

CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 9092

DATE 12-17-20

TITLE

RESOLUTION FOR THE TRANSFER OF OPERATIONS AND TRANSITION AGREEMENT FOR STORMWATER CONTROL SYSTEM

THIS AGREEMENT is made and executed as of March 1, 2021, by and between the **City of Williamsport**, a Pennsylvania City of the Third Class with offices at 245 West Fourth Street, Williamsport, Lycoming County, Pennsylvania (hereinafter referred to as the "City"), and the **Williamsport Sanitary Authority**, a Pennsylvania Municipal Authority with offices at 253 West Fourth Street, Williamsport, Lycoming County, Pennsylvania (hereinafter referred to as the "Authority").

RECITALS

WHEREAS, the City is required by applicable law, including the regulations at 40 CFR Part 122 and parallel state regulations, to implement and maintain a program of stormwater controls; and

WHEREAS, a comprehensive program of stormwater management is fundamental to the public health, safety and welfare and to the protection of persons and property within the City; and

WHEREAS, the City incurs costs to construct, reconstruct, operate and maintain a public stormwater control system (the "System"); and

WHEREAS, due to increases in the number and complexity of regulations, as well as fiscal considerations, the City lacks the necessary funding, staffing and expertise to operate, enhance and maintain the System in the most efficient and effective manner consistent with community resources and priorities; and

WHEREAS, the Authority owns and operates a sanitary sewer system within the City and, thereby, has the staffing and expertise to manage the System appropriately; and

WHEREAS, the Authority is authorized by applicable law, including 53 Pa. C.S. Section 5607(a), as well as by its articles of incorporation, to own, operate and maintain the System; and

WHEREAS, the City desires to transfer to the Authority, and the Authority desires to accept from the City, ownership of the System, together with the obligation to construct, reconstruct, operate and maintain the System; and

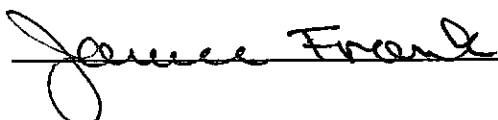
WHEREAS, each property within the City, directly or indirectly, is connected with, serviced by or benefited by the System; and

WHEREAS, applicable law, including 53 Pa. C.S. Sections 5607(a) and 5607(d), authorize the Authority to assess reasonable and uniform user fees in order to operate, enhance and maintain the System; and

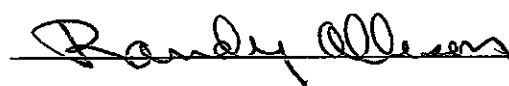
WHEREAS, the parties recognize that the Authority will develop, implement and assess reasonable and uniform user fees, which may vary by property based upon objective factors, such as the characteristics of individual properties, and will seek such other revenue sources as it deems necessary and prudent to operate, enhance and maintain the system; and

WHEREAS, the parties hereby find that all of the foregoing is in the best interests of the City and its residents and guests and will benefit the health, safety and welfare of the community and appropriately assure reasonable protection of persons and property within the City.

Approved



City Clerk



President

**TRANSFER OF OPERATIONS AND TRANSITION AGREEMENT FOR
STORMWATER CONTROL SYSTEM**

THIS AGREEMENT is made and executed as of the ____ day of October, 2020, by and between the **City of Williamsport**, a Pennsylvania City of the Third Class with offices at 245 West Fourth Street, Williamsport, Lycoming County, Pennsylvania (hereinafter referred to as the "City"), and the **Williamsport Sanitary Authority**, a Pennsylvania Municipal Authority with offices at 253 West Fourth Street, Williamsport, Lycoming County, Pennsylvania (hereinafter referred to as the "Authority").

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WHEREAS, applicable law, including 53 Pa. C.S. Sections 5607(a) and 5607(d), authorize the Authority to assess reasonable and uniform user fees in order to operate, enhance and maintain the System; and

WHEREAS, the parties recognize that the Authority will develop, implement and assess reasonable and uniform user fees, which may vary by property based upon objective factors, such as the characteristics of individual properties, and will seek such other revenue sources as it deems necessary and prudent to operate, enhance and maintain the system; and

WHEREAS, the parties hereby find that all of the foregoing is in the best interests of the City and its residents and guests and will benefit the health, safety and welfare of the community and appropriately assure reasonable protection of persons and property within the City.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows. The above recital provisions above are incorporated as substantive provisions of this Agreement

1. Transfer of the Controlling Operations for Stormwater System. The City hereby grants, transfers and conveys unto the Authority, control and operations of the System. The System and all assets conveyed hereunder are conveyed "AS IS" without warranty from the City. However, all applicable warranties on equipment and/or infrastructure will be transferred to the Authority. As of the effective date of this Agreement, the Authority shall commence and control operations associated with the System. The Authority shall operate, enhance and maintain the System, ensure continued effective and economical operation of the System through installation and management of best management practices, provide related services, such as inspections, asset management and regulatory oversight associated with stormwater and watershed management, and develop, assess and collect reasonable and uniform user fees to ensure sufficient and stable funding for those services. In performing its duties under this Paragraph, the Authority shall have and may exercise all of the powers available to it under applicable law, including without limitation Pennsylvania's Municipality Authorities Act as codified at 56 Pa C.S. 5601 et. seq. and any successor thereto.

