



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Robert Vidoni, City Clerk

From: Loren Speziale, Esq., Assistant City Solicitor

Re: Proposed Resolution – Intermunicipal Cooperation Agreement with Lower Nazareth Township, Bethlehem Township, and Bethlehem Township Municipal Authority

Date: March 29, 2022

Attached is a proposed Resolution in connection with the Intermunicipal Cooperation Agreement with Lower Nazareth Township, Bethlehem Township, and Bethlehem Township Municipal Authority for the LVTC III Subdivision for Council's consideration.

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

/s/ Loren L. Speziale
Loren L. Speziale, Esq., Assistant City Solicitor

Cc: Edward Boscola

RESOLUTION _____

**AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL COOPERATION AGREEMENT
PURSUANT TO 53 Pa. C.S.A. §2307 BY AND BETWEEN
THE CITY OF BETHLEHEM, LOWER NAZARETH
TOWNSHIP, BETHLEHEM TOWNSHIP, AND
BETHLEHEM TOWNSHIP MUNICIPAL AUTHORITY.**

WHEREAS, the CITY OF BETHLEHEM, is a municipal corporation being a City of the Third-Class, subject to the Optional Third-Class City Charter Law, organized and existing under the laws of the Commonwealth of Pennsylvania, its constituent parts being split by law between Northampton County and Lehigh County, Pennsylvania with principal administrative offices at City Hall, 10 E. Church Street, Bethlehem, PA 18018 (hereinafter referred to as "City"); and

WHEREAS, a land development located in Lower Nazareth Township and Bethlehem Township and known as Lehigh Valley Trade Center III Subdivision and Land Development ("LVTC") has received conditional preliminary/final subdivision and land development plan approval from Lower Nazareth Township and Bethlehem Township (the "Development"); and

WHEREAS, LVTC is seeking access to public sanitary sewer for a portion of the Development designated as the Service Area in the Intergovernmental Cooperation Agreement (the "Agreement"); and

WHEREAS, Lower Nazareth Township, Bethlehem Township and Bethlehem Township Municipal Authority have agreed that the Service Area can be provided public sewer service through Bethlehem Township Municipal Authority and Bethlehem Township, and the sanitary sewer flow for the Service Area will ultimately be discharged into and treated by the City's waste water treatment plant in accordance with the terms and conditions set forth in the Agreement; and

WHEREAS, the Agreement shall be subject to all the conditions and terms specified and set forth in the prior agreements between Bethlehem Township and the City regarding limitations and obligations regarding discharge of sewage into the City's sewer lines and treatment of sewage by the City's waste water treatment plant (collectively, the "Bethlehem Township Agreements"); and

WHEREAS, the duration of the Agreement shall be current with and extend for the duration of the Bethlehem Township Agreements; and

WHEREAS, subject to the terms and conditions of the Bethlehem Township Agreements, the Agreement further addresses the manner and extent of financing the obligations of the Agreement and the organizational structure necessary to implement the Agreement.

NOW THEREFORE BE IT RESOLVED, on this ____ day of _____, 2022, that the City Council of the City of Bethlehem, approves and ratifies the intergovernmental cooperation agreement attached hereto and that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute the same on behalf of the City of Bethlehem.

President of Council

ATTEST:

City Clerk

**INTERMUNICIPAL COOPERATION AGREEMENT FOR LVTC III SUBDIVISION
AND LAND DEVELOPMENT IN LOWER NAZARETH TOWNSHIP,
NORTHAMPTON COUNTY, PENNSYLVANIA FOR TRANSPORTATION THROUGH
BETHLEHEM TOWNSHIP MUNICIPAL AUTHORITY LINES AND TREATMENT AT
THE CITY OF BETHLEHEM WASTE WATER TREATMENT PLANT**

THIS AGREEMENT made this _____ day of _____, 2022, by and between LOWER NAZARETH TOWNSHIP, a second class township organized under the laws of the Commonwealth of Pennsylvania with offices at 623 Municipal Drive, Nazareth, Northampton County, Pennsylvania (hereinafter referred to as "LNT"), BETHLEHEM TOWNSHIP, a first class township organized under the laws of the Commonwealth of Pennsylvania, with offices at 4225 Easton Avenue, Bethlehem, Northampton County, Pennsylvania 18020 (hereinafter referred to as "BT"), BETHLEHEM TOWNSHIP MUNICIPAL AUTHORITY, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, with offices at 3535 Orth Street, Bethlehem, PA 18020 (hereinafter referred to as "BTMA"), and the CITY OF BETHLEHEM, a third class city organized under the laws of the Commonwealth of Pennsylvania, with offices at 10 East Church Street, Bethlehem, Northampton County, Pennsylvania 18018 (hereinafter "COB") LNT, BT, BTMA and COB sometimes referred to as "Party" or collectively "Parties".

