



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTER-OFFICE MEMORANDUM

To: Michael Colón, Council President

From: Matthew J. Deschler, Assistant Solicitor

Re: Riparian Planting Habitat Restoration Agreement

Date: September 14, 2023

Enclosed for Council's review and action is a proposed Resolution approving a Riparian Planting Habitat Restoration Agreement with Wildlands Conservancy, Inc. to create a riparian buffer along Saucon Creek in Saucon Park.

A handwritten signature in black ink that reads "Matt Deschler".

Matthew J. Deschler
Assistant Solicitor

Cc: J. William Reynolds
Michael Alkhal
Chris Sule
Basel Yandem
John F. Spirk, Jr.

RESOLUTION NO. _____

A Resolution approving a Riparian Planting Habitat Restoration Agreement with Wildlands Conservancy, Inc. and authorizing the Mayor and Controller to execute the same instrument.

WHEREAS, Wildlands Conservancy, Inc. has obtained grant funding to perform tree and bush planting in Saucon Park along Saucon Creek to create and support a riparian buffer; and

WHEREAS, the planting of the riparian buffer is of benefit to the health, safety and welfare of the City's residents, and helps safeguard an environmentally sensitive area.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and Controller are authorized to execute the attached Riparian Planting Habitat Restoration Agreement, which shall take effect according to the terms thereof.

Sponsored by _____

ADOPTED by Council this day of , 2023.

President of Council

ATTEST:

City Clerk

RIPARIAN PLANTING HABITAT RESTORATION AGREEMENT

This Riparian Planting Habitat Restoration Agreement (the “Agreement”), dated September ____, 2023, between the CITY OF BETHLEHEM, a third class city under the laws of the Commonwealth of Pennsylvania, with offices at 10 E. Church Street, Bethlehem, Pennsylvania 18018 (the “City”) and WILDLANDS CONSERVANCY, INC., a Pennsylvania nonprofit corporation with a registered address of 3701 Orchid Place, Emmaus, Pennsylvania 18049 (“Wildlands”) allows Wildlands to undertake riparian tree planting activities on land owned by the City in Northampton County, Commonwealth of Pennsylvania.

1. Wildlands, and its authorized agents, employees, officers, and volunteers, is hereby granted access by the City, upon notice to and under supervision and direction of authorized City personnel, to that section of Saucon Park owned by the City along the western bank of the Saucon Creek in the City of Bethlehem identified by green outline in the Saucon Park Planting Plan in attached Appendix “A” (the “Site”) on a date in October, 2023, to be agreed to between the City and Wildlands for the purpose of planting riparian trees and bushes of the types identified in the Saucon Park Planting Plan in Appendix “A” (the “Plantings”). The Plantings shall be supplied by Wildlands.

2. Prior to planting, Wildlands shall undertake a visual inspection and obtain PA One-Call confirmation to ensure that the Plantings will not be planted on or over the right-of-way of any buried utility lines including but not limited to gas, phone, water, and/or sewage, or planted directly under any electrical power lines. All Wildlands’ authorized agents, employees, officers, and volunteers will use access lanes identified by the City for transporting planting materials and equipment to and from the Site. All excess planting materials will be removed from the Site by Wildlands upon completion of planting.

3. The term of this Agreement shall be twenty-five (25) years from the date of execution unless terminated earlier pursuant to the provisions hereof.

4. During the term of this Agreement, the City shall not cut, remove, mow or otherwise disturb the Plantings planted by Wildlands within the Site unless required by applicable law or by determination of the City, in its reasonable discretion, that such cutting, removing, mowing, or disturbing is necessary to protect the health, safety, and welfare of the general public. Where reasonably practicable, City shall notify Wildlands in writing of its decision to cut, remove, mow or otherwise disturb the Plantings pursuant to this paragraph. The City shall not be required to replace any Plantings cut, removed, mowed or otherwise disturbed pursuant to this paragraph. The City’s cutting, removing, mowing or otherwise disturbing of any Plantings pursuant to this paragraph shall not require the City to make any reimbursement payment to Wildlands pursuant to paragraph 10 hereof.

