

ALLEN TOWNSHIP

NORTHAMPTON COUNTY, PENNSYLVANIA

ORDINANCE NO. 2016-03

AN ORDINANCE OF THE TOWNSHIP OF ALLEN, NORTHAMPTON COUNTY, PENNSYLVANIA PROVIDING FOR THE EXECUTION OF TWO (2) INTERMUNICIPAL COOPERATION AGREEMENTS WHICH PROVIDE FOR: (A) THE PURCHASE OF SANITARY SEWER CAPACITY IN THE CATASAUQUA SEWAGE TREATMENT PLANT, (B) THE PROVISION OF SANITARY SEWER TRANSPORTATION SERVICES THROUGH THE HANOVER TOWNSHIP, LEHIGH COUNTY, SANITARY SEWER LINES, AND (C) THE TREATMENT OF SANITARY SEWAGE AT THE CATASAUQUA BOROUGH TREATMENT PLANT.

WHEREAS, Allen Township (“Allen”) and Hanover Township, Lehigh County (“Hanover”), have agreed that Allen will purchase 25,500 gallons per day of sanitary sewer treatment capacity at the Borough of Catasauqua (“Catasauqua”) sanitary sewer treatment plant from Hanover; and

WHEREAS, Allen and Hanover have agreed that Hanover will provide sanitary sewer transmission services for up to 25,500 gallons per day of sanitary sewage through sanitary sewer lines owned and operated by Hanover; and

WHEREAS, Allen and Catasauqua have agreed that Catasauqua will provide treatment services for up to 25,500 gallons per day of sewage from Allen at the Catasauqua sanitary sewer treatment plant; and

WHEREAS, pursuant to the provisions of Article XV of the Pennsylvania Second Class Township Code and the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S.A. 2301 et seq., Allen Township is authorized to enter into intergovernmental cooperation agreements for the aforementioned purposes upon the passage of an Ordinance by the Board of Supervisors of Allen Township.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Allen, Northampton County, Pennsylvania as follows:

1. The Title and Whereas clauses of this Ordinance set forth above are incorporated herein by reference.
2. The Allen Township Board of Supervisors hereby approves entering into, and executing the two (2) Agreements, copies of which are attached hereto and incorporated herein by reference as exhibits "A" and "B", and which shall be filed with the minutes of the meeting at which this Ordinance was enacted, with the intent and effect that Allen Township shall be bound by the terms of the Agreements.
3. The Chairman or Vice-Chairman of the Board of Supervisors, acting alone or together with the Secretary or Assistant Secretary, are hereby authorized and directed on behalf of Allen Township to: (i) execute and deliver the Agreements, and (ii) execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry forth the provisions of the Agreements and the transactions to be effected under the Agreement, including payments to Hanover and Catasauqua of such amounts as are due by Allen Township pursuant to the terms of the Agreements.
4. All actions of any officer, agent or other representative of Allen Township heretofore taken in the pursuit of joining Allen's participation in the Agreements referred to herein, are hereby ratified and approved in all respects.

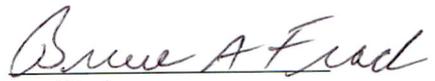
5. The Board of Supervisors of Allen Township is hereby authorized to take such other action as may be necessary or appropriate to carry out the purposes of this Ordinance and of the Agreement.
  
6. As required by the provisions of the Pennsylvania Intergovernmental Cooperation Act, the following matters are specifically found and determined:
  - a. The conditions of the Agreements are set forth in the Agreements attached hereto as exhibits "A" and "B";
  - b. The Agreements shall remain in effect for so long as Allen continues to utilize the Hanover sanitary sewer lines and Catasauqua treatment plant for the transmission and treatment of sanitary sewage originating in Allen;
  - c. The purpose and objectives of the Agreements are as set forth in this Ordinance and in the Agreements;
  - d. The manner and extent of financing the Agreement are that (i) no borrowing will be required by Allen Township, (ii) funds to implement Allen Township's obligations under the Agreement same shall come from normal and usual budgeted amounts for such matters, and (iii) other provisions governing the manner and extent payments for the contracted services shall be as set forth in the Agreements, all costs associated with the purchase of capacity in the Catasauqua treatment plant, the provision of sanitary sewer transmission services, and the provision of sanitary sewer treatment services shall be passed through to the Allen users of the aforementioned capacity and services;
  
7. The provisions of this Ordinance are severable and if any section, sentence, clause or part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect the remaining sections, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of

the Allen Township Board of Supervisors that this Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

8. Nothing contained in this Ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired or liability incurred, or any cause of action existing prior to the enactment of this Ordinance.
9. This Ordinance shall become effective five (5) days after enactment hereof.

