



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Tad J. Miller, City Clerk

From: John F. Spirk, Jr., Esq., City Solicitor

Re: Intergovernmental Cooperation Agreement with Bethlehem Township and Bethlehem Township Municipal Authority – Joint Implementation of Stormwater Management Projects

Date: May 9, 2023

Attached for Council's consideration is a proposed Resolution and Intergovernmental Cooperation Agreement with Bethlehem Township and Bethlehem Township Municipal Authority for the joint implementation of stormwater management projects.

Please place this matter on City Council's agenda for review and appropriate action.

John F. Spirk, Jr.

John F. Spirk, Jr., Esq., Solicitor

Cc: J. William Reynolds, Mayor
Michael Alkhal, Director of Public Works
Sara Aldarondo, Stormwater Project Engineer

RESOLUTION 2023-_____

AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL COOPERATION AGREEMENT PURSUANT TO 53 Pa. C.S.A. §2307 BY AND BETWEEN THE CITY OF BETHLEHEM, BETHLEHEM TOWNSHIP AND THE BETHLEHEM TOWNSHIP MUNICIPAL AUTHORITY.

WHEREAS, the CITY OF BETHLEHEM is a municipal corporation being a City of the Third-Class, subject to the Optional Third-Class City Charter Law, organized and existing under the laws of the Commonwealth of Pennsylvania, its constituent parts being split by law between Northampton County and Lehigh County, Pennsylvania with principal administrative offices at City Hall, 10 E. Church Street, Bethlehem, PA 18018 (hereinafter referred to as “City”); and

WHEREAS, BETHLEHEM TOWNSHIP is a township organized under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as “Township”); and

WHEREAS, the BETHLEHEM TOWNSHIP MUNICIPAL AUTHORITY is a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as “BTMA”);

WHEREAS, City owns, operates, and maintains a Municipal Separate Storm Sewer System (“MS4”) that discharges to the Lehigh River, Monocacy Creek, Nancy Run, Saucon Creek, Unnamed Tributaries to the East Branch of the Saucon Creek, Unnamed Tributaries to the Lehigh Coal and Navigation Canal and/or the East Branch of the Saucon Creek; and

WHEREAS, BTMA owns an MS4 that discharges to the Delaware River, Lehigh River, Monocacy Creek and/or Nancy Run; and

WHEREAS, Township operates and maintains an MS4 that discharges to the Delaware River, Lehigh River, Monocacy Creek and/or Nancy Run; and

WHEREAS, the City, Township, and BTMA wish to engage in a collaborative process of implementing Stormwater Management Projects (sometimes individually a “Project” and collectively the “Projects”); and

WHEREAS, each Participant will create, operate, and maintain Stormwater Best Management Practices (“BMP”) Projects within its municipal boundaries or service area designed to improve water quality and/or water quantity management including, without limitation, the retrofitting of basins and enhanced water quality and quantity features; and

WHEREAS, it is contemplated that City, Township and BTMA shall equitably share in the cost to implement the Projects; and

WHEREAS, the City, Township and BTMA desire to enter into the attached Intergovernmental Cooperation Agreement (hereinafter referred to as the "Agreement"), the purpose of which is to set forth, *inter alia*, how the parties will cooperate in the implementation of Projects and the obligations of each party; and

WHEREAS, the Agreement shall become effective upon adoption of authorizing ordinances or resolutions, as appropriate, by the parties and execution of the Agreement by all parties; and

WHEREAS, the Agreement shall remain in effect until terminated by any party upon ninety (90) days written notice to the other parties, provided, however, that any Projects pending at the date of termination shall be completed in accordance with the terms of the Agreement; and

WHEREAS, the Agreement further addresses the manner and extent of funding the obligations of the Agreement and the organizational structure necessary to implement the Agreement.

NOW THEREFORE BE IT RESOLVED, on this ____ day of _____, 2023, that the City Council of the City of Bethlehem, approves and ratifies the Intergovernmental Cooperation Agreement attached hereto and that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute the same on behalf of the City of Bethlehem.

Sponsored by _____

ADOPTED by Council this ____ day of _____, 2023.

President of Council

ATTEST:

City Clerk

**INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE
JOINT IMPLEMENTATION OF STORMWATER MANAGEMENT PROJECTS**

THIS AGREEMENT is made this _____ day of _____, 2023, (the “Agreement”), by and among the City of Bethlehem (“City”), Bethlehem Township (“Township”) and the Bethlehem Township Municipal Authority (“BTMA”) (collectively, the “Participants”) for the joint implementation of stormwater management projects.

