

MANAGEMENT AGREEMENT
(STORMWATER SYSTEM)

THIS MANAGEMENT AGREEMENT (“Agreement”), dated as of the 10th day of February, 2025, by and between the BATH BOROUGH STORMWATER AUTHORITY, a municipal authority of the Commonwealth of Pennsylvania (the “Authority”), and the BOROUGH OF BATH, Northampton County, Pennsylvania, a municipal corporation of the Commonwealth of Pennsylvania (the “Borough”).

WHEREAS, the Borough, pursuant to authority vested in it by law, owns Borough of Bath’s stormwater drainage systems, including but not limited to, all inlets, outlets, systems of piping, diversion terraces, grass waterways, energy dissipaters, stormwater retention devices, and natural or artificial infiltration areas, and all related appurtenant facilities in, adjacent to, and for rendering stormwater service in and for portions of the Borough and the Borough’s interests in related private rights-of-way, rights, licenses, and easements, together with all additions, extensions, alterations and improvements thereto which may be made or may be acquired, from time to time, by the Borough (the “Stormwater System”); and

WHEREAS, in addition to this Agreement, the Authority plans to contemporaneously enter into a Lease Agreement with the Borough, so that the Authority may concentrate and allocate its limited resources in an efficient manner with respect to billing and collection efforts for the Stormwater System; and

WHEREAS, the Borough and the Authority desire to memorialize and otherwise set forth terms, conditions and provisions which shall govern the administration, management, and operation of the Stormwater System and the performance of other various functions with respect to the Stormwater System; and

WHEREAS, employees of the Borough shall have the day-to-day responsibility of operating and maintaining the Stormwater System; and

WHEREAS, the Borough shall remain the permittee with respect to any permits related to the Stormwater System including, but not limited to, the National Pollution Discharge Elimination System (“NPDES”) Municipal Separate Storm Sewer System (“MS4”) Permit; and

WHEREAS, the Authority shall assume the system connection policy and approval responsibility.

NOW, THEREFORE, the Authority and the Borough, each intending to be legally bound, covenant and agree as follows:

1. The Authority and the Borough shall properly allocate their costs and expenditures related to their functions performed pursuant to this Agreement that may include, but not be limited to, wages and benefits, leases, insurances, audit expenses, communications, information technology, supplies, legal costs, dues, memberships, capital projects, and other applicable

expenses. Such costs and expenditures shall be paid from user rates collected by the Borough at the Authority's direction that shall be accounted for in the Authority's Stormwater Fund.

2. Costs incurred by the Authority or the Borough in association with the calculation of a stormwater user rate shall be reimbursed to the entity that incurred the expense, whether the Authority or the Borough, and sourced from stormwater user rates in the first fiscal year of enactment of such rate.

3. Subject to provisions of this Agreement, the Authority shall perform only the following services in connection with the Stormwater System:

a. The determination of what shall be required for the proper operation and maintenance of the Stormwater System (including upgrades, replacements, and repairs);

b. The implementation of said upgrades, replacements and repairs through necessary construction projects;

c. 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;

d. 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;

e. 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

f. 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. The Authority duly authorizes the Borough's employees, as agents of the Authority, to perform all other functions not specifically delegated to the Authority herein and related to the management and operation of the Stormwater System. The Borough's employees shall not be responsible for any functions not specifically set forth herein or as otherwise specified in a writing executed by the Authority and the Borough. Specifically, these functions may include:

a. Day-to-day monitoring of the Stormwater System and its infrastructure;

b. Reporting infrastructure damage and needed repair items to the Authority;

- c. Securing damaged stormwater infrastructure to ensure public safety and prevent further damage, including the stabilization of sinkholes/collapses as practical and as directed by the Authority;
- d. Cleaning/clearing of stormwater inlets, piping, and outfall structures; and
- e. Assisting the Authority with traffic control related to stormwater infrastructure projects, including signage and barriers.

5. The Authority shall be responsible for the keeping of proper accounts and records relating to the performance of its functions with respect to the Stormwater System identified herein.

6. The Borough shall, at the end of each calendar quarter, develop and submit to the Authority a detailed invoice of the Borough's services provided to the Authority in that quarter. The Authority shall pay the invoice within thirty (30) days following the day the invoice is provided. Such monies must be exclusively used for stormwater-related operation, maintenance, capital project, and administration purposes. Any time approved expenses are incurred by Borough Public Works employees for stormwater-related capital projects, such expenses shall be charged to the Authority's dedicated stormwater fund ("Stormwater Fund") at the reimbursement rate in effect between the Authority and the Borough when incurred. The Parties shall perform their respective 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 so that the customers served by the Stormwater System will receive the benefits accruing from proper and efficient administration, operation, and maintenance of the Stormwater System.

7. The Borough and the Authority shall cooperate fully in any reasonable request for records made by one to the other related to the operation of the Stormwater System. In addition, the Authority shall provide annual audited financial statements to the Borough in which stormwater related funds shall be clearly designated.

8. The Authority shall act in good faith and shall cooperate in all reasonable respects with the Borough so that the Borough may perform the obligations and duties assumed and undertaken under and by virtue of this Agreement in a proper and satisfactory manner. This provision includes the duty of the Authority to cooperate in any funding requests and projects deemed necessary by the Borough, related to the maintenance, repair (including emergency repairs), upgrade, and/or expansion of the Stormwater System. Final authority for the establishment of rates relating to the Stormwater System, however, shall remain with the Authority subject to any express provisions of the Lease Agreement, or any other agreements between the parties related to the Stormwater System.

