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ARTICLE I

POLICE JURISDICTION AND MUTUAL AID

Section 101. Title

This Ordinance shall be known and cited as the “Police Jurisdiction and Mutual Aid Ordinance.”

Section 102. Background

- A. Pursuant to the Second Class Township Code (“Second Class Township Code”), 53 P.S. § 66507, and the Pennsylvania Intergovernmental Cooperation Act (the “Intergovernmental Cooperation Act”), 53 Pa. C.S. § 2301, et seq., the Board of Supervisors may agree with the authorities of other local governments for the furnishing of mutual police protection assistant.
- B. Said Second Class Township Code, the Intergovernmental Cooperation Act and other applicable Pennsylvania laws authorize a second class township to conduct certain law enforcement activities outside of its corporate boundaries, to accept police protection aid and assistance from other municipal governments and to enter into cooperative agreements with other municipal governments for police protection.
- C. The Township of Ontelaunee wishes to enter into a proposed “Police Mutual Aid Agreement” (the “Agreement”), a copy of which is made a part hereof by reference thereto, with the Township of Bern, the Township of Muhlenberg, the Township of Maiden creek, and the Borough of Leesport (the “Adjacent Municipalities”), all located in Berks County, Pennsylvania, to set forth the terms to be made applicable to the provision of police protection mutual aid.
- D. The Township of Ontelaunee is willing to provide police protection assistance to, and to accept such assistance from, the Adjacent Municipalities, and finds that doing so is in the public interest and will improve public safety.

Section 103. Agreement

The Township of Ontelaunee, through its Police Department, shall provide to the Adjacent Municipalities police protection services upon the terms and conditions, and for the period or periods of time, set forth in the Agreement. The Township of Ontelaunee, through its Police Department, may accept police protection services from the Adjacent Municipalities upon the terms and conditions, and for the period or periods of time, set for the in the Agreement.

Section 104. Authority to Enter Agreement

The appropriate officers of the Township of Ontelaunee, by and hereby are, authorized to enter into and execute the Agreement.

Section 105. Jurisdiction

The Township of Ontelaunee does hereby approve and authorize the jurisdictional provisions of the Agreement with respect to (a) the jurisdiction and authority of the Township of Ontelaunee police officers when providing assistance in any of the Adjacent Municipalities and (b) the jurisdiction and authority of the police officers of the Adjacent Municipalities when providing assistance to the Township of Ontelaunee.

Section 106. Termination

Either the Township of Ontelaunee or any of the Adjacent Municipalities may withdraw from and terminate their participation in the Agreement upon written notice to each of the other municipal parties, under the terms, conditions and notice provisions set forth in Section 3.3 of the Agreement relating to termination.

Section 107. Related Actions

The proper officials of the Township of Ontelaunee hereby authorized and empowered to take such additional action as they may deem necessary or appropriate to implement the Agreement and this Ordinance.

Section 108. Specific Findings

As required by the Intergovernmental Cooperation Act, the following matters are specifically found and determined

- A. The conditions of the agreement are set for the in the Agreement.
- B. The term of the Agreement, as provided in Section 3.3 thereof, continues in effect for one (1) year after the “Effective Date” (as defined therein) subject to automatic annual renewals.
- C. The purpose and objective of the Agreement are to enter into an intergovernmental contract to provide for police mutual aid among the Township of Ontelaunee and the Adjacent Municipalities.
- D. The financial terms of the Agreement are set forth in Section 2.4 through and including 2.10 of the Agreement.

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- E. No new organizational structure is necessary to implement the Agreement, except to the extent that certain notice, jurisdiction and other matters are addressed in the Agreement.
- F. The Agreement contains no provisions applicable to the ownership of property by the respective parties.
- G. Each municipality shall continue to have the power to separately enter into contracts for policies of insurance or employee benefits.

Section 109. Miscellaneous

- A. The provisions of this Chapter shall be severable and if any provisions shall be held to be unconstitutional or illegal, such decision shall not affect the validity of any remaining provisions of this Chapter. It is hereby declared that it is the legislative intent that this Chapter would have been adopted had such unconstitutional or illegal provision not been included.
- B. All ordinance or parts of ordinances inconsistent with the provisions of this Chapter are hereby repealed.

Ord. 1991-4, 4/11/1991, §1-5; superseded by Ord. 1997-8, 12/11/1997, §1-4, superseded by Ord. 2010-3, 4/1/2010, §1-9.

Agreement

POLICE MUTUAL AID AGREEMENT

THIS AGREEMENT between the TOWNSHIP OF MUHLENBERG, a municipal corporation and government organized under the Pennsylvania First Class Township Code and located in Berks County, Pennsylvania, hereinafter called "Muhlenberg"; the TOWNSHIP OF BERN, a municipal corporation and government organized under the Pennsylvania Second Class Township Code and located in Berks County, Pennsylvania, hereinafter called "Bern"; the TOWNSHIP OF ONTELAUNEE, a municipal corporation and government organized under the Pennsylvania Second Class Township Code and located in Berks County, Pennsylvania, hereinafter called "Ontelaunee"; the TOWNSHIP OF MAIDENCREEK, a municipal corporation and government organized under the Pennsylvania Second Class Township Code and located in Berks County, Pennsylvania, hereinafter called "Maidencreek"; and the BOROUGH OF LEESPORT, a municipal corporation and government organized under the Pennsylvania Borough Code and located in Berks County, Pennsylvania, hereinafter called "Leesport".

BACKGROUND

- A. Muhlenberg, Bern, Ontelaunee, Maidencreek and Leesport are municipal governments which either have common political/corporate boundaries or are located in close proximity to one another, in Berks County, Pennsylvania.
- B. The Jurisdictional Laws (as hereinafter defined) authorize the aforesaid municipalities to enter into cooperative agreements for police protection, mutual aid and assistance.
- C. Ontelaunee, Maidencreek and Leesport are each members of an entity known as the "Northern Berks Police", which may also be known as the "Northern Berks Regional Police", "Northern Berks Police Commission" or "Northern Berks Regional Police Department".
- D. The governing body of each of the Municipalities has found and decided that it is in the public interest for each of the Municipalities to enter into this Agreement and that doing so will improve public safety.

1. GENERAL PROVISIONS.

1.1 Purpose. The purpose of this Agreement is to provide for mutual aid and mutual assistance for police officers working in the contracting Municipalities in various circumstances, including, but not limited to emergencies, arising in any of the Municipalities, thereby enhancing the safety of the officers and offering additional police protection for the residents of each Municipality.

1.2 Definitions.

(a) "Municipality" or "Municipalities" shall mean one or more, respectively, of Muhlenberg, Bern, Ontelaunee, Maidencreek and Leesport. When used in conjunction with requests for assistance, the term "Municipality" or "Municipalities" shall be

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understood as a reference to the Northern Berks Police, when such request is to be made of Ontelaunee, Maidencreek or Leesport.

(b) "Police Officer" or "Police Officers" shall mean one or more, respectively, duly qualified, sworn police officers, employed by any one or more Municipalities either full time or part time. When used in reference to the Police Officer(s) of a Municipality, such reference in the case of Ontelaunee, Maidencreek or Leesport shall be understood as a reference to the Police Officers of Northern Berks Police.

(c) "Jurisdictional Laws" shall have the meaning set forth in Section 3.2 of this Agreement.

(d) "Effective Date" shall have the meaning set forth in Section 3.7 of this Agreement.

(e) As to all pronouns and other terms in the Agreement (whether or not the same shall be a capitalized word and/or phrase), the singular shall include the plural and the vice versa and any gender shall include the other two genders, as the context may require. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Agreement may be used interchangeably in singular or plural form.

(f) The Background paragraphs set forth above are incorporated herein by reference and the Municipalities agree upon the accuracy of such paragraphs.

2. JURISDICTIONAL PROVISIONS.

2.1 Request for Assistance and Authority to Act. Each Municipality does hereby authorize the Police Officers of every Municipality that is a party to this Agreement to conduct police operations as listed in Section 2.2 of this Agreement in each Municipality pursuant to the Jurisdictional Laws when requested and authorized by this Agreement. A list of all Police Officers shall be supplied to each of the other Municipalities annually at the same time that such Police rosters are submitted to the Berks County Communications Center to assure that only the services of authorized personnel are provided. This list shall be kept current and any changes shall be reported immediately to each Municipality.

(a) Emergency Request. If an emergency police or public safety need arises in any Municipality, a Police Officer on duty in such Municipality where the need arises is hereby authorized to request emergency assistance from the Police Officers on duty in the other Municipalities. The request for emergency assistance shall be made to the Chief of Police or ranking Police Officer then on duty in each Municipality which is requested to provide emergency assistance. Such requests for emergency assistance may be made by means appropriate under the circumstances and utilizing methods of communication customarily used by the respective police departments. For the purposes of Sections 2.1, 2.10 and 3.6 of this Agreement, a request for assistance shall be deemed an "emergency assistance" request if the services requested are to be utilized to address a situation or need which is unexpected,

unforeseen, urgent and/or represents a clear and present danger to public peace and/or safety and as to which the requesting Municipality could not have reasonably and adequately anticipated in advance the need for sufficient on-duty police personnel beyond the Municipality's customary staffing levels. The duration of assistance provided pursuant to this Subsection 2.1 (a) shall not exceed seventy-two (72) hours with respect to any particular emergency need and any assistance needed or desired in addition to such initial period of seventy-two (72) hours shall be sought and obtained in accordance with Subsection 2.1 (b) below. Each of the Municipalities agrees that it will use its best efforts to honor an emergency assistance request made under this Subsection 2.1 (a), subject solely to assuring that an adequate number of Police Officers are on-duty or otherwise readily available to the Municipality honoring the request, either by means of the availability of its own personnel or by means of assistance under this Agreement, so as to adequately provide for public safety in the assisting Municipality.

(b) Other Requests. Subject to subparagraph 2.4 below, non-emergency requests shall be made in writing at least forty-eight (48) hours in advance of the projected time the assistance will be needed (unless such time period is waived by the Municipality receiving the request) and shall be made by the Chief of Police or the ranking Police Officer then serving to the Chief of Police, or ranking Police Officer then serving in the other Municipalities. The written request shall specify in reasonable detail the nature and quantity of assistance needed. Each of the other Municipalities shall have the right to decline a request for non-emergency assistance and must do so within twenty-four (24) hours of receipt of the written request. The written request shall be made in accordance with Section 3.6 of this Agreement.

2.2 Police Powers. Any Police Officer, while rendering assistance as set forth in Section 2.1 above or while in the normal course of police business is in a Municipality other than the Municipality regularly employing that Police Officer, shall have the authority and jurisdiction provided by the Jurisdictional Laws to do the following, notwithstanding whether the Police Officer viewed the offense:

- (a) Patrol Service –
- 1) Enforce the laws of the Commonwealth of Pennsylvania which are now or hereinafter enforced within the limits of the Municipality;
 - 2) Enforce the Vehicle Code of the Commonwealth of Pennsylvania which is now or hereinafter enforced within the limits of the Municipality; and
 - 3) Enforce the ordinances, codes and regulations of the Municipality.

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(b) Investigative Service –

- 1) Investigate all reported criminal offences which are alleged to have occurred in the Municipality;
- 2) Investigate accidents occurring in the Municipality;
- 3) Respond to citizen complaints and requests which occur in the Municipality;
- 4) Prosecute, in the courts having jurisdiction, those persons believed to be responsible for any criminal law, traffic law, ordinance, code and regulation violations occurring within the Municipality; and
- 5) Enforce the laws of the Commonwealth of Pennsylvania which are now or hereinafter enforced within the limits of the Municipality.

2.3 Direction and Control. For the purposes of this Agreement only, a Police Officer responding to any call for assistance shall ordinarily be under the direction and control of the Chief of Police or ranking Police Officer then on duty in the Municipality which requested the assistance, with respect to the performance of the assistance within the requesting Municipality. Notwithstanding anything to the contrary however, in the event of any question, dispute, or disagreement that cannot be resolved between the respective ranking officers of each police department, an officer shall follow the orders of his or her immediate superior which may include withdrawal from emergency or nonemergency assistance.

2.4 Salary, Compensation, and Benefits of Police Officer. The Municipality requesting assistance shall not be responsible for paying the salary, compensation, or benefits of the other Municipality's Police Officers responding to the request. It is intended that during the period when Police Officers are rendering assistance each Municipality shall continue to be responsible for providing the salary, compensation, and benefits of its own Police Officers and not that of any other Municipality's Police Officers. Accordingly, in order not to unfairly burden or disadvantage the taxpayers of any Municipality, requests for assistance will be made sparingly and shall be limited to either true emergencies as described above or nonemergencies where the responding Municipality will ordinarily not incur additional staffing or overtime payments to its police officers.

2.5 Workers Compensation. Each Municipality shall be responsible for providing and maintaining Workers' Compensation Insurance for their own Police Officers. Such Workers' Compensation Insurance shall cover Police Officers when operating under assistance situations in any Municipality which is a party to this Agreement. Notice of this Agreement shall be given in writing by each Municipality to the insurance companies carrying the Workers' Compensation and Public Liability Insurance coverage applicable to the Police Officers of each respective Municipality.

2.6 Public Liability Insurance. Each Municipality shall be responsible for providing and maintaining General Public Liability Insurance covering: (a) general police duties and operations within the Municipality and within the other Municipalities; and (b) motor vehicle operations within the Municipality and within the other Municipalities. For general police duties and operations such insurance shall cover: (a) bodily injuries; (b) personal injuries; and (c) property damages. The limit of this insurance coverage, including applicable excess liability coverage, shall be no less than \$1,000,000.00 for bodily injuries, personal injuries, and property damages. Motor vehicle insurance shall include coverage for: (a) all police motor vehicles owned by each Municipality; (b) police use of these vehicles within or without the limits of the Municipality owning the vehicles; and (c) authorized use of these vehicles by the Municipality's own Police Officers or the Police Officers of any other Municipality which is a party to this Agreement. The limit of this insurance coverage for each Municipality, including applicable excess liability coverage, shall be no less than \$1,000,000.00 for bodily injuries, personal injuries and property damages.

2.7 Police Pension Fund, Benefits and Participation. A Police Officer shall not be entitled to the benefits or to participate in the police pension fund of any Municipality which is a party to this Agreement, other than such Police Officer's employing Municipality.

2.8 Salary, Benefits, or Rights Under A Collective Bargaining Agreement. A Police Officer shall not be entitled to any salary, benefits, or rights existing under the terms of a collective bargaining agreement of any Municipality which is a party to this Agreement, other than such Police Officer's employing Municipality.

2.9 Other Salary, Benefits, or Rights of Police Officer. A Police Officer shall not be entitled to any other salary, benefits, contractual, civil service, indemnification, insurance, or other rights of any Municipality which is a party to this Agreement, other than such Police Officer's employing Municipality.

2.10 Costs.

(a) Emergency Requests. A Municipality shall not be required to pay any charge or compensation to any other Municipality and/or its police department for emergency services rendered to such other Municipality pursuant to an emergency request made pursuant to Section 2.1(a) of this Agreement. Any emergency services performed or expenditures made in connection with furnishing emergency aid and police services to Municipalities hereunder shall be deemed to be in furtherance of the direct protection and benefit of the inhabitants and property in all of the Municipalities.

(b) Other Requests. A Municipality responding to a non-emergency request for assistance pursuant to Section 2.1 (b) of this Agreement shall pay its own costs and expenses incurred in responding to such non-emergency request and providing the requested services, unless the Municipalities have agreed upon other terms in writing. If the applicable terms were not agreed upon in writing at the time of receipt of the request, then the costs and expenses charged for reimbursement under this Paragraph must be reasonable. Costs and

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expenses shall be deemed to be "reasonable" if they are substantially similar to costs and expenses charged to persons or entities not a party to this Agreement by the Municipalities in question.

3. GOVERNING LAW AND AUTHORITY.

3.1 Governing Law. This Agreement is made pursuant to the laws of the Commonwealth of Pennsylvania and at all times there shall be incorporated herein the provisions of any new statute either enlarging or diminishing the police jurisdiction powers hereinabove discussed.

3.2 Authority. The parties hereto have entered into this Agreement pursuant to the legal authority granted by the following statutes and ordinances (collectively, as amended and supplemented from time to time, the "Jurisdictional Laws"): (a) Article IX, Section 5 of the Constitution of the Commonwealth of Pennsylvania; (b) the Intergovernmental Cooperation Act of December 19, 1996, P.L. 1158, No. 177,53 Pa. C.S.A. § 2301, et seq.; (c) First Class Township Code §§ 1502(53) and 1520(54); (d) Borough Code §§ 1121, 1122, 1202(35) and 1202(74) (53 P.S. §§ 46121, 46122, 46202(35) and 46202(74)); (e) Second Class Township Code §§ 1506, 1507, 1527, 1903 and 1904 (53 P.S. §§ 66506, 66507, 66527, 66903 and 66904); (f) the municipal police jurisdiction provisions of the Municipal Police Jurisdiction Act (42 Pa. C.S.A. Section 8951-8953); (g) the respective ordinances duly adopted by each of the Municipalities approving this Agreement; and (h) the laws of the Commonwealth of Pennsylvania.

3.3 Effective Date and Termination. This Agreement shall be effective for a period of one (1) year from the Effective Date. Thereafter, this Agreement shall renew itself for each succeeding one (1) year period as to each Municipality until a Municipality terminates its participation in this Agreement. Any Municipality may terminate its participation in this Agreement by written notice of intent to terminate; said notice shall be given to all other Municipalities in the manner provided herein, no less than ninety (90) days in advance of the effective date of termination.

3.4 Successors. The within Agreement shall be binding upon the respective parties and upon their successors, until terminated as hereinbefore provided.

3.5 Amendments. The terms and conditions of this Agreement contain the entire understanding among the Municipalities. Such understanding may not be amended, modified, or terminated except in writing duly executed by the authorized elected officials of each of the Municipalities.

3.6 Notice. Any notice or other communications required or permitted hereunder (except emergency requests for mutual aid and assistance, which are governed by Section 2.1 (a) of this Agreement) shall be in writing and, unless otherwise provided herein, shall be deemed to have been duly given upon delivery in person, by facsimile, by overnight courier or by certified or registered mail, return receipt requested, as follows:

Muhlenberg Township
Attn: Steve Landes, Township Manager
5401 Leesport Ave.
Temple, PA 19560
Facsimile No. (610) 921-3764

Bern Township
Attn: Township Manager
1069 Old Bernville Road
Reading, PA 19605
Facsimile No. (610)926-9028

Ontelaunee Township
Attn: Board of Supervisors
35 Ontelaunee Drive
Reading, PA 19605
Facsimile No. (610)926-5476

Maidencreek Township
Attn: Township Manager
P.O. Box 319
Blandon, PA 19510
Facsimile No. (610)926-6314

Borough of Leesport
Attn: Borough Manager
27 South Canal Street
Leesport, PA 19533
Facsimile No. (610)916-3055

Northern Berks Police
Attn: Chief of Police
37 Ontelaunee Drive
Reading, PA 19605
Facsimile No. (610)926-0309

or at such other address or teletype number as shall have been furnished in writing by any such party in the manner set forth herein. Each such notice or other communication shall be effective (i) when received, if hand delivered, (ii) upon confirmation of receipt, if by facsimile, (iii) one day following deposit, if sent by overnight courier, or (iv) on the third business day following the date on which such communication is posted, if sent by certified or registered mail.

3.7 Effective Date. This Agreement shall become effective on the date ("Effective Date") occurring ten (10) days after the date of enactment of an authorizing ordinance by the last Municipality to adopt an authorizing ordinance.

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3.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Each Municipality shall provide a copy of the signed Agreement and enacted Ordinance within five (5) days of enactment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

TOWNSHIP OF MUHLENBERG
Date: _____

By: _____
Name: James Murray
Title: President, Board of Commissioners

By: _____
Name: Erik Grunzig
Title: Chief of Police

Attest: _____
Name: Judy Zettlemoyer
Title: Secretary

BOROUGH OF LEESPORT
Date: _____

By: _____
Name:
Title:

Attest: _____
Name:
Title: Secretary

TOWNSHIP OF MAIDENCREEK
Date: _____

By: _____
Name:
Title:

Attest: _____
Name:
Title: Secretary

TOWNSHIP OF BERN
Date: 3/2/2010

By: Lucille M. Brady
Name: Lucille M. Brady
Title: Chairperson

By: Christopher L. Kwozdzinski
Name: Christopher L. Kwozdzinski
Title: Chief of Police

Attest: Doree De Jesus
Name: Doree De Jesus
Title: Secretary/Treasurer

TOWNSHIP OF ONTELAUNEE
Date: April 1, 2010

By: Kenneth M. Stouck
Name: Kenneth M. Stouck
Title: Chairman

Attest: Alexis A. McCutcheon
Name: Alexis A. McCutcheon
Title: Secretary

NORTHERN BERKS POLICE
Date: _____

By: Scott Eaken
Name: Scott Eaken
Title: Chief of Police

Attest: _____
Name:
Title: Secretary

ARTICLE II

JOINT POLICE COMMISSION AGREEMENT WITH MAIDENCREEK TOWNSHIP, THE BOROUGH OF LEESPORT AND OTHER NEIGHBORING MUNICIPALITIES

Section 201. Formation

Pursuant to the provisions of the Intergovernmental Cooperation Act, the Township of Ontelaunee may from time to time enter into Councils of Government and other joint or cooperative agreements with other municipalities for purposes which the Township deems to be for the general welfare of the and in the best interest of its residents and taxpayers. The Township is further authorized to enter into any and all agreement and to take whatever action is necessary to effectuate the formation, operation and financing of such Council of Government or joint or cooperative agreements in which it shall participate.

Ord. 1997-8, 12/11/1997, §1.

