

**INTERGOVERNMENTAL COOPERATION AGREEMENT FOR THE PREPARATION
AND IMPLEMENTATION OF THE JOINT POLLUTION REDUCTION PLAN**

THIS AGREEMENT is made this 14th day of September, 2017, (the "Agreement"), by and among Susquehanna Township and Lower Paxton Township (collectively, Susquehanna Township and Lower Paxton Township are referred to herein as the "Municipalities") and Capital Region Water ("CRW") (collectively, the Municipalities and CRW may sometimes be referred to as the "Participants") for the development and implementation of a Chesapeake Bay Pollutant Reduction Plan, Paxton Creek TMDL Watershed Plan, and a Pollutant Reduction Plan to address Wildwood Lake and an unnamed tributary to Spring Creek ("Joint Pollution Reduction Plan" or "Plan").

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, the Participants each own, operate, and maintain Small Municipal Separate Storm Sewer Systems ("MS4s") that discharge to the Susquehanna River, Paxton Creek, Spring Creek, and/or Beaver Creek; and

WHEREAS, Paxton Creek, Spring Creek, and Beaver Creek all drain to the Susquehanna River and ultimately the Chesapeake Bay; and

WHEREAS, the Participants wish to engage in a collaborative process of preparing and implementing a Joint Pollution Reduction Plan consisting of a Chesapeake Bay Pollutant Reduction Plan, Paxton Creek Watershed TMDL Plan, and Pollutant Reduction Plan to address Wildwood Lake and an unnamed tributary to Spring Creek (the "Plan"); and

WHEREAS, the Participants desire that CRW shall serve as the point of contact for the Participants to the extent necessary for the development and implementation of the Plan; and

WHEREAS, each Participant will create, operate, and maintain Best Management Practices ("BMP") Projects within its municipal boundaries or service area designed to reduce sediment; and

WHEREAS, as set forth in this Agreement, the Participants shall equally share in the cost to develop the Plan; and

WHEREAS, the purpose of this Agreement is to set forth, *inter alia*, how the Participants will cooperate to create and revise the Plan, and the obligations of each Participant; and

WHEREAS, the Participants agree and acknowledge that nothing in this Agreement, or the resultant actions herefrom, shall prohibit, prevent, or interfere with any Participant's ability to comply with applicable Pennsylvania law and regulation, Federal law and regulation, applicable regulatory agency rules and policies, permit requirements, Pennsylvania Department

of Environmental Protection (“DEP”) directives, or United States Environmental Protection Agency directives, and local ordinances; and

WHEREAS, all Participants shall adopt an Ordinance (or Resolution if Participant is a municipal authority) approving this Agreement to effectuate their participation.

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

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

3. **Organization**. The Municipalities agree that CRW shall serve as the point of contact to the extent that it is necessary for the Participants to coordinate the development and implementation of the Plan as further set forth in this Agreement.

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

- A. Work cooperatively to oversee, supervise, and administer the development and implementation of the Plan.
- B. Oversee, supervise, and administer BMP Projects, including ensuring that BMP Projects are constructed as approved, within its municipal boundaries or service area.
- C. Approve for payment and pay appropriate invoices submitted for development of the Plan.
- D. Manage and administer all funds related to individual BMP Projects within its municipal boundaries or service area.
- E. Facilitate the implementation of new BMP Projects within its municipal boundaries or service area (including, but not limited to, 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.

- F. Each Participant must ensure that all applicable notice requirements are satisfied and advertisements are drafted and published as required by applicable laws, including, but not limited to, the Pennsylvania Sunshine Act.
- G. 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 the Plan 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.
- H. Municipalities agree to act in good faith and to cooperate in all reasonable respects with CRW insofar as CRW is acting as the point of contact to coordinate the development and implementation of the Plan as further set forth in this Agreement.
- I. Participants agree to take any and all legislative or other acts necessary to implement the purposes of this Agreement.
- J. 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.
- K. Participants agree and consent to the placement, ownership, continued operation, and ongoing maintenance of new BMP Projects within its municipal boundaries or service area consistent with this Agreement and the Plan. If necessary, Participants agree to obtain any real property necessary for the placement, ownership, operation, and maintenance of BMP Projects including the use of eminent domain pursuant to the Eminent Domain Code, 26 Pa.C.S.A. § 101, *et seq.*
- L. 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 said Participant.
- M. 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 the Plan's implementation and/or the actions and activities undertaken pursuant to this Agreement or the Plan.

