

RESOLUTION NO. 2023-12

RESOLUTION OF THE BOARD OF SUPERVISORS OF THORNBURY TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA REGARDING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THORNBURY TOWNSHIP AND THE COMMONWEALTH OF PENNSYLVANIA

WHEREAS, the Commonwealth of Pennsylvania, acting through the Pennsylvania Department of Transportation (PennDOT) and Thornbury Township (Thornbury) are required to reduce sediment pollution in the Delaware Watershed as part of the pollution reduction plan obligations in the National Pollution Discharge Elimination System permits for their respective municipal separate storm sewer systems; and

WHEREAS, PennDOT has issued and awarded an invitation for bids to First Pennsylvania Resource, LLC (FPR) to construct a project within the Delaware Watershed to reduce sediment pollution; and

WHEREAS, pursuant to the "Contribution Agreement", Thornbury is required to contribute zero dollars for the project; and

WHEREAS, the Pennsylvania Area Government and Intergovernmental Cooperation Law requires the Thornbury adopt a Resolution in order to enter into the "Contribution Agreement" between PennDOT and Thornbury.

NOW, THEREFORE, BE IT RESOLVED by the Thornbury Township Supervisors that Thornbury shall enter into the "Contribution Agreement" between PennDOT and Thornbury, marked as Exhibit A, attached hereto and incorporated herein be reference as if set forth in full hereunder,

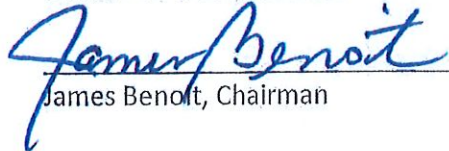
BE IT FURTHER RESOLVED, that the Chairman of the Board of Supervisors is authorized to sign the "Contribution Agreement".

ADOPTED and effective as this 21st day of March 2023 by Supervisors of Thornbury Township, Chester County, Pennsylvania in lawful session duly assembled.

ATTEST:

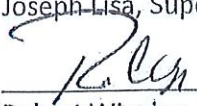

Judy Lizza,
Township Manager

**THORNBURY TOWNSHIP, CHESTER COUNTY
BOARD OF SUPERVISORS**


James Benoit, Chairman

Michael Gallagher, Supervisor

Joseph Lisa, Supervisor



Robert Wiggins, Supervisor



Eric C. Burling, Supervisor

- a. "Agreement" when capitalized means this Contribution Agreement.
- b. "Combined Contribution" means the sum of the Township's and PennDOT's Contributions.
- c. "Commonwealth" means the Commonwealth of Pennsylvania.
- d. "Township's Contribution" means the use of Township property to construct and maintain project(s) for the sum of zero dollars (\$0) and any additional funds that the Township elects to make available consistent with Section 3(a) below.
- e. "Township's Pro Rata Share" means a percentage calculated as the quotient of the Township's Contribution and the Combined Contribution.
- f. "IFB" means an invitation for bids. When preceded by the definite article, IFB means the IFB for the Project.
- g. "MS4" means a municipal separate storm sewer system.
- h. "NPDES" means the National Pollutant Discharge Elimination System.
- i. "PennDOT" means the Commonwealth of Pennsylvania, acting through its Department of Transportation.
- j. "PennDOT's Contribution" means the sum of four million (\$4,000,000) dollars and any additional funds that PennDOT elects to make available consistent with Section 2(c) below.
- k. "PennDOT's Pro Rata Share" means a percentage calculated as the quotient of PennDOT's Contribution and the Combined Contribution.
- l. "PennDOT's PRP" means the PRP in the NPDES permit for the MS4 operated by PennDOT or in renewals of that permit.

- m. "Project" when capitalized means the project in the Watershed to reduce sediment pollution.
- n. "PRP" means a pollutant reduction plan.
- o. "Township" means Thornbury Township
- p. "Vendor" means the bidder who is issued a purchase order consistent with this Agreement.
- q. "Watershed" when capitalized means the Delaware Watershed.

2. **Responsibilities of PennDOT.**

- a. **Issue the IFB.** PennDOT shall issue an IFB to construct the Project.
- b. **Award.** PennDOT reviewed and evaluated the bids for responsiveness consistent with the IFB and reviewed the lowest responsive bidder's status on the Contractor Responsibility Program file. PennDOT issued a purchase order for the lowest responsible and responsive bidder, and posted a notice of award, consistent with the applicable Commonwealth procurement procedures.
- c. **Contribution.** PennDOT shall make four million dollars (\$4,000,000) available for the Project. PennDOT may elect, at its sole discretion, to make additional funds available for the Project.
- d. **Project Administration.** PennDOT shall require the Vendor to construct the Project in accordance with the IFB.
- e. **Reimbursement.** If PennDOT cancels the IFB, then PennDOT shall reimburse 100% of the Township's Contribution within thirty days of the cancellation. If PennDOT determines after making the final payment to the Vendor that the total cost of the Project is less than Combined Contribution, then PennDOT

shall reimburse the Township's Pro Rata Share of the difference within thirty days of making the final payment. If PennDOT determines after making the final payment that the total cost of the Project exceeds the Combined Contribution because of change orders agreed upon in writing by the Township, then PennDOT shall send an invoice to the Township in the amount of the Township's Pro Rata Share of the difference.