Section 202. Northern Berks Police Commission

For the purpose of providing adequate police protection to the residents and taxpayers of the Township of Ontelaunee, the Board of Supervisors of the Township is hereby authorized and directed to enter into an agreement with Maiden creek Township and the Borough of Leesport, Berks County, Pennsylvania to establish the Northern Berks Police Commission. To implement the provisions of this Ordinance, the officers of the Township of Ontelaunee are hereby authorized and directed to execute an agreement with Maiden creek Township and the Borough of Leesport which sets forth the structure of the Norther Berks Police Commission, the manner and extent of financing, the duration and the organizational structure necessary to implement the Northern Berks Police Commission.

Ord. 1997-8, 12/11/1997, §2.

Section 203. Severance

The invalidity, illegality or unconstitutionality of any portion of this Ordinance shall not impair or affect the validity of the Ordinance as a whole or any other part thereof.

Ord. 1997-8, 12/11/1997, §3.

Section 204. Repealer

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All Ordinance 1991-3 and all other ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they may be inconsistent with the terms of this Ordinance.

Ord. 1997-8, 12/11/1997, §4.

ORIGINAL ①

COMPOSITE CHARTER OF THE
NORTHERN BERKS POLICE COMMISSION

This Charter Agreement is entered into this 17th day of December, 1997 effective January 1, 1998 at 12:01 A.M. as the Composite Charter for the Northern Berks Police Commission (hereinafter referred to as Commission), an unincorporated, non-profit association established under the authority of Act of December 19, 1996, P.L. 1158, No. 177, 53 Pa. C.S.A. Section 2301 et seq. for the purpose of providing police services for Maiden creek Township, Ontelaunee Township and Leesport Borough and possible future member municipalities (hereinafter "Participants").

WHEREAS, the Township of Maiden creek and Township of Ontelaunee entered into an agreement in April 1991 establishing the Maiden creek Ontelaunee Joint Police Commission; and

WHEREAS, said Joint Police Commission has been in existence since that time; and

WHEREAS, the Borough of Leesport has expressed interest in becoming a Participant in the Joint Police Force operated by said Joint Police Commission; and

WHEREAS, the Intergovernmental Cooperation Law, Act of 1996, P.L. 1158 No. 177 authorizes two (2) or more municipalities in the Commonwealth of Pennsylvania to jointly operate in the exercise or in the performance of their respective governmental functions, powers or responsibilities, including the provision of police services; and

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WHEREAS, Maidencreek Township, Ontelaunee Township and Leesport Borough have determined that it is in the best interests of the citizens of the Township and Borough that they be served by a joint police force; and

WHEREAS, upon Leesport Borough's agreement to enter into this Charter, the prior agreement entered into by the Townships shall be superseded by this Charter; and

WHEREAS, the Townships and Borough shall adopt ordinances authorizing the appropriate officers of each municipality to execute this Charter agreement.

NOW THEREFORE, said Participants, in consideration of their mutual commitments herein set forth, agree to be bound to the acknowledgements and covenants hereinafter set forth.

1. PURPOSE.

The express purpose of the Charter shall be to establish the Northern Berks Police Commission as an unincorporated association distinct from its Participants, the goal of which association shall be to provide comprehensive quality, and efficient police protection for the Participants through the Northern Berks Police Department (hereinafter "Department").

2. POLICE DISTRICT BOUNDARIES.

The geographic area served by the Northern Berks Police Commission shall be that area encompassing the collective municipal boundaries of the Participants. The established municipal boundaries of the Participants shall otherwise be ignored and the area served by the Department shall be identified as the Northern

Berks District, ("District"). The Participants have surrendered their authority to police said areas to the Department, subject to the terms of this Charter, with said area to be independent of the Participants for purposes of this Charter and subject solely to the control and authority of the Commission.

3. JOINT POLICE COMMISSION.

(a) **Appointment of Commissioners** - (i) The Department shall be governed by a joint Commission of persons composed of one representative from each Participant appointed by the governing body of each municipality which is a party to this Charter. Each municipality shall appoint an alternative representative in the event the designated member is unable to attend Commission meetings.

(ii) Each representative shall be appointed for a term of one year to be made at each Participant's periodic reorganizational meeting. The term of each member shall begin upon his appointment and shall continue for one year or until his/her successor shall be appointed.

(iii) Any commissioner vacating his office with the Participant for any reason or becoming incapable of performing the duties of that office, shall be deemed to have resigned his/her commissionership on even date therewith and the Participant shall forthwith appoint a successor for his/her unexpired term.

(b) **Conduct of the Meeting** - (i) Each commissioner from the Participants shall have one vote on the Commission.

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(ii) A majority of the total number of commissioners shall constitute a quorum and a majority vote of these commissioners present shall constitute effective action taken by the Commission, except as to amendment, termination of this Charter, or joinder of Participants, where a two-thirds vote shall be required.

(iii) Roberts Rules of Order, revised, shall otherwise govern the conduct of the commission meetings and the duties of its officers.

(c) **Officers** - (i) The members of the Commission shall at the first monthly meeting of each year, elect a Chairman and a Vice Chairman from among the members of the Commission, and shall appoint a Secretary-Treasurer.

(ii) The compensation of the Secretary-Treasurer shall be set by the Commission.

(iii) The Commission shall maintain an accurate record of the minutes of the meetings, regular and special, and other records and these shall be submitted to the governing bodies of each municipality prior to that municipality's regular monthly meeting, and that such minutes and records shall be at reasonable times, open for inspection by any citizen of the Commonwealth of Pennsylvania.

(d) **Scheduling of Meetings** - The Commission shall hold its regular meetings once each month on a day and at a time to be determined by the Commission at a location to be determined by the Commission.

Special or rescheduled meetings of the Commission may be scheduled by appropriate resolution fixing the date, time and place of such meeting and special or rescheduled meetings may be called at the written request of any members of the Commission. Notice of such meetings shall be provided to each member in writing at least forty-eight (48) hours in advance of said meeting.

All meetings of the Commission shall be advertised and conducted in compliance with 65 P.S. Section 261 et seq. a/k/a the Sunshine Law.

4. JURISDICTION AND AUTHORITY.

(a) **Jurisdiction** - The Commission shall supervise and direct all of the police activities of the District, and through the Department provide police services as shall be required in each of the participating municipalities, investigate all crimes and complaints which are reported in the participating municipalities and assist in the enforcement of the ordinances of the participating municipalities.

(b) **Authority** - The Commission shall have the following express authority:

- (i) lease, sell or purchase personal property;
- (ii) enter contracts for purchase of goods and services, policies of group insurance, and collective bargaining agreements;
- (iii) hire, fire, suspend, promote, demote, discipline, set salaries, and otherwise deal with employees (civilian or police officers);
- (iv) serve as a hearing board for employee grievances;

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(v) establish and maintain bank accounts and other financial accounts;

(vi) invest monies;

(vii) borrow monies and encumber property;

(viii) establish and fund employee benefit programs, including a pension fund and pay Social Security, if necessary; and

(ix) enact policies on salaries, wages, hours and terms and conditions of employment and other matters relating to effective police work consistent with the laws of the Commonwealth of Pennsylvania;

(x) Contract with professionals.

The Commission shall adopt a comprehensive written police personnel policy covering all the matters covered herein and make written copies of this policy available to the governing bodies of the participating municipalities.

5. GOVERNING LAW.

As an independent, non-profit, unincorporated association, the Commission shall not be governed by city, borough or township codes, including but not limited to those known as the Borough Code and Second Class Township Code. The Police Tenure Act shall govern the suspension, removal, reduction in number and reduction in rank of the police officers employed by the Commission. The Commission may, in its discretion, look to such codes for guidance and direction in the handling of its affairs; however, in doing so, shall not be deemed in any fashion to have adopted or become bound to abide by said laws by implication or past practice. The

Commission shall abide by the provisions of 2 Pa. C.S.A. 101 et seq., commonly known as the Local Agency Law.

6. **FINANCE.**

(a) The Commission shall prepare an annual budget which shall be submitted to the governing bodies of each participating municipality for the consideration and approval of each of the participating municipalities not later than October 1 of each year. If the said budget shall not be approved by each and every municipality party to this agreement, the prior year's budget shall remain in operation and effect until such approvals shall be given.

(b) **Apportionment of Costs** - (i) The parties agree that during the first year (1998) of the Commission, the cost of operation of the Department shall be apportioned as follows:

(i) Maiden creek Township - 43.6%

(ii) Ontelaunee Township - 27.3%

(iii) Leesport Borough - 29.1%

(ii) The apportionment percentages of each municipality shall be subject to review by the Commission and the governing body of each municipality at the times that the Commission budget is submitted to the governing body of each municipality and may be revised as of January 1st of each year by unanimous agreement of all parties to this agreement.

(c) The member municipalities shall each pay to the Commission their respective share of the budget of the Commission in twelve (12) equal monthly payments on or before the 15th day of each month.

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All of the monies of the Commission, from whatever source derived shall be paid to the Treasurer of the Commission who shall immediately deposit such funds in an account insured by the United States government or in the Pennsylvania Local Government Investment Trust. The Treasurer shall make payments from such funds as shall be directed by the Commission.

(d) The funds from the Foreign Casualty and Insurance Company (Act 205 1984, P.L. 1005, 53 P.S. §895.101 et seq. or any other act subsequently enacted) distributed to the Participants by the Commonwealth of Pennsylvania shall be forwarded by the Participants for the purposes authorized under such act governing the operation of the police pension funds, the amount credited against proportionate shares of total costs to be paid by the Participants.

(e) The Treasurer shall post a bond to the Commission in an amount approved by the Commission and the premium for such bond shall be paid by the Commission.

(f) **Fiscal year** - The fiscal year of the Commission shall be January 1 to December 31.

(g) Each Municipality shall contribute \$6,000.00 to the Commission for start-up costs. Any monies not spent before January 1, 1999 shall be returned to the municipalities in equal amounts.

7. PENSIONS.

Each municipality which is a member of the Commission shall within thirty (30) days of becoming a member terminate its existing police pension fund and shall transfer all of the allocated assets of such police pension fund to the Northern Berks Police Pension

Fund.

Each of the parties hereto hereby relinquish any and all claims to any of the funds transferred to the Northern Berks Police Pension Fund except as set forth in this agreement.

Each of the parties hereto agrees to pay a share of the costs of administration of the Northern Berks Police Pension Fund, which are not payable from the fund itself. Such share shall be in the same proportion to the full amount of such costs as is the party's share of the overall costs of operating the Department.

The service credits of all police officers of each member municipality who qualify to participate in that municipality's police pension fund at the time such municipality becomes a member of the Department shall be transferred to the Commission.

The governing bodies of each of the member municipalities of the Commission shall adopt an ordinance terminating the municipality's existing police pension fund, transferring the unallocated funds of the municipality's police pension fund to the Northern Berks Police Pension Fund, transferring the service credits of all police officers of the municipality to the Commission and authorizing and directing the Commission to establish and administer a pension fund for all full time officers of the Department in accordance with the authority and provisions of Act 600 as amended, supplemented or superseded.

Funds distributed to each member municipality by the Commonwealth of Pennsylvania under the Foreign Casualty and Insurance Company Act, being the Act of May 12, 1943 P.L. 259 as

INTERGOVERNMENTAL COOPERATION AGREEMENTS

amended or any act which shall supplement or replace the aforesaid act, shall be immediately paid over by the member municipality to the Commission for the purposes authorized under the aforesaid act governing the operation of municipal police pension funds.

8. PROPERTY.

(A) Each member municipality of the Commission shall contribute to the Commission all of its existing police equipment, materials and supplies which shall be deemed useful to the operation of the Department. Each municipality's contribution to such equipment, materials and supplies shall be deemed equal to the value of the contribution of each of the other member municipalities.

(B) Upon the withdrawal from the Commission of any Participant, the withdrawing municipality shall be entitled to such equipment, materials and supplies as shall represent in value the same proportion of the value of the total equipment, materials and supplies then owned by the Commission as is the proportion of financial contribution of the withdrawing municipality.

9. POLICE HEADQUARTERS.

The Department Headquarters shall be located in the Maiden Creek Township Municipal Building or at any other location as determined by the Commission.

The Commission shall pay to Maiden Creek Township or any municipality which allows its building to be used for police headquarters, a monthly rental in an amount to be set in the yearly budget of the Commission.

10. **DEPUTIZATION.**

The Commission shall furnish to each of the municipalities which are parties to this Charter agreement the names of all police officers of the Department for the purpose of deputization of such officers as police officers of all member municipalities and each member municipality shall deputize all officers employed by the Commission as police officers of the participating municipalities.

11. **POLICE RECORD SYSTEM.**

The Commission shall establish and control a complete and up to date uniform police record system - using the records of the police departments of the Participants. The Participants shall make their existing police records available to the Commission.

12. **IMMUNITY AND CLAIMS.**

(a) **Insurance** - The police services performed and the expenditures incurred under this Charter shall be deemed for public and governmental purposes, and all immunities from liabilities enjoyed by the Participants within their boundaries shall extend to their participation in police services outside their boundaries and within the geographical area served by the Commission. The Commission shall maintain adequate liability insurance coverage against claims arising out of police activities, including but not limited to motor vehicle liability coverage, all of which policies shall include the Participants as named insureds.

The Commission further agrees to cause any insurance policies providing liability coverage against claims arising out of its police activities to contain a waiver of subrogation clause or

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endorsement under which the insurance company waives its right of subrogation against each Participant to this Charter as to any and all causes of action or claims which may arise out of its police activities hereunder, provided that coverage containing such waiver of subrogation remains available. Said liability insurance protection shall be subject to annual review with a certificate of insurance to issue naming the Commission and all Participants as named insureds, provided such coverage is available.

For purposes of liability not covered by insurance protection, in actions arising out of regional police services, all Participants shall be proportionately liable for judgments rendered against any Participant in connection with police services rendered to the Participant by the Commission or against the Commission for police services provided to that Participant. The proportion of liability shall be in the same proportion as the funding assessment of the Participant during the period the police services in question were rendered.

(b) **Waiver and Indemnity** - Each participating municipality hereby waives any and all claims against all other participating municipalities and against the Commission which may arise out of police activities of the Commission or its officers and employees while rendering police services under this Charter.

The Commission shall indemnify and hold harmless the Participants against any and all claims arising out of said police activities. In addition, each participating municipality hereby agrees to proportionately indemnify and hold harmless all other

parties to this Charter from any and all claims by third parties, suits, damages and losses, including costs and expenses and attorney fees incident to or resulting from any injury to any person or any damage to any property which may arise out of the rendering of police services under this Charter.

13. JOINDER OF ADDITIONAL PARTICIPANTS.

Additional municipalities may become parties to this Charter Agreement upon application to and acceptance by the Commission, approval of the then participating municipalities and upon proper acceptance of the provisions of this Charter by the applicant municipality.

The Commission may also permit the purchase of services by non-participating municipalities on terms established by the Commission.

14. WITHDRAWAL OF PARTICIPANTS.

A Participant may withdraw from participating in the Commission provided that written notice of intent to withdraw is sent by certified mail, return receipt requested to the Commission at least one year in advance of November 1 of the year in which such withdrawal is to be effective. Such withdrawal can only be effective at the end of a term.

The immediate costs of such withdrawal and any continuing obligations and liabilities necessarily assumed by the remaining Participants of the Commission totally or partially attributable to the withdrawing Participant's participation, shall be satisfied by the withdrawing Participant upon the effective date of withdrawal.

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Upon withdrawal the withdrawing Participant's proportionate share of the Northern Berks Police Pension Fund, based upon the actuarial accrued liability of the members of the Department transferred to the withdrawing Participant as calculated by the actuary of the Commission Pension Fund in accordance with the Municipal Pension Plan Funding Standard and Recovery Act, shall be transferred to the pension fund created by the withdrawing Participant as of the effective date of the withdrawal.

Withdrawal from this Charter by any Participant shall not terminate this Charter as to the remaining participants.

15. TERM AND DISSOLUTION.

(a) **Term** - the Term of this Charter shall commence on January 1, 1998 at 12:01 A.M. and extend to and including December 31, 1999. The same shall thereafter renew automatically for a like term subject to termination by vote of two-thirds of the Participants at least six (6) months in advance of the effective date of termination.

(b) **Dissolution** - In the event of dissolution of the Commission, all equipment, materials, pension and supplies retained by the Commission shall be appraised by appraisers appointed by the Commission for purposes of determining the fair market value of the equipment, pension, materials and supplies.

The cash, equipment, materials and supplies shall then be distributed in the same proportion as the funding assessment for the Participants for the present fiscal year. In the event that an equitable distribution cannot be agreed upon by the Participants,

all, or any portion of the equipment, materials and supplies, shall be sold and the proceeds distributed in the aforesaid assessment proportions.

The pension shall be divided in proportionate shares based upon the initial contributions and subsequent contributions of the participants while a member in the Commission and shall then be transferred to pension funds created by the withdrawing participants.

16. **INTERPRETATION.**

All differences arising out of interpretation of this Charter shall be resolved by the Commission.

17. **AMENDMENT.**

This Charter shall not be subject to amendment or modification except in written document, dated, and executed. Any such amendment shall require the assent of at least two-thirds of all Participants.

18. **SEVERANCE.**

The invalidity, illegality or unconstitutionality of any portion of this Charter shall not impair or affect the invalidity of this Charter as a whole or any other part thereof.

19. **MISCELLANEOUS.**

All prior agreements conflicting with the provisions of this Charter shall be considered null and void, repealed and superceded by this Charter insofar as they may be inconsistent with the terms of this Charter.

ARTICLE III

BERKS COUNTY RECIPROCAL EMERGENCY ASSISTANCE

Section 301. Scope

Ontelaunee is hereby authorized to enter into the Agreement with the County of Berks, various political subdivisions within the County of Berks, and private entities located with the County of Berks, to provide for reciprocal emergency assistance. A true and correct copy of the Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

Section 302. Purpose

Ontelaunee shall provide and receive reciprocal emergency assistance as specified in the Agreement as required by the Code.

Section 303. Term

The term of the Agreement will continue in force and remain binding upon Ontelaunee until Ontelaunee takes action to withdraw from them. Ontelaunee may withdraw upon ninety (90) days' written notice to each of the parties to the Agreement.

Ord. 2001-6, 9/27/2001, §1-3.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

SEP-24-2002 10:51

COUNTY-WIDE MUTUAL AID AGREEMENT

AGREEMENT NO. _____

This **AGREEMENT** is made this ____ day of _____, 2001, pursuant to the provisions of the Act of November 26, 1978, No. 323, P.L. 1332, 35 Pa. C.S.A. §7101 et seq., as amended, known as the Emergency Management Services Code (the "Code"), by and between the following political subdivisions: the COUNTY OF BERKS (the "County") and all other municipalities and private entities designated in the signatory section of the Agreement (Attachment I).

WHEREAS, Section 7501 of the Code directs and authorizes each political subdivision to develop an emergency management organization in accordance with the plan and program of the Pennsylvania Emergency Management Agency; and

WHEREAS, Section 7504 of the Code directs county and local coordinators of emergency management to develop mutual aid agreements with adjacent political subdivisions for reciprocal emergency assistance; and

WHEREAS, the County and the below named municipalities and private entities located within the County desire to enter into this County-Wide Mutual Aid Agreement pursuant to the above cited sections of the Code; and

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WHEREAS, by adoption of an ordinance, if necessary, and mutual execution of this Agreement, the County, municipalities and private entities desire and intend to formalize the agreements and arrangements relative to reciprocal emergency assistance by and between said parties.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the County, municipalities and private entities signing below mutually agree as follows:

1. When used in this Agreement, the term "municipality" shall mean any city, borough, township or incorporated town. The term "private entity(ies)" shall include but not be limited to: privately operated fire organizations, ambulance service, fire, police, and rescue companies independent of any municipality.

2. The County, each signatory municipality or private entity agrees to furnish emergency services to any other signatory municipality, private entity or the County upon request of such other municipality, private entity or the County through the direction of the County Emergency Management Agency, or other organization exercising coordination responsibilities pursuant to the Code. The emergency services may involve the preparation for and the carrying out of functions, other than functions for which military forces are primarily responsible, to prevent, minimize and provide emergency repair of injury and damage resulting from disaster, together with all other activities necessary or incidental to the preparation for the carrying out of these functions. The functions include without limitation, fire fighting services, police services, medical and health services,

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rescue, engineering, disaster warning services, communications, radiological shelter, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, emergency resource management, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to civilian protection.

3. Each municipality authorizes the provision of emergency services by emergency services personnel of other municipalities, if and when the municipality or such services are provided pursuant to the exercise of emergency management coordination responsibilities of the County or other organization.

4. In addition to the emergency services outlined in Paragraph 2, this Agreement shall apply to the following circumstances and/or situations:

(a) The dispatch of emergency services equipment and/or personnel by one or more municipalities in response to the occurrence or threat of a man-made, natural or war-caused disaster;

(b) The distribution of materials, supplies, equipment and other forms of aid by and between municipalities;

(c) The staffing and equipping of an emergency operations center responsible for coordinating the emergency response activities of one or more municipalities affected by an actual or imminent natural disaster emergency;

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(d) The dispatch of emergency service equipment, material and/or personnel by one or more municipalities in response to a declaration of local disaster emergency declared by one or more municipalities;

(e) Response to incidents (actual or imminent) which endanger the health, safety or welfare of the public which require the use of special equipment, trained personnel or personnel in larger numbers than are locally available in order to reduce, counteract or remove the danger caused by the incident;

(f) Participation in exercises, drills or other training activities designed to train personnel to prepare for, cope with or prevent the occurrence of any disaster emergency.

5. It is mutually understood and agreed that the provision and direction of disaster emergency management services is the responsibility of the lowest level of government affected. When two or more municipalities within the County are affected, the County Emergency Management Agency shall exercise responsibility for coordination and support to the area of operations.

