twenty-Three Thousand Four Hundred Forty (\$223,440.00) Dollars to be paid by LOWER NAZARETH upon the execution of this Agreement by HANOVER.

- (ii) An Annual Transportation Fee of \$9,600.00 Dollars which covers all costs for Hanover Township to analyze data, conduct periodic site visits, collect and analyze two (2) waste water samples per year, analyze chemistry and peak flows and prepare an annual report, which annual report will be made available to Lower Nazareth upon written request, plus \$0.002 per gallon to sanitary sewage being transported, to be paid by LOWER NAZARETH to HANOVER on an annual basis with the first payment due May 1, 2016 and annually thereafter. The annual fee (the "Transportation Fee") may be increased by HANOVER, thereafter, to cover additional reasonable costs due to inflation and other factors, provided that written notice is given to LOWER NAZARETH at least sixty (60) days prior to the end of any fiscal year.
- (iii) The cost (which shall include a 25% administrative fee) of any repairs, reconstruction, special pumping, special maintenance or treatment that HANOVER and/or COB needs to undertake on or for Hanover Facilities as a result, directly or indirectly, of the Sewage Flows entering the Hanover Facilities from LOWER NAZARETH shall be paid by LOWER NAZARETH to HANOVER or the COB depending on which municipality incurs the cost. The determination of need of the task and/or the direct or indirect nature of the cause shall be in the sole and absolute discretion of HANOVER but reasonably applied, and with written notice to LOWER NAZARETH outlining the determination at least thirty (30) days prior to the payment date. Such payment shall be due and payable in thirty (30) days from notice by HANOVER.
- (iv) The cost (which shall include a 25% administrative fee) of any environmental cleanup, penalties or fines that HANOVER and/or the COB incur related to or caused in part or in whole by Sewage Flows entering the Hanover Facilities from LOWER NAZARETH shall be paid by LOWER NAZARETH. The determination of those costs and level of responsibility shall be in the sole discretion of HANOVER but reasonably applied, and with written notice to LOWER NAZARETH outlining

the determination at least thirty (30) days prior to the payment date . Such payment shall be due and payable in thirty (30) days from notice by HANOVER.

- (v) In the event LOWER NAZARETH exceeds the Maximum Flow, LOWER NAZARETH agrees to pay a surcharge for the amount exceeded at the rate of \$0.005 per gallon of sanitary sewage.

- (i) LOWER NAZARETH shall take affirmative action to reduce the Annual Average Daily Flow or Peak Flow, if the Maximum Flow is exceeded. Affirmative action may include but not be limited to: imposing a moratorium on future connections, imposing flow restrictions on customers within Lower Nazareth, collecting pumping and hauling flows away from the point of connection and limiting infiltration and inflow. Such affirmative action shall be undertaken within sixty (60) days of written notice by HANOVER and during the entire period of any violation of this Agreement provision, LOWER NAZARETH shall pay HANOVER a penalty of One Hundred (\$100.00) dollars per day. Such penalty shall be due and payable in thirty (30) days written notice by HANOVER. Such penalty shall be due in addition to any cost or liability incurred by HANOVER as a result of the excessive flow. For the purpose of this section, multiple violations of Maximum Flow in a given calendar day or simultaneous exceedances of the Maximum Flow limits shall be treated as one day of violation. Further violations of either individually will be treated as a one day violation for each day it continues. In addition to the costs and penalties described above, HANOVER can require LOWER NAZARETH to provide specific corrected performance and/or HANOVER can terminate this Agreement for violations that continue more than twelve (12) consecutive months.

- (h) LOWER NAZARETH shall take affirmative action to eliminate waste water characteristics that exceed the limitation imposed by HANOVER or COB ordinances. Affirmative action may include but not be limited to: imposing a moratorium on future connections, imposing flow characteristic restrictions on customers within Lower Nazareth Township, collecting, pumping and hauling flows away from the point of connection and limiting infiltration and inflow. Such affirmative action shall be undertaken within sixty (60) days of written notice by HANOVER and during

the entire period of violation of this Agreement provision, LOWER NAZARETH shall pay HANOVER a penalty of One Hundred (\$100.00) Dollars per day. Such penalty shall be due and payable in thirty (30) days of written notice by HANOVER. Such penalty shall be due in addition to any cost or liability incurred by HANOVER as a result of the violation of wastewater characteristics. For the purpose of this section, multiple violations in a given calendar day shall be treated as one day of violation. In addition to the costs and penalties, HANOVER can demand LOWER NAZARETH to provide specific corrected performance and/or cancellation of this Agreement for violations that continue more than twelve (12) consecutive months.