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, City owns, operates, and maintains a Municipal Separate Storm Sewer System (“MS4”) that discharges to the Lehigh River, Monocacy Creek, Nancy Run, Saucon Creek, Unnamed Tributaries to the East Branch of the Saucon Creek, Unnamed Tributaries to the Lehigh Coal and Navigation Canal and/or the East Branch of the Saucon Creek; and

WHEREAS, BTMA owns an MS4 that discharges to the Delaware River, Lehigh River, Monocacy Creek and/or Nancy Run; and

WHEREAS, Township operates and maintains an MS4 that discharges to the Delaware River, Lehigh River, Monocacy Creek and/or Nancy Run; and

WHEREAS, the City, Township, and BTMA wish to engage in a collaborative process of implementing Stormwater Management Projects (sometimes individually a “Project” and collectively the “Projects”); and

WHEREAS, each Participant will create, operate, and maintain Stormwater Best Management Practices (“BMP”) Projects within its municipal boundaries or service area designed to improve water quality and/or water quantity management including, without limitation, the retrofitting of basins and enhanced water quality and quantity features; and

WHEREAS, it is contemplated that the Participants shall equitably share in the cost to implement the Projects; and

WHEREAS, the purpose of this Agreement is to set forth, *inter alia*, how the Participants will cooperate in the implementation of Projects and the obligations of each Participant; and

WHEREAS, prior to the execution of this Agreement, all Participants shall adopt either an Ordinance or Resolution approving this Agreement to effectuate their participation.

NOW, THEREFORE, the Participants, 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 are incorporated herein by reference as if fully set forth at length herein.

2. **Guiding Principle.** The Participants have a mutual interest in working together in a cooperative manner to implement Projects and to achieve the objectives set forth in this Agreement.

3. **Functions, Powers and Responsibilities.** Each Participant shall be responsible for the following functions and responsibilities and shall have the following powers:

A. To work cooperatively to oversee, supervise and administer the implementation of such Projects as the Participants may agree to undertake. Agreement to undertake a Project shall be evidenced by the execution by all parties of a Project Task Order Form which shall, at a minimum, set forth the objective(s) of the Project, a description of the services to be performed, the estimated cost of the Project, the allocation of costs between and among the Participants and the Participant responsible for the bidding and administration of the Project.

B. To facilitate the implementation of new Projects within its municipal boundaries or service area (including design, permitting, construction, operation, monitoring, maintenance, and approval). The Participants may transfer such obligations for design, construction, operation and maintenance, and monitoring to qualified third parties, but each Participant shall remain responsible to ensure that the contracted third parties are performing the required tasks satisfactorily to the benefit of all Participants. Unless otherwise provided, a Participant shall manage and administer all funds related to Projects within its municipal boundaries or service area.

C. Notwithstanding the provisions of Paragraph 3(B), a Participant may transfer its obligation to facilitate the implementation of new Projects within its boundaries or service area to another Participant. In the event a Participant transfers the obligation for design, construction, operation, monitoring or maintenance to another Participant, the Participant to which the obligations are transferred shall also be responsible for managing and administering all funds related to that Project, even if it is outside its municipal boundaries or service areas.

D. Each Participant 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. Each Participant shall make available to the other Participants for review and copying any records related to a Project and the activities undertaken pursuant to this Agreement upon submission of written request no less than five (5)

business days prior to the desired date of review. Each Participant may waive the requirement for written request in its discretion.

E. Participants agree to take all action reasonably necessary to implement the purposes of this Agreement.

F. Participants agree to 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.

G. Unless otherwise stated in the applicable Project Task Order Form, after completion of a Project, all aspects of ongoing operation and maintenance of a Project, including, without limitation, all administrative and document related tasks and the costs thereof, shall be the responsibility of the Participant in whose municipality or service area the Project or portion thereof is located.

H. Participants 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 responsibility of the Participant that operated and maintained the existing BMP before the formation and implementation of this Agreement, to be performed at the sole cost and expense of that Participant.

I. Participants shall collaborate with one another to the extent practicable to take all necessary actions to acquire grants or other funding that can be used to fund a Project's implementation and/or the actions and activities undertaken pursuant to this Agreement and applicable Project Task Order Form.

4. Enforcement Actions. If any compliance or enforcement action (including the pursuit of a civil penalty, issuance of a 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 a Project or implementation actions and activities undertaken pursuant to this Agreement, the Participants shall discuss the enforcement action, whether any one or more Participants are responsible for the alleged violation(s), and determine what the responsive action(s) shall be. Where an act of malfeasance, misfeasance, negligence, or other misconduct of a Participant results in a civil penalty, issuance of an NOV or other compliance action, a fine, or a damages award of any kind, the responsible Participant shall indemnify and hold harmless the non-responsible Participants with respect thereto.

5. Financing of Projects.

A. Costs associated with implementation of a Project shall be apportioned among the Participants as set forth in the Project Task Order Form for each Project.

Each Project Task Order Form shall be negotiated in good faith between and among the Parties and, upon execution, shall constitute an addendum to this Agreement.

B. Unless otherwise stated in a Project Task Order Form, the agreement by the Participants to participate in a Project shall not be contingent upon a Participant obtaining grants and/or financing.

C. Each Participant shall be responsible for its own out-of-pocket costs not included in a Project Task Order Form and its own solicitor's fees.

6. Initial Project. It is anticipated that the initial Project under this Agreement will be the East Boulevard East Basin and East Boulevard West Basin Retrofits. A true and correct copy of the Project Task Order Form for that Project is attached hereto, made part hereof and marked Exhibit "A".

7. Effective Date. This Agreement shall become effective upon adoption of authorizing ordinances or resolutions, as appropriate, by the Participants and execution of this Agreement by all Participants.

