

LEASE AGREEMENT
(STORMWATER SYSTEM)

THIS AGREEMENT (the "Lease Agreement") made and entered into as of the 10th day of February, 2025, by and between the BOROUGH OF BATH, a municipal corporation organized in accordance with the laws of the Commonwealth of Pennsylvania (the "Borough") and the BATH BOROUGH STORMWATER AUTHORITY, a municipal authority organized and existing pursuant to the Pennsylvania Municipality Authorities Act of 1945, as amended (the "Authority").

WHEREAS, the Secretary of the Commonwealth issued the Authority's Certificate of Incorporation dated December 9, 2024, and the Authority's scope of service defined by its Articles of Incorporation explicitly provides for stormwater system planning, management, and implementation; and

WHEREAS, the Borough, pursuant to the authority vested in it by law, owns the stormwater drainage systems located in Bath Borough, Northampton County, Pennsylvania (the "Stormwater System"); and

WHEREAS, the Stormwater System is more particularly defined in a corresponding Management Agreement between the parties that is to be executed contemporaneously and that definition is incorporated herein by reference; and

WHEREAS, the Borough believes it to be in the best interests of its residents to lease the Stormwater System to the Authority so that it may better assist with stormwater planning, management, and implementation in Bath Borough; and

WHEREAS, the Borough and the Authority wish to formally set forth the terms and conditions of said leasing agreement for the Stormwater System and do so as stated herein.

NOW, THEREFORE, in consideration of the execution and delivery of this Lease Agreement and One Dollar (\$1.00) paid by each party to the other, the receipt and sufficiency of all of which is hereby acknowledged, the parties do covenant and agree as follows:

1. INCORPORATION. The recitals set forth above are incorporated by reference herein and made a part hereof.

2. TERM.

2.1 Term of Lease. The Borough hereby leases to the Authority, the Stormwater System for a term of twenty-five (25) years, commencing on February 10, 2025, and expiring on February 10, 2050, upon the terms, covenants and agreements contained herein. The Borough shall have the right to extend this Lease Agreement for additional terms. Each extended term shall last ten (10) years, unless otherwise stated in a written agreement between the Parties. The Borough must notify the Authority of any intention to extend this Lease Agreement at least two (2) years prior to the lapse of the then-current term.

2.2 Impact on Other Agreements. The Borough and the Authority are also parties to a Management Agreement (“Management Agreement”) further governing the parties’ relationship with respect to the Stormwater System. The Management Agreement shall be executed contemporaneously with this Lease Agreement. This Lease and the Management Agreement shall remain effective so long as either the Borough or the Authority has any debt outstanding that is secured by a lien on the revenues of the Stormwater System, including, but not limited to, any outstanding PENNVEST loans. Termination of this Lease and the Management Agreement shall be subject to PENNVEST’s prior written approval.

3. LEASE RENT.

3.1 Rent Amount. The Authority shall pay to the Borough rent in such amounts as may become necessary as determined by the Borough and the Authority for use of the Stormwater System. No rent shall become due and payable upon the signing of this Lease Agreement.

3.2 Terms of Rent. The Authority covenants that any rental amount that becomes due under this Lease Agreement shall continue to be payable, without suspension or abatement of any nature, irrespective of delays in the completion of the Stormwater System or improvements thereto, and notwithstanding the fact that all or any part or parts of the Stormwater System have been wholly or partially damaged, injured or destroyed, or if so damaged or destroyed, shall not have been repaired, replaced or rebuilt. In no event, however, shall the rent be less than the amount specified in 4.4(b).

4. COVENANTS.

4.1 General Covenant. The Authority hereby accepts the lease of the Stormwater System from the Borough and agrees to not adversely damage the Stormwater System so as to impact stormwater service within Bath Borough.