2. System. The System is defined as the infrastructure designed to collect and convey stormwater and begins at each stormwater inlet point and carries through from there discharging to surface waters. It includes inlets, catch basins, manholes, pipes, culverts, pump stations, and all related appurtenances. The System does not include the levee crosspipes, the combined sewer system, any part of the Publicly Owned Treatment Works, or operation and maintenance of the current or future Grafius Run best management practices.

3. Operational Responsibility. Prior to the transfer, the City and the Authority will itemize a list of known operational responsibilities to be conducted after the transfer to the best of their abilities. Following the transfer contemplated by this Agreement, the Authority will be responsible for operating and maintaining the System with the exception of the pump stations as described in this paragraph.

There are nine pump stations associated with the System: Hepburn Street, Arch Street, Basin Street, Penn Street, Mill Run, Spring Run, McClures Run, Fox Hollow, and Cemetery Run. All nine pump stations are part of the Greater Williamsport Area Levee System. In accordance with the U.S. Army Corps of Engineers requirements, the City is the non-Federal sponsor and is

responsible for the operation and maintenance of all nine pump stations. The parties understand and agree that this agreement anticipates that the transfer of the operation and maintenance responsibilities for all nine pump stations will be delegated to the Authority upon the City's correction of the deficiencies identified by the U.S. Army Corp of Engineers and recommendations by AMEC dated February 26, 2018. The operations and maintenance responsibilities of all nine pump stations shall be solely handled by the City until the deficiencies identified by the U.S. Army Corp of Engineers and recommendations by AMEC are corrected and the operations and maintenance responsibilities are delegated to the Authority. The City will provide updates on the status of correcting the deficiencies and recommendations.

4. MS4 NPDES Permit. The City and Authority will request transfer of the PaDEP MS4 Permit responsibilities as allowed by regulation to be transferred to the Authority thirty (30) days prior to the transfer date as required by the current permit. It is anticipated that in accordance with PaDEP policy, both the City and the Authority will be co-permittees and the permit will define the parties' responsibilities and the parties will cooperate on all matters of joint interest. The parties understand that the Authority will assume responsibilities for any and all permit requirements as approved by PaDEP including the implementation of the Chesapeake Bay Pollution Reduction Plan. The City agrees to fulfill the street sweeping best management practice as submitted to PaDEP in the August 2020 HRG Chesapeake Bay Pollution Reduction Plan. The MS4 Permit Professional Services Agreement signed on December 21, 2017, which requires an annual payment of \$4,750.00 by the City to the Authority will no longer be required after the permit responsibilities are transferred to the Authority.

5. Land Development. Within 30 days of this Agreement, the City shall modify its procedures for land development approval such that the Authority is a partner in all aspects of stormwater management land development. Further, the City shall not issue any occupancy permit to any person without a certification from the City that the developer has complied with applicable stormwater management planning and implementation. Prior to City approval of any plan, the authority will have a 30-day opportunity to review and comment on the plan. The authority will be responsible for inspection of existing and future stormwater Best Management Practices as required to be inventoried to comply with the MS4 NPDES permit. In the event that a Best Management Practice is found by the Authority to be deficient and is required to be corrected, the City will through its ordinances, enforce the owner to make such timely corrections.

6. Agency Relationship. The City hereby appoints the Authority as its Agent for purposes of dealing and interacting with any third-party concerning rights, title, and interest in the System.

7. Permits. The City agrees to cooperate with the Authority and use its best efforts to assist the Authority in obtaining any permits necessary for operating the System and/or transferring any and all permits necessary to operate and maintain the System. If the Authority and City are joint permittees with respect to any permit, they shall continue to cooperate in obtaining and complying with the permit.

8. Ordinances, Resolutions and Regulations. The City and Authority shall enact, keep in effect and enforce all ordinances, resolutions and regulations necessary to facilitate the Authority's performance of its obligations hereunder.

9. Authority Legal Requirements. Following the transfer, the Authority will comply with all legal requirements necessary for the operation of the System.

10. Grants and Funding. The City and Authority shall cooperate as necessary to obtain grants and other funding to ensure effective and economical operation, maintenance and enhancement of the System.

11. Employee Training. The City and Authority shall cooperate with the Authority to ensure that the Authority's employees are properly trained to take on responsibilities related to the System. The City shall use its best efforts to train the Authority's employees and ensure a seamless succession associated with operations and control of the System.