8. Term. This Agreement shall commence upon the Effective Date. This Agreement may be terminated by any Participant upon ninety (90) days written notice to the other Participants, provided, however, that any Projects pending at the date of termination shall be completed in accordance with the terms of this Agreement.

9. Authorization and Certification. 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 to any pending lawsuits, regulatory fines, consent decrees, or other similar sanction of whatever kind related to their MS4 system. Each Participant shall undertake best efforts to resolve any and all such lawsuits, fines, consent decrees, or similar sanctions prior to that Participant's execution of this Agreement. In the event a Participant is unable to resolve such lawsuits, fines, consent decrees, or similar sanctions prior to execution of this Agreement, the Participant agrees to fully indemnify and defend all other Participants from any associated damages and liability.

10. 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 Northampton County Court of Common Pleas. The Participants hereby submit to the exclusive jurisdiction of that Court.

11. Integration. This Agreement contains the entire agreement between 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.

12. 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.

13. 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.

14. 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. The Participants shall be deemed 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 fully explained to them and that they are voluntarily and knowingly entering into this Agreement.

15. 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.

16. 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.

IN WITNESS WHEREOF, the Participants hereto have entered into this Intergovernmental Cooperation Agreement for the Joint Implementation of Stormwater Management Projects.

SIGNATURES APPEAR ON NEXT PAGE

ATTEST:

City of Bethlehem

By: _____

Title

ATTEST:

Bethlehem Township

By: _____

Title

ATTEST:

Bethlehem Township
Municipal Authority

By: _____

Title

TASK ORDER FORM

In accordance with the INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE JOINT IMPLEMENTATION OF STORMWATER MANAGEMENT PROJECTS, made effective as of _____, _____, 2023 written authorization by Participants is hereby given for performance of the below listed Services.

TITLE: East Boulevard East Basin and East Boulevard West Basin Retrofits

JOINT OBJECTIVE: To implement the retrofit of the East Boulevard East Basin and the East Boulevard West Basin towards achieving compliance with each party’s respective Pollution Reduction Plans (PRP) and downstream flood mitigation goals. Sediment Reduction credits shall be shared as follows: City 50% of credits; Township 50% of credits. Project shall be implemented by Bethlehem Township Municipal Authority (“BTMA”) as part of a larger project entitled Easton Avenue Flood Mitigation Phase 1. Estimated costs for construction of the two basins amounts to 65% of the total Easton Avenue Flood Mitigation Phase 1 project. This percentage shall be used for distribution of engineering design costs. The costs associated with implementation of improvements at the two basins shall be identified separately on the bid form and used as those to be distributed as part of the cost sharing between Participants. Operation and Maintenance of the basins will remain the responsibility of City of Bethlehem (“City”), in accordance with the Intermunicipal Agreement. Bethlehem Township Municipal Authority (“BTMA”) has the right to perform inspection for regulatory purposes, and as such a permanent construction access easement shall be granted by City to BTMA.

Bethlehem Township submitted a FEMA BRIC grant application in 2022 for 70% of the costs for the Easton Avenue Flood Mitigation Phase 1 project. If notice is given by FEMA in 2023 that this grant is not being awarded to the Township, BTMA shall proceed with Project at that time. If notice is given by FEMA in 2023 that the grant application is being reviewed further, BTMA shall not proceed with Project until grant is awarded, which is anticipated to not occur until the summer of 2024. If the grant is received, proceeds from the grant shall be distributed in accordance with the percentages noted in this Task Order for cost sharing.

POINT OF CONTACT: Steve Hunsberger, BTMA Executive Director

TASK ORDER AUTHORIZATION NUMBER: 2023-01

SERVICES TO BE PERFORMED BY: Design and Construction Phase Engineering Services performed by Herbert, Rowland, and Grubic, Inc pursuant to Agreement with BTMA. Construction Services to be performed Contractor(s) contracted through BTMA bidding process.

DESCRIPTION OF SERVICES: Design East Boulevard East and East Boulevard West basin retrofits to provide flooding mitigation and sediment reduction credits towards meeting Pollution Reduction Plan requirements imposed by the PA Department of Environmental Protection. Issue contract(s) for construction of designed improvements and provide construction administration and resident project representative service for this construction.

SCHEDULE:

Allocated Task Order Costs	BTMA	City of Bethlehem	Total Estimated Cost
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East Boulevard East and East Boulevard West Basin Engineering Design Services	50%	50%	\$152,750
East Boulevard East and East Boulevard West Basin Construction including Contractor Construction Costs and Construction Phase Engineering Services	50%	50%	\$2,819,000
Total Costs			\$2,971,750

Payment is due to the BTMA within thirty (30) days of receipt of invoice.

SEDIMENT REDUCTION CREDIT:

Total Annual Sediment Reduction Credit (Using Model My Watershed Method) = 207,296 lbs.

ADDITIONAL COSTS: N/A

REIMBURSABLES: N/A

ATTEST:

City of Bethlehem

By: _____

Title

ATTEST:

Bethlehem Township

By: _____

Title

ATTEST:

Bethlehem Township Municipal Authority

By: _____

Title
