

**RESOLUTION 2021-91**

**RESOLUTION OF THE MAYOR AND BOROUGH COUNCIL OF THE  
BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE  
OF NEW JERSEY, CONSENTING TO THE TRANSFER OF SEWERAGE  
ALLOCATION FROM THE BOROUGH OF STANHOPE TO THE TOWNSHIP  
OF BYRAM IN THE AMOUNT OF 4,300 GALLONS PER DAY**

**WHEREAS** the Musconetcong Sewerage Authority (“MSA”) is a regional sewer authority which serves the Borough of Stanhope, the Borough of Netcong, the Township of Roxbury, the Township of Mt. Olive, the Township of Byram, the Township of Mt. Arlington and the Borough of Hopatcong (the “Members”); and

**WHEREAS** the Members have entered into Service Agreements with the MSA which provide for, among other things, the number of gallons per day (“gpd”) each Member may discharge into MSA’s facilities; and

**WHEREAS** the Borough of Stanhope presently has an allocation reservation in the amount of 539,550 gpd and the Township of Byram presently has an allocation reservation in the amount of 101,450 gpd; and

**WHEREAS** the Borough of Stanhope desires to sell and transfer 4,300 gpd to the Township of Byram, and the Township of Byram desires to purchase said gallonage from the Borough of Stanhope (the “Transfer”); and

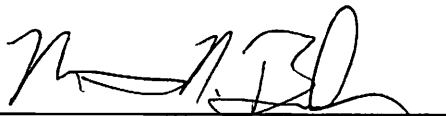
**WHEREAS** Stanhope and Byram have entered into a written agreement for the Transfer dated May 4, 2021 (the “Agreement”); and

**WHEREAS** any transfer of allocation between Members shall be with the consent of the MSA and of all of the Members; and

**NOW, THEREFORE, BE IT RESOLVED,**

1. The Mount Arlington Borough hereby authorizes the MSA to take such steps as are reasonably necessary to effectuate the Transfer, including but not limited to, modifying the Service Agreements to reflect the transfer of gallonage contemplated herein.

**I HEREBY CERTIFY** this to be a true and correct Resolution of the Mayor and Council of the Borough of Mount Arlington and adopted on August 3, 2021.

  
Matthew N. Bansch, Borough Clerk



## MUSCONETCONG SEWERAGE AUTHORITY

May 14, 2021

Dear Member Municipalities:

Please be advised the MSA has received notice of a proposed transfer of 4,300 gallons of sewer allocation by the Borough of Stanhope to the Township of Byram. Enclosed is a copy of their agreement.

This proposal will be forwarded to counsel to ensure it complies with bonding requirements.

In the event the parties proceed to closing you will be asked to adopt a Resolution acknowledging that the sewer agreements, allocations and billing for Byram and Stanhope shall be adjusted to reflect this transfer. Billing for non-participating municipalities will not be affected.

Should you have any questions please do not hesitate to contact our office at 973.347.1525.

Very truly yours,

James Schilling  
Executive Director  
jschilling@msa-nj.org

JS/pd

## **MEMORANDUM**

**TO:** MUSCONETCONG SEWERAGE AUTHORITY ("MSA")  
**FROM:** PATRICK J. DWYER, ESQ.  
**RE:** PROCEDURE FOR THE TRANSFER OF SEWER RESERVATION  
ALLOCATION BETWEEN MEMBER MUNICIPALITIES  
**DATE:** revised April 1, 2021

The following is a guide for the transfer of sewer reservation allocation from one or more MSA Member Municipalities to another.

**FIRST:** Any Member Municipality which desires to purchase or sell allocation gives notice to the MSA which notifies the other Municipalities.

**SECOND:** The Member Municipalities who desire to transfer enter into a written contract setting forth the terms of their agreement including price. Transfers may involve more than two municipalities, for example, two Member Municipalities may each transfer gallonage to a single buying Member.

**THIRD:** The Agreement is forwarded to MSA.

**FOURTH:** MSA confirms with its Bond Counsel that the proposed transfer is not restricted by outstanding bonding obligations.