4.2 Operation Covenant. The Authority shall undertake and perform certain functions with respect to the Stormwater System, including the determination of what shall be required for the proper operation and maintenance of the Stormwater System (including upgrades, replacements, and repairs); the implementation of said upgrades, replacements and repairs through necessary construction projects; the establishment of user rates and use of the services of the Borough for the creation and issuance of invoices and bills, collection of payment, and maintenance of records related to these functions; the receipt and collection of receipts, revenues, and money due and payable to the Authority from time-to-time, in connection with the Stormwater System, and the keeping of proper and appropriate records in connection therewith; the calculating, preparing, and rendering of all bills or statements for services rendered in connection with the Stormwater System, such bills or statements shall be in accordance with Pennsylvania Law(s), laws of the Borough, and the appropriate resolution(s) of the Authority; and the deposit of all receipts, revenues, and money collected by the Borough, in any manner or from any source, from or in connection

with the use and operation of the Stormwater System, which receipts, revenues, and money shall be deposited into the Authority's stormwater-related account.

4.3 Rate Covenant. The Authority shall enact—and agrees to keep in full force and effect during the term of this Lease Agreement—a resolution (or resolutions) imposing annual stormwater rents and other charges upon properties benefited by the Stormwater System and impose fines or penalties otherwise providing for the enforcement of said resolution(s) as may be permitted or required by law.

4.4 Stormwater Revenue Covenant. The Authority covenants that the total of such stormwater rentals and other charges shall be at least such that the gross operating revenues which may be reasonably collected therefrom by the Borough at the Authority's direction in each lease year, together with any amount payable under agreements with others, and other available funds for such purposes (including, among other things, grants received by the Authority to be applied to the operation of the Stormwater System and any balances collected in prior years in excess of such requirements) will be sufficient to provide funds for the following purposes:

(a) Payment of operating expenses related to the Stormwater System, including: (1) the amounts payable under any agreement between the Borough and others for conveyance, expenses of maintenance, insurance, repair, alteration, and inspection, of administrative, engineering, legal and auditing services, and Municipal Separate Storm Sewer System ("MS4") compliance as required by the Department of Environmental Protection ("DEP"), which may include Best Management Practice ("BMP") compliance; and (2) all taxes, including income, profits, property, franchise, and excise taxes.

(b) Payment commencing on August 1, 2025, of: (1) sums, if any, payable for administration expenses as provided in this Lease Agreement or other such agreement requiring payment of expenses; and (2) taxes, if any, levied or assessed, constituting additional sums payable under this Lease Agreement.

(c) Payment of all debt service (principal and interest) for all loans, debts, mortgages, etc. incurred or guaranteed by the Borough or Authority for the Stormwater System (if any).

(d) The Authority covenants that if collections and receipts and appropriations in any lease year shall be less than the sum of requirements of subparagraphs (a), (b), and (c) above, the Authority shall modify the usage rates and other charges to ensure that amounts thereafter to be collected and received by the Authority will be sufficient to comply with such requirements and to eliminate any deficiencies of prior lease years; and, to the extent necessary, the Authority also covenants that, if collections and receipts by the Authority, in any lease years, shall be less than the sum of requirements of subparagraphs (a), (b), and (c) above, it will provide from other available current revenues or from other legally available funds

an additional amount which, when added to collections, receipts and appropriations, will be sufficient to enable the Authority to meet such requirements.

(e) The Authority covenants that it will do all things lawfully within its power to obtain, maintain and properly request, collect, and pursue funds from which the Lease Agreement payments may be made.

4.5 Deposit Covenant. The Authority and Borough covenant to deposit all stormwater rentals and all other moneys received under the resolution or resolutions referred to in Paragraph 4.3 of the Rate Covenant herein, and all other moneys received from, or in connection with, the Stormwater System, including any amounts payable under agreements with others.

5. SUBORDINATION.

5.1 Subordinate Matters. This Lease Agreement and the Authority's rights are subject and subordinate (inferior) to all present and future: (a) leases, easements, and rights of way; (b) mortgages on the Stormwater System; (c) agreements securing money paid or to be paid to a lender; and (d) terms, conditions, renewals, changes of any kind, and extensions of the mortgages, leases, or lender agreements.

5.2 Administration. The Authority must promptly execute any certificate(s) that the Borough requests to show that this Lease Agreement is so subject and subordinate.

