SMITHFIELD SEWER AUTHORITY

RESOLUTION NO. 1-2016

A RESOLUTION ESTABLISHING A USER FEE FOR THE SMITHFIELD SEWER AUTHORITY STORM WATER COLLECTION AND MANAGEMENT FACILITIES SERVING THE FLORY POND DRAINAGE AREA.

WHEREAS, the Smithfield Township Board of Supervisors has enacted and amended a Storm Water Management Ordinance pursuant to the authority of the Pennsylvania Storm Water Management Act and the Second Class Township Code; and

WHEREAS, the Township by Ordinances Nos. 168 and 203 amended the Storm Water Management Ordinance and established the Flory Pond Drainage Area and special regulations for storm water management within the Flory Pond Drainage Area; and

WHEREAS, the Township and an owner of land within the Flory Pond Drainage Area have requested that the Authority undertake a project to construct a storm water collection and management facility to enable new development of land within the Flory Pond Drainage Area to provide storm water management meeting the regulations for the Flory Pond Drainage Area in the Storm Water Management Ordinance, as amended; and

WHEREAS, the Municipality Authorities Act authorizes municipal authorities to undertake projects for storm water planning, management, and implementation and to fix, alter, charge and collect rates and other charges in the area served by its facilities at reasonable and uniform rates; and

WHEREAS, this Authority desires to set forth regulations for the connection to and use of this Authority's facilities providing storm water collection and management within the Flory Pond Drainage Area and to establish user rates for this Authority's facilities providing storm water collection and management within the Flory Pond Drainage Area.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED by the Board of Smithfield Sewer Authority as follows:

ARTICLE I Definitions and

Word Usage

Section 101. Interpretation. In this Resolution the following rules of interpretation shall be used:

- 1. Words in the present tense may imply the future tense.
- 2. Words used in the singular may imply the plural.
- 3. The masculine gender includes the feminine and neuter genders.
- 4. The word "shall" is to be interpreted as mandatory; the word "may" as directory.
- 5. References to codes, ordinances, resolutions, plans, maps, governmental bodies, commissions or agencies or officials are to codes, ordinances, resolutions, plans, maps, governmental bodies, commissions or agencies or officials of the Authority or the Township as in effect or in office from time to time including amendments thereto or revisions or successors thereof, unless the text indicates that another reference is intended.

<u>Section 102.</u> <u>Definitions of Terms.</u> Unless the context specifically and clearly indicates otherwise, the meaning of terms used in this Resolution shall be as follows:

AUTHORITIES ACT B The Municipality Authorities Act, 53 Pa. C.S. *5601 et seq., as amended.

AUTHORITY B Smithfield Sewer Authority, a municipality authority incorporated and operating pursuant to the provisions of the Authorities Act.

AUTHORITY DEBT B All sums borrowed by the Authority for the design and construction of, and any and all related legal, professional and engineering fees associated with the System, particularly including sums provided by Pocono Mountains Industrial Park Authority, PennWorks Loan No. 99900026, assigned to the Authority by Agreement dated May 20, 2008, said PennWorks loan in the maximum principal amount of Three Million (\$3,000,000) Dollars bearing interest at the rate of 2.00 percent.

DEVELOPER B Any landowner, agent of such landowner or tenant with the permission of such landowner who makes or causes to make a subdivision of land or a land development within the Flory Pond Drainage Area.

DEVELOPMENT B The creation of a subdivision or land development as such terms are defined in the Pennsylvania Municipalities Planning Code or any man-made change to improved or unimproved real estate, including but not limited to the erection of buildings, placement of

mobile homes or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or any regulated activity as defined in the Storm Water Management Ordinance within the Flory Pond Drainage Area.

FLORY POND DRAINAGE AREA B That portion of the Township where storm waters drain to Flory Pond as shown on the map attached hereto as Exhibit A and incorporated herein.

HOP – A highway occupancy permit required by and issued by PennDOT.