**FIFTH:** MSA adopts a Resolution authorizing the transfer and reallocating sewer reservations with the following conditions:

- (i) the transfer shall occur within a set time frame;
- (ii) MSA's receipt of Riders to the Service Contracts between MSA and any Member Municipality participating in the transfer which are signed by the participating Members;
- (iii) MSA's receipt of Resolutions from the participating Member Municipalities authorizing signature of the Riders to their Service Contracts;
- (iv) Resolutions from all non-participating Member Municipalities consenting to the transfer and authorizing MSA to reallocate sewer reservation between the participating Member Municipalities upon receipt of the above.

**SIXTH:** MSA Counsel prepares a template Resolution for signature by all Member Municipalities not participating in the transfer. The Resolution shall indicate the Member's consent to the proposed transfer.

**SEVENTH:** MSA Counsel prepares (i) a Rider to the Service Contracts of each participating Member Municipality; and (ii) a template Resolution to be signed by the governing body of each participating Member Municipality authorizing execution of the Rider.

**EIGHTH:** Upon receipt of (i) Resolutions of Consent from all non-participating Member Municipalities; (ii) Riders to the Service Contract signed by each Member Municipality participating in the transfer, and (iii) Resolutions by the participating Member Municipalities authorizing execution of the Riders to their Service Contracts, MSA shall adopt a Resolution to reallocate the sewer reservations for the participating Member Municipalities in accordance with their agreement.

**NINTH:** MSA adjusts the flow allocation billing for the participating Member Municipalities.

**NOTE:** There is no right of first refusal on transfers in the Service Contracts between MSA and the Member Municipalities.

**SEWER CAPACITY ALLOCATION RESERVATION AGREEMENT  
FOR 4,300 GALLONS PER DAY**

**THIS AGREEMENT** is made the later of the two dates on the signature page between the **BOROUGH OF STANHOPE**, a municipal corporation of the State of New Jersey in Sussex County with offices at 77 Main Street, Stanhope, New Jersey 07874 (hereinafter referred to as "Stanhope") and the **TOWNSHIP OF BYRAM**, a municipal corporation of the State of New Jersey in Sussex County with offices at 10 Mansfield Drive, Stanhope, New Jersey 07874 (hereinafter referred to as "Byram");

**WHEREAS**, Stanhope is a member of the Musconetcong Sewerage Authority (hereinafter referred to as "MSA"); and

**WHEREAS**, Byram has a service Contract with the MSA dated April 1, 2004 for 100,000 gallons per day of sewage treatment capacity at the MSA plant, although Byram is not a member of the MSA; and

**WHEREAS**, Byram and Stanhope entered a Sewer Capacity Allocation Reservation Agreement in 2016, which was completed and which resulted in an allocation of an additional 1,450 gallons per day of sewerage capacity to Byram by Stanhope over and above the 100,000 gallons per day.

**WHEREAS**, Stanhope has total sewage treatment capacity allocation (hereinafter referred to as "Stanhope's Allocation") at the MSA Regional Sewage Treatment Plan of 539,550 gallons per day; and

**WHEREAS**, Stanhope has preliminarily evaluated its future sewer treatment needs and has determined that there is more than 4,300 gallons per day of Stanhope's Allocation not reasonably anticipated to be needed to serve properties within Stanhope's borders, thereby making said 4,300 gallons per day available for transfer to other municipalities; and

**WHEREAS**, Byram has determined that it reasonably anticipates a need for 4,300 gallons per day of sewer treatment capacity allocation to serve properties within Byram's borders; and

**WHEREAS**, in accordance with the terms and conditions of this agreement, Stanhope agrees to sell and transfer 4,300 gallons per day of Stanhope's Allocation to Byram and Byram agrees to purchase and accept same from Stanhope;

**NOW, THEREFORE**, for the consideration, mutual covenants and agreements contained herein, each party, intending to be bound, agrees as follows:

1. **Recitals.** The recital clauses set forth above are hereby made an integral part of this agreement.