DULY ORDAINED AND ENACTED this 12 day of May,  
2016, Northampton County, Pennsylvania.

Attest:   
Secretary

By:   
Chairman

(SEAL)

SEWAGE TRANSMISSION AGREEMENT

THIS AGREEMENT, made this 16<sup>th</sup> day of May, 2016, by and between ALLEN TOWNSHIP, Northampton County, Pennsylvania ("Allen") a municipal corporation and a second class township, with offices at 4714 Indian Trail Road, Northampton, Pennsylvania 18067.

AND

HANOVER TOWNSHIP Lehigh County ("Hanover"), a municipal corporation and home rule township with offices located at 2202 Grove Road, Allentown, Pennsylvania.

WITNESSETH:

WHEREAS, Allen owns certain sanitary sewer facilities for the purpose of serving certain properties in Allen Township, Northampton County; and

WHEREAS, Allen desires to have sewage from such properties transported to and treated by the Borough of Catasauqua Sewerage Treatment Plant ("Plant"); and

WHEREAS, to accomplish this purpose it will be necessary to traverse Hanover Township, Lehigh County, with new sewer lines and to transfer from Hanover to Allen, certain capacity already allocated to Hanover in the Plant; and

WHEREAS, Hanover desires to cooperate with Allen, but not to incur any costs, liability or other expense as a result of such cooperation; and

WHEREAS, Allen, in order to encourage the assistance and cooperation of Hanover wishes to assure Hanover that Hanover will incur no costs, liability or other expenses by reason of such assistance and cooperation; and

WHEREAS, Hanover owns and/or operates a sanitary sewer line running from a metering station on Weaversville Road near the municipal boundary of Hanover and Hanover Township, Northampton County to Manhole #425 near Willowbrook Road in Hanover (the "Han-Nor-Co-Line") and owns and operates a sewer line from there to Manhole #417 at the municipal boundary of Hanover and the Borough of Catasauqua (the "Joint Line"); and

WHEREAS, a developer of a project in Allen township intends to construct or have constructed a sewer line from the municipal boundary between Hanover and Allen Township (Manhole #8) to Manhole #425 in the Joint Line to serve Allen Township (the "Allen Line" and, together with the Joint Line and Han-Nor-Co Line, the "Sewer Lines");

NOW, THEREFORE, in consideration of the mutual covenants set forth below other good and valuable consideration, and intending to be legally bound hereby, the Allen Township, Northampton County and Hanover Township, Lehigh County, agree as follows:

#### SEWER PLANT CAPACITY TRANSFER

1. By separate agreement ("Transfer Agreement") Hanover intends to transfer to Allen from its present allocation of Five Hundred Five Thousand Eight Hundred Seventy-Five (505,875) gallons per day capacity at the plant, the capacity of Twenty-Five Thousand Five Hundred (25,500) gallons per day, subject to any approval of The Borough of Catasauqua, or any other approvals which may be rightfully required ("Transfer Approvals") and the payment by Allen to Hanover of One Hundred and Fifty-Nine Thousand Three Hundred and Seventy-Five Dollars (\$159,375.00).

2. Allen shall make a separate agreement with the Borough of Catasauqua for direct payment by Allen to Catasauqua of any and all charges, fines, fees, levies, assessments or other such costs and expenses arising from the transportation and treatment of sewerage from Allen ("Billing Agreement"). Such agreement shall include a provision to deduct the sewage volume and strength attributable to sewage from Allen's sewer lines from the volume and strength of sewage flowing from Hanover's sewer lines into Catasauqua. Copies of

such meter readings and strength reports shall be provided to Township at such time as they are taken by or provided to Catasauqua.

3. Allen further agrees that in the future, in the event any municipal, township, state, federal or other agency authorized by law establishes or imposes any costs, fees, fines, assessments or other such expenses with respect to sewage originating in Allen, they shall be a direct responsibility of Allen and shall be paid by Allen to such entity.

4. Notwithstanding any other provisions of this Agreement, Hanover will not accept any sewage from Allen into Hanover Allen Line until the execution of the Transfer Agreement and Billing Agreement and receipt of all Transfer Approvals.