OWNER B The record owner of a lot which discharges storm water directly to the System through storm water laterals connected to the System or through the installation of inlets or grading or swales directing storm water to inlets which convey storm water into the System.

PENNDOT – The Pennsylvania Department of Transportation or any agency successor thereto.

STORM WATER MANGEMENT ORDINANCE – The Smithfield Township Storm Water Management Ordinance as effective on the date an application is filed in accordance with Article II of this Resolution.

SYSTEM B The storm water collection and management system owned and/or operated by the Authority serving the Flory Pond Drainage Area including, but not limited to, the storm water conveyance pipe located within or parallel to the right-of-way of Pennsylvania Route 447 conveying storm water from the Flory Pond Drainage Area to Head Wall 11 at Penn DOT Station 189+11.02, Segment 0010, Offset 0052, i.e. the 72 inch x 96 inch Box Culvert at the intersection of SR 0447 and SR 0209.

TOWNSHIP B The Township of Smithfield, Monroe County, Pennsylvania.

UNIFORM CONSTRUCTION CODE – The Uniform Construction Code as adopted by the Pennsylvania Department of Labor of Industry at 34 Pa. Code §403 et seq., and the Township.

ARTICLE II

Connections to System

<u>Section 201.</u> <u>Conditions and Procedures for Connection.</u> No Developer shall make or cause to be made any connection to the System until the Developer has fulfilled all of the following conditions and procedures:

A. Any Developer desiring to connect to the System must first make a written application for approval to connect to the System.

- B. The application shall include the address, the name of the Developer and, if different, the record owner of the subject property; the reason for which the connection is necessary, the proposed use of the property, calculation of storm water flows prepared in accordance with the Storm Water Management Ordinance; and the design of all storm water management facilities to be installed on the subject property, such design to be in compliance with the Storm Water Management Ordinance. The application shall also include a complete set of any subdivision or land development plan filed with the Township for the proposed development of the property. If no subdivision or land development plan application has been filed with the Township, the application shall include a plan prepared in accordance with all requirements of the Storm Water Management Ordinance.
 - C. The application shall be signed by the Developer or its duly authorized agent.
- D. The application shall be accompanied by all required fees established by the Authority. The Developer will be responsible to reimburse the Authority for all costs associated in the processing of the Developer's application including, but not limited to, the fees of the Authority Engineer and the Authority Solicitor to review plans, prepare documents, inspect construction, review proposed financial security, and similar matters. The Authority may require that the Developer establish an escrow fund to enable the Authority to reimburse itself for all such costs.
- E. If the application requires issuance of a HOP, the application shall include a copy of the application for the HOP. If Developer requests that the Authority execute an application for a HOP, the Developer will be responsible for all costs associated with the HOP application and, if PennDOT grants the HOP, compliance with all conditions which PennDOT may impose on the HOP. The Developer shall also be required to execute an agreement in recordable form requiring the Developer to comply with all conditions which PennDOT may impose on the issuance of the requested HOP if the Authority is required to be the applicant for the HOP.
- F. The application shall contain a proposed date when the construction of the storm water management facilities will commence.
- G. The Developer may not commence construction of any storm water management facilities until the Developer has obtained all required approvals from the Township including, but not limited to, approvals under the Storm Water Management Ordinance. The Developer must provide the Authority with evidence of receipt of Township approvals. If the development is part of a subdivision or land development, the Developer shall provide the Authority with a copy of the recorded subdivision and/or land development plan.
- H. The Developer shall provide the Authority with not less than 48 hours' notice prior to the commencement of construction of any storm water management facilities on the subject property or abutting street right-of-way. The Developer shall permit the

inspector full and complete access to the property. No portion of the storm water management facilities shall be covered over, or in any manner concealed, until after it is inspected and approved by the inspector.