2. **Cost.**

A. **Purchase Price.** Byram shall pay to Stanhope a purchase price for the sewage allocation that is equal to a portion of the present value of the payments that Stanhope has made to MSA from 1973 to the present for Stanhope's sewer allocation. Byram shall pay to Stanhope an amount equal to the aforementioned present value of sewer allocation payments multiplied by 4,300 and divided by 539,550. **The purchase price is \$197,800.00, provided that the deposit is paid and this agreement is signed by Stanhope and Byram before April 30, 2021.**

B. **Deposit.** Byram shall pay a deposit to Stanhope in the amount of TWENTY-THOUSAND DOLLARS (\$20,000.00) for reserving the allocation. Stanhope shall credit this deposit against the purchase price to be paid to Stanhope by Byram under this agreement. In the event that the aforesaid deposit of \$20,000.00 is not paid by Byram to Stanhope on or before April 30, 2021, Stanhope shall have the right to terminate this agreement or provide additional time to Byram to make said payment as Stanhope, in its sole discretion, shall determine.

C. **Payment.** Byram shall make full payment of the remaining balance of the purchase price upon completion of: (i) Byram's execution of a service agreement with the MSA; (ii) the transfer of 4,300 gallons per day of sewage allocation to Byram from Stanhope.

D. **Refund of Deposit.** In the event: (a) this agreement is properly cancelled according to its terms; and (b) no gallons per day of sewage allocation have been transferred to Byram; then the \$20,000.00 deposit made by Byram pursuant to paragraph 2.B, above, shall be refunded to Byram.

3. **MSA Fees.** Byram acknowledges that the MSA charges quarterly user fees to its members without regard to the use of the allocation. In recognition of this continuing carrying cost of Stanhope, Byram shall pay to Stanhope that portion of Stanhope's MSA quarterly user charges based upon the ratio of 4,300 gallons per day to Stanhope's sewage capacity as billed by MSA to Stanhope. Byram shall pay this proportionate share of Stanhope's quarterly bill from MSA fifteen days prior to the date that Stanhope's quarterly payment is due to MSA (March 1, June 1, September 1 and December 1). In the event of any adjustment to Stanhope's billing by the MSA, Byram shall either pay a surcharge to Stanhope or receive credit from Stanhope as a result of such adjustment, which shall be reflected in Byram's next payment to Stanhope following such billing adjustment.

Byram shall begin making payments to Stanhope under this paragraph on the date of this agreement, pro-rated between quarters if necessary, and shall continue to pay said charge to Stanhope until such time as Byram actually obtains a transfer of the allocation set forth herein or until this agreement has been otherwise terminated.

In the event Byram should fail to make any payment when due under the provisions of this paragraph, Stanhope shall have the right, upon ten days prior, written notice to Byram to cure any such non-payment, to terminate this agreement.

These fees are non-refundable.

4. **Stanhope's Costs.** Byram shall be solely responsible for the payment of all charges and expenses of any nature whatsoever related to or arising from the negotiation, execution and implementation of this agreement and any subsequent agreements or actions reasonably required to be entered into or carried out by or between the parties, or with the MSA, to effectuate the intent of this agreement. Byram shall be solely responsible for paying all costs incurred by Stanhope, including, but not limited to engineering and attorney fees. Further, Byram shall be solely responsible for paying all costs incurred by it in the negotiation, preparation, execution and implementation of this agreement, including any ancillary action which must be taken. Said costs are not refundable.

5. **Escrow For Costs.** Prior to the signing of this agreement, and as a condition hereof, Byram has caused to be paid THREE THOUSAND DOLLARS (\$3,000.00) in escrowed funds to Stanhope for its costs and expenses. In the event that the escrow is depleted to the sum of ONE THOUSAND DOLLARS (\$1,000.00) or less, Stanhope shall so notify Byram, in which event Byram shall replenish or cause to be replenished the escrow fund to THREE THOUSAND DOLLARS (\$3,000.00) within sixty days of notice from Stanhope. In the event that such payment is not made when requested by Stanhope, Stanhope shall have the right to suspend the undertaking of any obligation on its part under the terms and conditions of this agreement until such time as the escrow is replenished, including termination of this agreement. Stanhope shall maintain a separate escrow account for this 4,300 gallons per day of sewer allocation, notwithstanding the existence of other escrow accounts for other amounts of sewer allocation with Byram Township.

