

**ORDINANCE NO. 4 of 2017**

**AN ORDINANCE OF THE BOROUGH OF PLYMOUTH, LUZERNE COUNTY, PENNSYLVANIA APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE CREATION OF THE WYOMING VALLEY REGIONAL STORMWATER MANAGEMENT PROGRAM**

**RECITALS**

WHEREAS, Plymouth Borough is a municipal Corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with offices located at 162 West Shawnee Avenue, Plymouth, PA 18651;

WHEREAS, Municipalities that hold a Pennsylvania Department of Environmental Protection ("DEP") MS4 Permit (regarding stormwater discharges) within the Chesapeake Bay watershed are required to prepare and implement a Chesapeake Bay Pollutant Reduction Plan ("CBPRP"); and

WHEREAS, Wyoming Valley Sanitary Authority ("WVSA") is leading the Municipalities through the process of developing a Regional CBPRP and watershed-based pollutant reduction plans (the "Regional Plans"), as an alternative to each of the local government units developing their own plans; and

WHEREAS, certain Best Management Practices ("BMP") are designed to control stormwater and improve water quality, and are required to be implemented as part of a pollutant reduction plan; and

WHEREAS, Municipalities are required to comply with certain stormwater related Minimum Control Measure ("MCM") as mandated by law; and

WHEREAS, Municipalities are required to comply with certain Pollution Control Measures ("PCM") as mandated by law; and

WHEREAS, BMPs or BMP Projects, MCM work and PCM work require capital expenditures, in some cases, significant capital expenditures; and

WHEREAS, Participants desire to cooperate to effectuate the cost effective installation, operation, and maintenance of BMPs, MCM work and PCM in order to accomplish annual reduction (s) of nitrogen, phosphorous and sediment discharges into surface waters in Luzerne County; and

WHEREAS, Municipalities desire that WVSA will initially serve as the regional "MS4 Permit administrator" and will engage in stormwater management including facilitating the development and implementation of the Regional Plans, along with the creation, operation, and maintenance of BMP's on behalf of the Participants as more specifically set forth herein; and

WHEREAS, as set forth in the Intergovernmental Cooperation Agreement (the "Agreement"), executed by and between the Municipalities and the WVSA and incorporated herein by reference as if set forth at length, all Municipalities who are participants to the Agreement shall share in the cost to develop and implement the Regional Plans through one-time financial contributions as set forth in this Agreement; and

WHEREAS, WVSA shall, on behalf of the Municipalities, develop new stormwater and water quality Best Management Practices Projects, including stormwater infrastructure construction and improvements, (individually referred to as a "BMP Project" or collectively "BMP Projects") identified in the Regional Plans and will fund the cost of doing so, along with related MS4 Permit administration costs, through imposition of reasonable and uniform rates on ratepayers located within the Municipalities; and

WHEREAS, Municipalities desire that WVSA shall, on their behalf, carry out certain appropriate MCMs and PMCs at a regional level as specified in Agreement; and

WHEREAS, Municipalities that hold an MS4 Permit may be able to report the pollutant reductions achieved by construction of the BMP Projects that WVSA undertakes on behalf of the Municipalities. Such pollutant reductions may be reported in each Municipality's MS4 Annual Status Report to DEP in accordance with the approved Regional Plans; and

WHEREAS, the content of the Regional Plans, including BMP: Project selection and the level of funding for each BMP Project and associated regional stormwater management program efforts, shall be determined as set forth herein; and

WHEREAS, over the course of the 2018 MS4 Permit term, the Parties shall determine whether WVSA will become an nMS4 Co-Permittee and take on additional regional stormwater management program functions; and

WHEREAS, the purpose of this Ordinance is to approve the Agreement which provides, *inter alia*, that the Municipalities will cooperate to create and revise the Regional Plans, manage BMP Projects through WVSA service territory, interact with the regulatory agencies regarding MS4 Permit requirements, how the Regional Plans will be implemented, and the obligations of each Municipality and WVSA; and

WHEREAS, the Participants agree and acknowledge that nothing in this Agreement, nor the resultant actions herefrom, shall prohibit, prevent, or interfere with any Participant's ability to comply with applicable Pennsylvania law and regulation, Federal law and regulation, applicable regulatory agency rules and policies, permit requirements, DEP directives, or United States Environmental Protection Agency directives, and local ordinances.