- f. **Approvals by PennDOT.** For purposes of this Agreement, consent, concurrence or approval by PennDOT may be provided by the Deputy Secretary for Highway Administration or such other PennDOT employee as designated by the Deputy Secretary.

3. Responsibilities of the Township.

- a. **Contribution.** This paragraph intentionally left blank.
- b. **Election.** This paragraph intentionally left blank.
- c. **Reimbursement.** This paragraph intentionally left blank.
- d. **Payment Method.** The Township shall make timely payments to the selected vendor consistent with the Project Contract up to a maximum of zero dollars (\$0). The Township may elect, at its sole discretion, to make additional authority funds available for the Project.
- e. **Maintenance.** The Township shall be responsible for enforcing long term operation and maintenance of any improvements constructed by the Project in its municipal boundaries by the responsible entity consistent with the IFB and shall be responsible for long term operation and maintenance of any improvements within its municipal boundary not maintained by a responsible entity. The Township shall not be responsible for enforcing long term operation

and maintenance of the improvements constructed by the Project outside of the Township's municipal boundaries.

4. **Approvals by the Township.** For purposes of this Agreement, consent, concurrence or approval by the Township may be provided by the President of the Board of Supervisors or such other individual as designated by the Board of Supervisors.

4. **Sediment Reduction Credit.** The parties will make every effort to obtain full credit for all of the sediment reduction achieved by the Project including change orders.

5. **Sufficient Funds.** The Township, by executing this Agreement, certifies that it has on hand funds to meet its contribution and reimbursement obligations.

6. **Indemnification.** Unless otherwise agreed to by the parties in writing, in addition to the Township's Contribution, and any reimbursement obligations, the Township shall indemnify and (if requested) defend PennDOT, to the extent authorized by applicable law, its agents and employees from, and be solely responsible for, the payment and satisfaction of awards, judgments, claims, costs, and damages, including costs of appraisers and attorneys, witness fees, and other court costs and expenses resulting from the following:

- a. Changes required to be made to any approved plans and specifications for the Project made necessary by requests exclusively by and for the Township.
- b. Time delays and extensions of time or termination of work requested or caused exclusively by the Township after a purchase order has been issued.
- c. Right-of-way and other property damages resulting from the acquisition or condemnation of the lands necessary for or the construction of the Project made necessary solely by requests by and for the Township. Right-of-way and other property damages, as used in this section, shall include consequential

damages; damages arising from de facto or inverse takings; special damages for displacement; damages for the preemption, destruction, alteration, blocking and diversion of facilities; and other damages that may be claimed or awarded within the purview of the Eminent Domain Code of 1964, as amended, the State Highway Law of 1945, as amended, and eminent domain case law of the Commonwealth of Pennsylvania; and claims awarded or entered against PennDOT or the Township.

- d. Relocation of utility facilities, including gas, water, railroad, sewer, electric, telecommunications or drainage facilities, in the Project area made necessary exclusively by requests by and for the Township.
- e. Where made solely necessary by requests by and for the Township, preparation or revisions of environmental impact statements, negative declarations, environmental reports or other documents required by law and environmental litigation; public environmental hearings made necessary by the planning, design and environmental litigation; public environmental hearings made necessary by the planning, design, and construction of the Project and Supplemental Improvements; and increased planning, design, construction, utility relocation and right-of-way costs resulting therefrom.
- f. Unforeseen costs and expenses not included in the Project cost estimates, but which are directly related to or made necessary by requests by and for the Township.
- g. Injuries to and damages received or sustained by people or property arising out of, resulting from, or connected with an act, omission, neglect, or misconduct of the Township and its contractors, their officers, agents and employees with respect to maintenance, operation and use of the completed Supplemental Improvements or otherwise with respect to this Agreement.

7. **Standard Provisions.** PennDOT shall require the Vendor to comply with the standard Commonwealth provisions consistent with the IFB.

8. **Right-to-Know Law.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 – 3104, applies to this Agreement. Therefore, this Agreement is subject to, and the Township shall comply with, the clause entitled *Contract Provisions – Right to Know Law*, attached as Exhibit A. As used in this Agreement, the term Contractor refers to the Township.