6. **Duration.** Unless otherwise rightfully cancelled by one or more of the parties, this agreement will remain in full force and effect until December 30, 2021, or until the agreement's terms are fulfilled and allocation is transferred and final payment is made, whichever comes first. Stanhope shall have the right to extend, or refuse to extend the duration of this agreement as Stanhope, in its sole discretion, shall determine. In the event that this agreement lapses, or is not renewed or extended, or is cancelled by either party for any reason, no allocation is transferred to Byram and Stanhope retains all of its allocation from the MSA.

7. **Right of First Refusal.** Stanhope has the right of first refusal if Byram decides to transfer or convey any or all of the allocation transferred in this agreement to an individual or other entity, public or private, outside of the Byram Township municipal boundary. Prior to such transfer or conveyance, Byram shall first offer the allocation to Stanhope for a purchase price equal to the purchase price paid by Byram to Stanhope, without interest. Stanhope shall have thirty days after receipt of written notice of the proposed offer to acquire the available sewer allocation. Stanhope may request and shall receive a payment schedule of up to five years to pay for the allocation.

In the event Stanhope chooses not to exercise its right of first refusal, Byram must pay any outstanding balances owed to Stanhope under this agreement prior to Byram's transfer of the allocation.

8. **Restrictions on Transfer.** This agreement is subject to any transfer restriction and/or limitation on Stanhope's sewer allocation which may exist or be imposed by the MSA, New Jersey Department of Environmental Protection, a court of competent jurisdiction, or any other governmental or other entity properly vested with jurisdiction over Stanhope's sewer allocation. Any such restriction imposed prior to the date of transfer of allocation to Byram shall be applied pro rata to the allocation transferred herein in proportion to the ratio of the within allocation to Stanhope's total allocation, subject to the provisions of paragraph 10, below.

9. **Approvals.** Byram, at its sole cost and expense, shall apply for and obtain any and all necessary approvals from the MSA, NJDEP or other governmental entity properly vested with jurisdiction. This agreement is subject to Byram entering into a service agreement with the MSA upon such terms and conditions and in such form as the MSA shall require.

10. **Withdrawal.** In the event Byram is unable to complete the transfer due to no fault of Stanhope, Byram shall have no right to the allocation. Stanhope expressly reserves the right to withdraw its entire allocation offer to Byram, prior to the consummation of the transfer, in the event the MSA, NJDEP, or other governmental entity or court limits or in any way diminishes Stanhope's total allocation. In such diminishing event, Stanhope shall return the balance of Byram's deposit paid pursuant to paragraph 2.B. of this agreement. Byram expressly reserves the right to cancel this agreement for any reason at any time prior to the consummation of the transfer of allocation.

11. **Breach of Agreement.** In the event Byram breaches this agreement in any way, Byram agrees to pay any and all costs incurred by Stanhope relating to the breach, including, but not limited to, reasonable attorney fees and costs.



12. **Indemnification.** Byram agrees to indemnify and hold harmless Stanhope, its officers, employees, agents, professionals, servants and every one of them against any all claims, liability, suits and costs and from all damages to which Stanhope or its officers, agents, employees, agents, professionals or servants may be put with respect to any personal injury, property damage or other actions of any nature. This indemnification shall be construed as broadly as possible in favor of Stanhope.

13. **Voluntary Agreement.** The parties represent that they have voluntarily entered into this agreement. This document is the result of "arms length" negotiations between the parties and no party hereto shall be considered the drafter hereof. No provision in this agreement shall be construed against any party, as all parties are the mutual drafters hereof.

14. **Approval.** Both parties agree to cooperate with each other in this implementation of this agreement and to promptly prepare and execute any document or to take any action that reasonably may be required by it to fully effectuate the intent of this agreement.