**NOW, THEREFORE,** be it enacted and ordained, this 13<sup>th</sup> day of June, 2017, by the Plymouth Borough Council, Luzerne County, Pennsylvania, in a lawful session duly assembled as follows:

1. The attached "Intergovernmental Cooperation Agreement for the Creation and implementation of the Wyoming Valley Regional Stormwater Management Program" (the "Agreement"), the provisions of which are incorporated herein as if fully set forth at length, is hereby approved by the governing body of Plymouth Borough and the President of Council is authorized to execute such agreement on behalf of the Borough and the Secretary of the Borough is authorized to attest to the council president's signature to give full force and legal effect to the Agreement and this Ordinance.
2. Any amendments, modifications or termination of the Agreement shall not require passage of another Ordinance, but shall be authorized and confirmed by the adoption of a resolution by the governing body of Plymouth Borough and all parties to the Intergovernmental Cooperation Agreement.

ENACTED AND ORDAINED the 13<sup>th</sup> day of June, 2017 at a regular meeting of the Plymouth Borough Council.

ATTEST:


Plymouth Borough

  
Holly Spece, Borough Secretary

BY:   
Gary Kochinski, Council President

(SEAL)

APPROVED BY MAYOR:

  
Dorothy E. Petrosky, Mayor

Dated: 



**INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE CREATION  
AND IMPLEMENTATION OF THE WYOMING VALLEY REGIONAL  
STORMWATER MANAGEMENT PROGRAM**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and among the Wyoming Valley Sanitary Authority ("WVSA") and all of the municipalities executing this Intergovernmental Cooperation Agreement ("Municipalities" or "Participants") for the implementation of a regional stormwater management program to benefit the Wyoming Valley Region (the "Agreement") (collectively, the parties will sometimes be referred to as the "Participants" or "Parties").

This Intergovernmental Cooperation Agreement is authorized and required pursuant to applicable law including, but not limited to, 53 Pa.C.S.A. § 2301, *et seq.*

**RECITALS**

WHEREAS, Municipalities that hold a Pennsylvania Department of Environmental Protection ("DEP") MS4 Permit (regarding stormwater discharges) within the Chesapeake Bay watershed are required to prepare and implement a Chesapeake Bay Pollutant Reduction Plan ("CBPRP"); and

WHEREAS, WVSA is leading the Municipalities through the process of developing a Regional CBPRP and watershed-based pollutant reduction plans (the "Regional Plans"), as an alternative to each of the local government units developing their own plans; and

WHEREAS, certain Best Management Practices ("BMP") are designed to control stormwater and improve water quality, and are required to be implemented as part of a pollutant reduction plan; and

WHEREAS, Municipalities are required to comply with certain stormwater related Minimum Control Measures ("MCM") as mandated by law; and

WHEREAS, Municipalities are required to comply with certain Pollution Control Measures ("PCM") as mandated by law; and

WHEREAS, BMPs or BMP Projects, MCM work, and PCM work require capital expenditures, in some cases, significant capital expenditures; and

WHEREAS, Participants desire to cooperate to effectuate the cost effective installation, operation, and maintenance of BMPs, MCM work, and PCM work in order to accomplish annual reduction(s) of nitrogen, phosphorous and sediment discharges into surface waters in Luzerne County; and

WHEREAS, Municipalities desire that WVSA will initially serve as the regional "MS4 Permit Administrator" and will engage in stormwater management including facilitating the development and implementation of the Regional Plans, along with the creation, operation, and maintenance of BMPs on behalf of the Participants as more specifically set forth herein; and

WHEREAS, as set forth in this Agreement, all Municipalities shall share in the cost to develop and implement the Regional Plans through one-time financial contributions as set forth in this Agreement; and