6. Any requests for aid hereunder shall state the amount and type of equipment or personnel requested, but the actual amount and type of equipment and number of personnel to be furnished shall be determined by the responding municipality or private entity or County. The responding municipality, private entity or County as the case may be shall dispatch all equipment and personnel and may, at its discretion, terminate or recall emergency services furnished by it. No municipality, private entity or the County shall be

INTERGOVERNMENTAL COOPERATION AGREEMENTS

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held liable to another municipality, private entity or the County as the case may be for failure to supply assistance at the request of another municipality, private entity or the County responsible for coordination of emergency management services.

7. Personnel of the responding municipality or private entity shall report to the officer in charge of the requesting municipality or his designee at the location to which the equipment or personnel are dispatched, but such equipment or personnel shall remain under the operational control of the municipality or private entity furnishing the emergency services.

8. No municipality, private entity or the County as the case may be shall be required to pay any charge or compensation to any other municipality, private entity and the County for services rendered hereunder. Each municipality, private entity or the County remains liable for the salaries of its personnel in the same manner as if the personnel were assigned to duty in the home municipality, private entity or County, even though said personnel are responding to an emergency in another municipality or private entity.

9. The County and each municipality or private entity shall maintain workmen's compensation insurance to cover emergency service personnel employed by the County, municipality or private entity. If injury or loss occurs under any circumstances to any emergency services employee, then the home municipality or jurisdiction or private entity that employs the emergency services employee shall be solely liable for payments of all workmen's compensation claims arising from said injury or loss. Each municipality or

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private entity hereby warrants in writing to the others that it has conferred with its workmen's compensation insurance carrier and that the provision in this Agreement is lawful and in accordance with the insurance policies for workmen's compensation now held by the respective municipality or private entity.

10. The County and each municipality and private entity shall maintain adequate general and public liability insurance policies which cover the emergency service activities of the County or municipality or private entity when acting pursuant to the terms of this Agreement.

11. No municipality or private entity shall present any claim of any nature against any other municipality or private entity for compensation for any loss, damage, or personal injury or death occurring in consequence of the performance of the services called for in this Agreement.

12. This Agreement shall become effective for each municipality or private entity participating herein upon the adoption of an ordinance by the municipality or private entity providing for the entry into this Agreement or in the case of a private entity by execution of this Agreement. This Agreement shall continue in force and remain binding upon each municipality or private entity until the governing body of such municipality or private entity shall take action to withdraw therefrom. Any municipality or private entity that is party to this Agreement may withdraw upon 90 days written notice to each of the other parties.


INTERGOVERNMENTAL COOPERATION AGREEMENTS

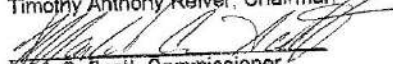
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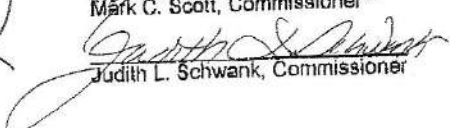
Upon such event, however, this Agreement shall continue to exist among the remaining parties.

IN WITNESS WHEREOF, the County of Berks and the undersigned municipalities and private entities, by their respective governing bodies, as set forth on the pages of Attachment I, have duly executed this County-Wide Mutual Aid Agreement for Emergency Services on the respective dates listed on Attachment I.

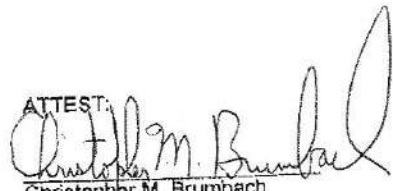
COUNTY OF BERKS


Timothy Anthony Reiver, Chairman


Mark C. Scott, Commissioner


Judith L. Schwank, Commissioner

ATTEST:


Christopher M. Brumbach
Chief Clerk

Township of Port Deposit

Kenneth W. Street

Cherie L. James

Attest:

Mardene E. Ernst, Sec.

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ARTICLE IV

BERKS COUNTY UNIFORM CONSTRUCTION CODE BOARD OF APPEALS

Section 401. Title and Background

The Title and Background of this Ordinance set forth above are incorporated herein by reference.

- A. Certain townships and boroughs in Berks County, Pennsylvania have enacted Ordinances adopting the Uniform Construction Code (“UCC”), Act 45 of 1999, 35 P.S. § 7210.101, et. seq. (the “Act”).
- B. Section 301 of the Act directed the Pennsylvania Department of Labor and Industry to promulgate regulations with respect to the administration and enforcement of the Act, which regulations were codified at Title 34 Pa. Code, Chapters 401, 403 and 405 (“Regulations”).
- C. Section 403.121(d) of the Regulations, 34 Pa. Code § 403.121(d), as authorized by Section 501(c) of the Act, 35 P.S. § 7210.5019(c), provides that two or more municipalities may establish a joint board of appeals through an intergovernmental agreement adopted under the authority of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa. C.S. § 2301, et seq.
- D. Under the Pennsylvania Intergovernmental Cooperation Act, a municipality may enter into an intergovernmental cooperation agreement upon the passage of an ordinance by its governing body.
- E. The Township of Ontelaunee (Township) desires to enter into an intergovernmental agreement (“Agreement”) with other participating municipalities in cooperation with the County to establish the Berks County Uniform Construction Code Board of Appeals (“UCC Board of Appeals”), to hear and rule on appeals, requests for variances and requests for extension of time as may be filed under the Township’s UCC ordinance.

Section 402. Board Approval

The Board hereby approves entering into the Agreement, a copy of which is attached hereto and incorporated herein by reference (and which shall be filed with the minutes of the meeting at which this Ordinance was enacted), with the intent and effect that the Township shall be bound by the Agreement.

Section 403. Authorization of Chair

INTERGOVERNMENTAL COOPERATION AGREEMENTS

The Chairman of the Board is hereby authorized and directed on behalf of the Township:

- A. To execute and deliver the Agreement; and
- B. To execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry forth the Agreement and the transactions to be effect under the Agreement, including payment of the participation fee to Berks County on behalf of the UCC Board of Appeals, as may be due from the Township under the Agreement.

Section 404. Ratification and Approval

All actions of any officer, agent or other representative of the Township heretofore taken in the pursuit of the establishment of the UCC Board of Appeals and/or the Township's participation therein are hereby ratified and approved in all respects.

Section 405. Authorization of Board

The Board is hereby authorized to take such other action as may be necessary or appropriate to carry out the purposes of this Ordinance and of the Agreement.

Section 406. Intergovernmental Cooperation Act Findings

As required by the Pennsylvania Intergovernmental Cooperation Act, the following matters are specifically found and determined.

- A. The conditions of the Agreement are set for the in the Agreement.
- B. The Township shall utilize the UCC Board of Appeals for all appeals filed from application of the Townships UCC ordinance for the term as set forth in the Agreement.
- C. The purpose and objectives of the Agreement are as set forth in the Background of this Ordinance and in the Agreement.
- D. The manner and extent of financing the Agreement are that
 - 1. no borrowing will be required by the Township.
 - 2. funds to implement the Township's obligations under the Agreement shall come from normal and usual budgeted amounts for such matters; and
 - 3. other provisions governing the manner and extent of which the financing of the UCC Board of Appeals shall be as for the in the Agreement.

- E. The UCC Board of Appeals shall be administered by the Board of Commissioners of Berks County, or its designee.
- F. All property, real or personal, of the UCC Board of Appeals shall be acquired, managed, licensed or disposed of by the UCC Board of Appeals in accordance with the terms of the Agreement and the rules and procedures as may be adopted by the UCC Board of Appeals.
- G. The UCC Board of Appeals will be entering into any contracts.

Ord, 2006-2, 5/4/2006, §1-6.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

INTERGOVERNMENTAL AGREEMENT FOR THE ESTABLISHMENT OF THE BERKS COUNTY UNIFORM CONSTRUCTION CODE BOARD OF APPEALS

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this 4th day of May, 2006 by and among Berks County, Pennsylvania ("County") and the undersigned Boroughs and Townships of Berks County.

BACKGROUND

A. Certain townships and boroughs in Berks County have enacted ordinances adopting the Uniform Construction Code ("UCC"), Act 45 of 1999, 35 P.S. § 7210.101, et seq. (the "Act").

B. Section 301 of the Act directed the Pennsylvania Department of Labor and Industry to promulgate regulations with respect to the administration and enforcement of the Act, which regulations were codified at Title 34 Pa.Code, Chapters 401, 403 and 405 ("Regulations").

C. Section 403.121(d) of the Regulations, 34 Pa.Code § 403.121(d), as authorized by Section 501(c) of the Act, 35 P.S. § 7210.501(c), provides that two or more municipalities may establish a joint board of appeals through an intergovernmental agreement adopted under the authority of the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S. § 2301, et seq.

D. Under the Pennsylvania Intergovernmental Cooperation Act, a municipality may enter into an intergovernmental cooperation agreement upon the passage of an ordinance by its governing body.

E. Certain boroughs and townships located in Berks County (individually, "Participating Municipality" and collectively, "Participating Municipalities") desire to enter into an intergovernmental agreement ("Agreement") in cooperation with the County to establish the Berks County Uniform Construction Code Board of Appeals, to hear and rule on appeals, requests for variances and requests for extension of time as may be filed under each Participating Municipality's UCC ordinance.

NOW, THEREFORE, based on the foregoing and pursuant to the authority of the Pennsylvania Intergovernmental Cooperation Act, as amended, the County and the Participating Municipalities agree and intend to be legally bound as follows:

SECTION 1. ESTABLISHMENT OF THE BOARD OF APPEALS

- 1.1 The Berks County Board of Commissioners, in cooperation with the governing bodies of the Participating Municipalities, hereby establish the Berks County Uniform Construction Code Board of Appeals ("Board")

- 1.2 The Participating Municipalities shall designate the Board, by resolution or ordinance, as the body to hear appeals brought under the codes and standards promulgated in the most current version of the Act, as maybe amended and adopted by a Participating Municipality.

SECTION 2. PURPOSE

- 2.1 The purpose of the Board is to hear and rule on appeals, requests for variances, and requests for extensions of time under the Act. An application for appeal shall be based on a claim that the true intent of the Act has been incorrectly interpreted, the provisions of the Act do not fully apply or an equivalent or better form of construction is to be used.

SECTION 3. ORGANIZATION

- 3.1 The Board shall consist of five (5) members and three (5) designated alternates.
- 3.2 Members of the governing body of a Participating Municipality and its building code official may not serve on the Board.
- 3.3 A member of the Board shall be qualified by training and experience to pass on matters pertaining to building construction. Training and experience may consist of licensure as an architect or engineer, experience in the construction industry, or training or experience as an inspector or plan reviewer.
- 3.4 A member of the Board holds office at the discretion of the Berks County Board of Commissioners.
- 3.5 The Board shall hold an annual organizational meeting, at which it shall elect a Chairman and Vice Chairman. The Chairman or Vice Chairman shall have the authority to call the Board into a special session.
- 3.6 The Secretary to the Board shall be the Berks County Planning Director or the Director's designee.
- 3.7 The County Board of Commissioners may fill a position on the Board with a qualified person who resides outside of the County when it cannot find a person within the County who satisfies the requirements of this section.
- 3.8 A member of the Board may not cast a vote or participate in a meeting or hearing in any appeal, request for variance or request for extension of time in which the member has a personal, professional or financial

INTERGOVERNMENTAL COOPERATION AGREEMENTS

interest, or where such participation may otherwise constitute a conflict of interest within the meaning of the State Ethics Act.

- 3.9 The Board shall schedule meetings and hearings and provide public notice of meetings and hearings in accordance with the Pennsylvania Sunshine Act, 65 Pa.C.S. § 701, *et seq.*, as amended.
- 3.10 The Board may not act on appeals, requests for variance or requests for extension of time relating to accessibility.
- 3.11 The Board may, as it deems necessary, hire legal, architectural, engineering or other professional consultants.
- 3.12 Each Participating Municipality shall pay an annual subscription fee in an amount as may be determined by resolution of the Board from time to time. Any Participating Municipality that fails to pay the annual subscription fee shall be required to withdraw from this Agreement and appeals from a decision of such Participating Municipality's building code official shall not be heard by the Board.

SECTION 4. APPEALS AND EXTENSIONS OF TIME

- 4.1 An owner or owner's agent may seek a variance or extension of time or appeal a decision of a Participating Municipality's building code official by filing with the Board Secretary an Appeal Form available from the County Planning Office or the Participating Municipality.
- 4.2 The postmark date or the date of personal service on the Board Secretary will establish the filing date of the appeal or request for variance or extension of time.
- 4.3 An appeal or request for extension of time to the Board will automatically suspend an action to enforce an order to correct issued by the building code official until the matter is resolved; provided, however, an action under Section 403.84 of the Regulations, 34 Pa.Code § 403.84 (relating to unsafe building, structure or equipment) may not be stayed.
- 4.4 The Board shall decide an appeal, request for variance or request for extension of time by reviewing the Appeals Form, accompanying documents, and the written brief or argument, if any, unless the owner or owner's agent requests a hearing.
- 4.5 The Board shall hold a hearing within 60 days from the date of the request for hearing by the owner or owner's agent unless the owner or owner's agent agrees in writing to an extension of time for the hearing.

- 4.6 All hearings shall be held in accordance with the Local Agency Law, 2 Pa.C.S. § 551, *et seq.*
- 4.7 The Board shall only consider the following factors when deciding an appeal under Section 501 (c) (2) of the Act:
 - 4.7.1 The true intent of the Act or the Regulations was incorrectly interpreted.
 - 4.7.2 The provisions of the Act do not apply.
 - 4.6.3 An equivalent or better form of construction is to be used.
- 4.8 The Board may consider the following factors when ruling on a request for extension of time:
 - 4.8.1 The reasonableness of the application of the Act or the Regulations in a particular case.
 - 4.8.2 The extent to which the granting of an extension of time will pose a violation of the Act or the Regulations or an unsafe condition.
 - 4.8.3 The availability of professional or technical personnel needed to come into compliance.
 - 4.8.4 The availability of materials and equipment needed to come into compliance.
 - 4.8.5 The efforts being made to come into compliance as quickly as possible.
 - 4.8.6 Compensatory features that will provide an equivalent degree of protection to the Act and/or the Regulations.
- 4.9 If the owner or owner's agent requests a hearing, the Board shall schedule a hearing and notify the owner or owner's agent and Participating Municipality's building code official of the date, time and place of the hearing.
- 4.10 The Board may:
 - 4.10.1 Deny the appeal or request in whole or in part.
 - 4.10.2 Grant the appeal or request in whole or in part
 - 4.10.3 Grant the appeal or request upon certain conditions being satisfied.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

- 4.11 The Board shall provide a written notice of its decision to the owner and to the Participating Municipality's building code official.
- 4.12 An owner shall file an appeal and request for extension of time relating to accessibility with the Accessibility Advisory Board under Section 403.142 of the Regulations, 34 Pa. Code § 403.12 (relating to Accessibility Advisory Board).
- 4.13 An owner desiring to appeal the decision of the Board shall do so to the Berks County Court of Common Pleas within thirty (30) days of the date of the written decision.

SECTION 5. EFFECTIVE DATE

- 5.1 The effective date of this Agreement shall be upon enactment by ordinance of this Agreement by all the Participating Municipalities.

IN WITNESS WHEREOF, the County and the Participating Municipalities, pursuant to actions of their respective governing boards, have entered into this Agreement the day and year first above written.

ATTEST:

Terry L. Slyo
Secretary

COUNTY OF BERKS, PENNSYLVANIA

Judith R. Shultz
Chairman

Ontelaunee TOWNSHIP, BERKS
COUNTY, PENNSYLVANIA

ATTEST:

Alexis M. Cuthbertson
Secretary

Kenneth M. Stovick
Chairman

_____ BOROUGH, BERKS
COUNTY, PENNSYLVANIA

ATTEST:

Secretary

President

ARTICLE V

STORMWATER COALITION

Section 501. Approval of Agreement

The Board of Supervisors of the Township hereby approves entering into the “Pennsylvania Stormwater Coalition Cost-Sharing and Cooperation Agreement” (herein “Agreement”) between Ontelaunee Township and the Participating Municipalities of the Stormwater Coalition in accordance with the authorization under the Pennsylvania Intergovernmental Coalition in accordance with the authorization under the Pennsylvania Intergovernmental Cooperation Act, 53 Pa. C.S. § 481, *et seq.* and the Second Class Township Code, 53 Pa. C.S. § 66507. A copy of the Agreement is attached to this Ordinance as Exhibit “A” and incorporated herein by reference.

Section 502. Authority to Enter Agreement

The appropriate officers of the Township of Ontelaunee, be and hereby are, authorized to enter into and execute the Agreement.

Section 503. Termination

A Participating Municipality may end their participation in the Pennsylvania Stormwater Coalition upon thirty (30) days written notice in accordance with the Agreement, Paragraphs 21 through 23.

Section 504. Related Action

All actions of any officer, agent, or other representative of the Township heretofore taken in pursuant of the authorization, execution and delivery of the Agreement are hereby ratified and approved in all respects. The proper officials of the Township of Ontelaunee are hereby authorized and empowered to take such additional action as they may deem necessary or appropriate to implement this Agreement.

Section 505. Specific Findings

As required by the Intergovernmental Cooperation Act, the following matters are specifically found and determined.

- A. The condition of the Agreement are set for the in the Agreement. Coalition Counsel is authorized to handle any and all legal aspects of assessing the legal regulatory impacts and implications of the proposed new MS4 Permit (PAG-13) and the associated state generated Model Stormwater Management Ordinance,

INTERGOVERNMENTAL COOPERATION AGREEMENTS

including but not limited to, instituting legal action on behalf of the Participating Municipalities.

- B. The Agreement is for an indefinite term.
- C. The purpose and objectives of the Agreement are to enter into an intergovernmental cost-sharing and cooperation agreement to collectively take action on proposed stormwater regulations by the United States Environmental Protection Agency and Pennsylvania Department of Environmental Protection.
- D. The financial terms of the Agreement are set forth in Paragraphs 11 through 16, and including Paragraph 19 of the Agreement.
- E. The Agreement requires the formation of a Steering Committee, governed by Paragraphs 4 through 10 of the Agreement, and the formation of a Coalition Counsel and Professional Team, governed by Paragraphs 1-3 of the Agreement.
- F. The Stormwater Coalition does not own, and pursuant to the Agreement, does not intend to acquire, manage, license, or dispose of any real or personal property. Each Participating Municipality shall remain individually responsible for its own real and personal property within their respective municipal boundaries.
- G. Each municipality shall continue to have the power to separately enter into contracts for polices of insurance or employee benefits.

Ord 2010-7, 10/7/2010, §1-5.

**THE PENNSYLVANIA
STORMWATER COALITION**

COST-SHARING AND COOPERATION AGREEMENT

[FOR STORMWATER REGULATORY SUPPORT]

INTERGOVERNMENTAL COOPERATION AGREEMENTS

THE PENNSYLVANIA STORMWATER COALITION

COST-SHARING AND COOPERATION AGREEMENT

[FOR STORMWATER REGULATORY SUPPORT]

THIS AGREEMENT, is made by and between the Participating Municipalities of The Pennsylvania Stormwater Coalition, as set forth below.

BACKGROUND

WHEREAS, First Class Townships, Second Class Townships, and Boroughs, when not inconsistent with state or federal law, are authorized to oversee and regulate trade, commerce, and the use of public streets, ways and property within their jurisdictions;¹

WHEREAS, under the recognized corporate powers of the First Class Townships, Second Class Townships, and Boroughs, municipalities have the authority to enter into agreements with other municipalities, in accordance with existing laws, for performing governmental powers, duties, functions and maintaining peace, good government, health and welfare of the respective municipalities, and their citizenry²;

WHEREAS, The Pennsylvania Stormwater Coalition was formed to take action on proposed stormwater regulations by the United States Environmental Protection Agency and Pennsylvania Department of Environmental Protection. The Coalition continues to educate local municipalities along with federal, state, and local elected officials on the heavy burden that is expected to be placed on local governments throughout the Commonwealth. This Coalition supports the environment, however, reasonable environmental standards need to be enacted, rather than cumbersome policies that will be expensive and difficult for municipalities within the Commonwealth to administer and support.

WHEREAS, the Coalition has tried to resolve and work on a compromise with DEP with no resolution.

WHEREAS, the Participating Municipalities have determined that it is in the best interests of their residents to cooperate in obtaining legal services to assist them in

¹ See, First Class Township Code, 53 P.S. §55101, *et seq.*; The Second Class Township Code, 53 P.S. §651014, *et seq.*; and Borough Code, 53 P.S. §45101, *et seq.*

² *Id.*

assessing the legal and regulatory impacts and implications of the proposed new MS4 Permit (PAC-13) and the associated state generated Model Storm Water Management Ordinance (collectively referred herein as the "Project");

WHEREAS, the Participating Municipalities wish to enter into this Agreement providing for cost-sharing and cooperation in assessing the impact of the MS4 Permit and Model Ordinance upon their communities, all in the best interests of their residents as set forth in the terms and conditions thereof;

WHEREAS, the Participating Municipalities will also jointly communicate their concerns about the new MS4 Permit and Model Ordinance with the United States Environmental Protection Agency and Pennsylvania Department of Environmental Protection and respective elected representatives for the purpose of mitigating the fiscal impact of the new MS4 Permit and Model Ordinance on the Participating Municipalities;

WHEREAS, the Participating Municipalities recognize that inaction on their part may constitute a waiver of their right to later challenge the legality of the new MS4 Permit and Model Ordinance; and

WHEREAS, the Participating Municipalities agree that time is of the essence in completing the aforementioned assessment and outreach effort.