9. The Borough shall provide to the Authority an estimated annual budget for expenses related to the Stormwater System no later than the October regular meeting of the Authority of each year ("Annual Budget"). The Annual Budget shall include information regarding reasonable estimated costs for administration, maintenance, operation, and capital

improvements of the Stormwater System necessary for the Authority to establish rates sufficient to fully fund all anticipated expenses related to the Stormwater System. The Annual Budget documents shall include line items for each function related to the Stormwater System, which may include, but not be limited to, inlet, basin, and pipe maintenance, public education and participation, illicit discharge detection and elimination, inspection, record-keeping, capital projects, equipment, and other related functions. The initial Annual Budget for 2025 shall be set by the Borough with input provided by the Authority. For years thereafter, the Annual Budget shall be mutually agreed upon by the Authority and Borough. The Annual Budget and related rates from the prior year shall apply until such time as a new Annual Budget is adopted. Notwithstanding the foregoing, emergency repairs or replacements will become part of the Annual Budget and the expenses thereof paid for by funds generated from stormwater rates.

10. The Borough shall have all its expenses related to the Stormwater System, that are both incurred by the Borough pursuant to this Agreement and included in the Annual Budget, covered from sufficient funds in its Stormwater Fund. In order to maintain operations within budget constraints, the Borough shall not incur, nor will the Authority reimburse, expenses in excess of line items within the Annual Budget except as expressly authorized by the Authority.

11. At all times during the term of this Agreement, the Borough will carry and maintain in full force and effect general liability insurance in such amounts sufficient to provide an appropriate level of coverage for the covered property and individuals, as determined from time to time by the Borough. Said general liability insurance shall cover the Stormwater System, the Authority, and all members of the Authority's Board, and shall be with a responsible company or companies authorized and qualified to do business under the laws of the Commonwealth. A copy of the annual insurance renewal along with policy limits shall be provided to the Authority within 30 days of renewal.

12. The Borough shall act in good faith and shall cooperate in all reasonable respects with the Authority so that the Authority may perform the obligations and duties assumed and undertaken under and by virtue of this Agreement in a proper and satisfactory manner.

13. The Borough and Authority shall, as necessary, meet and confer regarding the terms of this Agreement including, but not limited to, the duration of this Agreement, the rates charged or fees assessed hereunder, and any other issue related to the Stormwater System. At said meeting or as otherwise agreed upon, the parties shall have the ability to revisit and revise the terms of this Agreement, upon mutual agreement, as appropriate.

14. This Agreement shall be for an initial term beginning upon its effective date as provided herein and ending at such time as the Lease Agreement between the Borough and the Authority becomes ineffective, whether by expiration of the term of the Lease Agreement, by violation of any provision of the Lease Agreement, by election of the Parties pursuant to the terms of the Lease Agreement, or by any other means. When possible, however, the Parties agree to deliver notice that a violation of the Management or Lease Agreements has occurred, and that adequate time will be provided to cure that violation. The Parties may otherwise agree to terminate, alter, or amend this Agreement by an executed written agreement signed by representatives of the Authority and the Borough, but termination of the Lease and this

Management Agreement shall be subject to PENNVEST's prior written approval. As provided for in the Lease Agreement, the Lease and this 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.

15. Upon termination of this Agreement, the Borough and the Authority—promptly, but in no event more than ninety (90) days after the annual audited financials are completed by the Authority—shall make final settlement with respect to this Agreement and each shall do whatever properly and reasonably shall be necessary to effectuate and insure an orderly transition in the change of the method of administration, operation, and maintenance of the Stormwater System.

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

17. The Borough and the Authority, from time to time, by mutual agreement, in writing, may amend and/or supplement this Agreement, so that this Agreement fully and completely carries out the intent and purposes of the Borough and the Authority with respect to the Stormwater System.

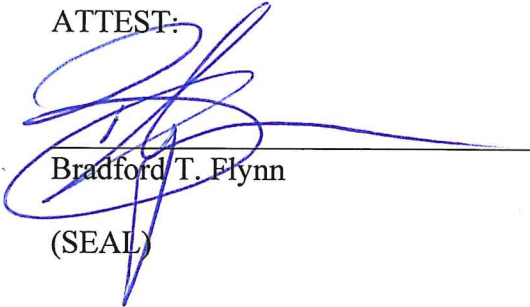
18. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original; and such counterparts shall constitute but one and the same instrument.

19. This 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 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:



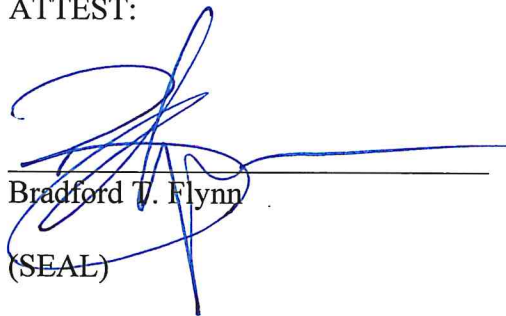
Bradford T. Flynn
(SEAL)

BATH BOROUGH

By: 

Frank J. Hesch, III, Council President

ATTEST:



Bradford T. Flynn
(SEAL)

BATH BOROUGH
STORMWATER AUTHORITY

By: 

Emanuel Mirabito, Chair