9. **Termination.** The parties may terminate this Agreement for convenience or non-appropriation until the date when a purchase order is issued to the Vendor, but not after that date. Each party shall bear the costs it incurred during the time this Agreement was in effect. Nothing contained in the Agreement shall be deemed to be a waiver by PennDOT of its discretion to abandon or postpone the Project.

10. **Amendments and Modification.** No alterations or variations to this Agreement shall be valid unless made in writing and signed by the parties. Amendments to this Agreement shall be accomplished through a formal written document signed by the parties with the formality of the original Agreement, with exception of the notice section.

11. **Titles Not Controlling.** Titles of sections are for reference only, and shall not be used to construe the language in this Agreement.

12. **Severability.** The provisions of this Agreement shall be severable. If a phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and its applicability to a government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and its applicability to a government, agency, person, or circumstance shall not be affected.

13. **No Waiver.** Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party. Failure by either party to enforce its rights and remedies shall not be construed as a waiver of a subsequent breach of the same or another term or condition of this Agreement.

14. **Independence of the Parties.** Nothing contained in this Agreement is intended or shall be construed to create or establish the relationship of partners between PennDOT and the Township, or as constituting any party as another party's representative or general agent.

15. **Assignment.** Neither party may assign this Agreement, either in whole or in part, without the other party's written consent.

16. **No Third-Party Beneficiary Rights.** This Agreement does not create or intend to confer rights in or on persons or entities not a party to this Agreement.

17. **Notice.** Notices and reports arising out of, or from, this Agreement shall be in writing and given to the parties at the addresses below, either by regular mail, facsimile, email, or delivery in person. A party may revise its contact information by providing written notice to the other party.

If to PennDOT:

PennDOT
Highway Administration Executive Office
8th Fl Commonwealth Keystone Building
Harrisburg, PA 17120

If to the Township:

Judy Lizza, Township Manager
Thornbury Township
800 E Street Road
West Chester, PA 19382

18. **Force Majeure.** No party shall be liable for failure to perform if the failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Causes may include acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

19. **Integration and Merger.** This Agreement, when executed, approved, and delivered, shall constitute the final, complete, and exclusive Agreement between the parties containing the terms and conditions agreed on by the parties. Representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made before or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by this Agreement. No conditions precedent to the performance of this Agreement exist, except as expressly set forth in this Agreement.

20. **Choice of Law.** This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law principles.

21. **Automated Clearing House Network Provisions.** Submission of invoices for purposes of reimbursement or payment by PennDOT shall be made through the Pennsylvania Electronic Payment Program. The following provisions apply:

- (a) The Commonwealth will make payments to the Township through the Automated Clearing House ("ACH") Network. Within 10 days of the execution of this Agreement, the Township must submit or must have already submitted its ACH information in the Commonwealth's Master

Database. The Township will also be able to enroll to receive remittance information via electronic addenda and email (e-Remittance). ACH and e-Remittance information is available at <https://www.budget.pa.gov/Services/ForVendors/Pages/Direct-Deposit-and-e-Remittance.aspx>.

- (b) The Township must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth's ACH remittance advice to enable the Township to properly apply the state agency's payment to the respective invoice or program.
- (c) It is the responsibility of the Township to ensure that the ACH information contained in the Commonwealth's Master Database is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

22. **Offset.** The Township agrees that PennDOT may offset the amount of any state tax or Commonwealth liability of the Township or its affiliates and subsidiaries that is owed to the Commonwealth against any payments due the Township under this or any other contract with the Commonwealth.

23. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Signatures delivered by electronic means (i.e. email or facsimile) will be effective.

24. **Effective Date.** This Agreement shall not be effective until the necessary Commonwealth officials required by law have executed it. Following full execution, PennDOT shall insert the effective date at the top of page 1.

[The remainder of this page is intentionally left blank.]

The parties have executed this Agreement to be effective as of the date of the last signature affixed below.

ATTEST

Thornbury Township

Judy Lizza 3/21/23
Judy Lizza, Manager DATE

BY James Benoit 3/21/23
James Benoit, Chairman DATE

If a Corporation, a senior corporate officer must sign; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary DATE

APPROVED AS TO LEGALITY
AND FORM

FUNDS COMMITMENT DOC. NO. _____
CERTIFIED FUNDS AVAILABLE UNDER
SAP NO. _____
SAP COST CENTER _____
GL. ACCOUNT _____
AMOUNT _____

BY _____
for Chief Counsel Date

BY _____
Deputy General Counsel Date

BY _____
for Office of Comptroller Operations Date

BY _____
Deputy Attorney General Date