5. HANOVER agrees to indemnify and save harmless LOWER NAZARETH against all losses, costs or damages on account of any injury to persons or property occurring in the performance of this Agreement due to the negligence of HANOVER, its servants, agents or employees or resulting from violation of the terms of this Agreement.
6. LOWER NAZARETH agrees to indemnify and save harmless HANOVER against all losses, costs or damages on account of any injury to persons or property occurring in the performance of this Agreement due to the negligence of LOWER NAZARETH, its servants, agents or employees or resulting from violation of HANOVER'S ordinances and regulations which results in damage to the Hanover Facilities or the terms of this Agreement.
7. HANOVER for itself and its successors, and assigns, hereby agrees to hold LOWER NAZARETH, its supervisors, employees, consultants and representatives harmless and indemnify LOWER NAZARETH, its supervisors, employees, consultants and representatives from and against any and all claims, actions, damages, suits, expenses (including reasonable attorneys' fees), liabilities and the like, in law or in equity, and of any kind and nature, in connection with loss of life, personal injury and/or damage to property to any person arising from or in any way, directly or indirectly, associated with or caused by HANOVER'S violation of the terms of this Agreement.
8. LOWER NAZARETH for itself and its successors, and assigns, hereby agrees to hold HANOVER, its supervisors, employees, consultants and representatives harmless and indemnify HANOVER, its supervisors, employees, consultants and representatives from and against any and all claims, actions, damages, suits, expenses (including reasonable attorneys' fees), liabilities and the like, in law or in equity, and of any kind and nature, in connection with loss of life, personal injury and/or damage to property to any person arising from or in any way, directly or indirectly, associated with or caused by the sewage flows from LOWER NAZARETH or LOWER NAZARETH'S violation of the terms of this Agreement.
7. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

8. This Agreement contains the entire agreement of the Parties hereto with respect to the subject matter hereof and thereof, and supersedes all prior understandings and agreements of the Parties with respect thereto.
9. The term of this Agreement shall be perpetual.
10. This Agreement may not be amended except by the written agreement of both Parties.
11. Except as otherwise provided in this Agreement, any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the business address of a Party and handed to the receptionist or authorized agent thereof, or sent by facsimile transmission, electronic mail, or overnight express to the party to whom the same is directed or, if sent by certified mail, postage and charges prepaid, addressed to the Party's address, at its principal place of business, or at such other address as a party may direct in writing.
12. The titles of the paragraphs and the headings of any section of this Agreement are for convenience of reference only and are not to be considered in construing the terms and provisions of this Agreement.
13. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons, or entity may require in the context thereof.
14. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act that would have originally constituted a violation, from having the effect of an original violation.
15. If any provision of this Agreement or its application to any person or circumstance shall be held or declared to be invalid, illegal or unenforceable to any extent by a court of competent jurisdiction, the remainder of this agreement and its application shall not be affected and shall be enforceable to the fullest extent permitted by law.
16. None of the provisions of this Agreement shall be for the benefit of or enforceable by any person other than the Parties to this Agreement and their respective successors and assigns.
17. It is the intention of the Parties that, during the term of this Agreement, the rights of the Parties and their successors-in-interest shall be governed by the terms of this Agreement, and the right of any Party or successor-in-interest to assign, transfer, sell or otherwise dispose of any interest in this Agreement shall be subject to limitations and restrictions of this Agreement. The Parties acknowledge that each has had an active role

in the drafting of this Agreement, and no language interpretation shall be construed against either Party on the basis of its role in the drafting of such language.

20. Each Party shall execute all such certificates and other documents and shall do all such other acts as are appropriate to comply with (a) the requirements of law for entering into this Agreement, which shall specifically include, on the part of both Parties, the proper adoption of ordinances, (b) any laws, rules regulations and third-party requests, including those of Pa. DEP, DRBC or USEPA, relating to the subject matter hereof, and (c) the intent and purposes of this Agreement.

21. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the Parties hereof has caused this Agreement to be duly executed and attested by its proper officers, pursuant to proper action of its governing body, all as of the day and year first above written.

ATTEST:

TOWNSHIP OF HANOVER,
NORTHAMPTON COUNTY,
PENNSYLVANIA

By: _____
Elizabeth D. Ritter, Secretary

By: _____
John N. Diacogiannis, Chairman
Board of Supervisors

ATTEST:

TOWNSHIP OF LOWER NAZARETH

By: _____
Timm A. Tenges, Secretary

By: _____
James S. Pennington, Chairman
Board of Supervisors