- I. No stormwater lateral shall be laid in the same trench with a water, sewer or gas pipe or with any facility of a public service company, or within three feet of any excavation or vault, without prior written approval of the Authority.
- J. Notwithstanding any other provisions to the contrary, the Authority shall at all times reserve the right to withhold the issuance of any permit for connection to the System until the Developer provides financial security as the Authority in its sole discretion deems adequate. Such financial security is to provide a fund from which all costs and expenses can be paid for the construction of any necessary connection from the System to the property of the Developer in the event the Developer or any or any successor fails to complete the construction.
- K. The Developer shall indemnify and save harmless the Township and the Authority from all loss or damage that may be occasioned, directly or indirectly, as a result of construction of storm water management facilities and/or connection to the System. The Developer shall also name the Township and Authority as additional insureds on the general liability policy of the Developer.

<u>Section 202.</u> <u>Connection Costs.</u> The Developer who is approved for connection to the System shall be responsible for all direct and indirect costs associated with providing the connection including the cost of excavating, making the actual connection to the System and surface restoration.

<u>Section 203.</u> <u>Right of Inspection.</u> The Authority and its duly authorized representatives and employees, bearing proper credentials and identification, shall be permitted to enter upon all property for the purpose of inspection, observation, testing and retesting of the System, and to verify the installation and ongoing maintenance of best management practices.

- Section 204. Stormwater Laterals. The Developer must complete the actual connection to the System, including all appurtenances, from the property. The installation of all pipe and appurtenances must be in conformance with the Authority's Rules and Regulations.
 - A. All fittings and/or adapters required by the Owner, along with the actual watertight physical connection thereof to the Authority's System, shall be the exclusive responsibility of the Developer.
 - B. The stormwater lateral shall be and shall remain the exclusive property of the Developer; and any maintenance, replacement, repair, upgrading, etc. shall be the exclusive responsibility of the Developer, its successors and assigns.

- C. No stormwater lateral shall be within three feet of any open excavation or vault, unless such installation plan shall have been previously authorized and approved by the Authority, as evidenced by its written permission.
- D. Stormwater laterals are not permitted to be installed across the property of a third party in order to access an Authority-owned stormwater main.
- E. All stormwater laterals and connection pipe shall be placed on a three (3) inch deep PennDOT type 2B aggregate base; and backfilled with PennDOT type 2B aggregate to at least six (6) inches above the top of the pipe. Where rock is encountered on the trench bottom, overexcavate six inches and backfill with PennDOT type 2B aggregate. All pipe shall have at least twenty-four (24) inches of cover mechanically tamped in layers not to exceed twelve (12) inches. All pipe is to be laid in a straight alignment and grade; avoiding summits and depressions which could collect air and sediment.
- F. All stormwater laterals, connections, and installations shall conform to ASTM standards. All joints shall be soil tight gasketed joints.
- G. Specifications and standards for all stormwater laterals and connections shall be as described herein, or at a minimum, as prescribed by the Uniform Construction Code.

ARTICLE III

Use of System

- Section 301. Unlawful Use of Stormwater Management System. All Owners and occupants of properties served by the System shall use the System and connections to the System solely for the discharge of storm waters in accordance with storm water management plans approved by the Township and the plan for connection to the System approved by the Authority.
 - A. No person shall discharge or cause to be discharged into the System any sewage, agricultural, industrial, or commercial waste, leachate, heated effluent, or other matter other than storm waters, whether originating at a point or nonpoint source.
 - B. No person shall connect, cause to be connected, or allow any other person to connect any building and/or property or other source of water to the System in any way other than that for which the permit is or has been issued.
 - C. No person shall make, or cause to be made, any cross connection between any pipe, fixture, or other appurtenance connected in any way to the System and any public or private component of any potable water system or wastewater source; whereby, in the opinion of the Authority, the potential exists for vacuum or back siphonage which could permit the co-mingling of sanitary wastes, stormwater and/or potable water.

Section 302. Prohibited Discharges.