WHEREAS, WVSA shall, on behalf of the Municipalities, develop new stormwater and water quality Best Management Practices Projects, including stormwater infrastructure construction and improvements, (individually referred to as a "BMP Project" or collectively "BMP Projects") identified in the Regional Plans and will fund the cost of doing so, along with related MS4 Permit administration costs, through imposition of reasonable and uniform rates on ratepayers located within the Municipalities; and

WHEREAS, the Municipalities desire that WVSA shall, on their behalf, carry out certain appropriate MCMs and PCMs at a regional level as specified in Appendix A; and

WHEREAS, Municipalities that hold an MS4 Permit may be able to report the pollutant reductions achieved by construction of the BMP Projects that WVSA undertakes on behalf of the Municipalities. Such pollutant reductions may be reported in each Municipality's MS4 Annual Status Report to DEP in accordance with the approved Regional Plans; and

WHEREAS, the content of the Regional Plans, including BMP Project selection and the level of funding for each BMP Project and associated regional stormwater management program efforts, shall be determined as set forth herein; and

WHEREAS, over the course of the 2018 MS4 Permit term, the Parties shall determine whether WVSA will become an MS4 Co-Permittee and take on additional regional stormwater management program functions; and

WHEREAS, the purpose of this Agreement is to set forth the agreement of Participants as to how, *inter alia*, the Participants will cooperate to create and revise the Regional Plans, manage BMP Projects throughout the WVSA service territory, interact with the regulatory agencies regarding MS4 permit requirements, how the Regional Plans will be implemented, and the obligations of each Municipality and WVSA; and

WHEREAS, the Participants agree and acknowledge that nothing in this Agreement, nor the resultant actions herefrom, shall prohibit, prevent, or interfere with any Participant's ability to comply with applicable Pennsylvania law and regulation, Federal law and regulation, applicable regulatory agency rules and policies, permit requirements, DEP directives, or United States Environmental Protection Agency directives, and local ordinances; and

WHEREAS, all Municipalities shall adopt an Ordinance approving this Agreement to effectuate their participation and return the fully executed Ordinance and this Agreement executed by the appropriate and authorized official(s) of the Municipality, along with a check made payable to the Wyoming Valley Sanitary Authority as provided for in Section 7 (A)(i) below, to William T. Finnegan, Jr., Esquire, 575 Pierce Street, Suite 500, Kingston, PA 18704, no later than July 14, 2017. In addition, Member Municipalities, only, shall also adopt an Ordinance approving amendments to the WVSA Articles of Incorporation and send that fully executed Ordinance to Attorney Finnegan along with the fully executed Agreement, Ordinance



and check referenced above. Failure to meet this deadline may preclude the Municipality from participating in the regional stormwater management program and make the Municipality fully responsible for all applicable stormwater compliance mandates.

**NOW, THEREFORE**, the Participants hereto, in consideration of the mutual promises, covenants, and undertakings herein contained, each binding itself and representing that it has proper legal authority to enter into this Agreement, and intending to be legally bound, agree as follows:

1. **Recitals.** All of the Recitals hereto are incorporated herein by reference as if fully set forth at length.

2. **Guiding Principle.** The Participants have a mutual interest in working together in a cooperative manner to implement Regional Plans that identify and fund cost effective BMP Projects to reduce the annual amount of nitrogen, phosphorous and sediment entering impaired and non-impaired surface waters in Luzerne County, Pennsylvania as efficiently as possible and to work together in a cooperative manner to achieve the objectives set forth in this Agreement.

3. **Organization.** The Municipalities agree that WVSA shall be responsible for coordinating the development and implementation of the Regional Plans and the creation, operation, and maintenance of BMP Projects, MCMs, and PCMs as further set forth in this Agreement.

