

**RESOLUTION NO. 2023-4  
MUHLENBERG TOWNSHIP AUTHORITY  
BERKS COUNTY, PA**

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**RESOLUTION PROTECTING RATEPAYERS OF THE MUHLENBERG  
TOWNSHIP AUTHORITY FROM HOSTILE TAKEOVER ATTEMPT BY THE  
TOWNSHIP OF MUHLENBERG**

**BACKGROUND**

**WHEREAS**, the Muhlenberg Township Authority, established by Resolution of the Board of Township Supervisors of Muhlenberg Township dated June 25, 1940, and later codified by Ordinance, was formed for purposes of undertaking water and sanitary sewer projects on behalf of ratepayers located within the Township;

**WHEREAS**, the Muhlenberg Township Authority (the "Authority") has, since its formation in 1940, provided uninterrupted daily water and sanitary sewer service to residential and commercial ratepayers currently situate in the Township of Muhlenberg (the "Township"), now extending beyond the boundaries of the Township to Laureldale Borough and portions of Alsace Township and the City of Reading;

**WHEREAS**, the Authority is a viable municipal water and sewer utility that provides life-sustaining water and sanitary sewer services to over 9,200 residential, commercial, industrial, and fire customers;

**WHEREAS**, the Authority operates approximately 200 miles of water and sewer mains, and its water storage facilities have the capacity to hold approximately 4.5 million gallons of treated water;

**WHEREAS**, the Authority's mission and purpose is to provide the upmost quality water and sanitary sewer disposal to all Authority customers, when they need it, at reasonable cost, and establishing projects for the benefit of present and future ratepayers;

**WHEREAS**, the Authority owes a duty to its customers that are separate and apart from the duties owed by the Township to their residents;

**WHEREAS**, the Authority has grown and funded its investments and improvements through its customers in the Township, Laureldale Borough, Alsace Township, and City of Reading;

**WHEREAS**, since its formation in 1940, the Authority has never received any funds from the Township to support its operations;

**WHEREAS**, the Authority is party to an Intermunicipal Agreement with the Township dated August 25, 2014, by which the Authority remits an annual "infrastructure fee" to the Township, currently in the amount of \$540,000.00, increasing to \$580,000.00 beginning in 2028, and increasing to \$620,000.00 beginning 2033 forward. The Authority receives nothing from the Township in monetary return;

**WHEREAS**, the Authority has current licenses and permits to conduct its operations from the Pennsylvania Department of Environmental Protection (“DEP”), the United States Environmental Protection Agency (“EPA”) and other state and federal agencies that have oversight responsibility for the Authority’s water and wastewater operations;

**WHEREAS**, the Authority continuously strives to invest in and improve its water treatment and distribution infrastructure, and its sanitary sewer collection and transportation system;

**WHEREAS**, Authority water quality consistently meets or exceeds the criteria established by the DEP and the EPA;

**WHEREAS**, in its consistent record of compliance with current federal and state requirements concerning the provisions of safe drinking water and legally compliant wastewater treatment, and a commitment to continue this compliance, the Authority has established a reserve fund for foreseeable as well as unexpected expenses and costs that it expects to realize in its operations, such as the pending federal requirement to address the dangers of “forever chemicals” (i.e. PFAS/PFOA) in drinking water, and compliance with the federal lead and copper rule;

**WHEREAS**, the Authority is party to an Intermunicipal Agreement with the City of Reading dated November 19, 2012 (the “IMA”) relating to the transportation, treatment, and disposal of sewage collected in the Township by and through the Authority’s sewage collection and transportation system. Through the IMA, the Authority is legally obligated to contribute to and reserve a significant amount of funds for payment of its proportionate share for use of the City of Reading’s sewage treatment facility, and for shared costs in scheduled upgrades to its facility;

**WHEREAS**, the Authority is currently finalizing terms of a multi-million dollar project with a neighboring municipal authority for the supply of upwards of 1,000 Gallons Per Minute of water per day, which will further protect and enhance the water supply and support future economic development in the Township. The Authority explored a partnership outside Township boundaries only after all efforts at siting a well within the Township failed;

**WHEREAS**, the Authority has completed a countless number of projects in recent years, with many projects ongoing and planned, all with the goal of providing continually safe, quality, and affordable life-sustaining water and sanitary sewer services to its ratepayers;

**WHEREAS**, the reserve balance of the Authority as of December 31, 2022 was \$35,951,299 (the “Reserve”);

**WHEREAS**, the ratepayers who paid the quarterly bill from Authority have paid to establish the Reserve. The Authority has treated this Reserve as a trust fund to be used only for the public health purposes for water and wastewater operations to benefit the Authority ratepayers and for no other purpose;

**WHEREAS**, the Authority has been prudent and disciplined in its operations, having not raised sewer rates since 2016, and having not raised water rates since 2018. Historically, the Authority’s water and sewer rates have remained one of the lowest in Berks County;

**WHEREAS**, in recent years as the impact of climate change has become more apparent, certain areas of the Township have experienced surges of rainfall which result in unrestrained stormwater to inflow and infiltrate the Authority's sanitary sewer system. The result is felt by Township residents in these stormwater surge areas who suffer basement back-ups;

**WHEREAS**, stormwater is controlled, maintained, and overseen strictly by the Township, not the Authority;

**WHEREAS**, per the EPA, a major component of wastewater flow in a sanitary sewer system derives from stormwater inflow and infiltration. Excess storm and groundwater entering the sewer system through inflow and infiltration robs the system of its valuable capacity, and puts a burden on operation and maintenance, reduces the life expectancy of the distribution facilities, and is a cause of sewer back-ups and disruption in service. See U.S. EPA Water Infrastructure Outreach manual, June 2014;