6. REMEDIES.

6.1 Instances of Default. Upon the occurrence of an event of default—as long as such event of default is continuing thirty (30) days after written notice of default by the Borough to the Authority and an adequate time to cure has been provided—the Borough may, at its option, exercise any one or more of the following remedies:

(a) By written notice to the Authority, declare all remaining Lease Agreement payments due during the fiscal period in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable.

(b) Exercise any other right, remedy or privilege which may be available to it under applicable laws of the Commonwealth of Pennsylvania or any other applicable law or proceed by appropriate court action to enforce the terms of this Lease Agreement or to recover damages for the breach of this Lease Agreement or to rescind this Lease Agreement as to any or all of the Stormwater System. In addition, the Authority will remain liable for all covenants and indemnities under this Lease Agreement.

7. NO ASSIGNMENT. Without the Borough's prior written consent, the Authority shall not be permitted to assign, transfer, sublet, pledge, hypothecate, grant any security interest in, or otherwise dispose of this Lease Agreement.

8. MISCELLANEOUS.

8.1 Severability. If any provision hereof shall be held to be invalid, such invalidity shall not affect any other provision hereof, and the remaining provisions shall be construed and shall be enforced as if such invalid provisions had not been contained herein.

8.2 Amendments. The Borough and the Authority, by mutual agreement, in writing, may amend and/or supplement this Lease Agreement at any time during the term of the Lease Agreement.

8.3 Counterparts. This Lease Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

8.4 Merger. This Lease Agreement contains the entire agreement between the parties and there are no covenants, express or implied, except as contained herein. No statement, promise, or inducement made by either party or agent of either party shall be valid or binding that is not contained in this written Lease Agreement.

8.5 Waiver. No waiver of any condition or covenant of this Lease Agreement by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant of said Lease Agreement.

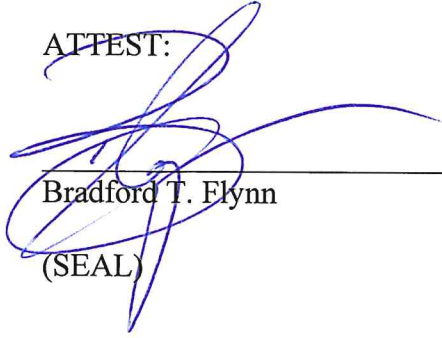
8.6 Binding. The provisions of this Lease Agreement shall bind and inure to the benefit of the parties hereto and their administrators, successors, and assigns.

8.7 Choice of Laws and Venue. This Lease Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any action related to any dispute arising out of this Lease Agreement shall be brought in the Court of Common Pleas of Northampton County.

[signatures to follow]

IN WITNESS WHEREOF, Bath Borough, Northampton County, Pennsylvania, has caused this Agreement to be executed in its name and on its behalf, by its President of Borough Council, and its official seal to be affixed hereunto and attested by its Secretary, and the Bath Borough Stormwater Authority has caused this Agreement to be executed in its name and on its behalf, by its Chair, and its official seal to be affixed hereunto and attested by its Secretary, all as of the day and year first above written.

ATTEST:



Bradford T. Flynn
(SEAL)

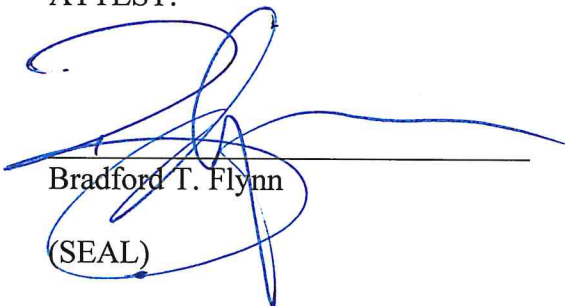
BATH BOROUGH

By:



Frank J. Hesch, III, Council President

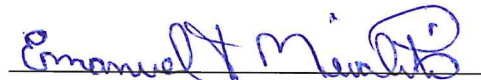
ATTEST:



Bradford T. Flynn
(SEAL)

BATH BOROUGH
STORMWATER AUTHORITY

By:



Emanuel Mirabito, Chair