4. **WVSA Functions, Powers and Responsibilities.** Among other things, WVSA shall be exclusively responsible for the following tasks, at WVSA's expense, and the Municipalities delegate such functions, powers, and responsibilities exclusively to WVSA:

A. MS4 Permit Administrator:

i. Regional Plans

1. Prepare and make available to all Municipalities minutes from all WVSA meetings, where required, related to the Regional Plans, BMP Projects, and other material matters contemplated by this Agreement.
2. Arrange, plan, and coordinate all meetings and/or conference calls regarding the Regional Plans, stormwater BMP Projects, MCMs, and PCMs as deemed necessary by WVSA.
3. Prepare the Regional Plans, and any and all drafts, revisions, updates, or other amendments to the same.
4. Administer and implement the Regional Plans and conduct a review of the Regional Plans as deemed administratively necessary or otherwise required by law.
5. Oversee, supervise, and administer BMP Projects, including ensuring that BMP Projects are constructed as approved by WVSA.

6. Approve for payment and pay appropriate invoices submitted for BMP Projects.
  7. Provide supplemental information as necessary for each Municipality to submit its MS4 Annual Status Report.
  8. Manage and administer all stormwater related funds including, but not limited to, Municipality contributions, ratepayer funds, grant monies, or any other similar funds of WVSA related to the Regional Plans, BMP Projects, MCM work, and PCM work.
  9. Prepare or cause to be prepared an annual Financial Report of WVSA funds and all expenditures related to the Regional Plans, BMP Projects, MCM work, and PCM work.
  10. WVSA shall be responsible for the implementation of new BMP Projects (including, but not limited to, design, permitting, construction, operation, monitoring, and maintenance). WVSA may contractually transfer such obligations for design, construction, operation and maintenance, and monitoring to qualified third parties, but WVSA shall remain responsible to ensure that the contracted third parties are performing the required tasks satisfactorily.
  11. WVSA shall maintain the BMP Project documentation in accordance with applicable law and regulations and shall provide copies of the same and updates to Municipalities upon request as more specifically set forth herein.
  12. WVSA agrees to develop and implement reasonable and uniform rates and rules and regulations in accordance with the Municipality Authorities Act, 53 Pa.C.S. § 5601, *et seq.*, with respect to the planning, creation, and implementation of the Regional Plans, BMP Projects, MCM work, and PCM work contemplated by this Agreement.
  13. WVSA shall be responsible for any regulatory fines occasioned by actions taken under this Agreement to the extent of their responsibility as defined under this Agreement.
- ii. MCMs and PCMs
    1. Delegation of responsibility for implementation of MCMs and PCMs shall be governed by Appendix A, which may be amended from time to time.
  - iii. Miscellaneous

1. WVSA shall ensure that all applicable notice requirements are satisfied and advertisements are drafted and published, at WVSA's expense, as required by applicable laws, including, but not limited to, the Pennsylvania Sunshine Act.
2. WVSA shall retain all records, as that term is defined by the Pennsylvania Right-to-Know Law, for the time period required by applicable law but not less than six (6) years. Such records related to the Regional Plans and the activities undertaken pursuant to this Agreement shall be available for review and copying by any Municipality at WVSA offices, upon submission of written request no less than five (5) business days prior to the desired date of review. WVSA may waive the requirement for written request in its discretion.
3. WVSA shall undertake other actions that may be necessary or convenient to implement the provisions and intent of this Agreement.
4. WVSA shall perform its obligations and duties under this Agreement in a competent and business-like manner and shall exercise due care, diligence, and control in connection with costs, fees, and expenses related to such performance so that the ratepayers that it serves will receive the benefits accruing from proper and efficient implementation of the Regional Plans, operation and maintenance of BMP Projects, providing MCM work, and PCM work as contemplated by this Agreement.

**B. MS4 Co-Permittee**

- i. WVSA may assume the role of MS4 Co-Permittee by joint application of the parties to DEP. The roles and responsibilities of the Parties shall be determined at the time of application and pursuant to the then current MS4 Permit requirements.

**C. Asset Transfer**

- i. The Municipalities agree that WVSA shall have the ongoing option to lease or purchase any and all BMP Projects and stormwater systems, both separate and combined sewer and stormwater systems, located within a Municipality's boundaries in existence prior to execution of this Agreement. Such option shall be contingent upon WVSA and each Municipality agreeing upon lease or purchase terms.