#### MAINTENANCE

5. Hanover shall maintain the Sewer Lines, including, but not limited to, testing, flushing, meter reading, repairs, clearing blockages, sampling and submission of any required county, state or federal filings or reports. Hanover shall maintain records of the cost of such maintenance, including but not limited to costs of its equipment, employees, engineers, attorneys, and consultants. Allen shall pay one-third of the cost of such maintenance costs plus five percent (5%) for administration, as follows:

Allen shall pay one-third of the estimated cost of maintenance of the Sewer Lines within 30 days of receipt of a Statement of Estimated Maintenance Costs from Hanover at the beginning of each calendar year. At the conclusion of such year, Hanover shall provide to Allen a Statement of Actual Maintenance Costs plus the five percent (5%) administrative fee, together with a reconciliation of the actual costs and the estimated costs paid. Allen shall pay any deficiency or receive a credit toward the following year's estimated cost of maintenance payment for any excess payment. The estimated cost of maintenance for each year except the first year shall be the actual cost of maintenance for the previous year. The Statement of Estimated Maintenance Cost and Statement of Actual Maintenance Costs and Administrative Fee, together with the reconciliation,

shall be provided to Allen in a single document. Allen shall pay the amount due on such statements within thirty (30) days. The estimated total cost of maintenance for the first calendar year shall be \$8,560 of which Allen will pay one-third or a portion thereof prorated to the portion of the calendar year remaining after commencement of use of the Allen Line. Such first payment of estimated costs shall be made prior to the commencement of use of the Sewer Lines by Allen.

6. At such time due to normal use and wear, act of God or other circumstances beyond the control of Hanover, replacement or reconstruction is necessary of any portion of the sewer lines of Hanover through which sewage originating in Allen flows, a reasonable allocation of such capital costs (including such costs necessary to cover appropriate financing) shall be added to the annual maintenance fee. Reasonable allocation shall mean Allen shall pay none of the capital costs for work on the Han-Nor-Co Line; Allen shall pay 100% of the capital costs for work on the Allen Line; Allen shall pay one-third of the capital costs for work on the Joint Line. If a property which is a sewer customer of Hanover ties into the Allen Line, Allen shall thereafter pay one-half of the capital costs for work on the Allen Line. This provision shall not be construed to require Allen to contribute or finance directly any such capital improvement but is limited to the recovery through annual payments thereafter of such costs over the life of the improvement or life of the financing period, whichever is less. If the cost of the improvement is paid by Hanover directly, rather than financed, the cost shall be amortized in equal payments including principal and interest over the life of the improvement, but not more than thirty years, with interest at the Wall Street Journal thirty (30) year fixed mortgage rate as selected by Hanover for a date within sixty days prior to the initial bill to Allen for its portion of such capital costs.

#### EXPENSES

7. Allen shall reimburse Hanover for all Township's costs for legal services, fees and expenses associated therewith in negotiating, and advising Hanover with respect to this Agreement.

INDEMNITY

11. Allen agrees to exonerate, indemnify and save harmless Hanover officers, elected officials, engineer and attorneys and Hanover's appointees and employees or other agents, employees or assigns from any and all claims, actions, awards, verdicts, or judgments together with reasonable counsel fees based upon or arising out of sewage discharged from Allen into the Sewer Lines, for damages or injuries, including death, to persons or properties caused by or sustained in connection with respect to such sewage discharged by Allen and, any conditions created thereby, except in the case of gross negligence or willful misconduct by Hanover is the cause of such damages or injuries and among other things, if requested by Hanover, will assume without expense to Hanover the defense of any claims or actions against Hanover, its officers, elected officials, appointees, employees, agents, or assigns arising out of such discharge.

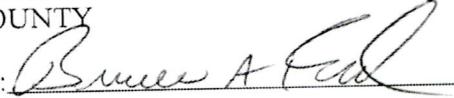
MISCELLANEOUS

12. The parties hereto have entered into this Agreement only after each has consulted with its own counsel and in no case shall the fact that one party or the other may have drafted all or portions of this Agreement cause such Agreement to be read more strictly against one party or the other and it shall be interpreted on the basis that both parties contributed equally to its drafting.

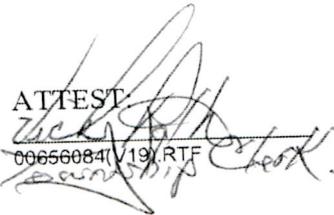
ATTEST:



ALLEN TOWNSHIP NORTHAMPTON  
COUNTY

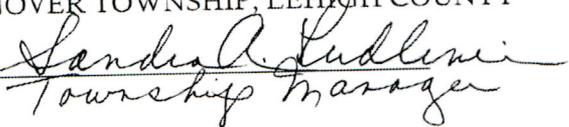
By: 

ATTEST:



