

WATER SERVICE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2023 by and between the CITY OF BETHLEHEM, a municipal corporation with its offices and principal place of business situated at 10 East Church Street, Bethlehem, Northampton County, Pennsylvania, 18018, hereinafter referred to as "City", and THE BALLINA GROUP, LLC hereinafter referred to as "Developer" having an address at 1439 Monroe Ave, Suite 1, Dunmore, PA. 18059

BACKGROUND

Developer desires to build the proposed South New Street Project (the "Project") located at 319-327 South New Street, Bethlehem PA 18015 and also known as Parcel Number P6SE1A 20 15 0204.

The Project requires water service at an appropriate capacity (flow and pressure) for domestic and fire protection uses.

The existing water main infrastructure in South New Street is inadequate to provide the required capacity to serve the Project.

City desires to install an approximately six hundred (600) foot long water main extension along South New Street between Third and Fourth Streets in the City of Bethlehem, Northampton County as shown on plans prepared by the City (the "Work") for the primary purpose of (a) allowing the Developer of the Project to connect to City water, and the ancillary purpose of (i) allowing for extension of the water main to serve other customers, and (ii) creating a cross-tie along South New Street between Third and Fourth Streets to improve reliability of service to the Project and other customers.

City designed and publicly bid the Work.

Seven (7) bids were received on December 14, 2022, and a Recommendation of Award was made to the lowest responsible bidder by the Bethlehem City Council at their January 17, 2023 City Council Meeting.

The value of the Contract for Construction of the Work is Two Hundred Thirty-Three Thousand Two Hundred Fifty Dollars (\$233,250.00).

City and Developer acknowledge and agree that City is responsible for the design, bid, and execution of a construction contract for the Work.

City and Developer agrees to split all costs attributable to the Work in equal parts with each party responsible for fifty percent (50%) of such costs.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Background. The background is incorporated by reference as if the same were more fully set forth herein.
2. Performance of Work. City shall be responsible for retaining the necessary contractors to perform the Work, as determined in its sole discretion. The Work shall include design and construction of the Facilities (as defined below). City shall cause all Work to be performed in a good and workmanlike manner. All design, construction, and any additional costs attributable to the Work shall be payable by City subject to its right to reimbursement from Developer under Section 3 of this Agreement.
3. Reimbursement. Upon completion of the Work and acceptance by the City Engineer, the City shall invoice Developer for fifty percent (50%) of the cost of the Work, not to exceed fifty percent (50%) of the original contract value of Two Hundred Thirty-Three Thousand Two Hundred Fifty Dollars (\$233,250.00). City shall be responsible for the cost of any change order additions to the Project. Should the final Project cost come in lower than the original contract value due to negative change orders, then the Developer's fifty percent (50%) share of such cost be recalculated based on the final contract price. Payment of each invoice shall be made by Developer to City within ten (10) days of the date of such invoice.
4. Ownership of Facilities. Upon completion of the Work and acceptance by the City Engineer, the parties acknowledge and agree that ownership of the approximately six hundred (600) feet of water main extension on South New Street and all appurtenances starting at the point of interconnection with City's eight inch (8") and eight inch (8") main (the "Facilities") shall be conveyed to the Bethlehem Authority (the "Authority"), which operates a public water utility subject to regulation under the PA Public Utilities Commission. The parties acknowledge and agree that City is a party to a lease agreement with the Authority for all water facilities, including the Facilities.
5. Compliance with City Standards and Specifications. All materials and construction methods used, installed and performed under this Agreement shall be in strict compliance with City's Standard Specifications for this type of construction, except as may be waived by the City Engineer in its sole discretion. City's Standard Specifications shall, for the purpose of this Agreement, be deemed to be the minimum accepted standard. The City Engineer's interpretation of compliance with City's Standard Specifications shall be controlling, final and not subject to Developer's challenge or dispute.