5. The parties shall undertake good faith efforts to cooperate toward achieving the maintenance objectives and responsibilities therefor as set forth in the Riparian Buffer Stewardship Plan included in Appendix “A”. However, while the City, where noted in the Riparian Buffer Stewardship Plan, shall generally maintain the Site as it does other City-owned properties, decisions over maintaining the Site are vested in the City’s sole discretion. No default of this Agreement on the part of the City shall arise on the basis that the City has failed to maintain the Site. No liability shall arise against the City under this Agreement on the basis of any failure of the City to maintain the Site, including, without limitation, any obligation or liability to reimburse Wildlands for the costs of Plantings under paragraph 10 of this Agreement. Wildlands waives and releases the City from

any obligation to maintain the Site, including, without limitation, any obligation to comply with the Riparian Buffer Stewardship Plan. Any maintenance by Wildlands pursuant to the Riparian Buffer Stewardship Plan shall be performed under the supervision of and at the discretion of the City.

6. The City retains all rights to control access to the Site and retains all responsibility for taxes, assessments, granting of rights-of-way, and other incidences of ownership.

7. The City shall provide Wildlands with notice, if reasonable and practicable under the circumstances, in writing prior to selling, leasing, assigning, or transferring all or any part of the lands included within the Site. Any buyer, lessee, assignee, or transferee of all or any part of the lands included within the Site shall be subject to the terms of this Agreement to the same extent as the City. The City shall notify Wildlands in writing following the sale, lease, assignment, or transfer of all or any part of the lands included within the Site.

8. Wildlands shall not record this Agreement in any office of recorder of deeds. It shall be a default under this Agreement for Wildlands to record this Agreement. Should Wildlands record this Agreement, the City's obligations to Wildlands shall terminate immediately and Wildlands shall not be entitled to any reimbursement of costs incurred in planting the Plantings pursuant to paragraph 10 hereof.

9. Wildlands' failure to strictly comply with any term of this Agreement shall constitute a default hereof and upon the occurrence of such default the City, at its discretion, may terminate this Agreement upon written notice to Wildlands. Termination of this Agreement under this paragraph shall relieve the City of any obligation to reimburse Wildlands for the costs of Plantings pursuant to paragraph 10 hereof.

10. The City may terminate this Agreement by providing twenty (20) days written notice to Wildlands. Except where otherwise provided for in this Agreement, if the City terminates this Agreement prior to the expiration of the term of this Agreement as set forth in paragraph 3 hereof, the City shall reimburse Wildlands for its project installation costs for the Plantings as identified in Appendix "B", on a pro-rata basis based on a twenty-five year period from the date of execution of this Agreement. By way of example, if the City terminated the Agreement pursuant to this paragraph during the first year following the date of execution, the City would be required to pay Wildlands \$27,900, which reflects Wildlands' entire Plantings project installation costs; if the City terminated the Agreement pursuant to this paragraph during the second year following the date of execution, the City would be required to pay Wildlands \$26,784 (\$27,900 divided by 25 multiplied by 24) and so forth.

11. Upon the termination of this Agreement, the obligations of the parties to one another shall end, except that liabilities incurred under this Agreement prior to its termination shall survive its termination.

12. Wildlands, on behalf of itself, its officers, authorized agents, employees, and volunteers, shall indemnify, defend, save and hold harmless the City and its officers and employees from and against all suits, liabilities, or claims that may be based upon any damage or injury or death, to any person or property that may occur, or that may be alleged to have occurred, wholly or partly as a result of Wildlands' activities at the Site. Wildlands shall, at its own expense, pay all

charges of attorneys, and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against the City and/or its officers and/or its employees in any such suits, liabilities, or claims, Wildlands, at its own expense, shall satisfy and discharge the same. This paragraph shall not apply to require indemnification by Wildlands for any liability, claims, or suits attributable solely to the negligence or intentional conduct of the City. Nothing in this paragraph shall be interpreted as a waiver or relinquishment by the City of its rights, protections, and immunities under the Pennsylvania Subdivision Tort Claims Act, 42 Pa. C.S. § 8541 et seq, said rights, protections, and immunity being expressly reserved.