NOW, THEREFORE, in consideration of the above and intending to be legally bound hereby, the Participating Municipalities do agree to the following terms of this Agreement:

TERMS

Coalition Counsel and Professional Team

1. The Participating Municipalities hereby appoint the following Coalition Counsel and Professional Team:
 - a. Counsel for Coalition: Douglas R. Blazey, Esquire*
 - b. Local Counsel to Coalition: Frank R. Bartle, Esquire**
 - c. Lead Engineer for Coalition: Eric Frary, Michael Baker Corp.*
(NB: Mr. Frary will be engaged by Mr. Blazey directly)
 - d. Communication and Legislative Consultant: Thomas A. Gailey, Jr.*
 - e. Supporting Engineer for Coalition: John Chambers, Chambers Associates**

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- f. Supporting Engineer for Coalition: Barry Wert, Metz Engineering**
- g. Coalition Spokesman: Michael J. Fox**
- h. Coalition Administrative-Contact: John B. Nagel**

* denotes paid by Coalition
** denotes not paid by Coalition

- 2. The Coalition's Counsel and Professional Team shall assist the Coalition in assessing the legal and regulatory impacts and implications of the proposed new MS4 Permit (PAG-13) and the associated state generated Model Storm Water Management Ordinance. Doug Blazey, Counsel for the Coalition, is authorized to handle any and all legal aspects of these issues, including, but not limited to, instituting legal action on behalf of the Participating Municipalities.
- 3. The Coalition's Counsel, and its Professional Team when appropriate, shall communicate directly with the United States Environmental Protection Agency, Pennsylvania Department of Environmental Protection, and with various elected representatives, as directed by the Steering Committee.

Steering Committee

- 4. Montgomery Township shall select a Steering Committee comprising public officials from no more than 12 representative municipalities of the Participating Municipalities.
- 5. Michael J. Fox (Vice Chairman of the Montgomery Township Board of Supervisors and Coalition Spokesman), shall serve as the Steering Committee's Chairperson.
- 6. The Steering Committee shall receive information from the Coalition Counsel and Professional Team and pass that information back to the Participating Municipalities. It will specifically pass back any and all decisions of the Coalition Counsel as to instituting legal action. The Steering Committee may meet to share and discuss information learned from contacts with other municipal officials or discuss any other relevant matters.
- 7. The Steering Committee is not authorized to take "official action" as that term is defined in the Sunshine Act, 65 Pa.C.S. §§701-716.
- 8. All Participating Municipalities shall communicate through the Steering

Committee.

- 9. The Steering Committee, at the direction of its Chairperson, shall communicate directly with the Coalition's Counsel and Professional Team.
- 10. The Steering Committee is not authorized to amend this Agreement.

Coalition Project Budget

- 11. The Coalition's Project Budget shall have an initial cap of \$100,000 on fees, costs, and expenses. This intended cap, however, may be increased upon written notification to all Participating Municipalities, with a detailed accounting of the expenditures within \$100,000 initial cap.
- 12. There will be no cap, however, as to litigation costs. If certain litigation must be instituted, an initial cost estimate will be provided to all Participating Municipalities as soon as practicable before litigation commences. Thereafter, Participating Municipalities will be afforded periodic status reports, updated cost estimates and current litigation cost summaries. As set forth in the "Terminating Coalition Participation" section of this Agreement, Participating Municipalities may terminate their participation in the Coalition at any time, after affording 30-days written notice.
- 13. The Coalition Project Budget will be based upon population under a formula taking: (a) the population of the municipality (per the 2000 Census), as the numerator; and dividing (b) the total population of all the Participating Municipalities (per the 2000 Census), as the denominator; and then (c) taking that figure and multiplying the Coalition's fees, costs, and expenses, to derive the municipality's financial obligation:

(a)	<u>Population of Municipality (per 2000 Census)</u>	X	(c) fees, costs, expenses
(b)	Total Population of all Participating Municipalities (per 2000 Census)		

- 14. Each Participating Municipality shall pay its proportional cost based upon the above formula. Payment shall be made to Montgomery Township c/o John B. Nagel, Manager of Montgomery Township and the Coalition's administrative contact. Mr. Nagel will maintain an escrow account in the name of the Coalition, and pay Project costs when appropriate, and, at the written request of any Participating Municipality, provide an up-to-date accounting of expenditures made for the Project.

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15. All fees, costs and expenses associated with the Project shall be reviewed by the Steering Committee.
16. Each Participating Municipality shall be responsible for its own out of pocket costs and solicitor fees attendant to their involvement with the Project.

Joining the Coalition

17. Any municipality not a signatory to this Agreement, shall be a new municipality to the Agreement
18. After the execution of this Agreement, any new municipality, requesting to become a party to this Agreement and participate in the Project, shall be admitted upon the approval of the Steering Committee.
19. Any new municipality to the Coalition, as approved by the Steering Committee, shall contribute its share of the cost of the Project based on its 2000 Census population (per the formula above), plus an additional, one-time, "late-initiation" payment of \$1,000. Within 5 business days of the Steering Committee's approval, the new municipality shall remit this \$1,000 "late-initiation" payment to Montgomery Township c/o John B. Nagel. It will be deposited into the escrow account maintained by him to pay Project costs when appropriate.
20. All new municipalities to the Coalition shall be subject to all the terms and conditions of this Agreement.

Terminating Coalition Participation

21. If at any time, a Participating Municipality wishes to end its participation in the Project, it shall give thirty (30) days written notice to Montgomery Township, c/o John Nagel, Manager of Montgomery Township and the Coalition's Administrative Contact, that it no longer wishes to participate.
22. A Participating Municipality terminating its participation in the Coalition, will be responsible to pay its proportional cost per the formula above until the last day of its participation in the Coalition (*i.e.*, the 30th day after written notice of termination).

23. In no event shall any funds already contributed for the Project be refunded to any Participating Municipality seeking to end its participation in the Project.

Reimbursement of Remaining Project Funds

24. Upon the completion of the Project, any funds remaining shall be refunded to the Participating Municipalities according to the above formula.

Miscellaneous Provisions

25. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.
26. This Agreement represents the entire agreement between the parties hereto. Any amendment to this Agreement shall be in writing and must be signed by all parties hereto in order to be valid and enforceable. The Steering Committee shall not have the authority to amend this Agreement.
27. This Agreement may be executed in counterparts. Each agreement signed by a Participating Municipality shall become a part of the whole Agreement and shall bind that Participating Municipality to the terms of this Agreement.

INTENDING to be legally bound hereby, the following Participating Municipalities agree to participate in The Pennsylvania Stormwater Coalition, and abide by the terms of this Agreement:

[SIGNATURES OF ALL PARTICIPATING MUNICIPALITIES ON NEXT PAGE]

INTERGOVERNMENTAL COOPERATION AGREEMENTS

ATTEST: _____	[INSERT] TOWNSHIP: _____
ATTEST: _____	[INSERT] TOWNSHIP: _____
ATTEST: _____	[INSERT] TOWNSHIP: _____
ATTEST: _____	[INSERT] TOWNSHIP: _____
ATTEST: _____	[INSERT] TOWNSHIP: _____
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ATTEST: _____	[INSERT] TOWNSHIP: _____
ATTEST: _____	[INSERT] TOWNSHIP: _____
ATTEST: _____	[INSERT] TOWNSHIP: _____

ARTICLE VI

**PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT
ASSOCIATION**

Section 601. Association Membership and Contract

The municipality shall join with other municipalities in accordance with the Pennsylvania Intergovernmental Cooperation Act by becoming a Member of the Association and entering into the Intergovernmental Contract which is attached hereto, made a part hereof and marked as Exhibit "A" and adopted by reference with the same effect as if it had been set out verbatim in this Section and a copy of which shall be filed with the minutes of the meeting at which Ordinance was adopted.

Section 602. Authorization

This municipality is authorized to enter into the Intergovernmental Contract for the purposes contained therein, as well as any amendments or modifications thereto as the same may be required from time to time. These actions are to be taken by the Chairman of the Board of Supervisors of Ontelaunee Township, pursuant to general or specific instructions by the Board of Supervisors.

Section 603. Investment of Funds

The Association is designated as having official custody of this municipality's funds which are invested by Association pursuant to the terms of the Intergovernmental Contract.

Section 604. Intergovernmental Cooperation Act Findings

As required by the Intergovernmental Cooperation Act, the following matters are specifically found and determined.

- A. The conditions of this agreement are set forth in the Intergovernmental Contract referred to in Section 601 and attached hereto as Exhibit "A," and any amendments thereto approved by the Board of Supervisors;
- B. This municipality's participation in the Association shall be terminable at any time by ordinance duly enacted by the Township Board of Supervisors pursuant to the member withdraw, cancellation and termination requirements and notice set forth in the Intergovernmental Contract;
- C. The purposes and objectives of the agreement are set forth hereinabove and the Intergovernmental Contract and actions contemplated thereby and purposes and objectives contained therein are otherwise legal as part of a pooled arrangement

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with other governmental units, thereby achieving economic and other advantages of intergovernmental cooperation;

- D. It is not necessary to finance the agreement authorized herein from municipal funds except through the contribution of this municipality's Basis Rate (as such term is defined in the Intergovernmental Contract) to the Association;
- E. The Association shall be managed by a Board of Commissioners or Executive Committee as set forth in the By-Laws of said Association, a copy of which has been provided for review in connection with the adoption of this Ordinance and in enacting this Ordinance approved by the Board of Supervisors;
- F. All property, real or personal, shall be acquired, managed or disposed of by the Association in accordance with the terms of the Intergovernmental Contract;
- G. The Association is authorized to enter contracts, contracts for insurance, and employee benefits for its membership as provided for in the Intergovernmental Contract.

Ord. 2011-5, 12/1/2011, §1-4.

**INTERGOVERNMENTAL CONTRACT FOR
PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION**

This Contract is made and entered into by the undersigned Governmental Entities who upon execution of this Contract, will become Members of PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION.

Whereas, the Acts of the Commonwealth of Pennsylvania authorize and/or permit various Governmental Entities to form a local government risk pool;

Whereas, the undersigned desires, along with other such entities, to form or join a local government risk pool now being or heretofore created known as PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION;

Whereas, the undersigned executes this document for purposes of joining, by virtue of an intergovernmental contract, the local government risk pool known as PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION;

Now, therefore, the undersigned executes this Agreement in consideration for other Governmental Entities executing this Agreement for the purpose of joining and establishing a local government risk pool known as PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION. The undersigned agrees to abide by the terms and conditions of this Contract and all actions taken pursuant to this Contract. In consideration of the mutual covenants of all signatories to this Intergovernmental Contract it is agreed as follows:

ARTICLE I - NAME - ENTITY

The name of the entity created herewith shall be PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION.

The signatories hereto, together with future signatories, establish a local government risk pool as a separate legal and administrative entity for the purpose of effectuating this Agreement; which Pool shall have a perpetual duration and shall continue until terminated pursuant to the terms and conditions of this Agreement.

ARTICLE II - PURPOSE

The purpose of this Agreement is to enter into an intergovernmental contract to form a local government risk pool, to provide for joint or cooperative action by Members relative to their financial and administrative resources for the purpose of providing risk management services and risk sharing facilities to the Members and to the Members' employees, and to defend and protect, in accordance with this Agreement, any Member of the Pool against liability as outlined in the Appendix, The powers and duties created hereunder and the activities of this Pool shall not constitute doing an insurance business.

This Agreement shall constitute a contract among those Governmental Entities which shall now or at any time enter into this Agreement and become Members of the Pool.

The liability of each Member is limited to the amount of financial contributions required to be made to the Pool pursuant to this Agreement.

This Agreement shall not inure to the benefit of third parties nor does any party hereto waive such sovereign or governmental immunity as may be available to it individually. Furthermore, nothing contained herein shall be construed so as to create responsibility in one Member for the liabilities of any other Members.

EXHIBIT "A"

INTERGOVERNMENTAL COOPERATION AGREEMENTS

In no event shall a Member be responsible, jointly or severally, for the liabilities of any other Member.

ARTICLE III - DEFINITIONS

In the interpretation of this Agreement the following definitions shall apply unless the context requires another interpretation:

1. Act -- "Act" shall mean such Acts of the Commonwealth of Pennsylvania, pursuant to which this Pool is organized, as the same may be amended from time to time.
2. Administrator -- "Administrator" shall mean American Risk Pooling Consultants, Inc., the entity designated to supervise the administration of the Pool and to perform such additional duties as shall be delegated by the Board in accordance with a certain Administration Agreement incorporated herein by reference.
3. Agreement -- "Agreement" shall mean this Intergovernmental Contract for PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION and all of the counterparts subsequently executed.
4. Annual Budgetary Contribution -- "Annual Budgetary Contribution" shall mean those amounts necessary to fund the expenses of the Pool, including, but not limited to, administrative expenses, reinsurance expenses, or other fundings required to satisfy the requirements of any regulatory authority having jurisdiction over the Pool and those other obligations of Members required by this Agreement.
5. Basis Rate -- "Basis Rate" shall mean that amount annually promulgated by the Administrator deemed necessary to provide the Scope of Coverage afforded to a Member for the period of one year with due consideration to the Member's individual characteristics.
6. Board -- "Board" shall mean the Board of Directors of PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION.
7. Budgetary Fund -- "Budgetary Fund" shall mean those amounts paid by Members pursuant to Article IX.
8. Cumulative Reserve Fund -- "Cumulative Reserve Fund" shall mean those amounts paid by Members pursuant to Articles IX and X, supplemented by investment earnings.
9. Cumulative Reserve Fund Contribution -- "Cumulative Reserve Fund Contribution" shall mean those amounts paid by Members to fund the Cumulative Reserve Fund.
10. Governmental Entity -- "Governmental Entity" shall mean a municipality, borough, authority, or other similar entity as defined in the Act.
11. Member -- "Member" shall mean a Governmental Entity participating in PENNSYLVANIA INTER-GOVERNMENTAL RISK MANAGEMENT ASSOCIATION, by executing this Agreement.
12. Members' Contribution -- "Members' Contribution" shall mean those amounts paid by Members to the Budgetary Fund and Cumulative Reserve Fund.
13. Municipal or Municipality -- "Municipal" or "Municipality" shall mean any Government Entity.

14. Pool --"Pool" shall mean PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION, an unincorporated association of all of its Members.
15. Risk Sharing Certificate --"Risk Sharing Certificate" shall mean that document provided a Member evidencing its scope, nature, and limits of participation in the Pool.
16. Scope of Coverage --"Scope of Coverage" shall mean the coverage, limits, deductibles as outlined in the Appendix and subsequent amendments thereto.

ARTICLE IV - MEMBERSHIP

The membership of the Pool shall consist of Governmental Entities who have entered into this Agreement or its counterpart by and through an individual duly authorized to execute this Agreement, and who have agreed to make the initial contributions into the Cumulative Reserve Fund and the Budgetary Fund pursuant to the further provisions hereof. Members agree to the admission of future Members and acknowledge that they shall have no right to object to the addition of such Members, provided they are admitted in accordance with the terms hereof. This Agreement shall be automatically renewed unless the provisions for withdrawal or termination are applied.

Each Member shall appoint an individual and an alternate to represent the Member with the Pool. That individual shall act as liaison between the Member and the Pool for purposes of relating risk reduction and loss control information, and any other information or instructions concerning the obligations of the Member imposed by this Agreement and the rules and regulations established hereunder. The individual or alternate shall cast on behalf of the Member, any vote to which the Member is required or permitted to cast.

The obligations of Members of the Pool shall be as follows:

1. To promptly report to the Pool any incident which could result in a claim being made by or against the Member within the Scope of Coverage;
2. To cooperate with and institute to the degree possible all loss prevention procedures established by the Board or the Administrator pursuant to this Agreement;
3. To provide to the Pool such information as needed for rating purposes, including but not limited to, an audit prepared by the Members staff or a certified public accountant of all revenues and expenditures for any fiscal year of the Member requested by the Pool;
4. To provide representatives of the Pool access to all records, including financial records and/or properties of the Member, provided the Pool or the Administrator determines the information or access is necessary;
5. To cooperate with the Pool's attorneys, claims adjustors, the Administrator and any employee, officer or subcontractor relating to the purpose and powers of the Pool;
6. To allow attorneys and others employed by the Pool to represent the Member in investigation, settlement, and all levels of litigation arising out of any claim made against the Member within the Scope of Coverage furnished by the Pool;
7. To pay when due all annual contributions or other contributions, due or required, to the Budgetary Fund or Cumulative Reserve Fund pursuant to this Agreement.

ARTICLE V - BOARD OF DIRECTORS

1. **Administration of the Pool.** The administration of the Pool and management of the Budgetary Fund and Cumulative Reserve Fund shall be initially governed by a Board of three (3) Directors to be expanded to

INTERGOVERNMENTAL COOPERATION AGREEMENTS

seven (7) Directors by vote of the Board as soon as practicable but no later than by the end of the first fiscal year of the Pool. Unless otherwise prohibited by statute or regulation, the Board of Directors may, by a vote of not less than a majority of the authorized number of Directors, allocate up to two seats on the Board of Directors to be filled by (a) representative(s) of a group bearing specific characteristics and may increase or decrease the number of Directors from time to time, without a vote of the Members provided, however, that any such decrease shall not eliminate any Director then in office.

2. **Directors Qualifications.** Directors shall be either;

- a. Elected or appointed members of the governing body of Pool Members, or
- b. Managers or secretaries of Pool Members or full-time employees of a Pool Member (persons in the employment of a Pool Member working not less than an average of thirty (30) hours per week, determined on an annual basis), authorized by the governing body of the Pool Member to represent the Pool.

3. **Eligibility and Vacancies.** Should the number of Directors become less than seven (7) due to disqualification, death, incompetence, resignation or other cause, the remaining Directors shall appoint a person or persons, meeting the qualifications set forth in paragraph 2. above, to fill such vacancy or vacancies so that a Board of seven (7) persons shall be maintained. Any Director may resign by sending notice of his resignation to the Administrator.

4. **First Board.** A majority of the initial Members at the time the Pool is activated shall appoint three (3) eligible individuals to serve as the first Board.

5. **Term of Directors.** The First Board shall have two (2) Directors appointed for a one (1) year term and the remaining Directors appointed for a two (2) year term. Thereafter, an election shall be held within thirty (30) days after the beginning of the fiscal year of the Pool to elect Directors for those whose terms have expired. Directors so ejected shall serve for a two (2) year term or until such new Directors are elected. In the event that the Board is expanded, the term of the Directors shall be amended to three years, except that the initial term of newly elected Directors may be limited, at the discretion of the Board of Directors, so that no more than two Director terms shall end in the same year. Members and the Administrator may nominate candidates for the terms to be filled according to rules to be promulgated by the Board. Each Member shall have one (1) vote which shall be cast either in person or by proxy or by mail. There shall be no prohibition on election to successive terms, and election shall be by a majority of those Members voting.

6. **Meetings of the Board of Directors.** Meetings of the Board shall be held at least annually at such time as R shall prescribe. Any item of Pool business may be considered at such meetings. Special meetings may be called by the Administrator or by a majority of the Board. Meetings may be held by telephone or by written executed document.

7. **Executive Committee.** The Board shall from time to time elect an Executive Committee of no more than three (3) of its members. Membership of the Executive Committee may be changed at any time by majority vote of the Board. The Executive Committee shall inform and direct the Administrator on Board policy and shall exercise powers for and on behalf of the Board as it deems necessary for the prudent operation and management of the Pool until matters requiring Board action are considered at the next Board meeting.

8. **Directors Compensation.** The Directors shall be entitled to reimbursement of actual expenses incurred in the pursuit of Pool business and such other reasonable and lawful compensation as may be awarded from time to time by a majority vote of the Board.

9. **Officers.** By majority vote, the Board at its first regular meeting of each fiscal year, shall select from the Directors a Chairman, Vice-Chairman and Secretary. No Director shall serve more than two (2) consecutive terms as Chairman.

10. **Clerk.** The Administrator shall serve as clerk to the Board and shall attend all Board meetings.

ARTICLE VI - POWERS & DUTIES

The Board shall be permitted and authorized to perform and carry out, or delegate to others to perform and carry out, on behalf of the Pool, each and every act necessary, convenient or desirable to, and for carrying out the purpose of the Pool, including, but not limited to:

1. Administer the Pool, receive Members' Contributions to the Pool, and settle and pay claims and losses on behalf of its Members;
2. Make and enter into contracts to conduct and operate the business of the Pool, including, but not limited to, the execution of an Administration Agreement;
3. Employ agents and employees;
4. Incur debts, liabilities and obligations, but no debt, liability or obligation so incurred shall be the debt, liability or obligation of any Member to this Agreement;
5. Sue or be sued in its own name, and prosecute and defend claims;
6. Acquire, hold or dispose of personal property;
7. Advise Members on loss control guidelines and procedures, and provide them with risk management services, loss control and risk reduction information;
8. Purchase reinsurance and/or excess insurance and enter into such excess risk sharing pools as may be available and deemed desirable for the protection of the Members and/or the Pool itself;
9. Invest Pool funds in securities and investments in a prudent and lawful manner;
10. Promulgate procedures and regulations for the general operation of the Pool;
11. Take such action as is necessary to terminate the participation of any Member that fails to comply with the reasonable requirements of the Board concerning contractual obligations;
12. Provide surety and/or fidelity bonds, as may be available, for Directors, Officers, and all persons charged with the custody or investment of Pool monies.

ARTICLE VII - ADMINISTRATOR

By contract with the Administrator, the Board may hire and delegate to said Administrator such of its contractual powers and duties (set forth in Article VI above) as the Board shall deem advisable and all signatories hereto hereby ratify and endorse the Administrative Agreement by and between the Pool (executed by the Board) and the Administrator under which those duties and powers are delegated to the Administrator. The undersigned further acknowledges that in the event the Administrative Agreement has been executed prior to the execution of this Intergovernmental Contract, the undersigned ratifies and adopts the Administrative Agreement

INTERGOVERNMENTAL COOPERATION AGREEMENTS

The Board shall receive, at least annually, a report from the Administrator. The nature and details of the report shall be established by the Board and shall be in addition to or supplemental to any reports that the Administrator shall be required to file with any regulatory authority having jurisdiction over the Pool.