**5. Municipality Functions, Powers and Responsibilities.** The Municipalities' functions, powers and responsibilities shall be as follows:

- A. Member Municipalities of WVSA agree to cooperate in and take all steps necessary to facilitate the filing of an amendment to WVSA's articles of



incorporation authorizing WVSA to acquire, hold, construct, improve, maintain, operate, and own stormwater systems or parts thereof including the planning, management, and implementation of stormwater systems and take all other actions necessary to effectuate the regional stormwater management program and Regional Plans. Member Municipalities of the WVSA further agree to cooperate in and take all steps necessary to facilitate the filing of an amendment to WVSA's articles of incorporation to extend the life of WVSA for fifty (50) years.

- B. Municipalities agree to act in good faith and to cooperate in all reasonable respects with WVSA so that WVSA may perform the obligations and duties assumed and undertaken under and by virtue of this Agreement in a proper and satisfactory manner.
- C. Municipalities agree to take any and all legislative or other acts necessary to implement the purposes of this Agreement.
- D. Municipalities shall perform their obligations and duties under this Agreement in a competent and business-like manner and shall exercise due care, diligence, and control in connection with costs, fees, and expenses related to such performance so that the ratepayers that WVSA serves will receive the benefits accruing from proper and efficient implementation of the Regional Plans, operation and maintenance of BMP Projects and work related to covered MCMs and PCMs.
- E. Municipalities agree and consent to the placement, ownership, continued operation, and ongoing maintenance of new BMP Projects by WVSA within their municipal borders consistent with this Agreement and the Regional Plans. If necessary, Municipalities agree to cooperate fully with WVSA in obtaining any real property necessary for the placement, ownership, operation, and maintenance of BMP projects including the use of eminent domain pursuant to the Eminent Domain Code, 26 Pa.C.S.A. § 101, *et seq.* If eminent domain powers are exercised, WVSA shall cover all costs associated therewith.
- F. Municipalities agree to continue the operation and maintenance with respect to any and all existing BMPs created before the formation and implementation of this Agreement. All aspects of said operation and maintenance, including all administrative and document related tasks, shall be solely the Municipality's responsibility, to be performed at the Municipality's sole cost and expense. The Parties may, upon mutual agreement, elect to transfer responsibility for operation and maintenance, including all associated administrative functions, of existing BMPs to WVSA. Unless otherwise agreed upon, WVSA shall be responsible only for the operation and maintenance of new BMP Projects created

subsequent to the effective date of this Agreement consistent with the Regional Plans.

- G. Municipalities shall maintain the appropriate documentation relating to existing BMP operation and maintenance and shall provide copies of the same and updates to WVSA upon request as more specifically set forth herein.
  - H. Municipalities shall timely submit MS4 Annual Status Reports as required by existing law and regulations. Each Municipality shall, contemporaneously upon submission to DEP, provide to WVSA a digital or hard copy of the Municipality's MS4 Annual Status Report.
  - I. Municipalities agree to provide to WVSA for its review any land development plans and applications for stormwater permits received by the Municipality and required by the Municipalities Planning Code, 53 P.S. § 10101, *et seq.*, that may impact the Regional Plans or BMP Projects in any way.
  - J. Municipalities agree to cooperate fully in WVSA's acquisition of any easements necessitated by WVSA's administration of this Agreement and its creation, operation, and maintenance of any BMP Project or other function covered by this Agreement.
  - K. Municipalities shall cooperate in any application by WVSA for grants or other funding that can be used to fund the Regional Plans' implementation and/or the actions and activities undertaken pursuant to this Agreement or the Regional Plans. WVSA may request that Municipalities agree to serve as a guarantor on a pro-rata basis, if deemed necessary by WVSA to secure financing or favorable terms, on any debt necessary to fund the Regional Plans or regional stormwater management program. The Municipalities shall not unreasonably refuse to guarantee any such financing or debt.
6. **Enforcement Actions.** If any compliance or enforcement action (including the pursuit of a civil penalty, issuance of an Notice of Violation ("NOV"), Order, or any other compliance notice or action) is initiated by either the Commonwealth of Pennsylvania or the Federal Government in any way related to the Regional Plans or implementation actions and activities undertaken pursuant to this Agreement and the relevant Municipality permit requirements, WVSA shall, in its sole discretion, discuss the enforcement action, whether any one or more Municipalities are responsible for the alleged violation(s), and determine what WVSA's response action(s) shall be. Where an act of malfeasance, misfeasance, negligence, or other misconduct of a Municipality results in the Municipality or WVSA incurring a civil penalty, issuance of an NOV or other compliance action, a fine, or a damages award of any kind, or other breach of the terms of this Agreement the responsible Municipality, as