13. Wildlands shall throughout the term of this Agreement, carry with insurance companies or self insurance programs acceptable to the City commercial general liability insurance, including where applicable contractual liability insurance, which coverage shall be at least One Million Dollars (\$1,000,000.00) (each occurrence), Two Million Dollars (\$2,000,000.00) (aggregate) for personal injury and/or death, and at least One Million Dollars (\$1,000,000.00) for property damage, and workers compensation insurance fully compliant with the Pennsylvania Workers Compensation Act, naming “the City and its officers and employees” on such insurance policies. A certificate of insurance naming the City as “certificate holder” only is non-compliant. Wildlands also shall produce proof of Workers’ Compensation insurance or proof of no employees for which such insurance is otherwise statutorily required. Wildlands shall furnish to the City’s Bureau of Law any certificates of insurance required by this Agreement in a form satisfactory to the City evidencing all such required insurance coverages prior to the execution of this Agreement, and shall be responsible for providing up-to-date certificates during the term of this Agreement. Wildlands shall provide updated certificates of insurance as the City Solicitor may direct in order to confirm that coverage is ongoing in the manner required by this Agreement. The certificates of insurance shall require thirty (30) days’ written notice to the City before the policy of insurance required hereunder can be altered or canceled.

14. This Agreement creates no rights or interests in or benefits in favor of any third party, including, without limitation, the Commonwealth of Pennsylvania. The only parties capable of enforcing this Agreement are the City and Wildlands or their assignees.

15. Wildlands shall be permitted to install a sign, subject to approval by the City, identifying the work performed at the Site pursuant to this Agreement.

16. Wildlands shall not assign its rights or interests in or obligations under this Agreement without the written consent of the City, which may be withheld in the City’s sole discretion.

17. This Agreement shall inure to the benefit or, and be binding upon, the parties and their respective successors and assigns.

IN WITNESS WHEREOF and intending to be legally bound hereby, the parties hereto have caused this Agreement to be properly executed the day and year first above written.

ATTEST:

CITY OF BETHLEHEM

City Controller

By: _____
J. William Reynolds
Mayor

I certify that the within Agreement is
Needed, necessary and appropriate.

By: _____
City of Bethlehem Department Head
Print Name: Michael Alkhal

WILDLANDS CONSERVANCY, INC.

By: _____
_____, Authorized Agent

APPENDIX A

RIPARIAN BUFFER PLANTING and STEWARDSHIP PLAN, PROJECT TIMELINE, TOPO MAP, SITE PLAN DRAWINGS

RIPARIAN BUFFER STEWARDSHIP PLAN

Better maintenance for a riparian buffer will lead to an increased survival of planted trees and shrubs and a swifter return to natural conditions. General stewardship for a riparian buffer, at a minimum, includes an annual inspection of the planted area, noting the condition of tree tubes -- including downed tubes, broken stakes, and trees emerging through the protective netting. Wildlands shall complete basic routine maintenance as necessary, such as but not limited to, correcting downed tubes and broken stakes and removing netting on any tubes where the trees have emerged. Significant maintenance, such as tree replacements, shall be completed as grant funding from Wildlands allows and is deemed necessary. Any replanting efforts will be reported to the City and no replanting shall occur without the written consent of the City. The City may be contacted annually by Wildlands to inquire about the annual inspection. Wildlands, at its own expense, may perform needed maintenance during this annual inspection; however, no maintenance shall occur without the City's prior approval. During the annual inspection, Wildlands will note:

- Condition of trees tubes and stakes (maintenance needs)
- Tree survival and condition
- Competing and invasive vegetation

Any tree tubes used to shelter the plants are designed to allow for the growing tree to split out of the tube and will breakdown over time, thus will not need to be removed.

Netting used to "cap" tree tubes is utilized to prohibit birds (typically bluebirds) from entering the tube and becoming trapped. Upon tree emergence from the tube, the netting is no longer needed and can be removed from the tubes.

Practice	monitoring of project site
Maintenance Required	checking condition of tree tubes and plantings
Schedule	yearly, as needed
Responsible Party	Wildlands Conservancy
Practice	mowing
Maintenance Required	mow only designated access areas as desired by City and leave the remaining buffer area as a naturalized no-mow zone
Schedule	as determined by the City
Responsible Party	City of Bethlehem
Practice	maintenance of planting area
Maintenance Required	righting downed trees and tubes/stakes, invasive species management, removing netting
Schedule	yearly and as needed after storm events
Responsible Party	Wildlands Conservancy, with written consent of City

