

LEMON TOWNSHIP AND TUNKHANNOCK TOWNSHIP
JOINT MUNICIPAL SEWER AUTHORITY

October 6, 2016

RESOLUTION NO. 2016-10-01

**REGARDING PAYMENT OF INTEREST FROM THE LEMON TOWNSHIP
AND TUNKHANNOCK TOWNSHIP JOINT MUNICIPAL SEWER
AUTHORITY TO TUNKHANNOCK TOWNSHIP AND LEMON TOWNSHIP
RELATING TO FUNDS ADVANCED BY THE TOWNSHIPS FOR THE LAKE
CAREY SEWER PROJECT**

WHEREAS, Tunkhannock Township, Wyoming County (“Tunkhannock”), Lemon Township, Wyoming County (“Lemon”) (collectively, the “Municipalities”), and the Lemon Township Tunkhannock Township Joint Municipal Sewer Authority (the “Authority”) (the “Parties”) have been working together to implement a sewer project at Lake Carey; and

WHEREAS, the Authority is a municipal authority incorporated under the Pennsylvania Municipality Authorities Act of 1945, as amended (the “Act”), pursuant to ordinances adopted by the Municipalities; and

WHEREAS, the primary purpose of the Authority, as set forth in its By-Laws, is to acquire, hold, construct, finance, approve, maintain, operate, own, lease, sanitary systems or parts thereof, sewage treatment works, and for such allied purposes as may be necessary for Tunkhannock, Lemon, and such other territory as it may serve; and

WHEREAS, the Municipalities prepared and adopted a Joint Sewage Facility Plan (the “Sewage Plan”) pursuant to the Pennsylvania Sewage Facilities Act, as amended, (“Act 537”), and the Sewage Plan was approved by the Pennsylvania Department of Environmental Protection (the “DEP”); and

WHEREAS, the Municipalities assigned the Authority the responsibility of implementing the Sewage Plan; and

WHEREAS, upon preliminary investigation into funding sources for the Sewage Plan, the Authority determined that user costs could be reduced if certain design and construction modifications could be implemented; and

WHEREAS, the design and construction modifications required revisions to the Sewage Plan at additional cost (the “Sewage Plan Update”); and

WHEREAS, Tunkhannock, Lemon, and the Authority entered into a joint municipal agreement known as the “Lake Carey Sewage Plan Update Agreement” on May 2, 2016, pursuant to which Tunkhannock agreed to advance the cost of the Sewage Plan Update in the amount of one hundred twenty five thousand dollars (\$125,000.00); and

WHEREAS, pursuant to the Lake Carey Sewage Plan Update Agreement, the Authority agreed to reimburse the Municipalities the entire cost incurred by the Municipalities for the Sewage Plan Update upon financial closing for the implementation of the Sewage Plan; and

WHEREAS, the Municipalities have advanced other costs to the Authority relating to implementation of the Sewage Plan; and

WHEREAS, pursuant to these additional funding requests, the Authority agreed to reimburse the Municipalities the entire cost incurred by the Municipalities for advancing these other costs upon financial closing for the implementation of the Sewage Plan; and

WHEREAS, the Lake Carey Sewage Plan Update Agreement did not contain any provisions relating to the payment of interest to the Municipalities for advancing the cost of the Sewage Plan Update; and

WHEREAS, the additional funding requests did not contain any provisions relating to the payment of interest to the Municipalities for advancing other costs relating to implementation of the Sewage Plan; and

WHEREAS, in consideration of the Municipalities advancing the cost of the Sewage Plan Update, the Authority now wishes to reimburse the Municipalities the entire cost incurred by the Municipalities for the Sewage Plan Update upon financial closing for the implementation of the Sewage Plan, plus 2% interest per annum; and

WHEREAS, in consideration of the Municipalities advancing other costs relating to implementation of the Sewage Plan, the Authority now wishes to reimburse the Municipalities the entire cost incurred by the Municipalities for other costs relating to implementation of the Sewage Plan upon closing on the financing for the implementation of the Sewage Plan, plus 2% interest per annum; and

WHEREAS, Section 5607(d)(13) of the Act authorizes the Authority to “make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business;” and

WHEREAS, Section 5607(d)(14) of the Act authorizes the Authority to “borrow money and accept grants from and to enter into contracts, leases or other transactions with . . . a municipality;” and

WHEREAS, the Authority is pursuing funding for the Sewage Plan from financing sources, including USDA’s Rural Utilities Service and PennVest (the “Eventual Financing Source”), and the use of funds from the Eventual Financing Source may or may not be subject to certain statutory restrictions; now therefore be it

RESOLVED, that to the extent the Eventual Financing Source recognizes the costs incurred by the Municipalities for the Sewage Plan Update as reimbursable project costs, and to the extent funds from the Eventual Financing Source may be used for the payment of interest in accordance with applicable law, the Authority will, upon financial closing with the Eventual Financing Source, reimburse the Municipalities for advancing the cost of the Sewage Plan Update, to the extent incurred, in accordance with the terms of the Lake Carey Sewer Plan Update Agreement, with interest payable on the amount advanced therein at a rate of 2% per annum, calculated yearly not in advance; and be it further

RESOLVED, that to the extent the Eventual Financing Source recognizes other costs relating to implementation of the Sewage Plan incurred by the Municipalities as reimbursable project costs, and to the extent funds from the Eventual Financing Source may be used for the payment of interest in accordance with applicable law, the Authority will, upon financial closing with the Eventual Financing Source, reimburse the Municipalities for advancing other costs relating to implementation of the Sewage Plan, to the extent incurred, with interest payable on the amount advanced therein at a rate of 2% per annum, calculated yearly not in advance.

Resolved by the Board of the Lemon Township and Tunkhannock Township Joint Municipal Sewer Authority, on the 6th day of October, 2016.

Attested:

LEMON TOWNSHIP AND
TUNKHANNOCK TOWNSHIP
JOINT MUNICIPAL SEWER
AUTHORITY

Rebecca Kilmer
Secretary

Veto Barziloski, Jr.
Board Chairperson