- A. The discharge of stormwater to the System from any building or property other than those for which a permit has been issued in accordance with these rules and regulations is expressly prohibited.
- B. The discharge of excessive amounts of stormwater to the System is expressly prohibited. The Authority reserves the right to define the amount it deems excessive.
- C. The discharge of garbage or any form of waste to the System is expressly prohibited.
- Section 303. Relationship to Township Ordinances. The Township has adopted ordinances regulating storm water management and land development relative to the System. Owners and occupants of properties connected to or using the System are advised that they are likewise subject to all the Ordinances of the Township governing stormwater, whether or not specifically set forth herein. Where there is a conflict between the rules and regulations in the Resolution and the Township's ordinances, the more stringent regulation or requirement shall apply and control.

ARTICLE IV

User Rates

<u>Section 401.</u> <u>User Rates.</u> The rates, rents and charges imposed upon the Owner of each property connected to the System for use thereof shall be set annually by resolution of the Board of the Authority. System rates and charges shall be collected from the Owners of properties which shall be connected to the System. Rates for use of the System shall be established as follows:

- A. The Authority shall determine the amount of Authority Debt outstanding and the debt service required for the Authority Debt for the next twelve (12) months.
- B. The Authority shall estimate the annual operations cost for the System, including any maintenance and administrative costs.
- C. The Authority shall review the connections to the System. Using the storm water management calculations submitted in accordance with Article II of this Resolution, the Authority shall determine the amount of storm water discharged from each property connected to the System into the System using the estimate for the 100-year storm. The Authority may also review the storm water calculations submitted to the Township as part of any subsequent subdivision and land development plan application or

an application filed under the Storm Water Management Ordinance to determine the amount of storm water discharged from each property connected to the System.

- D. The Authority shall determine the percentage of the total amount of storm water discharged into the System which each property connected to the System discharges into the System.
- E. The annual user rate for each property connected to the System shall be determined by adding the annual debt service required for the Authority Debt and annual operations cost and then multiplying that sum by the percentage of total storm water discharged into the System for the 100- year storm by such property. An example of this calculation is attached hereto as Exhibit B and incorporated herein.
- F. The Authority shall divide the annual user rate by twelve and forward bills to each Owner monthly.
- G. The Authority reserves the right to recalculate the user rate at any time a new property is connected to the System.

Section 402. Billings, Payments and Penalties.

- A. Payments of System user rates shall be due and payable upon the applicable billing date, at the office of the Secretary of the Authority, in the appropriate amount, computed in accordance with this Resolution, which shall constitute the net bill. If any user charge is not paid within thirty (30) calendar days after the applicable billing date, an additional sum of ten (10%) shall be added to such net bill, which net bill, plus such additional sum, shall constitute the gross bill. Payment made or mailed and postmarked on or before the last day of such thirty (30) calendar day period shall constitute payment within such period. If the end of such thirty (30) calendar day period shall fall on a legal holiday or a Sunday, then payment made on or mailed and postmarked on the next succeeding business day or Saturday shall constitute payment within such period.
- B. It shall be the responsibility of each Owner to provide the Authority with, and thereafter keep the Authority continuously advised of, the correct mailing address of such Owner and, if applicable, the name and address of any other person (including tenants, etc.) who will be paying the user charges. Bills will be sent to persons other than Owners (such as tenants) only as a convenience to Owners; Owners shall in all cases remain responsible to the Authority for payment of all fees and charges. Failure of any Owner or other person to receive a bill for charges due and payable shall not be considered an excuse for nonpayment, nor shall such failure result in an extension of the period of time during which the net bill shall be payable.
- C. Any Owner who or which has reason to doubt the accuracy of a bill shall notify the Authority in writing within ten (10) days of the date of the bill as to the fact

the Owner believes the bill to be inaccurate and the factors which support the Owner's position.