Project Timeline

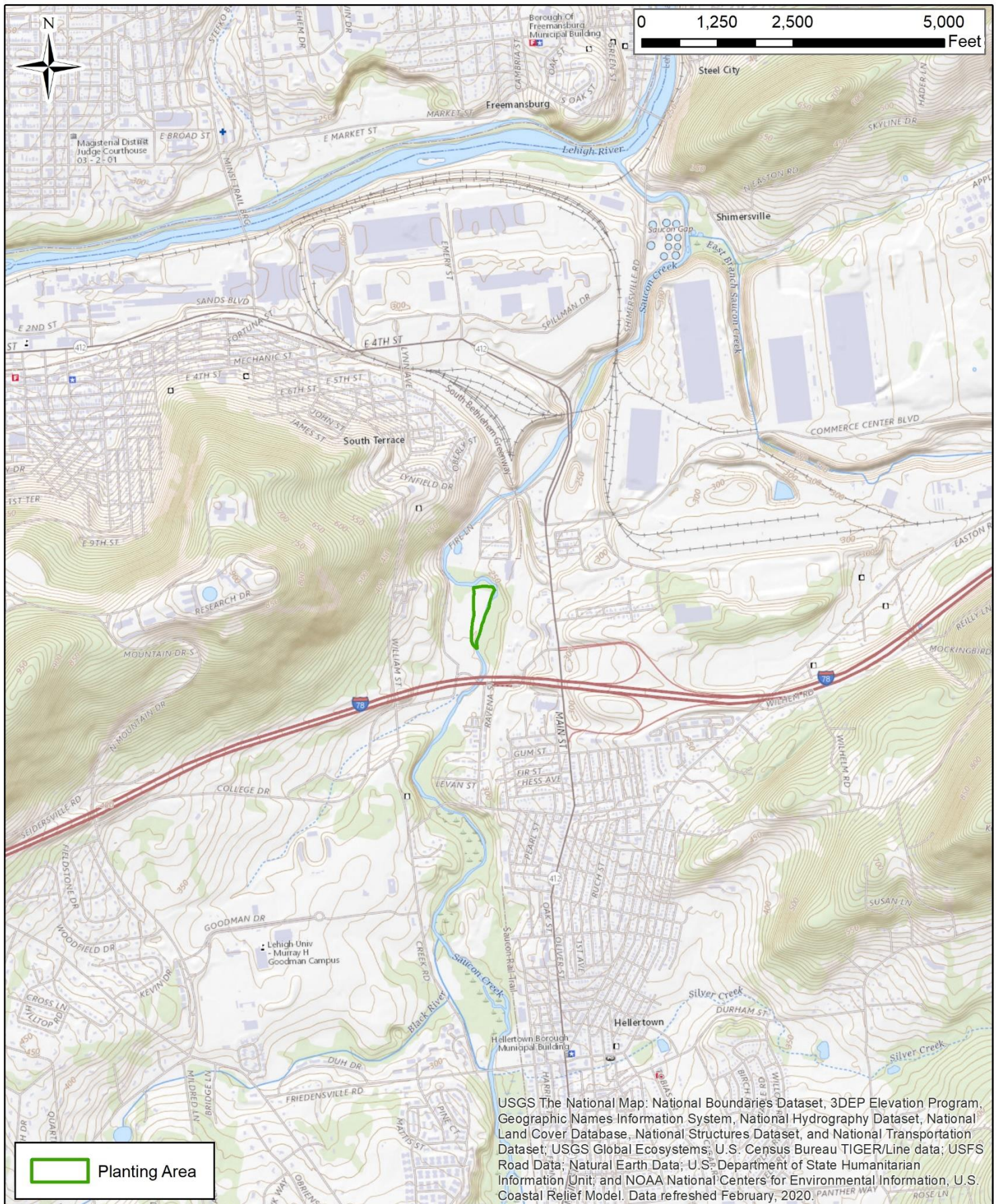
- Outreach and partnership collaboration: August 2022 – remainder of project period
- Invasive species management: August 2022 – August 2023
- Site design: July 2023
- Site preparation and planning: August 2023 – September 2023
- Buffer planting: October 2023
- Post planting establishment: October 2023 – December 2027 (grant funds will only be utilized during the grant period)