6. Inspection Costs. Notwithstanding any provision to the contrary, City shall cover all costs and expenses for construction inspection services associated with the Work (the "Inspection Costs").
7. Right to Reject. In connection with the completion of the Work, City may refuse, in its sole discretion, to connect with any piping system or furnish water through such system if lead based materials, as defined in the Safe Drinking Water Act, have been used in any plumbing beyond City's curb control valve. It shall be Developer's responsibility to provide City with any certification which may be required to verify the absence or removal of such materials and pending receipt of such certification, City shall have no obligation to continue performing or ensure the performance of the Work.
8. Connection to City Mains. In connection with the completion of the Work, except as directed and controlled by City, Developer shall not cause or permit a connection to the City main, nor detachment from the City main. All such connections shall be accessible to City and the property, and under the control, of City. City shall furnish, install and maintain all service lines from the City main to, and including, the curb stop and box. City reserves the right to determine, in its sole discretion, the size and type of the City-owned service line. In performing the Work, City shall in no event be responsible for maintaining any portion of the customer service line or for any damage done by water escaping therefrom, or from lines or fixtures.
9. Service. In accordance with this Agreement, City agrees to provide water service for properties located along the Facility in the City of Bethlehem, Northampton County, along the water main extension on South New Street between Third and Fourth Streets. This Agreement shall not be construed or enforceable as a commitment to service any other developer or customer.
10. Indemnification. Developer shall indemnify, hold harmless, and defend City, City Council, the Bethlehem Authority, boards and commissions, officers, officials, directors, employees, agents, volunteers and affiliates and each of them from any and all claims, demands, causes of action, damages, costs, expenses, attorney's fees, consultant's fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with this Agreement, Developer's performance hereunder, Developer's negligence including active or passive, or strict liability, including but not limited to personal injury including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused by any act or omission of Developer, or anyone directly or indirectly employed by any of them or anyone for the full period of time allowed by the law, regardless of any limitation of coverage by insurance, with the exception of the sole negligence or willful misconduct of City. The provisions of this Section shall survive the expiration or termination of this Agreement.

11. The Parties' Relationship. This Agreement shall not be construed as giving rise to any agency, partnership, joint venture, or employment relationship between City and Developer. Developer shall have no ability to bind City and shall not hold itself out as having any such ability.
12. Force Majeure. Neither party shall be held responsible for delays when such delays are caused by conditions beyond its control, including without limitation, acts of God, fire, explosion, epidemic, cyclone, flood, war, strikes, revolution, civil commotion, or acts of public enemies, change of law and order, proclamation, regulation, ordinance, or governmental requirement, or delays caused by third-parties.
13. No Assignment. Neither party assign this Agreement without the other party's written authorization. Any unauthorized assignment shall be void and shall be considered a material breach of this Agreement.
14. Notice. All notices or instruments required to be given or delivered by law or this Agreement shall be in writing and shall be effective five (5) calendar days from the date of mailing or if personally delivered, from the date of personal delivery. If notice is given by mail, it shall be delivered by depositing the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to each party at the address set forth in the Preamble
15. Compliance with Law. The parties shall be responsible for complying with all application local, state and federal laws, rules, and regulations applicable to this Agreement, whether now in force or hereinafter enacted.
16. Waiver. City reserves the right to waive any provisions of this Agreement under any circumstances it deems prudent, but it is under no obligation to do so. If the City should grant a waiver in particular circumstances, it shall not be obliged to grant any similar or ongoing waivers for similar or ongoing future circumstances.
17. Severability. Should any portion of this Agreement be declared null, void, or unenforceable by legal or governmental action, all remaining sections shall remain in full force and effect.
18. Amendment. This Agreement may be amended by mutual agreement in writing between Developer and City. Any request by Developer for amendments must be in writing stating the amendment request and reason for the request.
19. Entire Agreement. This Agreement is the final, complete, exclusive, and fully integrated record of the agreement of the parties with regard to this matter and supersedes any prior or contemporaneous agreements or understandings, whether oral or written, between the parties with respect to the subject matter of this Agreement. No amendment or modification of this Agreement, and no waiver of any of its terms, shall become effective unless in writing and signed by all parties. The express terms of this

Agreement control and supersede any course of performance or usage of trade inconsistent with any of the terms hereof.

20. Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania excepting conflicts of laws, and without regard to rules of construction or interpretation relating to which party drafted this Agreement. The parties confer exclusive jurisdiction to interpret and enforce this Agreement upon the Northampton County Court of Common Pleas and waive any objections to such jurisdiction and venue, including objection as to an inconvenient forum.
21. Survival. The provisions of this Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.
22. Captions. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of this Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be duly executed and attested as of the date first above written.

WITNESS:

THE BELLINA GROUP, LLC

By: _____

Name: _____

Title: _____

ATTEST:

CITY OF BETHLEHEM

City Controller

By: _____

J. William Reynolds

Mayor

The within Agreement is certified to be needed, necessary and appropriate.

By: _____

Edward Boscola

City of Bethlehem Department Head

Bethlehem Authority joins this Agreement for the sole purpose of agreeing to take ownership of the improvements as outlined in Paragraph 4 herein.

By: _____

Stephen Repasch

Executive Director