ARTICLE VIII - LIABILITY OF THE BOARD OF DIRECTORS, OFFICERS, ADMINISTRATOR, SUBCONTRACTORS OR EMPLOYEES.

The Directors and Officers of the Pool and the Administrator, its directors, officers, employees, and subcontractors shall:

1. Use reasonable and ordinary care in the exercise of their duties hereunder;
2. Be afforded all of the privileges and immunities that attach generally to governmental officers;
3. Not be liable for, and be held harmless and defended by the Pool, for any act of negligence, any mistake of judgment or any other action, made, taken or omitted in good faith;
4. Not be liable for any loss incurred through investment of funds or failure to invest such funds.

The Pool may purchase, subject to availability and cost, insurance providing coverage for Directors, Officers and the Administrator.

The Pool shall and the undersigned agrees that the funds of the Pool shall be used to hold harmless and defend any Director, Officer, Administrator or its employees (including its officers) or its subcontractors for any act or omission taken or omitted in good faith by the Board or a Director or by the Administrator, its employees (including its officers) or its subcontractors relating to or arising out of the conduct of Pool business. The hold harmless and indemnity provisions of the undersigned shall be joint and several with all signatories to this Contract; provided, however, this obligation shall be considered an expense of the Pool and in no event shall any individual signator be liable for more than its pro-rata annual contribution herein.

Neither the Administrator, its employees (including its officers) nor any of its subcontractors shall be liable for any act of negligence, any mistake of judgment or any other action made, taken, or omitted by them in good faith, nor for any loss incurred through investment of funds or failure to invest the same, unless the same is the result of a willful act done in bad faith.

No covenant or agreement contained herein shall be deemed to be the covenant or agreement of any member of the Board or the Administrator nor any of its employees (including its officers) or subcontractors and none of such persons shall be subject to any personal liability or accountability by reason of the acceptance of a position or the undertaking of the performance of any of the responsibilities or obligations or duties contemplated in the carrying out of this Agreement, whether by virtue of any construction, statute or rule of law.

ARTICLE IX - ESTABLISHMENT OF BUDGETARY FUND

1. The Board shall establish a Budgetary Fund which shall consist of Annual Budgetary Contributions in amounts the Administrator deems sufficient to annually produce the sum of money reasonably necessary to fund the Pool's general and administrative expenses, the Pool's reinsurance expenses, the Pool's current year claims and claims expenses, all or any portion of any deficiencies which may occur in the Pool's Cumulative Reserve Fund and the Pool's obligation to satisfy the requirements of any regulatory authority; the sum of which shall be known as the Annual Budget.

2. Thirty (30) days prior to the Pool's fiscal year end the Administrator shall prepare an Annual Budget for the succeeding fiscal year. Each Member's share of the Annual Budget shall be assessed to the Member as its Annual Budgetary Contribution. Each Member's Annual Budgetary Contribution shall be in the proportion that

said Member's total paid Basis Rate, modified to reflect the loss experience of the Member, bears to the total of all Members' total paid Basis Rates as of the date of such calculation.

3. In the event that there shall exist a surplus in the Budgetary Fund at the end of any fiscal year, such surplus in the Budgetary Fund shall be applied toward the Annual Budget for the subsequent year.

4. In the event that the Budgetary Fund is exhausted during any Pool fiscal year, any funds required to fulfill the purpose of the Budgetary Fund shall be withdrawn from the Cumulative Reserve Fund. The sum so withdrawn shall constitute a deficiency in the Cumulative Reserve Fund.

ARTICLE X - ESTABLISHMENT OF CUMULATIVE RESERVE FUND

In addition to the Annual Budgetary Contributions made into the Budgetary Fund pursuant to Article IX, Members shall make annual contributions for the establishment of a Cumulative Reserve Fund. Such contributions shall be based on each Member's Basis Rate in accordance with the following schedule:

Initial Contribution	75% of Basis Rate
First Anniversary	55% of Basis Rate
Second Anniversary	45% of Basis Rate
Third Anniversary	30% of Basis Rate
Fourth Anniversary	25% of Basis Rate
Fifth Anniversary	20% of Basis Rate
Sixth Anniversary	20% of Basis Rate
Seventh Anniversary	15% of Basis Rate
Eighth Anniversary	15% of Basis Rate

Thereafter, no further annual contribution shall be made to the Cumulative Reserve Fund unless the Board shall require further annual contributions for the purpose of maintaining the Cumulative Reserve Fund at a level equal to 300% of the total current Basis Rates of all Members or to comply with the requirements of any applicable regulatory authority having jurisdiction over the Pool.

ARTICLE XI - MEMBER'S WITHDRAWAL, CANCELLATION, OR TERMINATION

1. Members agree to continue membership for a period of not less than one full year. At the conclusion of such period, or anniversary thereof, a Member who has given sixty (60) days prior written notice to the Pool may withdraw. Within 120 days following withdrawal, the Pool will refund to the withdrawing Member that percentage of those Cumulative Reserve Fund contributions made to the Pool by said withdrawing Member according to the following schedule:

End of Member's First Full Year	50%
End of Member's Second Full Year	60%
End of Member's Third Full Year	70%
End of Member's Fourth Full Year	80%
End of Member's Fifth Full Year	90%
End of Member's Sixth Full Year and thereafter	100%

The Pool shall deduct from such refund the Annual Budgetary Contribution which the withdrawing Member would have made for the one year period following withdrawal together with the withdrawing Member's proportionate share (determined in the manner set forth in Article IX above) of any deficiency in the Cumulative Reserve Fund created pursuant to paragraph 4 of Article IX.

Effective 12:01 a.m. on the date of withdrawal and notwithstanding anything contained to the contrary within this Agreement or attachments hereto or the Risk Sharing Certificate issued pursuant to this Agreement,

INTERGOVERNMENTAL COOPERATION AGREEMENTS

payments for all claims and claims expense shall thereafter become the sole responsibility of the withdrawing Member without regard to whether a claim occurred or was reported prior to the withdrawal of the Member's participation in the Pool.

At the request of the withdrawing Member, the Pool will continue to service all claims which have been reported to the Pool during the withdrawing Member's period of participation so long as the withdrawing Member shall promptly reimburse the Pool for all claims expenses incurred. Payment of all claims so serviced by the Pool for a withdrawing Member shall be the sole responsibility of the withdrawing Member and the Pool shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph.

2. The Pool may, by a two-thirds (2/3) majority of the Board and by providing a Member sixty (60) days prior written notice, cancel that Member's participation in the Pool effective at the end of any Risk Sharing Certificate year. Thereafter it shall be the responsibility of the Pool to defend, settle and pay claims within the scope and limits set forth in the cancelled Member's Risk Sharing Certificate in effect on the date of the occurrence out of which such claim arose. This provision shall apply solely to claims which occurred during a Member's participation and evidenced by the Member's Risk Sharing Certificate. The cancelled Member shall have the right, prior to the actual date of cancellation, to withdraw from the Pool by giving notice of such withdrawal. Electing to so withdraw, the Member shall be subject to the provisions of paragraph one (1) of this Article. Failing to elect to give notice of withdrawal, the cancelled Member forfeits all rights to refund of those Cumulative Reserve Fund contributions made to the Pool by said cancelled Member.

3. Any Member failing to make payments when due as required by this Agreement, shall be terminated from the Pool effective on the date the payment was due and upon that effective date of termination all coverages and benefits hereunder shall cease. All claims and claims expenses thereafter shall become the sole responsibility of the terminated Member without regard to whether a claim occurred or was reported prior to the termination of the Member's participation in the Pool. At the request of the terminated Member, the Pool will continue to service all claims which have been reported to the Pool during the terminated Member's period of participation so long as the terminated Member shall promptly reimburse the Pool for all claims expenses incurred. Payment of all claims so serviced by the Pool for a terminated Member shall be the sole responsibility of the terminated Member and the Pool shall incur no liability for payment of claims by virtue of servicing claims under the terms of this paragraph. The terminated Member shall also forfeit all rights to any return of contributions including its vested interest in the Cumulative Reserve Fund. The Pool shall apply any or all of the terminated Member's forfeited funds towards said Member's Annual Budgetary Contribution due for the one (1) year period following termination. If the Member shall subsequently submit its payment, the Administrator may, in its discretion, reinstate such membership.

4. In addition to the foregoing, in the event of a withdrawal, cancellation or termination of a Member's membership in the Pool, irrespective of whether such cessation of membership is initiated by the Member or the Pool, the Member shall be required to comply with and satisfy any and all laws, statutes, regulations, rules or policies, including any amendments to the same, in effect at the time of such withdrawal, cancellation or termination, which impose requirements on either the Pool or the Member arising out of or relating to such withdrawal, cancellation or termination.

ARTICLE XII - SCOPE OF RISK SHARING PROTECTION

1. The Pool provides risk sharing protection to each Member and will make or secure payment on behalf of each Member under criteria and procedures to be established for the payment of claims as provided in the Member's Risk Sharing Certificate. A Member may, with the approval of the Administrator, add additional parties to its Risk Sharing Certificate provided it is the Member's obligation or prerogative to provide risk sharing coverage for such additional named party.

2. The Pool may obtain excess insurance or reinsurance, or join in excess risk sharing pools.

3. In the event that a claim or a series of claims exceed the amount of risk sharing protection provided by the Member's Risk Sharing Certificate, or in the event that a claim or a series of claims should exhaust the Budgetary Fund, the Cumulative Reserve Fund and any reinsurance, then payment of valid claims shall be the sole and separate obligation of the Individual Member or Members against whom the claim was made and perfected by litigation or settlement.

4. A Member may purchase, in its sole discretion, any insurance coverage in addition to those amounts purchased by the Pool.

5. The Board may make changes in the Scope of Coverage, the amount of risk sharing protection or risk sharing retention by the Pool upon consideration of the needs and requirements of Members, loss experience, the kind and amounts of reinsurance coverage available and any such changes shall require a two-thirds majority (2/3) of the Board. Where the Board takes such action immediate notice after the taking of such action shall be sent to all Members (or their representatives) together with a replacement or updated Appendix to reflect the changes made.

ARTICLE XIII - TERMINATION

The Pool shall terminate at such time as two-thirds (2/3) of the Members vote for such termination. After a vote to terminate, the Board shall commence with the orderly liquidation of the Pool's business and shall complete the same as promptly as possible. During such period of liquidation the Pool shall continue to pay claims and losses incurred within the Scope of Coverage and pursuant to the Risk Sharing Certificate until all funds of the Pool are exhausted. After payment of all claims and losses, any remaining funds held by the Pool shall be paid to all those Members of the Pool at the time of the vote of termination, on a pro rata basis determined by the Board.

No Member shall be responsible for any claim, claims, judgment or judgments against any other Member or Members exception the extent of the assets of the Cumulative Reserve Fund and the Budgetary Fund. However, if upon termination of the Pool the remaining assets of the Pool are insufficient to satisfy indebtedness of the Pool (excluding claims or judgments against the Members), such deficiency shall be made up by assessments against Members of the Pool by a fair and reasonable method established by the Board.

ARTICLE XIV - MISCELLANEOUS PROVISIONS

1. The provisions of this Agreement shall be interpreted pursuant to the laws of the Commonwealth of Pennsylvania.

2. The parties hereto consent that courts in the Commonwealth of Pennsylvania shall have jurisdiction over any dispute arising under this Agreement. The terms of this Agreement may be enforced in a court of law in the Commonwealth of Pennsylvania either by the Pool or by any Member.

3. The consideration for the obligations imposed upon Members pursuant to and under this Agreement shall be based upon the mutual promises and agreements of all Members who now execute or who hereinafter execute this Agreement.

4. This Agreement may be executed in duplicate originals or counterparts now or at any time in the future. The individual executing this Agreement on behalf of participating Member hereby represents and certifies that he is duly empowered to so execute this document.

5. No waiver of any breach of this Agreement or any provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any of the other provisions herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligations or acts.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

6. This Agreement shall be binding and shall inure to the benefit of all Members who shall have executed this Agreement and complied with the financial requirements hereunder and provided that the Members shall have been duly approved in accordance with the terms and provisions of this Agreement.

7. The provisions of this Agreement shall be deemed severable and if any provision or part thereof is held illegal, void or invalid under applicable law, such provision or part may be changed to the extent reasonably necessary to make the provision or part, as so changed, legal, valid or binding. If any provision of this Agreement is held illegal, void, or invalid in its entirety, the remaining provisions of this Agreement shall not in any way be affected or impaired but shall remain binding in accordance with their terms and this Agreement shall be so interpreted.

8. This Agreement, the Appendix, and the Risk Sharing Certificate contain the complete Agreement between the parties and no representations or oral statements made or heretofore given shall constitute a part of this Agreement. In the event that any provision of this Agreement is in conflict with or is incompatible with the Appendix or attachments hereto or the Risk Sharing Certificate issued hereunder, the terms and conditions of this Agreement shall prevail and take precedence.

9. This Agreement may be altered or amended only by amendments duly adopted in accordance with the terms and conditions of this Agreement; provided, however, that the Risk Sharing Certificate may be amended from time to time to reflect the exposures of each Member and such changes shall be exempted from the preceding terms of this paragraph.

10. The caption headings used in this Agreement are used merely for identification purposes and shall not be deemed a part of this Agreement.

11. Whenever in this Agreement words, including pronouns, are used in the singular or plural or masculine or feminine, they may be read and construed in the plural or singular or feminine or masculine, respectively wherever they so apply.

12. This Agreement may be amended by the Board with the approval of two-thirds (2/3) of the Directors; all Members agree to properly execute and adopt amendments so approved.

13. The Board may, with the approval of two-thirds (2/3) of the Directors, elect to reform or reconstitute the Pool to a stock, mutual, or reciprocal insurance company operating as a captive, Risk Retention Group, or other risk bearing entity.

14. The Pool shall maintain a fiscal year ending December 31st.

ARTICLE XV - AGENT AND OFFICE

The agent of the Pool for service of notice shall be PENNSYLVANIA INTERGOVERNMENTAL RISK MANAGEMENT ASSOCIATION, attention General Counsel. The office of the Pool shall be 29621 Northwestern Highway, Southfield, Michigan, 48034.

ARTICLE XVI- ADMINISTRATOR'S CONTRACT

Wherever the term "Administrator" is used in this Agreement, that term shall refer to American Risk Pooling Consultants, Inc. or its successors. Wherever the term "Administration Agreement" is used in this Agreement, that term shall refer to the Administration Agreement which the first Board shall be authorized to enter into with Administrator, which agreement is incorporated herein by reference. By execution of this Intergovernmental Contract, the undersigned hereby ratifies, adopts and approves Administrator and the Administration Agreement and authorizes the Administrator to perform its duties and exercise its power hereunder.

ARTICLE XVII- NOTICE

All notices required to be given under this Agreement shall be in writing and sent certified mail return receipt requested with postage prepaid. Notices by a Member to the Pool shall be sent to the address in Article XV to the attention of the Administrator. Notices to any Member shall be sent to the representative of the Member at the Member's last known address.

In the event that any party to this Agreement desires to change its address, notice of change of address shall be sent to the other party in accordance with the terms and provisions of this Article.

In Witness whereof, this Agreement was executed on the 1st day of December, 2011, by the undersigned duly authorized officers of the Governmental Entity indicated below:

ONTELAUNEE TOWNSHIP,
BERKS COUNTY PENNSYLVANIA

Kenneth M. Stoudt
Kenneth M. Stoudt, Chairman

Attest:

Nicole Schwenk
Nicole Schwenk, Secretary

ACCEPTED FOR THE PENNSYLVANIA
INTERGOVERNMENTAL RISK MANAGEMENT
ASSOCIATION

By: _____
ADMINISTRATOR ON BEHALF OF ALL OTHER
CURRENT AND FUTURE SIGNATORIES

INTERGOVERNMENTAL COOPERATION AGREEMENTS

APPENDIX

Scope of Coverage

1. Coverage Document
 - a. Subject to the approval of the Board/Steering Committee and subject to any applicable State or Federal statute, coverages offered by the Pool may include:
 - General Liability
 - Automobile liability
 - Automobile Physical Damage
 - Public Officials Liability
 - Property and Inland Marine
 - Police Professional Liability
 - b. **THE COVERAGES LISTED ABOVE ARE INTENDED TO BROADLY OUTLINE THE PROGRAM PROVIDED BY THE POOL. A SEPARATE COVERAGE DOCUMENT, THE RISK SHARING CERTIFICATE, ITEMIZING ALL COVERAGE INCLUSIONS, EXCLUSIONS AND CONDITIONS WILL BE ISSUED TO EACH POOL MEMBER AND WILL, IN CONJUNCTION WITH THE INTERGOVERNMENTAL CONTRACT AS AMENDED FROM TIME TO TIME, CONTROL THE POOL MEMBER'S SCOPE AND TERMS OF COVERAGE.**
2. Limits of Coverage

The Pool offers limits of coverage up to \$10,000,000 per line of casualty coverage. Additional limits may be offered subject to availability of reinsurance.
3. Pool Retention

The Pool may retain up to \$250,000 of anyone loss under property coverage and up to \$350,000 anyone claim under casualty coverage.
4. Deductibles

Deductibles may be applied as appropriate to the individual risk subject to the approval of the Administrator.

NOTICE: CONFIRMATION OF THE SCOPE, TERMS AND CONDITIONS OF THE COVERAGE OF ANY MEMBER OF THE POOL CAN ONLY BE MADE BY A CAREFUL EXAMINATION OF THAT MEMBER'S RISK SHARING CERTIFICATE.

**AMENDMENT 1-A/
PROPERTY RIDER**

This Rider is made a part of a certain Intergovernmental Contract known as Intergovernmental Contract for the Pennsylvania Intergovernmental Risk Management Association (the "Agreement").

WHEREAS, the Agreement, which this document amends, established a local governmental risk pool known as Pennsylvania Intergovernmental Risk Management Association (the "Pool"); and

WHEREAS, the Pool established by the Agreement shall, from time to time, assume liability to cover Property, Vehicle Physical Damage, Inland Marine, Boiler and Machinery, Fidelity and other similar coverages usual to a Governmental Entity ("Property Risk"); and

WHEREAS, the terms and conditions of the Agreement are, to a certain extent, inapplicable to or incomplete for such Property Risk; and

WHEREAS, the parties to the Agreement acknowledge the Pool will include such Property Risk and desire to modify the Agreement in certain limited respects to provide for the inclusion of such Property Risk;

NOW, THEREFORE, the following modifications, changes, and amendments are made to the Agreement and shall apply when the coverage being provided by the Pool is for Property Risk. This Rider and the following modifications and changes are applicable only to coverage for Property Risk when the same shall be provided by the Pool;

1. The following definitions shall be added to Article III of the Agreement:

Annual Property Budget --"Annual Property Budget" shall mean the amount calculated by the Administrator pursuant to Paragraph 2 of this Amendment.

Annual Property Budgetary Contribution --"Annual Property Budgetary Contribution" shall mean those contributions made by Members which are applicable to coverage for Property Risks.

Property Basis Rate --"Property Basis Rate" shall mean one hundred percent (100%) of a Member's Annual Property Budgetary Contribution.

Property Budgetary Fund --"Property Budgetary Fund" shall mean that fund established pursuant to Paragraph 2 of this Amendment.

Property Coverage -- "Property Coverage" shall mean the coverage afforded a Member for Property Risk, pursuant to the Appendix of the Agreement and the Member's Property Risk Sharing Certificate and subsequent amendments and/or endorsements thereto.

Property Cumulative Reserve Fund --"Property Cumulative Reserve Fund" shall mean that fund established pursuant to Paragraph 3 of this Amendment.

Property Risk --"Property Risk" shall mean Property, Vehicle Physical Damage, Inland Marine, Boiler and Machinery, Fidelity and other similar coverages usual to a Governmental Entity.

Property Risk Sharing Certificate --"Property Risk Sharing Certificate" shall mean that document provided a Member evidencing its scope, nature and limits of Property Coverage participation in the Pool.

2. ESTABLISHMENT OF PROPERTY BUDGETARY FUND AND PROPERTY CUMULATIVE RESERVE FUND:

INTERGOVERNMENTAL COOPERATION AGREEMENTS

- (A) The Administrator shall establish a Property Budgetary Fund which shall consist of Annual Property Budgetary Contributions in the amounts the Administrator deems sufficient to annually produce the sum of money reasonably necessary to fund the general and administrative expenses, reinsurance expenses, current year claims and claims expenses for Property Risks, all or any portion of any deficiencies which may occur in the Property Cumulative Reserve Fund, and the Pool's obligation to satisfy the requirements of any regulatory authority; the sum of which shall be known as the Annual Property Budget.
- (B) The Administrator shall establish a Member's Annual Property Budgetary Contribution in such an amount that the sum of all Members' Annual Property Budgetary Contributions shall be at least equal to the Annual Property Budget. The Administrator shall advise each Member of its Annual Property Budgetary Contribution which shall be due on the Member's Property Risk Sharing Certificate anniversary date.
- (C) In the event that there shall exist a surplus in the Property Budgetary Fund at the end of a fiscal year, such surplus in the Property Budgetary Fund shall be contributed to the Property Cumulative Reserve Fund.
- (D) In the event that the Property Budgetary Fund is exhausted during any Pool fiscal year, any funds required to fulfill the purpose of the Property Budgetary Fund shall be withdrawn from the Property Cumulative Reserve Fund. The sum so withdrawn shall constitute a deficiency in the Property Cumulative Reserve Fund. In the event that the Property Cumulative Reserve Fund is exhausted, the Administrator shall immediately collect any reinsurance as may be available to the Pool. In the event that the Property Budgetary Fund, the Property Cumulative Reserve Fund and any available reinsurance are exhausted, the Pool shall have no further responsibility of payment of claims and each Member shall assume responsibility for its own losses.