Wildlands Conservancy

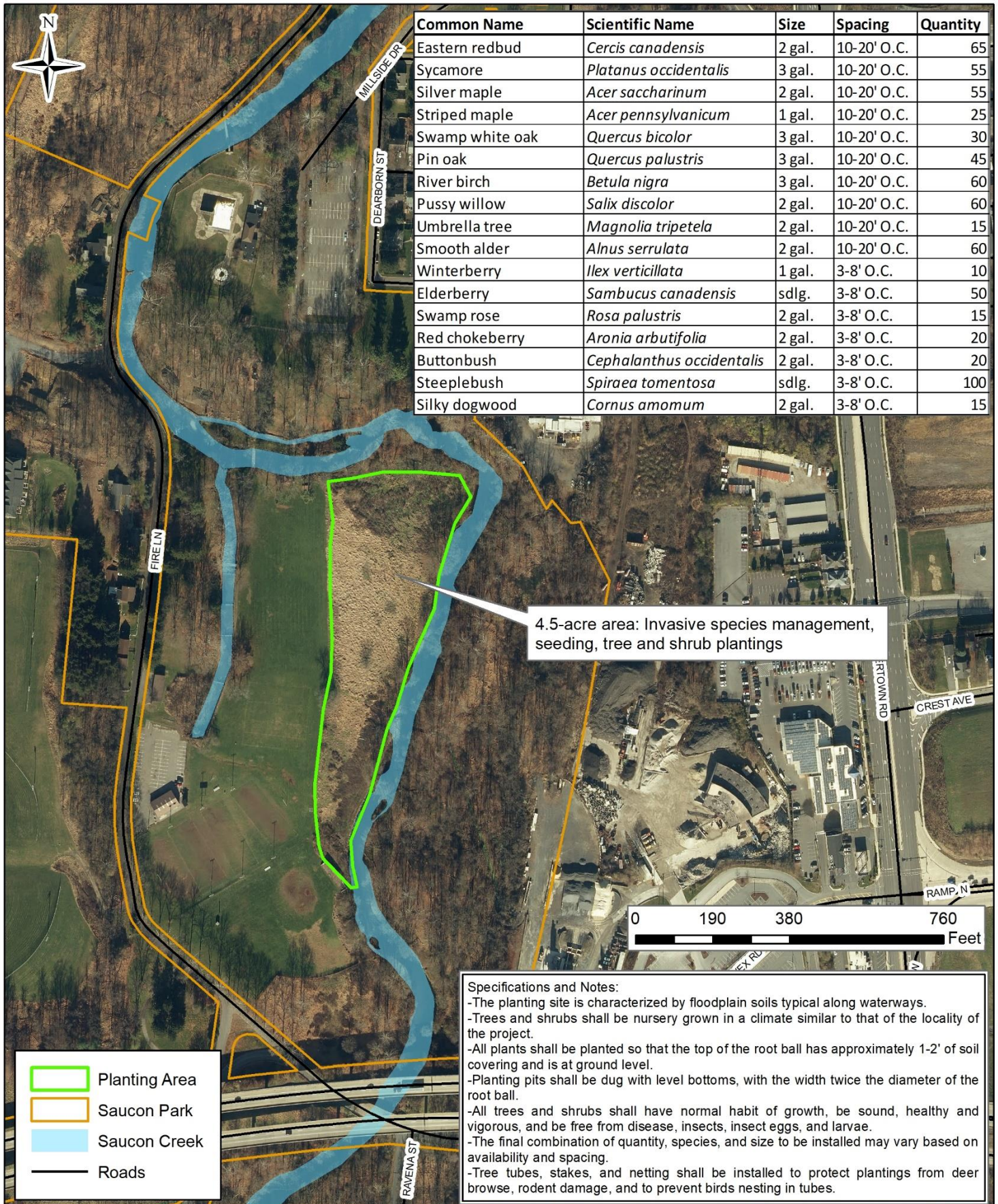
Saucon Park Planting Area

City of Bethlehem, Northampton County



Saucon Park Planting Plan

City of Bethlehem, Northampton County



APPENDIX B

PROJECT BUDGET PARTNER CONTRIBUTIONS, SPECIAL PROVISIONS

Project Budget

Item	Quantity	Grant Funds	Match	Total
Materials				
Trees & shrubs	700	\$9,100.00		\$9,100.00
Tubes, stakes		\$6,000.00		\$6,000.00
Signage	1	\$500.00		\$500.00
Shipping		\$500.00		\$500.00
Contractors				
Three rounds of invasive species (Japanese hops, mugwort, reed canary grass) management pre-planting, site preparation			\$8,800.00	\$8,800.00
Staff Time				
Wildlands Conservancy: landowner outreach, project planning/development, mapping, partnership coordination, planting plan design, materials procurement, site preparation, contractor oversight, volunteer training and oversight, invasive species management, planting labor, post-planting establishment		\$3,000.00		\$3,000.00
Total		\$19,100.00	\$8,800.00	\$27,900.00