

## **LEASE AGREEMENT**

This Lease Agreement made and entered into as of \_\_\_\_\_, 2020, by and between the **BOROUGH OF CAMP HILL** (the “Borough”), a municipal corporation organized in accordance with the laws of the Commonwealth of Pennsylvania and the **CAMP HILL BOROUGH MUNICIPAL AUTHORITY** (the “Authority”), a municipal authority organized and existing pursuant to the Pennsylvania Municipality Authorities Act of 1945, as amended, and formed by the Certificate of Incorporation dated March 4, 2020 pursuant to the Articles of Incorporation, as amended.

**WHEREAS**, the Borough, pursuant to the authority vested in it by law, owns the stormwater drainage systems located in the Borough of Camp Hill, Cumberland County, Pennsylvania (hereinafter, “the Stormwater System”); and

**WHEREAS**, the Borough has determined to lease to the Authority, and the Authority has determined to lease from the Borough, the Stormwater System; and

**WHEREAS**, the Borough and the Authority desire to set forth the terms and conditions of the parties’ agreement that the Borough lease the Stormwater System to the Authority.

**NOW, THEREFORE**, in consideration of the execution and delivery of this Lease and One Dollar (\$1.00) paid by each party to the other, the receipt and sufficiency of all of which is hereby acknowledged, the parties do covenant and agree as follows:

**1. INCORPORATION**

The recitals set forth above are incorporated by reference herein and made a part hereof.

**2. TERM**

The Borough hereby leases to the Authority, the Stormwater System for a term of twenty-five (25) years, commencing on \_\_\_\_\_, 2020, and expiring on \_\_\_\_\_, 2045, upon the terms, covenants and agreements contained herein. The Borough shall have the right to extend the tenancy for one (1) additional term of ten (10) years, which extension right must be exercised by written notice to the Authority on or before December 31, 2040.

The Borough and the Authority are also parties to a Management Agreement further governing the parties’ relationship with respect the Stormwater System, which Management Agreement is dated \_\_\_\_\_ and was executed contemporaneously with this Lease Agreement. If said Management Agreement, according to the terms stated therein, shall be terminated at any time during the term of this Lease, this Lease shall be rendered null and void.

### **3. LEASE RENT**

The Authority shall pay to the Borough rent in such amounts as may become necessary as determined by the Borough and the Authority for use of the Stormwater System. No rent shall become due and payable upon the signing of this Lease. The Authority covenants that any rental amount that becomes due under this Lease shall continue to be payable, without suspension or abatement of any nature, irrespective of delays in the completion of the Stormwater System or improvements thereto, and notwithstanding the fact that all or any part or parts of the Stormwater System have been wholly or partially damaged, injured or destroyed, or if so damaged or destroyed, shall not have been repaired, replaced or rebuilt. In no event, however, shall the rent be less than the amount specified in 4.2(b).

### **4. AUTHORITY COVENANTS**

#### **4.1 OPERATION COVENANTS**

The Authority hereby accepts the lease of the Stormwater System from the Borough and agrees to properly maintain and operate the Stormwater System so as to provide stormwater service within the Borough.

#### **4.2 RATE COVENANT**

The Authority shall enact, and agrees to keep in full force and effect during the term of the Lease, a resolution or resolutions imposing annual stormwater rents and other charges upon the users of the Stormwater System served and to be served thereby, and impose fines or penalties otherwise providing for the enforcement of said resolutions as may be permitted by law.

The Authority covenants that the total of such stormwater rentals and other charges shall be at least such that the gross operating revenues which may be reasonably collected therefrom by the Authority in each lease year, together with any amount payable under agreements with others, and other available funds for such purposes (including, among other things, connection charges collected by the Authority and grants received by the Authority to be applied to the operation of the Stormwater System and any balances collected in prior years in excess of such requirements) will be sufficient to provide funds for the following purposes:

- (a) Payment by the Authority in such year of operating expenses related to the Stormwater System, including: (1) the amounts payable under any agreement with others for conveyance, expenses of maintenance, insurance, repair, alteration and inspection, of administrative, engineering and legal and auditing services and (2) all taxes, including income, profits, property, franchise and excise taxes; and
- (b) Payment by the Authority in such lease year, commencing with such year on January 1, 2020, to the Borough or its assigns of: (1) sums, if any, payable for administration expenses of the Borough as provided in the Lease or other such agreement with the Borough requiring payment of expenses; and (2)

taxes, if any, levied or assessed against the Borough, constituting additional sums payable under the Lease.

- (c) Payment by the Authority in such year of all debt service (principal and interest) for all loans, debts, mortgages, etc. incurred or guaranteed by the Borough on behalf of the Authority for the Stormwater System (if any).
- (d) The Authority covenants that it will do all things lawfully within its power to obtain, maintain and properly request, collect, and pursue funds from which the Lease Payments may be made.

The Authority covenants that if collections and receipts and appropriations in any lease year shall be less than the sum of requirements of subparagraphs (a),(b) and (c) above, the Authority shall modify the usage rates and other charges to ensure that amounts thereafter to be collected and received by the Authority will be sufficient to comply with such requirements and to eliminate any deficiencies of prior lease years; and, to the extent necessary, the Authority also covenants that, if collections and receipts by the Authority, in any lease years, shall be less than the sum of requirements of subparagraphs (a),(b) and (c) above, it will provide from other available current revenues or from other legally available funds an additional amount which, when added to collections, receipts and appropriations, will be sufficient to enable the Authority to meet such requirements.