determined by WVSA, shall indemnify and hold harmless WVSA with respect thereto. Municipality may be further subject to a surcharge of up to \$1,000.00 per day until the condition from which the fine arose is remedied. Where WVSA becomes aware of a potential compliance issue or question, WVSA shall send written notice to all relevant Municipalities within three (3) business days, which notice shall include any and all correspondence (including hard, electronic, or telephone call notes/summary) from or with a regulatory entity (including, but not limited to, a County Conservation District, DEP, the United States Environmental Protection Agency, Federal Emergency Management Agency, Pennsylvania Emergency Management Agency, and U.S. Army Corps of Engineers). WVSA shall convene a special meeting in accordance with applicable law, and within ten (10) calendar days of issuance of the notice referenced herein, in an effort to resolve the dispute. In the event WVSA and Municipality are unable to resolve the dispute, WVSA may unilaterally terminate the Agreement as to any Municipality. Where this occurs, the terminated Municipality(s) contribution(s) to date shall be retained by WVSA in its Stormwater Account and is thereby forfeited by the terminated Municipality(s). Furthermore, any BMP Projects installed within the terminated Municipality's boundaries remain the property and responsibility of WVSA and any associated pollutant reductions may only be attributable to WVSA and compliant Municipalities. The terminated Municipality, however, remains liable for a pro rata share of any outstanding debt service related to the regional stormwater management program.

7. Financing of Regional Plans Development, BMP Projects, and MCM work.

A. The following contributions shall be made by Municipalities:

- i. Initial Contribution. On the date of execution of this Agreement, each Municipality shall contribute the sum of \$3,000.00, payable to WVSA, for purposes of financing the development and implementation of the Regional Plans ("Initial Contribution"). The Initial Contribution shall be included with the fully executed copy of this Agreement no later than July 14, 2017.
- ii. Subsequent Participation (i.e. "opt in"). WVSA shall develop a separate policy with the input of all Municipalities regarding the contribution required to be made by any local government jurisdiction that chooses to opt in/execute this Agreement after the Effective Date. Any Subsequent Participation shall, however, contribute a one-time payment in an amount not less than the amount of any administrative costs and expenses occasioned on WVSA by virtue of the Subsequent Participant's opt in (i.e., a "Plan Revision Fee"). Any initial contribution required of a Subsequent Participant shall not reduce the other Participants' Initial Contribution or entitle any Participant to a refund of the same.



B. Rates.

- i. For the purposes of funding and covering the costs of all MS4 Permit Administration undertaken pursuant to this Agreement, implementation of the Regional Plans and agreed upon MCM work and PCM work, WVSA shall charge reasonable and uniform rates to all ratepayers within each Municipality's borders. WVSA agrees to develop and implement reasonable and uniform rates and rules and regulations in accordance with the Municipality Authorities Act, 53 Pa.C.S.A. § 5601, *et seq.* with respect to the planning, creation, and implementation of the Regional Plans, BMP Projects, MCM work and PCM work contemplated by this Agreement.
- ii. WVSA shall be exclusively responsible for collecting amounts due from ratepayers. Municipalities shall, however, cooperate in the imposition and collection of the reasonable and uniform rates imposed by WVSA, and in any actions to enforce or cause to be enforced payment of such rates, including, but not limited to, the filing of liens.