**WHEREAS**, while the Authority does not have the legal ability to address Township stormwater issues, it has engaged in planning and upgrades to address those Township stormwater issues that impact the Authority's sanitary sewer collection system;

**WHEREAS**, by letter dated July 18, 2023, the Township Commissioners demanded the entire Authority Board resign, blaming the Authority for, among other things, stormwater issues stemming from two major storm events that impacted the region. This is not true, and, the Authority Board strictly denies and has rejected the Township's blame as baseless in fact;

**WHEREAS**, in the weeks that followed the Township's July 18 letter, the Authority has called and written to Township officials offering to meet to discuss stormwater issues, to provide updates as to key enhancements to Authority operations, and to assist the Township with its struggles to address the Township stormwater problem which causes inflow and infiltration surges in the event of heavy and condensed rainfalls;

**WHEREAS**, at its regular meeting held on September 18, 2023, the Township Commissioners passed a Motion as a momentous first step to dissolve the Authority that has served as an independent Pennsylvania Municipal Authority organized and operated to protect the public health by providing drinking water and wastewater collection to households and business continually on daily basis since 1940, as follows:

*Motion to authorize the Solicitor to advertise an ordinance to acquire all projects of the Muhlenberg Township Authority and terminate the Muhlenberg Township Authority.*

**WHEREAS**, the Authority can only react to the Township's action to dissolve operations based on the Township's nonresponse to the Authority's prior attempts to meet, and with the understanding that that there may be an underlying and alternative Township goal by taking this action which has not yet been publicly revealed; and

**WHEREAS**, the Authority is especially concerned about the Township's actions in seeking to dissolve the Authority where some Township employees have openly expressed and boasted about taking over Authority operations when in reality, they have no license, permitting, experience, training, or legal authority to conduct or intercede in daily Authority operations prior to any eventual termination event.

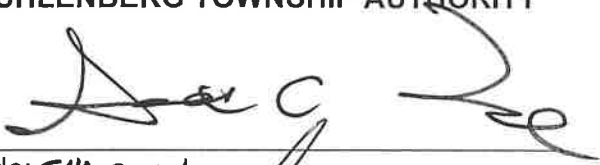
**NOW, THEREFORE**, to protect the ratepaying customers of the Authority and the customers' property (Reserves) that the Board of the Authority holds in trust for the benefit of the Authority ratepayers, the Authority Board resolves as follows:

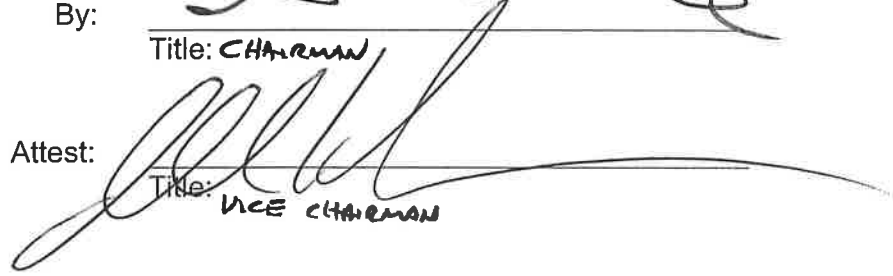
1. Because of the Township's affirmative vote to advertise an Ordinance serving to terminate the Authority, the Board shall immediately notify the DEP, the EPA, and other state and federal agencies that have oversight responsibility for the Authority's water and wastewater operations, in writing, of the Township's attempt to discontinue the Authority's operations and request their oversight of the Township's actions and goal in terminating the Authority;
2. Request the Township Commissioners to affirmatively acknowledge their legally binding obligation that the Authority Reserve is to be held in trust and used for the benefit of Authority ratepayers, strictly for use for public health purposes and only for water and wastewater operations, with a requirement of public disclosure containing a full accounting of such Reserve funds on no less than a quarterly basis;
3. If the Township Commissioners refuse to take all required action to immediately establish and affirm their legal obligation that the Authority Reserve is to be held in trust and used for the benefit of Authority ratepayers, for use for public health purposes and only for water and wastewater operations unless there is a ratepayer referendum deciding otherwise, then the appropriate Authority professionals are authorized to file an action in the Berks County Court of Common Pleas or Federal Court to request that the Court protect the ratepayers by imposing a constructive trust for the benefit of the ratepayers of the Reserve funds, and to protect the continuity of operations;
4. If the Township Commissioners decline to recognize and affirm their legally binding obligation that the Authority Reserve funds are to be held in trust and used strictly for the benefit of Authority ratepayers, then the Authority shall immediately begin refunding the available Reserve funds to the ratepayers on a pro rata basis, unless a Court imposes a constructive trust on such Reserve funds for protection of ratepayers; and
5. Authorizing Authority professionals and officials to take all necessary action deemed necessary and appropriate, including without limitation, Court action, to implement the intent of this Resolution, including Court supervision of the Township's actions.

**RESOLVED**, that the Muhlenberg Township Authority hereby adopts this Resolution No. 2023-4 for the protection of ratepayers from hostile takeover attempt by the Township of Muhlenberg.

IN WITNESS THEREOF, I affix my hand and attach the seal of the Muhlenberg Township Authority, this 21 day of September, 2023.

MUHLENBERG TOWNSHIP AUTHORITY

By:   
Title: CHAIRMAN

Attest:   
Title: VICE CHAIRMAN