00656084(V19).RTF  
Township Clerk

HANOVER TOWNSHIP, LEHIGH COUNTY

By:   
Township Manager

**AGREEMENT FOR THE TRANSFER OF ALLOCATED DAILY FLOW  
CAPACITY BETWEEN ALLEN TOWNSHIP NORTHAMPTON COUNTY,  
HANOVER TOWNSHIP LEHIGH COUNTY AND THE BOROUGH OF  
CATASAUQUA PURSUANT TO SECTION 3.05 OF THE INTERMUNICIPAL  
AGREEMENT, DATED NOVEMBER 4, 1991, AND RELATING TO THE  
CATASAUQUA WASTEWATER TREATMENT FACILITY**

**THIS AGREEMENT FOR TRANSFER OF ALLOCATED DAILY FLOW  
CAPACITY** (hereinafter, "Agreement") is made and entered into this 10<sup>th</sup> day of May, 2016, by and between the BOROUGH OF CATASAUQUA, HANOVER TOWNSHIP LEHIGH COUNTY and ALLEN TOWNSHIP, NORTHAMPTON COUNTY and is as follows.

**Recitals**

**WHEREAS**, the Borough of Catasauqua, directly and as successor to the Catasauqua Borough Authority (hereinafter, "Borough") and Hanover Township, Lehigh County (hereinafter, "HanLeCo") are parties to a certain Inter-Municipal Agreement, dated November 4, 1991, pertaining to, among other things, the operation of a Wastewater Treatment Facility in the Borough (hereinafter, "WWTF"); and

**WHEREAS**, the Borough is the Permittee of the WWTF pursuant to a certain NPDES Permit Number PA0021580, effective January 1, 2013; and

**WHEREAS**, Section 3.05 of the Inter-Municipal Agreement provides for the sale, transfer or lease by a party of any unused portion of its allocated Daily Flow capacity (hereinafter, "DFC") to a third party under certain terms and conditions; and

**WHEREAS**, HanLeCo desires to transfer a portion of its unused, allocated DFC to Allen Township, Northampton County (hereinafter, "Allen") so as to accommodate certain land development within Allen; and

**WHEREAS**, the amount of DFC which HanLeCo has agreed to transfer, and Allen has agreed to accept is Twenty-Five Thousand Five Hundred (25,500) gallons; and

**WHEREAS**, Allen acknowledges and agrees that by accepting the transfer from HanLeCo it shall be bound by the Inter-Municipal Agreement and shall comply with the transfer requirements of Section 3.05; and

**WHEREAS**, the Borough agrees to the transfer, provided that Allen complies with all of the terms, conditions and obligations of this Agreement and the Inter-Municipal Agreement; and

**WHEREAS**, the Parties enter into this Agreement for the purpose of amending the Inter-Municipal Agreement through the transfer of a portion of HanLeCo's allocated, DFC to Allen.

**NOW THEREFORE**, in consideration of the mutual promises and undertakings herein set forth and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

#### **Agreement**

1. The foregoing Recitals are incorporated herein by reference and made a part hereof.
2. Pursuant to the terms of the Inter-Municipal Agreement and particularly Section 3.05 thereof, HanLeCo hereby transfers to Allen Twenty-Five Thousand Five Hundred (25,500) gallons of HanLeCo's allocated DFC, effective October 1, 2016 ("Transfer Date").
3. Prior to the Transfer Date, Allen shall enact the Borough's Industrial Pre-Treatment Ordinance and provide a certified copy of that Ordinance to the Borough and HanLeCo.
4. On and after the Transfer Date, Allen shall be bound by all of the terms and conditions of the Inter-Municipal Agreement, the Borough's Industrial Waste Ordinance and any other laws, ordinances and regulations relating to the treatment and disposal of sewage, and with respect to all of the foregoing, any amendments thereto. Further, at that time Allen shall be bound by all of the terms and conditions of the Lease Agreement between the Borough and the Catasauqua Borough Authority ("Authority"), as applicable.
5. The Borough acknowledges the transfer of capacity set forth in Paragraph 2 and confirms that pursuant to the Inter-Municipal Agreement upon and after the Transfer Date, Allen shall be responsible for all obligations and entitled to all rights with respect to such capacity, and HanLeCo shall be relieved of such rights and obligations with respect to such capacity.
6. This Agreement shall amend the Inter-Municipal Agreement to add Allen as a party thereto, effective as of the Transfer Date.

THIS SPACE INTENTIONALLY LEFT BLANK

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

ATTEST:

BOROUGH OF CATASAUQUA

Matthew Curtin

BY:

[Signature]  
BOROUGH MANAGER

ATTEST:

HANOVER TOWNSHIP LEHIGH  
COUNTY

[Signature]  
Township Clerk

BY:

Sandra Budline  
Township Manager

ATTEST:

ALLEN TOWNSHIP NORTHAMPTON  
COUNTY

[Signature]

BY:

Bruce A. Ford