

County:	<u>Northampton</u>	Agreement #:	<u>057167</u>
Project Short Title:	<u>SR 378 Ramp</u>	MPMS #:	<u>82814</u>
Project (SR & Sec):	<u>378-RMP</u>	Federal ID #:	<u>24-6000689</u>

**DRAINAGE STRUCTURES AND SIDEWALK MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2009, between the Commonwealth of Pennsylvania, acting through the Department of Transportation, hereinafter called PENNDOT,

and

City of Bethlehem, Northampton County, a political subdivision duly and properly formed under the laws of the Commonwealth of Pennsylvania, acting through its proper officials, hereinafter called the MUNICIPALITY.

**WITNESSETH:**

WHEREAS, PENNDOT is about to make improvements State Route 378 in the City of Bethlehem titled Route 378 Ramp Project, identified in PENNDOT's files as S.R. 378, Section RMP, hereinafter referred to as the Project; and,

WHEREAS, the need for storm water inlets, drainage pipes, curbing, and sidewalks at the following location has been determined appropriate:

<u>County</u>	<u>State Road</u>	<u>Beginning Segment/Offset</u>	<u>Ending Segment/Offset</u>
Northampton	00378	0070/0323 & 0071/0328	0070/1403 & 0071/1399

WHEREAS, state and federal funds will be used to construct the storm sewer inlets, drainage pipes, curbing and sidewalks at this location; and,

WHEREAS, storm sewer inlets drainage pipes are being installed to control water discharge from the widening of State Route 378 West Third Street; and,

WHEREAS, the curbing and sidewalks are being installed to serve pedestrian traffic; and, and relocated ramp from West Third Street to SR 378; and,

WHEREAS, the MUNICIPALITY has agreed, upon completion of the Project, to assume year-round responsibility for maintenance and repair of said storm sewer inlets, drainage pipes, curbing and sidewalks.

NOW, THEREFORE, in consideration of the premises, the mutual covenants hereinafter contained and with the intent to be legally bound hereby, the parties hereto agree as follows:

1. PENNDOT shall, with its own forces or by contract, construct various improvements along State Route 378 including the storm sewer inlets, drainage pipes, curbing and sidewalks in accordance with the plans prepared by PENNDOT, which are incorporated herein by reference as though physically attached.
2. Upon completion of said Project by PENNDOT or its contractor(s), PENNDOT shall send to the MUNICIPALITY a written notice of completion.
3. Upon receipt of the notice, required by Paragraph 2 above, the MUNICIPALITY shall, at its sole cost and expense, be responsible for the year-round maintenance and repair of the storm sewer inlets, drainage pipes, curbing and sidewalks to insure an acceptable level of physical integrity and operation consistent with the original design standards. The maintenance shall include, but not be limited to the removal of any and all debris which may obstruct any inlets drainage pipes or outlet structures related to the storm sewer system, and the clearing and removal of snow and ice and application of anti-skid or de-icing materials on sidewalks.
4. PENNDOT shall have the right, at any given time, to terminate this Agreement by giving the MUNICIPALITY thirty (30) days written notice. In the event of such termination, the MUNICIPALITY's responsibilities under this Agreement, except those of liability, whether financial, in tort or , with respect to any act or omission occurring prior to the effective date of termination shall terminate.
5. The MUNICIPALITY shall indemnify, save harmless, and defend (if requested) PENNDOT, its officers, agents, and employees from all suits, actions, or claims of any character, name, or description brought for or on account of any injuries to or damages sustained by any person, persons or property as a result of or arising from the breach by the MUNICIPALITY, or its contractors, officers, agents and/or employees of the maintenance and repair obligations assumed by the MUNICIPALITY under this Agreement.
6. If, after written notice by PENNDOT to the MUNICIPALITY required by Paragraph 7 hereof, the MUNICIPALITY shall fail to perform any of these items, conditions, and provisions of this Agreement, subject to thirty (30) days prior written notice by PENNDOT to the MUNICIPALITY of such default, the MUNICIPALITY authorizes PENNDOT to withhold so much of the MUNICIPALITY's Liquid Fuels Tax Fund Allocation as may be needed to complete any necessary work and to reimburse PENNDOT in full for

all reasonable costs due thereof, and does hereby and herewith authorize PENNDOT to withhold such amount and to apply such funds, or portion thereof, to remedy the default.