15. **Notices.** Any notice provided for in this agreement shall be delivered to the parties at the addresses first appearing in this agreement.

16. **Severability.** It is acknowledged and agreed by both parties that in the event any of the terms, covenants and conditions contained in this agreement be declared invalid, for any reason, the balance of this agreement shall remain in full force and effect.

17. **Binding Nature.** This agreement shall be binding upon Stanhope and Byram, their successors and assigns.

18. **Entire Agreement.** Any and all prior discussions and negotiations between the parties are merged into this agreement, which represents the entire and only agreement between the parties. This agreement can only be modified by an agreement in writing signed by the parties.

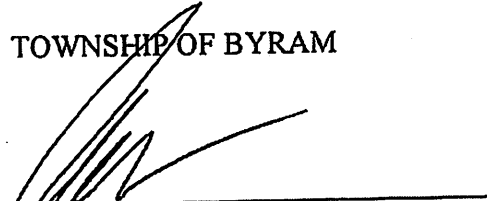
19. **Execution and Counterparts.** This agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as one original.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their corporate officers and their proper corporate seals to be affixed hereto the day and year as indicated in the acknowledgments attached hereto and made a part hereof.

ATTEST:

TOWNSHIP OF BYRAM

  
Cynthia Church, Township Clerk

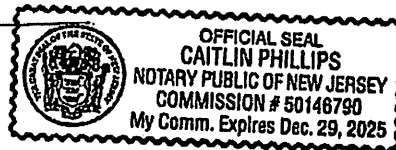
  
Alex Rubenstein, Mayor

STATE OF NEW JERSEY I  
I SS.:  
COUNTY OF SUSSEX I

BE IT REMEMBERED, that on this 18<sup>th</sup> day of March in the year, Two Thousand Eight, before me, the subscriber, personally appeared the above-named persons, who, being by me duly sworn on her oath, doth depose and make proof to my satisfaction that they are, respectively, the Township Clerk and Mayor of the TOWNSHIP OF BYRAM, a municipal corporation, the corporation named in the within instrument; that the execution as well as making of this instrument has been duly authorized by a proper resolution of the Township Council; that deponent well and truly knows the corporate seal of said municipality; and the seal affixed to said instrument is such seal and was thereto affixed to said instrument signed and delivered by said MAYOR as and for the voluntary act and deed of said municipality, in the presence of deponent, who thereupon subscribed her name thereto as witness.

Sworn and subscribed to before me this 18<sup>th</sup> day of March, 2021.

  
Notary Public  
Commission Expires 12/29/25



IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their corporate officers and their proper corporate seals to be affixed hereto the day and year as indicated in the acknowledgments attached hereto and made a part hereof.

ATTEST:

BOROUGH OF STANHOPE

Allen Horak  
Borough Clerk

Patricia Poppebeck  
Mayor

STATE OF NEW JERSEY I  
I SS.:  
COUNTY OF SUSSEX I

BE IT REMEMBERED, that on this 4<sup>th</sup> day of May in the year, Two Thousand ~~Eight~~, before me, the subscriber, personally appeared persons, who, being by me duly sworn on oath, doth depose and make proof to my satisfaction that they are, respectively, the Clerk and Mayor of the Borough of Stanhope, a municipal corporation, the corporation named in the within instrument; that the execution as well as making of this instrument has been duly authorized by a proper resolution of the Borough Council; that deponent well and truly knows the corporate seal of said municipality; and the seal affixed to said instrument is such seal and was thereto affixed to said instrument signed and delivered by said MAYOR as and for the voluntary act and deed of said municipality, in the presence of deponent, who thereupon subscribed her name thereto as witness.

Sworn and subscribed to before me this 4<sup>th</sup> day of May, 2021.