3. ESTABLISHMENT OF PROPERTY CUMULATIVE RESERVE FUND:

The Administrator shall establish a Property Cumulative Reserve Fund which shall be funded by any surplus existing in the Property Budgetary Fund at the end of each Pool fiscal year.

4. For purposes of this Amendment one hundred percent (100%) of a Member's Annual Property Budgetary Contribution shall be deemed the Member's Property Basis Rate. Such Basis Rates shall be treated like all other Pool Basis Rates except that they shall not be considered as part of the Basis Rate for purposes of making the calculations under Article X of the Agreement, or for determining the withdrawal payment pursuant to Article XI of the Agreement.

5. Anything contained in the Agreement to the contrary notwithstanding, a Member's election to cease participation in the Pool for Property Coverage shall not constitute a withdrawal under any other terms and conditions of the Agreement.

6. In the event that a Member does not make its Annual Property Budgetary Fund Contribution (exclusive of subsequent adjustments thereto, the payment of which shall be subject to the provisions of paragraph 7(B) (i) below), all Property Coverage shall terminate effective on the date when such contribution was due (the "termination date"). If the Member shall subsequently submit its payment the Administrator may, in its discretion, reinstate Property Coverage.

7. The following termination provisions shall apply to Property Coverage only:

- (A) Members agree to continue such coverage as is provided Property Risks for a period of not less than one full year. At the conclusion of such period, or anniversary thereof, a Member may terminate such coverage by giving notice to the Pool at least thirty (30) days prior to the end of such period.

- (B) The Pool may terminate such coverage as is provided for Property Risks by giving notice to the Member of such termination as least:
 - (i) Ten (10) days prior to the effective date of termination if the Pool terminates for nonpayment of any required adjustment to the Annual Property Budgetary Fund Contribution of a Member; or
 - (ii) Sixty (60) days prior to the end of any Property Risk Sharing Certificate year if the Pool terminates for any other reason.
- (C) The notice of termination will be made in accordance with Article XVII of the Agreement.
- (D) The notice of termination will state the effective date of termination at which time the coverage provided by the Property Risk Sharing Certificate shall terminate (the termination date).

8. INVALIDATION OR SUSPENSION OF COVERAGE:

Notwithstanding anything to the contrary contained in paragraph 7. of this Amendment, "Property Coverage" shall be subject to invalidation or suspension in accordance with the "General Conditions" of such "Property Coverage."

9. Coverage applies only to losses or claims which occur prior to the termination date. All rights for reimbursement or any right to claim against the Pool shall terminate for losses which occur after the termination date.

10. All of the terms used in this Amendment shall have the meanings and definitions assigned or given to them in the Agreement unless a separate definition is indicated or stated in this Amendment.

11. This Amendment is intended to apply solely to Property Coverage and shall not be construed to amend, modify, alter or change any of the terms, conditions or provisions of the Agreement other than as specifically enumerated herein. When dealing with all other forms of coverage the Agreement shall remain in full force and effect unaltered and unmodified by this Amendment.

12. In the event that the Pool is terminated pursuant to Article XIII of the Agreement, the Pool shall continue to pay claims and losses incurred within the scope of Property Coverage and pursuant to the Member's Property Risk Sharing Certificate during the period of liquidation until all funds in the Property Budgetary Fund and the Property Cumulative Reserve Fund are exhausted. After payment of all claims and losses, any remaining funds held by the Pool in the Property Budgetary Fund or the Property Cumulative Reserve Fund shall be paid to all those participants that were Members at the time of the vote for termination and that participated in Property Coverage, on a pro rata basis determined by the Board.

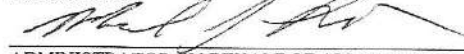
ONTELAUNEE TOWNSHIP,
BERKS COUNTY PENNSYLVANIA


Kenneth M. Stoudt, Chairman

Attest:

Nicole Schwenk, Secretary

ACCEPTED FOR THE PENNSYLVANIA
INTERGOVERNMENTAL RISK MANAGEMENT
ASSOCIATION

BY: 
ADMINISTRATOR ON BEHALF OF ALL OTHER CURRENT
AND FUTURE SIGNATORIES
MICHAEL J. SUTTON

ARTICLE VII

BERKS COUNTY MS4 STEERING COMMITTEE

Section 701. Title and Background

The short title of this Ordinance shall be “Berks County MS4 Steering Committee Ordinance”, and the same may be cited in that manner, and the Background of this Article is as set forth detail in the WHEREAS clauses of the Agreement referenced below in §703 as incorporated herein by reference.

Section 702. Purpose

The purpose of this Ordinance is to enable the Township of Ontelaunee to participate with other Berks County municipalities in the Berks County MS4 Steering Committee and Cooperative Education Program.

Section 703. Authorization

The Board of Supervisors of the Township of Ontelaunee hereby approves entering into the Berks County MS4 Steering Committee Cost-Sharing and Cooperation Agreement (the “Agreement”), a copy of which is attached hereto and incorporated herein by reference as Exhibit “A” (and which shall be filed with the minutes of the meeting at which this Article was enacted), with the intent and effect that the Township shall be bound by the Agreement.

Section 704. Execution

The Chairman of the Board of Supervisors of Ontelaunee Township is hereby authorized and directed on behalf of the Township

- A. To execute and deliver the Agreement; and
- B. To execute and deliver such additional instruments, and to take such further actions as may be necessary or appropriate to carry forth the Agreement and the transactions to be effected under the Agreement, including payment of expenses, as may be due from the Township under the Agreement.

Section 705. Ratification

All actions of any officer, agent or other representative of the Township heretofore taken in the pursuit of the Berks County MS4 Steering Committee and/or the Township’s participation therein are hereby ratified and approved in all aspects.

Section 706. Necessary Acts

The Township is hereby authorized to take such action as may be necessary or appropriate to carry out the purposes of this Article and of the Agreement.

Section 707. Pennsylvania Intergovernmental Cooperation Act

This Article is adopted pursuant to the authority granted in the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S.A. 2301 et seq., and, as required thereby, the following matters are specifically found and determined.

- A. The conditions of the Agreement are set for the in Agreement;
- B. The duration of the Agreement is set forth in the Agreement;
- C. The purposes, objectives, powers and scope of authority granted and delegated for the Berks County MS4 Steering Committee are as set forth in the WHEREAS clauses of the Agreement;
- D. The manner and extent of financing the Agreement is through, among other things, the payments set for the in Section 6 of the Agreement; provided, however, that if permitted by law, the participating municipalities may approve a revision in fees payable, if warranted, by resolution from time to time;
- E. The corporate organizational structure comprising the participating municipalities in the Berks County MS4 Steering Committee governing the Agreement is as set forth in the Agreement;
- F. All property, real or personal, necessary for the implementation and operation of this Agreement shall be acquired, managed, licensed or disposed of in accordance with the terms of this Agreement; and
- G. There will be no employees of the Berks County MS4 Steering Committee for purposes of entering into contracts for policies of group insurance and employee benefits.

Ord. 2012-6, 9/6/2012, §1-7; as repealed and restated in Ord. 2018-2, 3/1/2018, §1-5.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

EXHIBIT "A"

COST-SHARING AND COOPERATION AGREEMENT

BERKS COUNTY MS4 STEERING COMMITTEE
COST-SHARING AND COOPERATION AGREEMENT

THIS AGREEMENT, is made by and between the participating municipalities of the Berks County MS4 Steering Committee, as set forth below (the "Participating Municipalities").

BACKGROUND

WHEREAS, the First Class Townships, Second Class Townships, Boroughs and Third Class Cities of Pennsylvania, when not inconsistent with state or federal law, are authorized to oversee and regulate trade, commerce and the use of public streets, ways and property within their jurisdictions; and

WHEREAS, under the recognized corporate powers of the First Class Townships, Second Class Townships, Boroughs, and Third Class Cities, municipalities have the authority to enter into agreements with other municipalities, in accordance with existing laws, for performing governmental powers, duties, functions and maintaining peace, good government, health and welfare of the respective municipalities and their citizenry; and

WHEREAS, the Berks County MS4 Steering Committee (the "Committee") was formed to facilitate the creation and sharing of ideas, services and other resources to assist participating municipalities in the completion of their applications/annual report to the Pennsylvania Department of Environmental Protection ("DEP") for renewal of MS4 permits (PAG-13) and required reporting under the newly formulated regulations; and

WHEREAS, the Participating Municipalities have determined that it is in the best interests of their residents to participate in such a venture and to cooperate together and enter into this Agreement providing for cost-sharing and cooperation to determine the means by which the Participating Municipalities can best obtain the required information to be included in such applications/annual reports to the DEP for renewal of MS4 permits (PAG-13); and

NOW, THEREFORE, in consideration of the above and intending to be legally bound hereby, the Participating Municipalities do agree to the following terms of this Agreement:

1. Each Participating Municipality shall appoint one (1) individual to the Committee to represent their municipality. Each Participating Municipality shall have one (1) vote.
2. Berks County Conservation District ("BCCD") shall be entitled to appoint one (1) individual to represent that agency. The County of Berks

INTERGOVERNMENTAL COOPERATION AGREEMENTS

("Berks") shall appoint one (1) individual; provided, however, that BCCD and Berks shall each only have one (1) vote.

3. Berks Nature ("BN") shall appoint one (1) individual to the Committee, who shall be a non-voting member.
4. In addition to appointments pursuant to Section 1 above, Municipal and other professional engineers having experience in storm water management may be appointed to the Committee without regard to the total number of such individuals, except that they must be associated with the appointing Participating Municipality. Such individuals shall be non-voting members.
5. If deemed necessary, the Participating Municipalities may engage an attorney to serve as solicitor for the Committee.
6. In order to be a member of the Committee, each Participating Municipality shall pay the aggregate sum of Three Thousand and Five Hundred Dollars (\$3,500.00) as follows:
 - a. Seven Hundred Dollars (\$700.00) on or before March 1, 2018; and
 - b. Commencing January 15, 2019 and annually thereafter through 2022, the sum of Seven Hundred Dollars (\$700.00). All payments due hereunder shall be paid to and made payable to the Berks County Conservation District, which shall collect membership fees and pay for any services required to enable the Committee to conduct its business.
 - c. If permitted by law, the Participating Municipalities may approve a revision in fees payable, if warranted, by resolution from time to time.
7. A municipality may enter/reenter into this Agreement at any time; provided, however, that payment of an entrance/reentrance fee of One Thousand Dollar (\$1,000.00) for their first year and seven hundred dollars (\$700.00) the remaining years of the permit cycle, which is payable pursuant to Section 6(b) above.
8. The Cooperative Education Program shall be developed in accordance with the provisions of Exhibit "A" attached hereto and made a part hereof.
9. Immunity. The services performed and the expenditures incurred under this Agreement shall be deemed for public and governmental purpose, and all immunities from liabilities enjoyed by the participating municipalities within their respective boundaries shall extend to their participation in services outside their respective boundaries and within the geographical area served by the Committee.

10. Invalidity. The invalidity, illegality or unconstitutionality of any portion of this Agreement shall not impair or affect the invalidity of this Agreement as a whole or any part thereof.
11. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original part of the within Agreement and together shall constitute one Agreement.
12. Successors. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.

Approved by Ordinance 2018-2 of the Township of Ontelaunee the 1st day of March, 2018.

**BOARD OF SUPERVISORS OF
ONTELAUNEE TOWNSHIP,
BERKS COUNTY, PENNSYLVANIA**


Chairman

ATTEST:


Secretary

INTERGOVERNMENTAL COOPERATION AGREEMENTS

AGREEMENT- EXHIBIT "A"

MS4 INTERGOVERNMENTAL COOPERATION

EDUCATIONAL PROGRAM

The Joint Cooperative Education Program is a five year program intended to consist of a combination of some or all of the following educational offerings. The Education partners will strive to provide opportunities for education applicable to all minimum control measures as required in the permit.

	Education Partner Responsibility	Municipality Responsibility
MCM1	Provide template for PEOP	Must individualize PEOP
	Newsletter and brochure templates	Must individualize, circulate, print
	Story boards and posters	Print and post
	Provide training and workshop development and implementation	Advertise to appropriate target audience and have municipal representatives attend and keep records of the events they attend
	Organize tree planting, solicit volunteers, advertise	Municipalities provide trees, advertise event, solicit volunteers
	Provide up to date website content that includes educational resources, links	Review web content to assure the link is up to date on municipal website
MCM2	Provide template for PIPP	Must individualize PIPP, advertise and solicit public input on PIPP
	Attend public meetings which discuss stormwater/MS4 permit when necessary	Advertise and solicit public input prior to adoption of Stormwater Management Ordinance, Pollutant Reduction Plans
	Provide training and workshop development and implementation	Advertise to appropriate target audience and have municipal representatives attend and keep records of the events they attend
MCM3	Provide training and workshop development and implementation	Advertise to appropriate target audience and have municipal representatives attend and keep records of the events they attend
	Provide up to date website content that includes educational resources, links	Review web content to assure the link is up to date on municipal website
	Provide newsletter and brochure templates	Must individualize, circulate, print
MCM4	General education may be included during training/workshops	Fully responsible
MCMS	General education may be included during training/workshops	Fully responsible

MCM6	Provide training and workshop development and implementation	Advertise to appropriate target audience and have municipal representatives attend and keep records of the events they attend
	Provide municipal employee training workshops, brochure templates, videos	Must individualize, circulate, print

INTERGOVERNMENTAL COOPERATION AGREEMENTS

ARTICLE VIII

INTERMUNICIPAL COOPERATION AGREEMENT FOR THE PURPOSE OF REPAIR AND MAINTENANCE OF DRIES ROAD AND WINTER MAINTENANCE OF SLATER ROAD AND BEWLEY LANE AND TERMS AND CONDITIONS OF SUCH REPAIR AND MAINTENANCE

Section 801. Purpose

The Township of Ontelaunee (“Ontelaunee”) and the Township of Maiden creek (“Maiden creek”) have negotiated an Agreement whereby and whereunder they agree to responsibility for repair and maintenance of Dries Road and winter maintenance of Slater Road and Bewley Lane and terms and conditions of such repair and maintenance for the mutual benefits of the parties and best interests of the residents for each municipality.

Section 802. Grant of Power

This Ordinance is adopted pursuant to authority granted in:

- A. The Pennsylvania Intergovernmental Cooperation Act, Act 177 of 1996 (53 Pa. C.S.A. § 2301, et seq.) as amended, or as it may be amended from time to time (the “Cooperation Act”); and
- B. The Second Class Township Code, 53 Pa. C.S. § 66507, as amended or as it may be amended from time to time (the “Second Class Township Code”).

Section 803. Conditions of Agreement

The terms and conditions of the Intermunicipal Cooperation Agreement between Ontelaunee and Maiden creek (the “Agreement”) as attached hereto as Exhibit “A” and made a part hereof.

Section 804. Duration of Term of Agreement

The Agreement shall be for an initial term of one (1) year and so on for one-year periods thereafter until terminated by either party in writing with ninety (90) days notice prior to the expiration of the then current term.

Section 805. Finances

The manner and extent of financing the Agreement shall be as follows:

- A. No borrowing will be required by the Township to fund obligations under the Agreement;

- B. Funds to implement the Township's obligations under the Agreement shall come from usual budgeted amount for such matters; and
- C. Other provisions governing the manner and extent of financing joint projects and purchases shall be as set forth in the Agreement.

Section 806. Organization

The organization and administration of this Agreement shall be undertaken in accordance with the term of the Agreement.

Section 807. Property

All property shall be acquired, managed or disposed of pursuant to the Agreement in accordance with the term of the Agreement. No acquisition of personal property, real property or real estate is authorized under the terms of the Agreement. Nothing shall preclude the Township from acquiring personal property in its normal course to be utilized through the Agreement.

Section 808. Entity

No new entity has been created by the Agreement which would require employees; however in the event a new entity is subsequently created and granted authority by Ontelaunee and Maiden creek to hire employees, then the new entity shall be empowered to enter into contracts for policies of group insurance and employee benefits for its employees. Independently, Ontelaunee and Maiden creek are responsible for their respective employees' policies for group insurance and employee benefits.

Section 809. Modification or Waiver

Any substantial modification or waiver to the Intermunicipal Cooperation Agreement shall be effective only if made with the same formality as the Agreement authorized by this Ordinance. Notwithstanding the preceding sentence however both Townships reserve the right to make minor adjustments and changes to the Agreement at any time and from time to time by joint resolution of each respective Board of Supervisors, which may from time to time be recommended by the respective road masters of each Township and which does not fundamentally change the nature and scope of this Intermunicipal Cooperation Agreement. The failure of either Township to insist on strict performance of any of the provisions of the Agreement shall not be construed as a waiver of any other term, condition, or provision thereof, or any subsequent default of the same or similar nature.

Ord. 1999-6; 7/8/1999; repealed and newly enacted by Ord. 2014-7, 5/1/2014, §1.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

EXHIBIT "A"

ONTELAUNEE AND MAINDENCREEK TOWNSHIP INTERMUNICIPAL COOPERATION AGREEMENT

THIS AGREEMENT is entered into pursuant to the Intergovernmental Cooperation Act, Act of December 19, 1996, P.L. 1158, No. 177, found at 53 Pa. C.S.A. § 2301 *et. seq* by and between The **TOWNSHIP of MAINDENCREEK**, with a mailing address of One Quarry Road, Post Office Box 319, Blandon, Pennsylvania 19510 (Maidencreek) and the **TOWNSHIP of ONTELAUNEE** with a mailing address of 35 Ontelaunee Drive, Reading, Pennsylvania 19605 (Ontelaunee) of Berks County, Pennsylvania, and herein collectively referred to as the "Municipalities."

WHEREAS, the Municipalities desire to enter into this Intergovernmental Cooperation Agreement regarding cooperation for maintenance, repair, construction and reconstruction of roadways along or near their common boundaries including Dries Road, Slater Road, and Bewley Lane which may include, routine maintenance, winter maintenance, storm water drainage and drainage facilities related to the same; and,

WHEREAS this Cooperation Agreement will benefit the residents of both Municipalities and avoid safety hazards, obstructions to motorists and travelers during winter weather, avoid the necessity that one side of the road be plowed by one Municipality and the opposite side plowed by the other Municipality at different times, as well as allow each Municipality to more efficiently direct its resources during all times of the year for routine maintenance; and,

WHEREAS the Municipalities wish to authorize joint bidding for future road projects concerning any such roadways; and,

WHEREAS, the governing bodies of both Municipalities believe the interests of the taxpayers in their respective municipalities are best served by the allocating of resources and the provisions for the above-stated purposes.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings herein contained, and intending to be legally bound hereby, the municipalities mutually agree as follows:

1. Incorporation by Reference

The recitals set forth in the WHEREAS clauses above are an integral part of this Agreement and are incorporated herein by reference.

2. Effective Date

This Agreement shall become effective when each Municipality has passed an Ordinance in accordance with the requirements of the Intergovernmental Cooperation Act, Act of December 19, 1996, P.L. 1158, No. 177, found at 53 Pa. C.S.A. § 2301 *et seq* and signed the Agreement as provided below.

3. Dries Road

The centerline of Dries Road forms the boundary line between Maidencreek and Ontelaunee, with the easterly side being within Maidencreek and the westerly side being within Ontelaunee.

A) Except as otherwise provided in this Agreement, the Municipalities agree that they shall equally share all costs of maintenance, repair, construction, reconstruction, patching, paving, drainage facilities, line painting, signage, etc. for Dries Road. The roadmasters for each Municipality shall communicate with each other to implement this provision in the most efficient and cooperative way possible, subject to the internal processes of each municipality for the approval of projects and expenditures. In the event of any disagreement between roadmasters, the Supervisors for each Municipality shall confer and resolve any such disagreements.

B) With regard to winter maintenance, Maidencreek shall provide winter maintenance as required on the entire portion of Dries Road in both Municipalities lying between Snyder Road (T-799) and Allentown Pike (SR 222). Ontelaunee shall provide winter maintenance as required on the entire portion of Dries Road in both Municipalities lying between Allentown Pike (SR 222) and Park Road (SR 1010).

4. Slater Road and Bewley Lane

As of the date of this Agreement, the understanding between the Municipalities regarding Slater Road and Bewley Lane will be limited to winter maintenance only. However, both Municipalities reserve the right to expand their activities to the other actions authorized by this Agreement if mutually agreed in writing. Maidencreek shall provide winter maintenance as required on the Ontelaunee portion of Bewley Lane (T-816). Ontelaunee shall provide winter maintenance as required on the Maidencreek portion of Slater Road (T-600) from the Ontelaunee Township line to Orchard Road (T-717).

INTERGOVERNMENTAL COOPERATION AGREEMENTS

5. Performance Standards

A) For all purposes of this Agreement the term “winter maintenance” shall mean snow-plowing, application of antiskid and salt as needed.

B) The Municipalities shall be diligent in all actions undertaken pursuant to and in furtherance of this Agreement and shall put forth the same efforts on roadways or portions of roadways located in the other Municipality’s boundaries as it puts forth on roadways or portions of roadways located within its own boundaries.

C) Each Municipality shall maintain all vehicles and equipment used in conjunction with road work in good and serviceable condition.

D) Each Municipality shall maintain public liability insurance and shall name the other Municipality as an additional insured to the extent personnel and/or equipment are used within the territorial boundaries of the other Municipality.