5. **Enforcement Actions.** If any compliance or enforcement action (including the pursuit of a civil penalty, issuance of an 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 the Plan 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 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, or other breach of the terms of this Agreement, the responsible Participant shall indemnify and hold harmless the non-responsible Participants with respect thereto.

6. **Financing of the Plan**

- A. Costs associated with the development of the Plan shall be borne equally by the Participants.
- B. Costs associated with implementation of the Plan and related BMPs shall be apportioned among the Participants based upon the percentage of load reduction attributed to each Participant in the Plan for each BMP plus an equal share to apportion the percentage of load reduction outside of the municipal boundaries or service area of the Participants until such time as additional contributions are received from other entities.
- C. Each Participant shall be responsible for its own out-of-pocket costs and its own solicitor's fees.

7. **Effective Date.**

- A. The Effective Date of this Agreement shall be _____, 2017. It is the intent of the Participants, however, that the terms of this Agreement shall apply to any work related to the development and implementation of the Plan conducted after _____, regardless of the Effective Date of this Agreement.
- B. This Agreement shall become effective as to each Participant upon execution and, where applicable, adoption of an authorizing ordinance or resolution, and execution of this Agreement.

8. **Term.** This Agreement shall commence upon the Effective Date. The Agreement shall terminate as to each Participant on the date that said Participant's MS4 Permit expires unless revised or terminated by mutual written consent of all the Participants hereto in accordance with this Agreement.

9. **Authorization.** 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 of any pending lawsuits, regulatory fines, consent decrees, or other similar sanction of whatever kind related to the Plan. 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 Dauphin County Court of Common Pleas. The Participants hereby submit to the exclusive jurisdiction of that Court.

11. **Alternative Dispute Resolution.** The Participants agree to resolve disputes expeditiously. If a dispute arises among the Participants regarding the terms or the implementation of this agreement, the following steps will be taken prior to filing action in the Court of Common Pleas of Dauphin County, Commonwealth of Pennsylvania, as provided for in Paragraph 10: The Party that seeks resolution will provide a written statement of its dispute, along with any rationale or supporting documents, to the other Participants within five (5) working days of occurrence of the dispute. All Participants will engage in discussions in an attempt to arrive at a consensus and resolve the dispute. If no resolution is reached within fifteen (15) working days of receipt of the statement of dispute, the dispute may be elevated in writing, along with any rationale or supporting documents to the relevant Participants' respective chief executive officer or his designees. The principal contacts for the Participants will engage in discussions to seek consensus. If resolution is not reached by the chief executive officers within thirty (30) working days of his receipt of the written statement of the dispute, the Participants may employ the services of a dispute resolution specialist to assist in the resolution of disputes prior to filing action in the Court of Common Pleas of Dauphin County.

12. **Integration.** This Agreement contains the entire agreement between the 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.

13. **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.

14. **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.

15. **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, and the Participants shall be considered 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 discussed and negotiated between them, and their respective counsel, and are voluntarily and knowingly accepted for the purpose of making a full and final compromise between the Participants, as referenced herein. The Participants further acknowledge that they understand the facts and their respective legal rights and obligations pursuant to this Agreement.

16. **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.

17. **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.

18. **Fees and Costs.** Unless otherwise expressly stated herein, the Participants agree to bear their own fees and costs in connection with or incurred related to the matters between them, and relating to this Agreement.

19. **Signatures.** The Participants hereto, and the undersigned individuals and/or representatives, represent and warrant that they have the authority to enter into this Agreement and be legally bound hereby.

IN WITNESS WHEREOF, the Participants hereto have caused this Intergovernmental Cooperation Agreement for the Preparation and Implementation of the Plan.

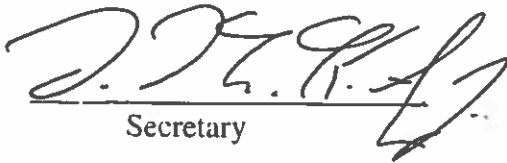
[SIGNATURE PAGE TO FOLLOW]

ATTEST:

Secretary

(SEAL)

ATTEST:



Secretary

(SEAL)

ATTEST:

Secretary

(SEAL)

CAPITAL REGION WATER

By: _____
(Vice) Chairperson

SUSQUEHANNA TOWNSHIP

By: 

() President

LOWER PAXTON TOWNSHIP

By: _____
(Vice) Chairperson