BACKGROUND

A. A land development located in LNT and BT and known as Lehigh Valley Trade Center III Subdivision and Land Development has received conditional preliminary/final subdivision and land development plan approval from LNT and BT (the "Development"). The equitable owner of the Development is LVTC III Owner, LLC, its successors and assigns ("LVTC").

B. The Development consists of three lots with Lot 1 being in LNT and Lots 2 and 3 being in both LNT and BT.

C. LVTC is seeking access to public sanitary sewer for Lots 1 and 3 of the Development from BT. LNT has agreed to permit Lots 1 and 3 to be provided with sanitary sewer service by lines of BTMA and BT and with sewage treatment by the COB waste water treatment plant (the "COB WWTP"). The lands comprising Lots 1 and 3 of the Development are as shown in the attached Exhibit "A", hereinafter known as the "Service Area".

D. LNT, BT and BTMA have agreed that the Service Area can be provided public sewer service through BTMA and BT, and the sanitary sewer flow for the Service Area will ultimately be discharged into and treated by the COBWWTP.

E. Based on the foregoing, and in order to better serve the health and welfare of both LNT and BT, the Parties have reached an understanding that the most advantageous way to meet the sanitary sewage needs of both BT and LNT for the Service Area is by an intermunicipal cooperation agreement pursuant to which BT agrees to transport sanitary sewage from the Service Area through lines owned by BTMA for treatment by the COB WWTP; and BT further agrees to provide Lots 1 and 3 of the Development with 5,000 gallons per day of sanitary sewage treatment

capacity at the COB WWTP and LNT has agreed to relinquish 5,000 gallons per day of sewage treatment capacity at the COB WWTP to BT for this to occur for Lots 1 and 3 of the Development. BT agrees to charge LVTC, or its successors and assigns, the same non-residential rates it charges its non-residential customers in BT, and reserves the right to set all fees charged to the property owners in the Service Area and connecting to the sanitary sewer lines constructed therein, including but not limited to connection fees, tapping fees and sewer rental fees.

F. It is the intent of BT that it accept, under the terms hereof, all non-residential sewage flowing from the Service Area, and it agrees to transport the same through sewer lines of BTMA for treatment by the COB WWTP and BT will bill LVTC or its successors and assigns in accordance with the terms of this Agreement, based on the wastewater discharge flows, without discount, and without surcharge.

G. LNT and COB acknowledge that they currently have no business relationship with respect to sanitary sewer service except to the extent set forth in this Agreement and in prior intermunicipal cooperation agreements.

NOW, THEREFORE, in consideration of their mutual promises, each to the other, the receipt of which is hereby acknowledged, and intending to be legally bound thereby, the Parties hereto agree as follows:

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

2. LNT does hereby grant unto BT the sole and exclusive right and privilege to provide sanitary sewer service to the Service Area shown on the attached Exhibit "A", as hereafter described, under and subject to the conditions hereinafter set forth.

3. BT hereby agrees to provide 5,000 gallons per day of sanitary sewage treatment capacity at the COB WWTP ("Capacity") for the Service Area, and LNT agrees to relinquish 5,000 gallons per day of its own sanitary sewage treatment capacity at the COB WWTP to BT. The Capacity shall be used exclusively by LVTC and its successors and assigns for the Service Area.

4. BT agrees to accept, and LNT agrees to discharge into BTMA sewer lines, and BTMA agrees to accept all the non-residential sanitary sewage from the Service Area for transportation and treatment at the COB WWTP. BT shall bill LVTC quarterly March, June, September and December within fifteen (15) days of receipt of the meter readings by BT, at the same rate charged BT non-residential customers as modified from time to time by ordinance of BT. LVTC shall pay said quarterly bill within thirty (30) days from its date. All properties in the Service Area shall be deemed sewer service customers of BT. LNT shall have no jurisdiction over said customers or over rates or fees charged customers in the Service Area by BT.

(a) Sewer service in the Service Area shall not commence until this Agreement is signed by all Parties and enabling ordinances or resolutions are adopted by the Parties authorizing signing of this Agreement.

(b) Sewer service to the Service Area shall be governed by this Agreement.

(c) At no time shall the cost to LVTC for sewer service under this Agreement ever exceed the rate charged BT customers for the same classification of customers and the same classification of waste water discharge for similar customers.

(d) This Agreement is not intended to create any individual user rights in the sewers constructed or used pursuant to this Agreement, as a third party beneficiary or otherwise excepting however, that LVTC shall have all rights as a third party beneficiary of this Agreement. The only parties entitled to enforce this Agreement shall be the Parties and the third party beneficiary.

(e) All sewage transported from the Service Area through the BTMA sewage system shall be done without any conveyance capacity charge due BTMA by LNT for the relinquished capacity.

5. BTMA, BT and LNT acknowledge and agree that BTMA shall have the right, in addition to the charges set in Paragraph 4, to collect from LVTC such connection fees and tapping fees that are normally charged by BTMA.