L. Chirip  
Notary Public  
Commission Expires \_\_\_\_\_

**LINDA CHIRIP**  
**NOTARY PUBLIC OF NEW JERSEY**  
**Comm. # 2419159**  
**My Commission Expires 3/28/2022**



# Borough of Stanhope

Sussex County, New Jersey

- Resolution -

## **A RESOLUTION BY THE BOROUGH OF STANHOPE AUTHORIZING THE EXECUTION OF THE SEWER CAPACITY ALLOCATION RESERVATION AGREEMENT BETWEEN STANHOPE BOROUGH AND BYRAM TOWNSHIP**

**WHEREAS**, the Borough of Stanhope is a member of the Musconetcong Sewerage Authority (MSA); and

**WHEREAS**, Byram Township and the Borough of Stanhope entered into a Sewer Capacity Allocation Reservation Agreement in 2016, which has completed, and which resulted in an allocation of an additional 1,450 gallons per day of sewerage capacity to Byram Township by the Borough over and above the 100,000 gallons per day; and


**WHEREAS**, the Borough has preliminarily evaluated its future sewer treatment needs and has determined that there is more than 4,300 gallons per day of their allocation not anticipated to be needed, thereby making 4,300 gallons per day available for transfer to other municipalities; and

**WHEREAS**, Byram Township has prepared an agreement between Byram Township and the Borough for Sewer Capacity Allocation Reservation for 4,300 gallons per day; and

**WHEREAS**, the Mayor and Council has reviewed and approved the attached Sewer Capacity Allocation Reservation Agreement.

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and Council of the Borough of Stanhope, County of Sussex, State of New Jersey that the Mayor and Borough Clerk are authorized to sign any and all documents relating to the Sewer Capacity Allocation Reservation Agreement.

I certify this is a true copy of the Resolution adopted by the Mayor and Council of the Borough of Stanhope on April 27, 2021.

  
Ellen Horak, Borough Clerk

**TOWNSHIP OF BYRAM  
RESOLUTION NO. 096 - 2021**

**RESOLUTION AUTHORIZING THE EXECUTION OF THE SEWER CAPACITY ALLOCATION  
RESERVATION AGREEMENTS BETWEEN BYRAM TOWNSHIP and STANHOPE BOROUGH**

**WHEREAS**, Stanhope is a member of the Musconetcong Sewerage Authority (MSA); and

**WHEREAS**, Byram has a service contract with the MSA dated April 1, 2004 for 100,000 gallons per day of sewage treatment capacity at the MSA plant, although Byram is not a member of the MSA; and

**WHEREAS**, Byram Township and Stanhope Borough entered into a Sewer Capacity Allocation Reservation Agreement in 2016, which has completed, and which resulted in an allocation of an additional 1,450 gallons per day of sewerage capacity to Byram Township by Stanhope Borough over and above the 100,000 gallons per day; and

**WHEREAS**, Stanhope Borough has preliminarily evaluated its future sewer treatment needs and has determined that there is more than 4,300 gallons per day of their allocation not anticipated to be needed, thereby making 4,300 gallons per day available for transfer to other municipalities; and

**WHEREAS**, Byram Township has determined that it reasonably anticipates a need for 4,300 gallons per day of sewer treatment capacity allocation to service properties within the Byram Township borders; and

**WHEREAS**, the Township of Byram has prepared an agreement between Byram Township and Stanhope Borough for Sewer Capacity Allocation Reservation for 4,300 Gallons per day; and

**WHEREAS**, the Mayor and Council have reviewed and approved the attached sewer capacity allocation reservation agreement;

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council of the Township of Byram that the Township Manager is authorized to finalize the terms of the agreement; and

**NOW THEREFORE BE IT FURTHER RESSOLVED** by the Mayor and Council of the Township of Byram that the Mayor and Township Clerk are authorized to sign any and all documents relating to the Sewer Capacity Allocation Reservation Agreements upon finalization.

**Byram Township Council**

	Councilman Bonker	Councilwoman Franco	Councilman Gallagher	Councilman Roseff	Mayor Rubenstein
Motion	Y				
2nd		X			
Yes	Y	X	X	X	X
No					
Abstain					
Absent					

**Attest:**

I certify that the forgoing resolution was adopted by the Byram Township Council at a meeting held on March 16, 2021.

  
 Cynthia Church, RMC  
 Township Clerk