E) Each Municipality now and in the future shall readily share information and regularly communicate on issues arising in furtherance of and pursuant to this Agreement.

F) To the extent that any Municipality intends to seek reimbursement from the other Municipality for any moneys expended, that Municipality shall notify the other Municipality in advance of the expenditure of the moneys except in the case of a previously declared emergency. Except as otherwise agreed in advance, each Municipality shall bear its own costs and expenses in the performance of this Agreement.

G) Ontelaunee and Maidencreek, on behalf of themselves and their respective officials, employees, successors and assigns hereby mutually indemnifies the other Municipality and saves it harmless from all loss, cost or expense, including court costs and reasonable attorneys fees for personal injury and/or property damage arising out of or relating to the negligence and or intentional conduct of the other Municipality or its employees and/or officials.

6. Joint Bidding

Ontelaunee and Maidencreek may in the future determine that public bidding for repair, construction, and reconstruction of roadways, drainage facilities, including paving, patching and non-routine maintenance, may be beneficial to each Municipality. Therefore, Ontelaunee and Maidencreek hereby expressly authorize the right to jointly bid such projects at any time, and from time to time in the future when both Municipalities by resolution agree that it is in the mutual best interest of both. This authorization shall include but shall not be limited to all related activities such as joint contracts, retaining consultants jointly, joint bidding, letting of contracts, establishment of bid terms, and sharing in the costs of all such activities in such proportion and in such amounts as the Municipalities shall determine by Resolution. Nothing in this agreement shall compel joint bidding, but joint bidding shall be authorized if elected by both Municipalities for any contemplated activity herein that is determined to be appropriate for public bidding.

7. General Provisions

This Agreement:

A. May be executed in any number of counterparts, and each such counterpart thereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement;

B. Supersedes all prior negotiations and agreements between the parties and contains the entire understanding between the parties hereto;

C. Shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns;

D. Any Notices required under this Agreement shall be provided by first class mail, postage prepaid, or overnight carrier to all parties at the addresses shown above;

E. Shall be construed and enforced in accordance with the domestic internal law (but not the law of conflicts of laws) of the Commonwealth of Pennsylvania;

F. Shall be performed timely and time is of the essence of this Agreement; and

G. Shall not be assignable by any of the parties hereto.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

This Agreement shall become effective for each municipality named herein when the municipality by Ordinance of its governing body, adopts and approves the Agreement, and authorizes the proper municipal officials to execute the same.

BOARD OF SUPERVISORS OF
MAIDENCREEK TOWNSHIP

David Franke, Chairman

Claude Beaver, Supervisor

Joe Rudderrow, III, Supervisor

BOARD OF SUPERVISORS OF
ONTELAUNEE TOWNSHIP

Kenneth M. Stoudt, Chairman

William F. Klein, Supervisor

Gary S. Hadden, Supervisor

Attest:

Township Manager

Attest:

Township Secretary

ARTICLE IX

PSATS UNEMPLOYMENT COMPENSATION GROUP TRUST

Section 901. Authorized Adoption of Trust Agreement

- A. That the Chairman of the Board of Supervisors and Secretary of the Township are hereby authorized to adopt the Restated Trust Agreement and any other agreements necessary for the Township's participation in the Trust.
- B. The Restated Trust Agreement is on file for inspection and review at the Township's offices at 35 Ontelaunee Drive, Ontelaunee Township, Reading, Berks County, Pennsylvania. The Restated Trust Agreement may be subsequently modified or amended in accordance with its terms, but no event shall such modifications or amendments divert any of the trust funds from the purposes of the Trust. The Township may withdraw from the Trust in accordance with the Restated Trust Agreement, including if the Board of Supervisors determines the modifications or amendments are not in the best interests of the Township.

Section 902. Purpose of Trust

That the participation of the Township in the Trust is authorized for the purpose of pooling resources for the purpose of providing unemployment compensation insurance for Participating Employees at reasonable cost.

Section 903. Trust Participation

That, as set forth in greater detail in the Restated Trust Agreement and as otherwise stated herein, the following conditions apply to the participation of the Township in the Trust:

- A. That each Participating Employee must meet the admission and eligibility requirements as set forth therein;
- B. That each Participating Employer agrees to pay all contributions when due as provided in the Restated Trust Agreement or as otherwise established by the Board of Trustees; and
- C. That each Participating Employee complies with all other conditions of the Restated Trust Agreement.

Section 904. Withdrawal from Trust

INTERGOVERNMENTAL COOPERATION AGREEMENTS

That the Township agrees to participate in the Trust and may withdraw for any reason in accordance with the Restated Trust Agreement provided that it has fulfilled all its financial obligations to the Trust upon withdrawal.

Section 905. Effective Date

That the effective date of the Township's agreement to and joinder in the Restate Trust Agreement and the participation of the Township in the Trust pursuant to the terms of the Restated Trust Agreement will be January 5, 2015.

Section 906. Powers

That each Participating Employer delegates to the Board of Trustees the powers enumerated in the Restated Trust Agreement.

Section 907. Organizational Structure

That the organizational structure of the Trust shall consist of a Board of Trustees. Under the Restated Trust Agreement, the Board of Trustees is authorized to, among other things, enter into contracts with third parties to perform various services necessary for the administration of the Trust.

Section 908. Operating Funds

That the funds required for the operation of the Trust shall be provided by the Participating Employers through scheduled appropriations as determined by the Board of Trustees.

Section 909. Employee Benefits

That the Trust is empowered to enter into contracts for policies of group insurance and employee benefits, including Social Security, for employees of the Trust, if any.

Section 910. Terms and Conditions

That as a condition of participating in the Trust, the Township agrees to comply with all of the terms and conditions in the Restated Trust Agreement.

Section 911. Certification of Ordinance Enactment

That the Secretary of the Township shall provide a certified copy of this Ordinance upon its enactment to the Board of Trustees of the Trust.

Section 912. Related Actions

The Board of Supervisors of the Township is hereby authorized to take any and all such other actions as may be necessary or appropriate to carry out the purpose of this Ordinance and comply with the requirements of the attached Restated Trust Agreement and any duly adopted amendments thereto.

Section 913. Term

The duration of the term of the Township's participation in the Trust and obligations under the Restated Trust Agreement shall continue until withdrawal from the Trust by the Township in accordance with the terms of the Restated Trust Agreement.

Section 914. Specific Findings

The Board of Supervisors hereby specifically finds and determines as follows:

- A. The conditions of the Intergovernmental Cooperation Agreement are set forth in the Restated Trust Agreement incorporated by reference herein.
- B. The Township shall participate in the Trust in accordance with the Restated Trust Agreement until it withdraws by giving notice of the Board of Trustees in accordance with the terms of the Restated Trust Agreement.
- C. The purpose and objectives of the Intergovernmental Cooperation Agreement, including powers and scope of authority delegated to the Board of Trustees, are set forth in the incorporated Restated Trust Agreement.
- D. The manner and extent of financing of the agreement are that:
 - 1. funds to implement the Township's obligations under the agreement shall come from the normal and usual budgeted amounts for the Township employee compensation and employee benefits; and
 - 2. no borrowing is anticipated to be required.
- F. The Trust shall be managed by the Board of Trustees pursuant to the terms of the Restated Trust Agreement.
- G. All assets and property, real or personal, of the Trust shall be titled to, acquired, managed, licensed or disposed of by the Trust, and its Board of Trustees, in accordance with the terms of the Restated Trust Agreement.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

- H. The Trust in accordance with the Restated Trust Agreement shall be empowered to enter into contracts for policies of group insurance and employee welfare benefits to be offered to Participating Employers for the eligible employee and dependents.

Ord. 2015-1, 1/5/2015, §1-14.

**AMENDED AND RESTATED DECLARATION AND AGREEMENT OF TRUST
OF THE PSATS UNEMPLOYMENT COMPENSATION GROUP TRUST**

Effective this 16th day of July 2014, THIS AMENDED AND RESTATED
DECLARATION AND AGREEMENT OF TRUST ("Trust Agreement") is unanimously
entered into and adopted by the Board of Trustees of the PSATS UNEMPLOYMENT
COMPENSATION GROUP TRUST.

WITNESSETH

WHEREAS, the Trust (as defined below) was originally established by Declaration and
Agreement of Trust of November 17, 1980, entered into by and between South Buffalo
Township, Armstrong County, Pennsylvania, Franklin Township, York County, Pennsylvania,
and East Hempfield Township, Lancaster County, Pennsylvania, political subdivisions of the
Commonwealth of Pennsylvania, as settlors, and H. Robert Daws, Edwin R. Hill, and Bruce E.
Henry, as original Trustees, as an intergovernmental cooperative arrangement to provide for a
group unemployment compensation trust and assist participating Townships in dealing with and
minimizing costs with respect to unemployment compensation claims of Township employees;
and

WHEREAS, the Trust, as amended and restated herein, is intended to continue to provide
the Townships of the Commonwealth of Pennsylvania, certain other permitted political
subdivisions of the Commonwealth of Pennsylvania, and the Association (as defined below) with
a vehicle to pool resources to provide for unemployment compensation obligations in a cost
effective manner; and

WHEREAS, it is the intent of the Trustees and Participants (as defined below) that the
Trust perform an essential governmental function within the meaning of Section 115 of the IRC
(as defined below); and

{L0564259.1}

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INTERGOVERNMENTAL COOPERATION AGREEMENTS

WHEREAS, the Board of Trustees is empowered pursuant to the Declaration and Agreement of Trust of November 17, 1980, as amended, including Article VIII, Section 4 thereof, to amend the Declaration and Agreement of Trust; and

WHEREAS, it is the desire of the Board of Trustees to comprehensively update, amend and restate the Declaration of Trust and Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and intending to be legally bound, the Board of Trustees hereby unanimously adopts this Amended and Restated Declaration and Agreement of Trust, effective July 16, 2014, as follows:

ARTICLE I DEFINITIONS

1. Defined Terms. Unless the context otherwise requires, capitalized terms used in this Trust Agreement but not otherwise defined herein shall have the respective meanings set forth in this Section:

- a. The term "Agreement" or "Trust Agreement" shall mean this Restated Declaration and Agreement of Trust, and any further duly adopted amendments thereto.
- b. The term "Association" or "PSATS" shall mean the statutorily created nonprofit unincorporated association acting in the interests of Pennsylvania Townships of the Second Class and their respective township supervisors, township secretaries, township treasurers, township managers, or comparable representatives of home rule or optional plan townships, and secretaries of county associations of township supervisors, organized in 1921 and operating thereafter pursuant to authorizing legislation, currently, as reenacted and amended, at 53 P.S. § 66402, known as the Pennsylvania State Association of Township Supervisors.

c. The term "Custodian" shall mean a bank or corporation with whom the Board of Trustees has entered into a written agreement under which the Custodian serves as custodian of Trust assets and carries out orders of the Board of Trustees or its Investment Manager, if any, concerning the handling of investments or sale or purchase of investments.

d. The term "Investment Manager" shall mean a person or entity who is registered as an investment adviser or with the Pennsylvania Securities Commission or registered under the Investment Advisers Act of 1940, who is a bank as defined in that Act, or who is an insurance company qualified by the laws of Pennsylvania to manage, acquire, or dispose of an asset of an employee benefit plan, who has acknowledged in writing that he, she, or it is a fiduciary with respect to the Trust and with whom the Board of Trustees has entered into a written agreement giving the person authority to manage, acquire, or dispose of any Trust assets.

e. The term "IRC" shall mean the Internal Revenue Code of 1986, as now or hereafter amended, or successor legislation thereto.

f. The term "Third Party Administrator" shall mean a person or entity retained as a service provider by the Board of Trustees to perform certain bookkeeping, accounting, administrative, collection, reporting, and related functions.

g. The term "Executive Board" shall mean the Executive Board of PSATS.

h. The term "Participating Township" or "Participant" shall include any township organized under the laws of the Commonwealth of Pennsylvania, including home rule townships, and the Association, any of which now or later agrees to and joins

INTERGOVERNMENTAL COOPERATION AGREEMENTS

in the terms of this Trust Agreement and meets all other requirements set forth in the Trust Agreement for participation in the Trust.

i. The "Trust" shall be known as the "PSATS Unemployment Compensation Group Trust."

j. The term "Trustees" or "Board of Trustees" as used herein shall mean the Trustees of this Trust acting from time to time hereunder.

ARTICLE II CREATION OF TRUST

1. The parties hereby create a Trust for the purpose of managing and administering Participants' unemployment compensation responsibilities.

2. Participants shall pay the Trustees, in trust, such amounts as the Trustees shall from time to time deem necessary and appropriate to satisfy the purposes of the Trust. The frequency and due dates and administrative procedures for contributions to the Trust shall be determined by the Trustees. Collection procedures and policies, including rules concerning late fees, shall be determined by the Trustees.

3. Trustees shall receive, hold and administer Participants' payments as a trust fund ("Trust Fund") for the purpose of managing the unemployment compensation responsibilities of Participants in accordance with the terms and conditions of this Agreement.

4. All funds received by the Trustees hereunder as part of this Trust Fund shall be used and applied in the following manner and for the following purposes:

- a) To pay the organizational and operational expenses of this Trust and all expenses involved in the collection of Participants' contributions and the administration of this Trust.

- b) To establish and maintain as part of the Trust Fund a reserve fund for the purpose of minimizing the amount of contributions required for unemployment compensation payments by Participants and the administration of the Trust.
- c) To make refunds to Participants at such times and in such manner as may be deemed by the Trustees to be proper.

The Trustees shall establish such annual contribution rates as the Trustees deem reasonable and necessary to provide for the obligations provided in this Agreement.

5. Prohibition Against Private Inurement. No activities shall be carried on by the Trust that would not be permitted to be conducted by an entity whose income is exempt from taxation under Section 115 of the IRC and regulations thereunder, or successor legislation or regulations. No part of the assets or earnings of the Trust shall inure to the benefit of any Trustee or any private individual (except to the extent that reasonable compensation may be lawfully paid to service providers acting on behalf of the Trust, or in the event that the Trustee or individual is an unemployed individual entitled to unemployment compensation benefits vis-à-vis the Participating Township and this Trust, to the extent of such unemployment compensation benefits payable in accordance with the terms of the Trust and the statute), and no Trustee or private individual shall be entitled to share in the distribution of any assets or property of the Trust upon dissolution. The Trust shall not engage in any activities attempting to influence legislation or engage in any activities relating to any political campaign on behalf of any candidate for public office.

6. Title to Trust Assets. All property and assets of the Trust shall be vested in and titled to the Trust, or to the Trustees as fiduciaries of the Trust.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

7. Duration of Trust. This Trust is intended to be perpetual in duration except in the event that the Trust is terminated in accordance with Article VIII of this Trust Agreement.

8. Trust Irrevocable. Subject to the provisions of this Trust Agreement in Article IX (relating to the amendment of this Trust Agreement) and Article VIII (relating to the dissolution of the Trust), the Trust is expressly declared irrevocable, and may only be terminated by the merger, dissolution or liquidation of the Trust in accordance with the terms of this Trust Agreement.

9. Any funds held by the Trustees hereunder may, in their discretion, be invested or reinvested as the Trustees shall see fit, provided that such investment or reinvestment complies with applicable state and federal laws and regulations. Without limiting the foregoing, such investments or reinvestments shall be consistent with restrictions, if any, applicable to the Trust regarding authorized types of investments for Townships of the Second Class under 53 P.S. § 68204, or successor legislation, or any more restrictive statutory limitations on types of investments, if any, applicable to the Trust. To the fullest extent permitted by law, the Trustees shall not be liable to Participants or any person having any interest in the Trust for any losses that may result from the making of any such investments or otherwise, except as a result of the Trustee's own gross negligence or intentional wrongdoing.

10. No Participant or former Participant or any person claiming by or through such Participant or former Participant, shall have any right, title or interest in or to the Trust Fund or any part thereof except as expressly provided herein.

**ARTICLE III
BOARD OF TRUSTEES**

1. Board of Trustees. The Trust shall be governed by a board known as the Board of Trustees. The Board of Trustees shall elect from its members a Chairman, Treasurer, Secretary and such other officers as it deems advisable. Any number of offices may be held by the same person.

2. Number of Trustees. The reconstituted Board of Trustees as of the effective date of the restatement of this Trust Agreement shall number three (3) Trustees and shall be made up of the individuals who are listed in Paragraph (a) of Section 3 of this Article III (collectively referred to as the "Current Named Trustees"), and each of the listed Current Named Trustees shall hold office until the date of the expiration of his term set forth therein or until he sooner resigns, is removed or becomes disqualified, or unless reelected to a subsequent term. One (1) day after the effective date of the restatement of this Trust Agreement, the size of the Board of Trustees shall be expanded to five (5) Trustees, and the additional Trustees to become members of the Board of Trustees as of that date shall be the individuals who are listed in Paragraph (b) in Section 3 of this Article III (collectively referred to as the "Additional Named Trustees"), and each of the listed Additional Named Trustees shall hold office until the date of the expiration of his term as set forth therein or until he sooner resigns, is removed, or is disqualified, or unless elected to a subsequent term. The Board of Trustees by a two-thirds vote shall thereafter have authority to (a) determine the number of Trustees to constitute the Board of Trustees, but beginning one (1) day after the effective date of the Trust Agreement, such number shall not be less than five (5), and (b) fix the terms of office of the Trustees and classify the Trustees with

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respect to the time for which they shall severally hold office. There will be no limit on the number of successive terms a Trustee may serve.

3. Named Trustees.

a) Current Named Trustees. The current Trustees of the reconstituted Board of Trustees as of the effective date of the restatement of this Trust Agreement are, and shall be, Jack Walter, whose term shall expire at midnight on the last day of December 2015; William Groves, whose term shall expire at midnight on the last day of December 2015; and Edward Goodhart, III, whose term shall expire at midnight on the last day of December 2016.

b) Additional Named Trustees. Effective one (1) day after the effective date of the restatement of this Trust Agreement, John Haiko shall become a Trustee, and his term shall expire at midnight on the last day of December 2017; and Michael Dennehy, Jr. shall become a Trustee, and his term shall expire at midnight on the last day of December 2017.

c) Successor Trustees. Thereafter, each Trustee shall be elected for a term of three (3) years, except that when there is a vacancy prior to the expiration of a Trustee's term, such vacancy shall be filled for the unexpired term.

4. Election of Successor Trustees. With respect to vacancies on the reconstituted Board of Trustees due to the natural expiration of the term of a sitting Trustee or due to an increase in the size of the Board of Trustees, the successor (or additional) Trustee shall be elected or reelected for a term of three (3) years by the Participating Townships. Nominations for a Trustee shall be solicited by the Board of Trustees from the Executive Board of the

Association not less than four (4) weeks before a scheduled expiration of a term of a current Trustee, with a due date for nominations to be received by the Board of Trustees at least two (2) weeks before any election. Participating Townships may also submit nominations at least four (4) weeks before any election. In order to be eligible to be nominated, or to serve, as a successor Trustee, the individual must be an elected or appointed individual of a Township who is serving such Township in the capacity of a Township supervisor or comparable representative of a home rule or optional plans Township, or in the capacity of a Township secretary, treasurer or manager. A list of all nominees and ballot forms shall be circulated to all Participating Townships and a date for the close of submission of ballots as determined by the Board of Trustees shall be provided in writing by the Board of Trustees to each Participating Township. Each Participating Township shall for the purpose of electing Trustees have one (1) vote per vacancy. In the event of a vacancy in the office of a Trustee prior to the expiration of the term, whether by reason of death, resignation, removal, disqualification, or otherwise, prior to the natural expiration of a term, the successor Trustee shall be such person as may be selected by a majority of the remaining members of the Board of Trustees. In the event that there are no remaining sitting Trustees, nominations for successor Trustees shall be made, and solicited from Participating Township, by the Executive Board of the Association, or failing such action by the Association, may be made and solicited by any Participating Township, and the election of Trustees shall be held in the manner provided above with respect to the election of a Trustee at the natural expiration of a term, except that nominations and ballots shall be sent to the Executive Board of the Association in the absence of any sitting Trustees for the Association to perform the ministerial non-discretionary tasks of collecting and counting ballots and notifying Participating Townships with respect to results. In the event that more than one Trustee vacancy

INTERGOVERNMENTAL COOPERATION AGREEMENTS

is being filled at the same time, each Participating Township shall have one (1) vote for each vacancy, which votes may be cast however desired by the Participating Township, including by casting all votes for one nominee.

5. Acceptance of Position. The said Additional Named Trustees provided for in Section 3(b) of this Article III, and any successor Trustee appointed or elected hereunder, shall execute and deliver to the Trustees a written instrument accepting such appointment and thereupon such successor Trustee shall become vested with all the property, rights, powers and duties of the Trustees hereunder with like effect as if originally named as a Current Named Trustee.

6. Resignation; Disqualification. Any Trustee acting hereunder may resign at any time by giving thirty (30) days' notice in writing to the Secretary of the Board of Trustees, with a courtesy copy to the Executive Director of the Association. In addition, except with respect to the Current Named Trustees and the Additional Named Trustees provided for in Paragraphs (a) and (b) of Section 3 of this Article III during their initial stated terms as set forth therein (but not with respect to any terms thereafter), which named Trustees shall be considered to be grandfathered for such initial terms, any Trustee shall immediately cease to be eligible to continue serving as a Trustee in the event, and effective on the date, that the individual ceases to be a Township supervisor or comparable representative of a home rule or optional plans Township, or a Township secretary, treasurer or manager of a Township, and the Trustee's position shall be deemed to become vacant as of that date.

7. Removal. Any Trustee acting hereunder may be removed from office at any time by an instrument in writing duly signed by a majority of Participating Townships. When removing a Trustee under this provision, Participating Townships may, concurrent therewith, fill

the vacancy by a vote of a majority, but if this is not done the vacancy shall be filled as provided in Section 4 of this Article.