C. Accounting

- i. WVSA Stormwater Account. WVSA shall establish a separate account (the "WVSA Stormwater Account") for the deposit of all funds related to or contemplated by this Agreement, including the Municipality's Initial Contributions and all other revenues received by the WVSA from whatever source.
- ii. The Initial Contribution shall be accounted for in the WVSA Stormwater Account in a separate and dedicated fund and shall be used solely for reimbursement for eligible WVSA administrative costs and expenses related to development and implementation of the Regional Plans.
- iii. Any and all other revenues that may be acquired or used by WVSA related to stormwater management, including, but not limited to, rates, grants, loans, or donated funds shall be accounted for separately from the Participant's Initial Contribution. Said funds shall be used for the development and implementation, including, but not limited to operation and maintenance, of BMP Projects, MCMs, and PCMs identified in the Regional Plans.
- iv. Administration of these funds to pay for proper expenses under this Agreement shall be the responsibility of WVSA.

8. **Effective Date.**

- A. The Effective Date of this Agreement shall be July 14, 2017. It is the intent of the Participants that their cooperative efforts, including the conduct of meetings authorized or required by this Agreement, shall commence as of July 14, 2017, regardless of when each Participant executes the Agreement or passes an Authorizing Ordinance. It is anticipated that all Municipalities will have properly adopted their Ordinances such that the effective dates, as provided by applicable law, of the Ordinances will be not later than July 14, 2017.
- B. This Agreement shall become effective as to each Participant upon execution and, where applicable, adoption of an Authorizing Ordinance and execution of this Agreement.

9. **Term.** Subject to the covenants and conditions set forth herein, the term of this Agreement shall be perpetual, beginning on the Effective Date, unless earlier terminated by mutual written consent of all the Parties hereto and following the payment and discharge of all debts incurred by WVSA related to any BMP Project in accordance with this Agreement. WVSA may periodically accept and consider comments or concerns from any Municipality related to this Agreement or the Plans.

10. **Termination and Wind-Up.** In the event of termination of this Agreement by mutual agreement, any funds remaining in the WVSA Stormwater Account, subject to any offsets necessary to retire any outstanding debt related to the regional stormwater management program, shall be returned to those Municipalities who remain participants in this Agreement at the time of termination based upon the percentage of revenue collected from ratepayers residing within the Municipality's boundaries as of the date of termination. In the event funds remaining in the WVSA Stormwater Account are insufficient to retire any outstanding debt related to the regional stormwater management program, Municipalities agree that WVSA may continue to charge rates in an amount sufficient and for as long as necessary to cover debt service and other costs related to the regional stormwater management program. Any funds remaining after any outstanding debt service and other costs are paid shall be disbursed to the Municipalities remaining on the date of Termination no more than one hundred twenty (120) days after the date of Termination.

11. **Authorization.** Participants certify that they are authorized to enter into and execute this Agreement in the exercise and/or performance of their governmental functions, powers, or responsibilities. Participants further certify that they are not the subject of any pending lawsuits, regulatory fines, consent decrees, or other similar sanction of whatever kind related to stormwater, including but not limited to stormwater BMPs, MCMs, and PCMs located within the Participants' municipal boundaries. Municipality shall undertake best efforts to resolve any and all such lawsuits, fines, consent decrees, or similar sanctions prior to that Municipality's execution of this Agreement. In the event a Municipality is unable to resolve such lawsuits, fines, consent decrees, or similar sanctions prior to execution of this Agreement, the Municipality agrees to fully indemnify and defend WVSA from any associated damages and liability.



12. **Applicable Law.** The Participants agree and affirm that Pennsylvania law applies to this Agreement and all matters covered by and addressed by this Agreement. It is acknowledged and agreed that the sole and exclusive jurisdiction and venue for any dispute relating to any matter covered by this Agreement, and/or regarding any dispute over the enforcement or interpretation of this Agreement, shall rest with the Luzerne County Court of Common Pleas. The Participants hereby submit to the exclusive jurisdiction of that Court.