#### **4.3 LEASE RENTAL DEPOSIT COVENANT**

The Authority covenants to deposit all stormwater rentals and all other moneys received under the resolution or resolutions referred to in paragraph 4.2 of the Rate Covenant herein, and all other moneys received by the Authority from or in connection with the Stormwater System, including any amounts payable under agreements with others, interest earned on moneys on deposit in the account to be created and known as the “Stormwater Operating Account,” separate and distinct from all other accounts of the Authority. Moneys in the Stormwater Operating Account are pledged by the Authority for prompt and full satisfaction of all its obligations under the Lease, or other agreements with the Borough requiring payment of expenses associated with service provided by the Borough to the Authority, and shall be withdrawn, from time to time, by the Authority to satisfy its obligations thereunder. The Authority, at its option, shall accumulate, from the balance remaining in the Stormwater Operating Account after such withdrawals, and maintain a reserve fund in an account created and known as the “Stormwater Capital Improvements Fund.” In the event amounts in the Stormwater Operating Account shall not be sufficient to enable the Authority to meet promptly and fully all obligations of the Authority under the Lease, the Authority shall withdraw, from time to time, from such Stormwater Capital Improvements Fund, amounts which will enable it to meet all such obligations. Funds remaining in the Stormwater Capital Improvements Fund may, consistent with other municipal or municipal authority funds, be invested in the manner and to the extent authorized and permitted by applicable law.

#### **4.4 INSURANCE COVENANTS**

The Authority covenants that it will pay for and maintain, from moneys available in the Stormwater Operating Account or from any other available moneys, insurance on the Stormwater System against loss or damage by fire and such other risks and casualties in such amount as are usually carried on like properties, with such insurers as may be satisfactory to the Borough or its assigns. The Borough or its assigns shall have the sole right to receive the proceeds of such policies and to collect for claims thereunder.

In the event that the Stormwater System shall be damaged or destroyed (partially or totally) by fire, the elements, or any other casualty insurable under a standard fire and extended coverage policy, the Authority, at the direction of the Borough or its assigns, shall promptly, and with due diligence, repair, rebuild, and restore the same as nearly as practicable to the condition existing just prior to such damage or destruction. In the event the Borough or its assigns determines to restore and/or repair the Stormwater System damaged in the manner contemplated in this covenant, the Borough or its assigns shall release said insurance proceeds to the Authority for the restoration and repair of the Stormwater System, to be performed by the Authority.

#### **5. SUBORDINATION**

This Lease and the Authority's rights are subject and subordinate (inferior) to all present and future: (a) leases, easements and rights of way; (b) mortgages on the Property; (c) agreements securing money paid or to be paid to a lender; and (d) terms, conditions, renewals, changes of any kind and extensions of the mortgages, leases or lender agreements. The Authority must promptly execute any certificate(s) that the Borough requests to show that this Lease is so subject and subordinate.

#### **6. REMEDIES**

Upon the occurrence of an event of default, and as long as such event of default is continuing thirty days after written notice of default by the Borough to the Authority, the Borough may, at its option, exercise any one or more of the following remedies:

(a) By written notice to the Authority, declare all remaining Lease Payments due during the fiscal period in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) Exercise any other right, remedy or privilege which may be available to it under applicable laws of the Commonwealth of Pennsylvania or any other applicable law or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement or to rescind this Agreement as to any or all of the Equipment. In addition, the Authority will remain liable for all covenants and indemnities under this Agreement.

## **7. NO ASSIGNMENT.**

Without the Borough's prior written consent, the Authority will not assign, transfer, sublet, pledge, hypothecate, grant any security interest in or otherwise dispose of this Agreement.

## **8. MISCELLANEOUS.**

- a. If any provision hereof shall be held to be invalid, such invalidity shall not affect any other provision hereof, and the remaining provisions shall be construed and shall be enforced as if such invalid provisions had not been contained herein.
- b. The Borough and the Authority, by mutual agreement, in writing, may amend and/or supplement this Lease at any time during the term of the Lease.
- c. This Lease may be executed in multiple counterparts, each of which shall constitute one and the same instrument.
- d. This instrument and its attachments contain the entire agreement between the parties and there are no covenants, express or implied, except as contained herein. No statement, promise, or inducement made by either party or agent of either party shall be valid or binding that is not contained in this written agreement. No waiver of any condition or covenant of this Lease by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant of said Lease.
- e. The provisions of this Lease shall bind and inure to the benefit of the parties hereto and their administrators, successors, and assigns.
- f. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any action related to any dispute arising out of this Lease shall be brought in the Court of Common Pleas of Cumberland County.

IN WITNESS WHEREOF, this Lease Agreement has been duly executed as of the day and year first above written. Signed and acknowledged in the presence of:

**ATTEST:**

**BOROUGH OF CAMP HILL**

\_\_\_\_\_  
\_\_\_\_\_, Secretary

By: \_\_\_\_\_  
Leigh Twiford, Borough President

(SEAL)

**ATTEST:**

**CAMP HILL BOROUGH  
MUNICIPAL AUTHORITY**

\_\_\_\_\_  
\_\_\_\_\_, Secretary

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

(SEAL)