6. BTMA, BT and LNT are Parties to this Agreement to signify their consent to transport the non-residential sewage from the Service Area through BTMA system and to treat the same at the COB WWTP based on BTMA and BT allocation in the COB WWTP and for BT to receive payment therefor from LVTC and its successors and assigns in accordance with this Agreement. LNT is a party to this Agreement to signify its consent to transport the non-residential sewage from the Service Area through BTMA system for treatment at the COB WWTP. The COB is a party to this Agreement to signify its consent to accept and treat the non-residential sewage in accordance with this and other Agreements with BTMA and BT.

7. Whenever a building permit is issued by LNT under which a non-residential building is to be constructed and connected to the subject sewer line in the Service Area under this Agreement, LNT shall promptly notify BT of the name and address of the property owner, tax map parcel number, the name of the subdivision and lot number, deed reference, estimated average daily sewage flow and the date of the proposed connection. Within fourteen (14) days of the issuance of an occupancy permit, a copy of the same shall be sent to BT by LNT.

8. The sewage flow from the Service Area shall be based upon consumption flow measurements provided by the City of Bethlehem.

9. The Parties shall permit authorized representatives of each other access at all reasonable times to the Parties records relating to matters hereunder, in order to assure compliance with the terms of this Agreement, including access for waste sampling and measurement.

10. BT, BTMA, and LNT each agree to furnish or to cause to be furnished to each other, upon reasonable cause shown by any Party, all information deemed essential by a Party, for determination of the volume, character and strength of sewage discharged into the BTMA'S sewer system.

11. BT has entered into various agreements with COB regarding limitation and obligations regarding discharge of sewage into the COB sewer lines and treatment of sewage by COB WWTP. LNT, by entering into this Agreement, agrees to comply with and be bound by the same and any

amendments made from time to time, as to sewage transported from the Service Area and discharged into the lines of BTMA and COB and thence treated at the COB WWTP, and all discharge from LNT shall be within the quality parameters set from time to time by COB and the COB WWTP and BT. BT agrees to promptly provide LNT with all amendments to all COB WWTP and/or BT treatment regulations. BT agrees that any changes subsequently made in its regulations or those proposed by COB WWTP with regard to quality of effluent acceptable for transport through BTMA lines and for treatment at COB WWTP that those new regulations will provide for a sixty (60) day notice to LNT in order for it to adopt any necessary ordinances. LNT agrees to promptly pass whatever ordinances are required by COB to limit the types of discharge with the COB WWTP.

12. It is agreed that each Party shall pay for their individual costs of engineering and legal review and preparation of resolutions and ordinances.

13. This Agreement is recognized as an agreement in principle of the Parties, and each Party will adopt such ordinances or resolutions required in order to approve and effectuate the terms and provisions of this Agreement.

14. The Parties hereto agree that if, at any time, disputes shall arise between them concerning factual determinations under the terms of this Agreement, the matter in dispute shall be referred to three arbitrators, one to be appointed by LNT, one to be appointed by BTMA and BT and the third to be agreed upon by the two appointees so selected; provided, however, that in the event such appointees cannot agree on the third arbitrator, the President Judge of the Court of Common Pleas of Northampton County, Pennsylvania, shall appoint the third arbitrator. A decision or award of the majority of such arbitrators shall be final and binding upon the Parties hereto, their respective successors and assigns. Each Party hereto shall pay the costs including costs of its own appointee and one-half of the costs of the third arbitrator. The arbitration shall be conducted in accordance with Pennsylvania Revised Statutory Arbitration Act.

15. The failure of any Party hereto to insist upon strict performance of this Agreement or any of the terms or conditions thereof shall not be construed as a waiver of any of its rights hereunder.

16. This Agreement may only be modified, amended or supplemented by the written agreement of all the Parties hereto.

17. Should any one or more of the provisions of this Agreement for any reason be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement and this Agreement shall, in such circumstances, be construed and enforced as if such illegal, invalid or unenforceable provision has not been contained herein.

18. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

19. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute but one and the same instrument.

[Signatures Appear on Next Page]

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals the day and date first above written.

ATTEST:

LOWER NAZARETH TOWNSHIP

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

ATTEST:

**BETHLEHEM TOWNSHIP
MUNICIPAL AUTHORITY**

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

ATTEST:

BETHLEHEM TOWNSHIP

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

ATTEST:

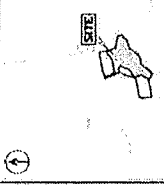
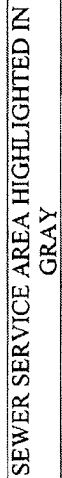
CITY OF BETHLEHEM

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

EXHIBIT “A”

Service Area Map



BOHLER

REVIEWS

[illegible][illegible]

FOR EXHIBIT
PURPOSES ONLY

**POWER
SERVICE AREA
EXHIBIT**

LVTC III OWNER, LLC

44-38861-1073
 PORTAL, ALBERTA 10/10/64

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EXHIBIT PLAN

QUALITY ASSURED EXHIBIT A JULY 10	OHS DATE - 07/26/07
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