13. **Integration.** This Agreement contains the entire agreement between the Participants. There are no understandings or agreements, verbal or otherwise, in relation hereto, except those expressly and specifically set forth herein. The Participants have not relied upon any statement, projection, disclosure, report, information or any other representation or warranty except for those as may be specifically and expressly set forth in this Agreement.

14. **No Oral Modification.** This Agreement may not be modified except in writing executed by all Participants. This Agreement shall be amended only in writing, by duly authorized representatives of all Participants, and such revision(s) must be approved by official action of each Participant jurisdiction, and as required by any applicable law of the Commonwealth.

15. **Severability.** No determination by any court, governmental body, arbitration, or other judicial body, that any provision of this Agreement or any amendment that may be created hereto, is invalid or unenforceable in any instance shall affect the validity or enforceability of any other provision of the Agreement or applicable amendment. Each provision shall be valid and enforceable to the fullest extent permitted by applicable law, and shall be construed where and whenever possible as being consistent with applicable law.

16. **Representation by Counsel.** This Agreement has been negotiated by the Participants through their respective legal counsel and embodies terms that were arrived at through mutual negotiation and joint effort, and the Participants shall be considered to have contributed equally to the preparation of this Agreement. The Participants warrant and represent that the terms and conditions of this Agreement have been discussed and negotiated between them, and their respective counsel, and are voluntarily and knowingly accepted for the purpose of making a full and final compromise between the Participants, as referenced herein. The Participants further acknowledge that they understand the facts and their respective legal rights and obligations pursuant to this Agreement.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, and all of which taken together shall constitute one and the same instrument.

18. **Execution by Facsimile or Electronic Scanning.** Delivery of an executed counterpart of this Agreement by facsimile, or by electronically scanning and e-mailing an executed counterpart signature page, while not specifically required, will be acknowledged by the Participants as being equally as effective as delivery of a manually executed counterpart of this Agreement. The use of a signature page received by facsimile, or through an electronic scan and e-mail, shall not affect the validity, enforceability, or binding effect of this Agreement.



19. Fees and Costs. Unless otherwise expressly stated herein, the Participants agree to bear their own fees and costs in connection with or incurred related to the matters between them, and relating to this Agreement.

20. Signatures. The Participants hereto, and the undersigned individuals and/or representatives, represent and warrant that they have the authority to enter into this Agreement and be legally bound hereby.

21. Contacts with WVSA. Any questions concerning this Agreement should be directed to the Executive Director of WVSA, Jim Tomaine, P.E.

**[SIGNATURE PAGES FOLLOW]**

as referenced herein. The Participants further acknowledge that they understand the facts and their respective legal rights and obligations pursuant to this Agreement.

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**18. Execution by Facsimile or Electronic Scanning.** Delivery of an executed counterpart of this Agreement by facsimile, or by electronically scanning and emailing an executed counterpart signature page, while not specifically required, will be acknowledged by the Participants as being equally as effective as delivery of a manually executed counterpart of this Agreement. The use of a signature page received by facsimile, or through an electronic scan and email, shall not affect the validity, enforceability, or binding effect of this Agreement.

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**20. Signatures.** The Participants hereto, and the undersigned individuals and/or representatives, represent and warrant that they have the authority to enter into this Agreement and be legally bound hereby.

IN WITNESS WHEREOF, the Participants hereto have caused this Intergovernmental Cooperation Agreement for the Implementation of the WVSA Regional Stormwater Management Program to be executed and effective on July 14, 2017.

Attest:

Wyoming Valley Sanitary Authority

\_\_\_\_\_  
Secretary

BY: \_\_\_\_\_  
Chairperson

(SEAL)

ATTEST:

Plymouth Borough

\_\_\_\_\_  
Holly Spece, Borough Secretary

BY: \_\_\_\_\_  
Gary Kochinski, Council President

(SEAL)