

COST SHARING AGREEMENT

THIS COST SHARING AGREEMENT (this “**Agreement**”) is made this ___ day of _____, 2017 by and between **BOROUGH OF MANHEIM**, a Pennsylvania borough with its offices located at 15 East High Street, Manheim, PA 17545 (the “**Borough**”) and **MANHEIM AREA WATER AND SEWER AUTHORITY**, a Pennsylvania municipal authority with its offices located at 18 East High Street, Manheim, PA 17545 (“**MAWSA**” and, together with the Borough, the “**Parties**”).

Background

The Borough is undertaking the street repaving of South Charlotte Street, with such repaving to occur beginning at Railroad Avenue and ending at the southernmost point of South Charlotte Street, located in the Borough of Manheim, Lancaster County, Pennsylvania (the “**Paving**”). The Paving shall occur in the vicinity of water and sewer lines, structures and other apparatuses and property of MAWSA (the “**MAWSA Facilities**”). The Borough has agreed to bid, manage and in all respects oversee the Paving on the condition that MAWSA shares equally with the Borough in the Paving’s cost. MAWSA has agreed to share equally in such costs on the condition that the Borough indemnify MAWSA for any damage to the MAWSA Facilities which occurs as a result of the Paving. This Agreement sets forth the cost sharing and other arrangements that the Parties have agreed to in connection with the Paving.

NOW, THEREFORE, incorporating the foregoing background and in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Cost Sharing. The Parties have agreed that the total costs of all components of the Paving, including the costs of bidding and of engineering services, will be approximately \$56,500.00 (the “**Estimated Paving Cost**”), and that the Borough and MAWSA shall split the Estimated Paving Cost equally. After the Paving is completed and in the event that the actual cost of the Paving (the “**Actual Paving Cost**”) exceeds the Estimated Paving Cost, then the Parties shall share in such excess cost equally. Except as set forth in this Agreement, the Parties have made no other agreements relating to the sharing of the costs of any other project or item of construction.
2. Project Oversight. Responsibility for the bidding, design, supervision, construction, management and oversight of the Paving shall rest solely with the Borough.
3. Payment. After completion of the Paving, the Borough shall provide MAWSA with an itemized invoice of the Actual Paving Cost, as well as a request for payment of the amount MAWSA owes pursuant to Section 1. MAWSA shall remit payment to the Borough within thirty (30) days of such invoice; provided, however, that in the event that MAWSA disputes responsibility for any charge related to the Actual Paving Cost, it shall inform the Borough of such dispute within fifteen (15) days of receipt of the invoice, and the Parties shall negotiate in good faith to resolve any such dispute. In the event that the Parties cannot come to

an amicable resolution, the Parties agree to submit any dispute to mediation, with any mediator to be chosen jointly by the Parties. Any further dispute shall be handled in accordance with Section 8(E).

4. Indemnification. The Borough shall indemnify, defend and hold harmless MAWSA and its member municipalities, officers, directors, employees, agents, customers, ratepayers, successors and assigns (collectively, “**Indemnified Parties**”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by any Indemnified Party, relating to, arising out of or resulting from the Paving, damage to the MAWSA Facilities, or from any third-party claim made against any Indemnified Party relating to the Paving.

5. Insurance. The Borough will provide MAWSA with proof of insurance related to the Paving, with policy limits at least as high as the full replacement value of the MAWSA Facilities, and will name MAWSA as an additional insured on such policies.

6. Regulatory Changes. If the Pennsylvania Department of Transportation, or any other governmental body having jurisdiction (“**Governmental Authority**”), orders the Borough and/or MAWSA to modify or adjust any component of the Paving, then the Borough and MAWSA shall effectuate such orders and any additional costs related thereto shall be incorporated into the Actual Paving Cost. In the event that a Governmental Authority shall fail or refuse to issue any permits and/or approvals which may be necessary to accomplish the Paving, then the parties hereto shall be relieved from further compliance with the terms and conditions of this Agreement until such time when such permit or permits shall be issued, at which time this Agreement shall again become operative and the parties hereto shall again be legally bound by the terms and conditions of this Agreement.

7. Authorization. Each Party represents and warrants to the other Party that this Agreement has been duly authorized by its respective Board or Council and that no conflicts, suits or other conditions exists that would prevent it from entering into this Agreement.

8. Miscellaneous.

A. This Agreement contains the whole Agreement between the Borough and MAWSA. There are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever, concerning this cost sharing agreement. This Agreement shall not be altered, amended, changed or modified except in writing executed by the Parties.

B. Binding Effect; Assignment. This Agreement shall extend to and bind the successors and assigns of the respective parties hereto. Neither Party may assign this agreement without the express written consent of the other Party.

- C. No Waiver. Failure of either Party to insist upon strict performance by the other Party in one or more instances shall not be construed as a waiver, release, or relinquishment of any term, covenant or condition of this Agreement, but rather each term, covenant, or condition of this Agreement shall continue in full force and effect.

- D. Further Assurances. Upon a Party's reasonable request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

- E. Governing Law; Forum. This Agreement, including all exhibits attached hereto and thereto are governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, United States of America, without regard to the conflict of laws provisions thereof. The Parties agree that any dispute under this Agreement that cannot be resolved under Section 3 shall be brought solely in the Court of Common Pleas of Lancaster County.

[Signature Page Follows]

IN WITNESS WHEREOF, the foregoing Agreement has been executed the day and year first above written.

BOROUGH OF MANHEIM

By: _____

Name: Carol Y Phillips

Title: Council President

Attest: _____

James R Fisher, Sec.

**MANHEIM AREA WATER AND
SEWER AUTHORITY**

By: _____

Name: Robert Miller

Title: Chairman