D. Bills for new connections to the System shall begin at the time the connection is complete.

Section 403. Recovery of Costs of Collection. The Authority may take all actions necessary or desirable to collect delinquent accounts when an Owner fails or refuses to pay bills for sewer rates and other charges. The Owner shall be responsible for the payment of all fees the Authority must pay and costs which the Authority incurs in the collection of delinquent accounts including, but not limited to, postage fees for mailing of notices of delinquency (including costs of certified mail); filing fees for collection actions filed with a magisterial district judge; costs to serve a complaint filed with a magisterial district judge; filing fees to file a magisterial district judge judgment with the Prothonotary of Monroe County; and all costs associated with the preparation and filing of a municipal lien. Any such fees or costs shall be added and become part of the Owner's account.

Section 404. Collection of Unpaid Charges.

A. Whenever any bill for service furnished to an Owner shall remain unpaid for a period in excess of one quarter after the due date thereof or delinquent in an amount of in excess of Five Hundred (\$500.00) Dollars, the Authority may and the proper officers of the Authority are hereby authorized and directed to do all things and take all legal action necessary to enforce collection of the System user rates established and imposed and otherwise carry out provisions of this Resolution.

B. System user rates imposed by this Resolution, to the extent permitted by law, shall be a lien on the property connected to and served by the System. Any such rates, rents or other charges which shall be delinquent, to the extent permitted by law, shall be filed as a lien against the property so connected and served by the System, which lien shall be filed in the office of the Prothonotary of Monroe County, Pennsylvania, and shall be collected in the manner provided by law for the filing and collecting of municipal claims.

Section 405. Change in Ownership of Property. When the ownership of a property changes from one person to another, the previous Owner shall notify the Authority in writing and in advance of the date of discontinuance of service under his ownership. Should the Owner fail to give such notice, it shall be responsible for all charges up to and including the date the new owner makes application for service.

ARTICLE V

Miscellaneous

Section 501. Rules and Regulations.

- A. The Authority, from time to time, in accordance with law, by appropriate resolution, may adopt such additional rules and regulations as, in the opinion of the Board of the Authority, shall be desirable, beneficial or necessary for or in connection with the use and operation of the System.
- B. Any such rules and regulations so adopted by the Board shall be construed in conjunction with the provisions of this Resolution and shall become effective on the date fixed by the Authority upon adoption thereof.

<u>Section 502.</u> <u>Rights Reserved by Authority.</u> The Authority reserves the right to repeal, amend, supplement or modify this Resolution or any part thereof or to change the System user rates established and imposed by this Resolution in such manner and at such time as, in the opinion of the Board of the Authority shall be necessary or desirable, all after due legal procedure.

Section 503. Floods and Liability. Floods from storm water may occur occasionally that exceed the capacity of the System maintained and financed with System user rates. Nothing in this resolution shall be deemed to imply that Properties subject to charges shall always be free from flooding or flood damage, or that all flood control projects to control storm water can provide complete protection from all flood and storm events. Nothing whatsoever in this Resolution shall deem the Authority or the Township liable for any damages incurred from Stormwater or from adverse water quality. Nothing in this Resolution purports to reduce the need or necessity for flood insurance and the Authority and the Township expressly reserve the right to assert all available immunities and defenses in any action seeking to impose monetary damages upon the Authority, the Township, their officers, employees and agents arising out of any alleged failure or breach of duty with respect to the System.

Section 504. Severability. The provisions of this Resolution are severable, and if any section, sentence, clause, 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 or impair the remaining sections, sentences, clauses, parts or provisions of this Resolution. It is hereby declared to be the intent of the Board that this Resolution would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

<u>Section 505.</u> <u>Effective Date.</u> This Resolution shall become effective and be in force immediately.

SMITHFIELD SEWER AUTHORITY

Attest: Stru Struko

(Assistant) Secretary

(Vice) Chairman

[AUTHORITY SEAL]

Exhibit A (Full size is available electronically)