12. Matters of Joint Interest. The City and Authority shall cooperate in matters of joint interest to the efficient, effective and economical operation of the System, such as curbing, street reconstruction, street sweeping, leaf removal, land development, emergency planning and response and MS4 permit compliance.

A. Notwithstanding any provision of this agreement, however, in the absence of a specific agreement to the contrary each party shall be solely responsible for funding its own operations, and neither party shall reimburse the other for work done.

B. With respect to matters such as curbing, street reconstruction, street sweeping and leaf removal, which will remain exclusively with the City, the parties shall coordinate the execution thereof to enhance the effective and economical operation, enhancement and management of the System.

C. With respect to matters such as land development and emergency planning and response, where the responsibility primarily belongs to the City but where the Authority will perform certain critical functions, the parties shall cooperate to ensure the most effective and economical discharge of their respective responsibilities, taking into consideration operation of the System.

D. With respect to MS4 permit requirements, the parties shall fulfill their agreed to responsibilities as described in the permit transfer application and the City will provide all information necessary for complete and accurate reporting.

E. The Authority shall reimburse the City for reasonable costs incurred to perform activities that are related to stormwater management, provided that the City obtains the Authority's prior written approval for any costs for which it later seeks reimbursement and provided that the City provides justification acceptable to the Authority for the costs for which it seeks reimbursement.

13. Separate Accounts. The Authority shall maintain separate accounts for stormwater management revenues and expenses, it being understood that the Authority cannot utilize revenues related to its sanitary sewer system for stormwater management expenses and cannot utilize revenues related to stormwater management for sanitary sewer expenses.

A. The Authority shall manage its stormwater accounts in accordance with applicable law and appropriate accounting principles.

B. It is understood that the Authority may transfer money from the sanitary accounts to the stormwater accounts, and *vice versa*, in the event of an emergency, to cover temporary revenue shortfalls, or for any other reason deemed good and proper by the Authority, provided, however, that any such money transferred between accounts as a temporary loan shall be repaid to the account from which it originated upon terms deemed reasonable and proper by the Authority.

14. Mutual Cooperation. The parties shall cooperate with each other and take all action, which, from time to time, may be required by law and/or which may be deemed by the Authority to be necessary and/or convenient with respect to operation, maintenance and enhancement of the System and imposition and collection of user fees. The obligations of the parties under this Paragraph shall continue after Closing.

15. Indemnification. The Authority agrees to indemnify and hold the City harmless for any responsibility or claims arising out of its operation of the Storm Water Management System after transfer, to include costs and fines for permit violations; provided, however, the Authority will not be responsible for permit violations or claims if they were attributable to deficiencies in the System that existed before its transfer to the Authority and that were not within the responsibility of the Authority to address or correct. The parties understand that the present permit holder for the System under the NPDES permit is the City.

16. Rights. All rights and obligations given herein to or imposed upon the respective parties hereto shall extend to and bind the several and respective successors and assigns, heirs; provided, however, that the City and Authority may not transfer, convey or assign its respective rights and obligations under this Agreement without the prior written consent of each other. The Authority is not assuming nor shall be bound by the debts, obligations, claims, charges, pension obligations, suits or other matters caused by, arising from or otherwise related to the City's operation, management, acts or omissions of the System prior to the City executing this Assignment in favor of the Authority.

17. Dispute Resolution. If there is any dispute between the parties regarding which party is responsible under this Agreement for operation of any part of the System, the parties' respective employees and agents shall first attempt in good faith to resolve the dispute at the operational level. If the dispute cannot be so resolved, the governing body of either party may officially notify the governing body of the other party in writing of the dispute, with the other party having thirty (30) days to respond in writing and to initiate remedial actions or negotiate a resolution. If a dispute cannot be resolved in this manner, the dispute shall be submitted to an arbitrator mutually agreed upon by the parties, whose decision shall be final and binding with respect to which party is responsible for operation of the affected portion of the stormwater system.

18. Jurisdiction. All of the parties to this Agreement hereby consent to the exclusive jurisdiction of the Lycoming County, Pennsylvania Court of Common Pleas, with respect to any dispute arising in connection with this Agreement or the enforcement thereof.

19. Choice of Law. This Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania.

20. Entire Agreement. This document contains the entire agreement made between City and Authority covered by this Agreement. This Agreement may not be amended, altered, revoked, waived or clarified orally or by any action other than by a signed writing.

21. Further Assurances. The parties agree to take such further action and execute such further documents as may be reasonably required to effectuate this transaction.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have made and executed this Agreement effective the day and year first written above.

ATTEST:

CITY OF WILLIAMSPORT

BY: _____
Janice Frank, City Clerk

BY: _____
Derek Slaughter, Mayor

BY: _____
Margaret J. Woodring , City Controller

ATTEST:

WILLIAMSPORT SANITARY AUTHORITY

BY: _____
Johnny R. Meyer, Secretary

BY: _____
William G. Ertel, Chairman