7. In the event that PENNDOT determines that certain repair or maintenance action is necessary with respect to the storm sewer inlets, drainage pipes, curbing and sidewalks, PENNDOT shall notify the MUNICIPALITY in writing. The MUNICIPALITY shall begin necessary work within thirty (30) days of receipt of PENNDOT's notice. In the event that the MUNICIPALITY fails to commence necessary work within said thirty (30) day period, unless an extension is requested by the MUNICIPALITY and granted by PENNDOT, or fails to prosecute said work diligently to completion, PENNDOT may perform said repair or maintenance action at the MUNICIPALITY's sole cost and expense. Failure by the MUNICIPALITY to pay PENNDOT within forty-five (45) days of receipt of an invoice for work performed by PENNDOT shall constitute a default for purposes of Paragraph 6 of this Agreement. Payment shall be deemed made when posted as U.S. First Class Mail, postage prepaid.
8. The MUNICIPALITY shall enact and/or adopt such ordinances and/or resolutions as may be necessary to affect the purposes of this Agreement.
9. The MUNICIPALITY agrees that PENNDOT may offset the amount of any state tax for PENNDOT liability of the MUNICIPALITY or its affiliates and subsidiaries that is owed to PENNDOT against any payments due the MUNICIPALITY under this or any other contract with PENNDOT.
10. The MUNICIPALITY shall comply with PENNDOT's Contractor Integrity Provisions attached hereto and incorporated herein as Exhibit "A."
11. The MUNICIPALITY shall comply with PENNDOT's Provisions Concerning the Americans with Disabilities Act attached hereto and incorporated herein as Exhibit "B."
12. The MUNICIPALITY shall comply with PENNDOT's Contractor Responsibility Provisions attached hereto and incorporated as Exhibit "C."
13. The MUNICIPALITY shall comply with the conditions set forth in PENNDOT's Nondiscrimination/Sexual Harassment Clause attached hereto and incorporated herein as Exhibit "D."
14. Notice under this Agreement shall be by First Class Certified United States Mail, Return Receipt Requested, postage prepaid or by overnight delivery service having positive tracking, such as Federal Express. Notice shall be deemed given when received. Notices shall be sent to the following individuals at the following addresses:

to PENNDOT: Mr. Michael W. Rebert, PE, District Executive  
Pennsylvania Department of Transportation  
Engineering District 5-0  
1002 Hamilton Street  
Allentown, PA 18101

to the MUNICIPALITY: Mr. Michael Alkhal, PE, Director  
Department of Public Works  
10 East Church Street  
Bethlehem, PA 18018

or to such other addresses as the parties may provide to each other from time to time.



## CONTRACTOR INTEGRITY PROVISIONS

1. For purposes of this clause only, the words "confidential information," "consent," "contractor," "financial interest," and "gratuity" shall have the following definitions.
  - a. **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - b. **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - c. **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
  - d. **Financial interest** means:
    - 1) Ownership of more than a five percent interest in any business; or
    - 2) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - e. **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
3. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
4. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
5. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
7. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
10. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

### EXHIBIT "A"

Enclosure 1 to Management Directive 215.8 Amended  
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**PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT**

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101 et seq., The Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1.

**EXHIBIT "B"**

## CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any government entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.

3. The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.

5. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.

6. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472

**EXHIBIT "C"**

## COMMONWEALTH NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

Each contract entered into by a governmental agency shall contain the following provisions by which the Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provision will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.

### EXHIBIT "D"