

**MEMORANDUM OF UNDERSTANDING BETWEEN  
MARION TOWNSHIP AND TULPEHOCKEN TOWNSHIP**

**DIRT, GRAVEL AND LOW VOLUME ROAD MAINTENANCE  
PROGRAM GRANTS REGARDING SPUR ROAD**

THIS MEMORANDUM OF UNDERSTANDING (the "MOU") made this 12<sup>th</sup> day of June, 2019, by and between MARION TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, a Pennsylvania Second Class Township, situate in Berks County, Pennsylvania, hereinafter referred to as "Marion",

and

TOWNSHIP OF TULPEHOCKEN, BERKS COUNTY, PENNSYLVANIA, a Pennsylvania Second Class Township, situate in Berks County, Pennsylvania, hereinafter referred to as "Tulpehocken".

**WITNESSETH:**

The Berks County Conservation District administers the Pennsylvania Dirt, Gravel and Low Volume Road Maintenance Program for Berks County in an effort to reduce pollution to nearby streams while improving the rural road network by providing funding to sites where road runoff is affecting water quality of a nearby stream or body of water.

Tulpehocken and Marion recently jointly applied for and received two (2) grants through the Dirt, Gravel and Low Volume Road Maintenance Program for culvert replacement, improvement of ditches, addition of ditch outlets, improvement of road banks, improvement of road base; stormwater improvements, vegetative management and reduction of erosion issues related to Spur Road, located in Berks County, Pennsylvania (the "Project").

The grants were applied for and received jointly by Marion and Tulpehocken since Spur Road and the work on and around Spur Road will be located in both Tulpehocken and Marion Townships.

Grant 1 was approved for improvements to Spur Road in the amount of Fifty-Nine Thousand Eight Hundred Twelve Dollars and Twenty-Eight Cents (\$59,812.28), with an in-kind contribution of Ten Thousand Six Hundred Five Dollars (\$10,605.00), making the total cost of the Grant 1 portion of the Project Seventy Thousand Four Hundred Seventeen Dollars and Twenty-Eight Cents (\$70,417.28).

Grant 2 was approved for improvements to Spur Road Crossing in the amount of Thirty-Four Thousand Nine Hundred Forty-Three Dollars and Sixty-Seven Cents (\$34,943.67), with an in-kind contribution of Nine Thousand Eight Hundred Eighty Dollars and Eighty-One Cents (\$9,880.81), making the total cost of Grant 2 portion of the Project Forty-Four Thousand Eight Hundred Twenty-Four Dollars and Forty-Eight Cents (\$44,824.48).

Tulpehocken and Marion have agreed to coordinate efforts and share certain duties necessary to effectuating the work for the Project and desire to set forth their understandings in writing.

**NOW THEREFORE, INTENDING TO BE LEGALLY BOUND**, the Parties hereby agree as follows:

1. The background sections set forth above are true and correct and are incorporated herein by reference thereto.

2. Marion and Tulpehocken shall each procure any easements necessary for the work performed in their respective municipalities and prepare any necessary plans and legal descriptions needed for the easements.

3. The Tulpehocken and Marion Roadmasters shall meet when necessary before and throughout the Project to coordinate and manage the Project work.

4. Marion shall be responsible for:

- a. Coordination and performance of all necessary surveying work.
- b. Permitting obligations regarding the Erosion and Sediment Plan.

5. Tulpehocken shall be responsible for:

- a. Permitting obligations regarding streams and wetlands delineation.
- b. Bidding and award of the contract for any outside labor required.
- c. All other work not specifically noted herein related to the Project.

6. Marion shall permit the use of its dump truck for the Project and Tulpehocken shall be permitted to use and operate the dump truck for work related to the Project in Tulpehocken Township.

7. Marion and Tulpehocken shall contribute labor and materials as a match for grant funding, however, if the costs of the Project exceed the grant funding, Tulpehocken shall be responsible for seventy percent (70%) of such excess costs, and Marion shall be responsible for thirty percent (30%) of such excess costs.

8. The Parties agree to respectively adopt Resolutions approving the foregoing Project and authorizing the execution of this MOU.

9. This MOU shall be deemed to be made under and shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania without regard to its principles of conflicts of law. Each of the parties to this MOU irrevocably and unconditionally: (a) agrees that any suit arising out of this MOU shall be brought and adjudicated in the Court of Common Pleas of Berks County, Pennsylvania, (b) submits to the exclusive jurisdiction of the said Court of Common Pleas for the purpose of any such suit, and

(c) waives and agrees not to assert by way of motion, as a defense or otherwise in any such suit, any claim that such party is not subject to the jurisdiction of the said Court of Common Pleas, that such suit is brought in an inconvenient forum or that the venue of such suit is improper.

10. Time is of the essence of this MOU.

11. Upon request by either party to this MOU, the other party hereto shall execute and deliver to the requesting party such additional documents as may be necessary or desirable to effectuate the intent of this MOU.

12. This MOU and all rights and powers granted hereby will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

13. The provisions of this MOU are deemed to be severable, and the invalidity or unenforceability of any provision shall not affect or impair the remaining provisions which shall continue in full force and effect.

14. No modification of this MOU shall be binding or enforceable unless in writing and signed by both parties.

15. This MOU may be executed in two (2) counterparts, each of which taken together will constitute one and the same instrument, and each of the parties hereto may execute this MOU by signing any such counterpart. The parties may execute and deliver this MOU via facsimile transmission or electronic mail, and a party's facsimile or electronic image signature will be deemed binding upon said party.

16. Each covenant contained in this MOU will be construed as being independent of each other covenant contained herein and compliance with any one (1) covenant will not be deemed to excuse compliance with any or all other covenants.

17. This MOU constitutes the entire understanding between the parties hereto concerning the subject matter set forth herein and supersedes all prior or contemporaneous oral and/or written memorandums, agreements and representations not contained herein concerning the subject matter of this MOU.

**INTENTIONALLY LEFT BLANK - SIGNATURES APPEAR ON NEXT PAGE**

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date first indicated hereinabove.

MARION TOWNSHIP  
Berks County, Pennsylvania

By: \_\_\_\_\_  
Chairman

Attest: \_\_\_\_\_  
Secretary

TOWNSHIP OF TULPEHOCKEN  
Berks County, Pennsylvania

By: Gayle DeK  
Chairman

Attest: Christy Flaherty  
Secretary