8. Transfer at End of Term. Any Trustee who for any reason ceases to act hereunder shall make and execute any and all papers and documents necessary to transfer any investments, insurance policy(ies), funds, books, records, and other property of the Trust to the Trustees continuing to act hereunder. Without limiting the foregoing, each departing Trustee shall promptly turn over to the Board of Trustees any and all Trust assets, records, books, documents, money, and other property in their possession or under their control which belong to the Trust, or which were received by the Trustee in his or her fiduciary or other capacity, and if requested by the departing Trustee, shall be provided by the Board of Trustees with a receipt for such returned items.

9. Actions and Meetings

- a) Regular Meetings. Regular meetings of the Board of Trustees shall be held at such times as the Board of Trustees may designate. Notice of regular meetings need not be given.
- b) Special Meetings. Special meetings of the Board of Trustees may be called at any time by the Chairman and shall be called by him on the written request of one third of the Trustees. Notice (which need not be written) of the time and place of each special meeting shall be given to each Trustee at least two (2) days before the meeting.
- c) Quorum. A majority of all the Trustees in office shall constitute a quorum for the transaction of business at any meeting and except as otherwise provided herein the acts of a majority of the Trustees present at any

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meeting at which a quorum is present shall be the acts of the Board of Trustees.

- d) Participation by Alternative Means. Trustees may participate in a meeting of the Board of Trustees by means of telephone conference, video conference, or similar communications equipment by means of which all persons participating in the meeting can hear each other and engage in debate.
- e) Written Consent in Lieu of Meeting. Any action required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting upon the unanimous written consent to action of the Trustees.
- f) Partial Written Consent in Lieu of Meeting. Any action required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting upon the consent in writing of Trustees who would have been able to cast the minimum number of votes that would be necessary to authorize the action at a meeting of the Board of Trustees at which all the Trustees were present and voting provided that all Trustees waive in writing ten (10) days' prior written notice of meeting or action. Any action required or permitted to be taken at a meeting of the Board of Trustees may also be taken without a meeting and without the written agreement of all Trustees to waive ten (10) days' prior written notice of meeting or action upon the consent in writing of Trustees who would have been able to cast the minimum number of votes that would be necessary to authorize the action at a meeting of the Board of Trustees at which all the

Trustees were present and voting provided that such non-unanimous action of the Board of Trustees shall not become effective until after ten (10) days' notice of the action has been given to each Trustee.

10. No Compensation. The Trustees shall receive no compensation for the performance of their duties, but they shall be reimbursed for all reasonable and necessary expenses which they may incur in the performance of their duties.

11. Indemnification: Insurance. The Trust shall indemnify, to the fullest extent permitted by law, any present or former Trustee or officer or employee, if any, of the Trust (an "Indemnitee") who was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that (s)he is or was a Trustee, officer, or employee of the Trust or is or was serving at the request of the Trust as a representative of the Trust, against claims, losses, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him/her in connection with the action or proceeding. The Trust may, to the extent determined to be appropriate by the Board of Trustees in its discretion, acquire such insurances, including but not limited to fiduciary insurance and errors and omissions insurance, to provide indemnity and cost of defense to the Trustees, officers, and employees, if any, of the Trust, or other Indemnitees determined by the Trustees to be appropriate to the full extent permitted by law, and to expend the assets of the Trust for the payment of the premiums therefor.

12. Fidelity Bonding. All Trustees or employees of the Trust shall be bonded by a surety company duly licensed and authorized to issue a fidelity bond in the Commonwealth of Pennsylvania in such amount as the Trustees shall determine from time to time, provided,

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however, that if any applicable law requires a fidelity bond to be in place, the bond procured by the Trustees shall at least satisfy the minimum requirements of any such law.

ARTICLE IV POWERS AND DUTIES OF TRUSTEES

1. Authority. Except as otherwise provided in this restated Trust Agreement, the Trustees shall have exclusive power to carry out the purposes of the Trust including but not limited to the investment of the Trust's funds and assets. The Trustees shall at all times act as a Board of Trustees. No individual Trustee shall have the power to bind the Trust. Any action duly taken by the Board of Trustees under this Trust Agreement shall bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Trust Agreement.

2. Fiduciary Duties.

- a) Except to the extent expressly provided otherwise in this Trust Agreement, the Trustees shall owe the same minimum fiduciary duties to the Trust and beneficiaries thereof consistent with the standards under the Probate, Estates and Fiduciaries Code, 20 Pa. C.S. § 101 et seq., to the extent it may be applicable, or consistent with any greater standards as may be required under any other federal or State law that is, or that in the future may be, directly applicable to the Trust and its operations.
- b) The Trustees shall not be personally liable to any person for any obligation of the Trust.

3. Ethical Standards. The Trustees shall in connection with the Trust conduct themselves consistently with the Pennsylvania State Ethics Act and with any Code of Conduct or ethical standards adopted by the Board of Trustees.

4. Capacity of Trustees. Except as expressly provided herein, all actions performed by the Trustees pursuant to this Trust Agreement are performed in the capacity of a Trustee and not in an individual capacity.

5. Limitation on Trustees' Liability. Except as otherwise provided by law, a Trustee shall not be personally liable for monetary damages as such for any action taken, or failure to take any action, unless:

- a) The Trustee has breached or failed to perform the fiduciary duties of his office as provided in this Trust Agreement or applicable law regulating the fiduciary duties of a Trustee of this Trust; or
- b) The breach or failure to perform constitutes self-dealing, willful misconduct or gross negligence.

6. Investment Policies. The Trustees shall from time to time adopt appropriate investment policies and/or guidelines.

7. Annual Audit/Records. The Trustees shall maintain true and accurate books of account and records of all the Trust's transactions which shall be audited at least annually by a certified public accountant. Such audits and records be open to authorized representatives of Participating Townships. The Trustees shall provide to Participating Townships, at least annually, a summary report of the Trust's finances.

8. Specific Duties and Services. The Trust and Trustees will perform the following services and be subject to the following obligations:

- a) Administer unemployment compensation matters for each Participant in accordance with the conditions set forth in this Trust Agreement or that

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may be established by the Trustees in accordance with this Trust Agreement.

- b) Pay all the operational and administrative costs incurred by the Trust and attributable to the unemployment compensation program administered by the Trust.
- c) Pay all unemployment compensation claims properly assessed against Participants out of available trust funds.
- d) Provide regular periodic accounting to Participants for the operation of the unemployment compensation pool.
- e) Furnish appropriate reporting forms to members.
- f) Provide information and/or training so that Participants may effectively administer unemployment compensation claims and programs.
- g) Establish from time to time the rate of contribution for each Participant.

The Trustees may, in their discretion, establish a system of graduated contribution rates and divided rates applicable to Participants according to their respective loss experiences.

13. The Trustees shall not have any liability with respect to the nonpayment of contributions by Participants nor shall the Trustees have any obligations to enforce payment of contributions by Participants except as herein provided.

14. The Trustees shall receive no compensation for the performance of their duties, but they shall be reimbursed for all reasonable and necessary expenses which they may incur in the performance of their duties.

15. The Trustees may employ such agents and professional and support personnel as may be appropriate or necessary for the administration of the Trust.

16. No Trustee acting hereunder shall be liable for any action taken or omitted by him or her in good faith, nor for any act or omission of any Participant or any agent, employee or attorney selected by the Trustees with reasonable care, nor for any act or omission of any other Trustee.

**ARTICLE V
OBLIGATIONS OF PARTICIPANTS**

1. Each Participant shall make timely contributions to the Trust on the due dates set by the Trustees at such rates as may from time to time be set by the Trustees. A late fee of 15% of any unpaid contribution or unpaid portion thereof shall be assessed on each Participant on contributions unpaid after their respective due dates; such late fee charge shall not exceed \$100 per covered employee per quarterly contribution. Additionally, a late interest charge per month (or fraction thereof) shall be assessed at the rate of one percent (1%) upon any contribution outstanding more than thirty (30) days past its due date.

2. Each Participant shall acknowledge the statutory provisions set forth in the Pennsylvania Unemployment Compensation Law, 43 P.S. § 909, as amended, as made applicable to political subdivision employers under 43 P.S. § 913, as amended, relative to the payment obligations of employers that are members of group accounts within the meaning of these provisions. The Participating Townships hereby obligate themselves to the contributions described in this Agreement. However, if in any quarter the funds available within the Trust Fund are insufficient to pay the unemployment compensation benefit obligations of Participants, then said excess benefit obligations shall be paid by Participants in accordance with the following formula:

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INTERGOVERNMENTAL COOPERATION AGREEMENTS

Each Participant shall in addition to the regular annual contribution be liable for a payment in an amount that bears the same ratio to the total excess benefit obligation as the total wages paid for service in employment by such Participant during that quarter bear to the total wages paid for services by all Participants during the same quarter.

3. Each Participant shall:
- a) Provide quarterly (or at such other interval set by the Trustees), on a form to be furnished by the Trustees, payroll information and numbers of employees.
 - b) Promptly complete fully and accurately and return to the Bureau of Employment Security any and all claims forms required to be completed by Participants.
 - c) Promptly forward to the Trustees legible photocopies of any and all completed claims forms received by Participants relating to unemployment compensation claims for employees or former employees.
 - d) Authorize the Trustees to represent Participants before the Bureau of Employment Security for the Commonwealth of Pennsylvania in the following matters:
 - i. The presenting of forms completed by Participants as necessary;

- ii. The presenting of claims for refund or adjustment of account, employer's protest of benefit claims, and information relative thereto;
- iii. The payment of all unemployment compensation claims properly assessed against Participants out of available Trust funds;
- iv. The obtaining of account information;
- v. The discussion of any or all of the foregoing with the proper officials of the Bureau of Employment Security of the Commonwealth of Pennsylvania.

4. Each Participant shall exercise due diligence and care to reduce, to the extent practicable, unemployment compensation claims arising from Participant, to cooperate with the Trustees in claims management, and to undertake claims defense in all appropriate circumstances.

ARTICLE VI PARTICIPATION

1. Pennsylvania Townships, and the Association, to the extent meeting the requirements of the Trust Agreement, shall be eligible for participation and shall not be denied Participant status unless the Trustees determine that the inclusion of such employer has been or will be detrimental to the Trust Fund and/or to the interests of the existing Participants of the Trust or unless such Township is not then a member in good standing with the Association or fails to adopt an Ordinance or join in and abide by this Trust Agreement as required herein.

2. Any Pennsylvania Township and the Association may elect to become a party to this Agreement and a Participant in the Trust by adopting this Agreement in conformance with

INTERGOVERNMENTAL COOPERATION AGREEMENTS

all applicable federal and state laws, including, but not limited to, the Pennsylvania Intergovernmental Cooperation Law, 53 Pa. C.S. § 2301 et seq., and by executing and delivering to the Trustees an election of participation statement that provides as follows:

Ontelaunee Township, Berks County, Pennsylvania, elects to participate in the unemployment compensation trust established for the benefit of Townships and Association and their respective employees, and agrees to all of the terms and conditions of the Trust Agreement, as amended and restated, July 16th, 2014, and as it may be amended from time to time. The Participant Township understands and agrees that the Trust may be amended from time to time by the Trustees without consent or approval of the Participants, but all Participants will be notified of any such amendment.

The Township (is/ is not) presently paying its unemployment compensation costs on the reimbursement of costs basis. This Township acknowledges that any Participant in the Trust presently paying its unemployment compensation costs on the reimbursement of costs basis shall be liable, in addition to the annual contribution rate established by the Trustees, for assessment of any unemployment compensation costs against it occurring during the first calendar year that the Township is a Participant in the Trust.

Ontelaunee Township, Berks County

SIGNATURE: Nicole Y. Schwert

TITLE: Secretary / Treasurer

3. Adoption of Ordinance. To the extent that the Pennsylvania Intergovernmental Cooperation Law, or any successor legislation, is applicable to a governmental employer that desires to participate in the Trust, such employer, as a condition for participating, or continuing participation, in the Trust and being a Participating Township for the purposes of this Trust Agreement, shall, through its governing body, duly pass an ordinance substantially in the form attached hereto as Appendix A or in such other form as is approved by the Board of Trustees, and shall provide a certified copy of such enacted ordinance with the Board of Trustees. For Participants of the Trust as of the effective date of this restatement of the Trust Agreement, updated ordinances in such format shall be duly passed, with certified copies provided to the

Board of Trustees, by no later than December, 2015. In the event that a Township participating in the Trust as of the effective date of this restatement fails to pass and deliver a certified copy of the ordinance by December 31, 2015, the Board of Trustees thereafter may, in its discretion, terminate the participation of such Township upon ninety (90) days prior written notice notwithstanding any other provision of the Trust Agreement.

4. Any Township that, at the time immediately preceding its election to participate in this Trust, made its unemployment compensation payments on reimbursement of costs basis rather than contributory basis, in addition to quarterly contributions to this Trust required under Article V of the Agreement, shall be liable for assessment for any unemployment compensation costs against it occurring during the first calendar year that the Township is a Participant in this Trust.

**ARTICLE VII
CLAIMS**

In the event of any unemployment compensation claims arising against any Participant in this Trust, the Trust and Trustees shall not be obligated to incur any effort or cost involved in representing the Participant at any hearing or court proceeding arising out of said claim. However, the Trustees may in their discretion provide consultation or other services to Participants relative to the investigation and contesting of claims pursuant to separate agreements between Trustees and Participants.

**ARTICLE VIII
TERMINATION**

1. Each Participant shall remain a Participant in this Trust Agreement for an initial twenty-four (24) month period beginning January 1 of the first year that the Township is a Participant in this Trust, as determined by the effective date noted on the Acknowledgment of

INTERGOVERNMENTAL COOPERATION AGREEMENTS

Election issued by the Trust. Each Participant shall automatically continue to participate in this Trust thereafter on the basis of renewal terms of two (2) years each. A Participant may discontinue participation only at the completion of each biennial renewal term. A Participant desiring to discontinue participating in the Trust shall give the Trustees written notice of its intent to discontinue at least ninety (90) days prior to the biennial renewal date.

2. The Trustees by a two-third vote may terminate this Trust. In any such event, the Trustees shall use the funds available in the Trust Fund to pay any and all obligations of the Trust. Should the Trust Fund be insufficient to pay such obligations, the Participants as of the effective date of the termination will contribute an amount sufficient to cover any such deficiency; said amount to be determined on the same pro-rationed basis as provided in Article V, Section 2 hereof. Should there be a surplus in the Trust Fund after the payment of all obligations, such surplus shall be distributed by the Trustees to the Participants at the time of termination in proportion to the amount of annual contribution paid by each such Participating Township during the twelve (12) months immediately preceding termination. Upon termination of this Trust, the Trustees shall nevertheless continue as such for the purpose of dissolution and may take any action necessary or appropriate to that purpose.

3. The Trustees may terminate the participation of any one or more Participants if it is determined by the Trustees that (a) said Participant is delinquent in making the payments required by the provisions of this Trust; or (b) said Participant has followed practices relative to or affecting unemployment compensation that renders its continued participation in the Trust detrimental to the purposes of this Trust, the Trust Fund and/or the interests of other Participants in this Trust; or (c) said Participant is not a member in good standing with the Association.

4. All rights and interests of any Participants in this Agreement or in any trust asset shall terminate and lapse as of the effective date of termination of its participation in this Trust Agreement. Neither the Trust nor the Trustees shall be liable for any unemployment compensation benefit or related costs occurring or falling due for payment subsequent to the date of termination of a Township's participation. Such former Participant shall reimburse the Trust for any unemployment compensation claims which the Trust is required to pay on behalf of the Township subsequent to the date of termination.

5. Townships whose participation shall terminate (other than in connection with the termination of the Trust as a whole) as herein provided, and all employees of such employers, shall thereupon forfeit all rights to and interests in this Trust and its funds and assets, and shall have no claim against the Trustees for any part of the trust funds or assets of the Trust, and all such funds and assets shall be held by the Trustees for and on behalf of the Participating Townships remaining in the Trust.

**ARTICLE IX
MISCELLANEOUS**

1. The Trustees agree to furnish to the Executive Board from time to time reports respecting the status of the fund, applications of the Trust Funds received from Participants and the benefits paid thereunder.

2. This Trust is accepted by the Trustees in the Commonwealth of Pennsylvania and all questions pertaining to its validity, construction and administration shall be determined in accordance with the laws of that Commonwealth.

3. This Trust Agreement may be amended by action of two-thirds of the Trustees; provided that no such amendment shall alter the basic nature or purpose of this Trust Agreement.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

IN WITNESS WHEREOF, the undersigned, being all of the duly appointed or elected members of the Board of Trustees of the PSATS Unemployment Compensation Group Trust as of the following effective date, set their hands and seals, and adopt this Amended and Restated Declaration and Agreement of Trust effective July 16, 2014.

Board of Trustees of the PSATS Unemployment
Compensation Group Trust



Jack Walter, Trustee

William Groves, Trustee

Edward Goodhart, III, Trustee

IN WITNESS WHEREOF, the undersigned, being all of the duly appointed or elected members of the Board of Trustees of the PSATS Unemployment Compensation Group Trust as of the following effective date, set their hands and seals, and adopt this Amended and Restated Declaration and Agreement of Trust effective July 16, 2014.

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Compensation Group Trust

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Edward Goodhart, III, Trustee

ARTICLE X

PURCHASE OF SANITARY SEWAGE TREATMENT CAPACITY

Section 1001. Background

- A. The Leesport Borough Authority (LBA) is expanding the capacity of its waste water treatment plant.
- B. Ontelaunee Township (Township) and the Ontelaunee Township Municipal Authority (OTMA) are constructing a sanitary sewage collection system to serve certain areas of Ontelaunee Township adjacent to the Borough of Leesport.
- C. In order to acquire capacity for the treatment of sanitary sewage to be collected in Ontelaunee Township, it is necessary for the Township and the OTMA to enter into an intermunicipal agreement with the Borough of Leesport (Borough) and the LBA to purchase such capacity.
- D. The Intergovernmental Cooperation Act, 53, Pa C.S. §2301 et seq., permits municipalities to enter into agreements to cooperate in the performance of their respective functions, powers or responsibilities.
- E. The Township of Bern and the Bern Township Municipal Authority desire to acquire capacity in the LBA Waste Water Treatment Plant and will also be parties to the intermunicipal agreement.
- F. The Intergovernmental Cooperation Act provided that any joint cooperation agreement shall be deemed in force as to any municipality when the same has been adopted by Ordinance by all cooperating municipalities.
- G. The Borough of Leesport, the Township of Ontelaunee and the Township of Bern each desire to enact such an Ordinance.

Section 1002. Parties to Agreement

The Township shall join with the Ontelaunee Township Municipal Authority, Leesport Borough, Leesport Borough Authority, Bern Township and Bern Township Authority in accordance with the Pennsylvania Intergovernmental Cooperation Act by entering into the Intermunicipal Agreement which is adopted by reference with the same effect as if it had been set out verbatim in this Section and a copy of which shall be filed with the minutes of the meeting at which this Ordinance was enacted.

Section 1003. Authorization for Agreement

This Township is authorized to enter into the Intermunicipal Agreement for the purposes contained therein. This action is to be taken by the officials or employees of the

INTERGOVERNMENTAL COOPERATION AGREEMENTS

Township designated for this purpose, pursuant to general or specific instructions issued by the Board of Supervisors.

Section 1004. Specific Findings

As required by the Intergovernmental Cooperation Act, the following matters are specifically found and determined:

- A. The conditions of the agreement are set forth in the Intermunicipal Agreement referred to in Section 1002.
- B. The term of the Intermunicipal Agreement is perpetual unless terminated by agreement of the parties.
- C. The purpose and objectives of the Intermunicipal Agreement are to allow the OTMA to enter into an intergovernmental contract to purchase sanitary sewage treatment capacity in the Leesport Borough Authority Waste Water Treatment Plant and to set forth the terms and conditions for such purchase.
- D. OTMA shall finance its portion of the treatment capacity in the Leesport Borough Authority Waste Water Treatment Plant and its own sanitary sewage collection system. OTMA shall finance the operating costs of its sanitary sewage system through sewer rates imposed on sewer system customers.
- E. No new administrative structure shall be formed under the Intermunicipal Agreement.
- F. All property, real or personal, shall be acquired, managed or disposed of by each municipality and authority.
- G. Each municipality and each authority has the power to enter into contracts for policies of insurance or other employee benefits.

Ord. 2003-4, 6/12/2003, §1-4.

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FIRST AMENDMENT TO INTERMUNICIPAL AGREEMENT

THIS AMENDMENT, made this *12th* day of *June*, A.D., 200*2*³, by and between:

LEESPORT BOROUGH AUTHORITY, a Pennsylvania Municipality Authority, whose office is located in the Borough of Leesport, Berks County, Pennsylvania, hereinafter referred to as "LEESPORT";

A N D

TOWNSHIP OF ONTELAUNEE, a Pennsylvania Township of the Second Class, whose office is located in the Township of Ontelaunee, Berks County, Pennsylvania, and ONTELAUNEE TOWNSHIP AUTHORITY, a Pennsylvania Municipality Authority, whose office is located in the Township of Ontelaunee, Berks County, Pennsylvania, both entities from the Township of Ontelaunee hereinafter shall be referred to collectively as "ONTELAUNEE";

A N D

TOWNSHIP OF BERN, a Pennsylvania Township of the Second Class, whose office is located in the Township of Bern, Berks County, Pennsylvania, and BERN TOWNSHIP MUNICIPAL AUTHORITY, a Pennsylvania Municipality Authority, whose office is located in the Township, both entities from the Township of Bern hereinafter shall be referred to collectively as "BERN".

W I T N E S S E T H :

WHEREAS, Leesport has constructed and has been operating a public sanitary sewage collection and treatment system, and

WHEREAS, both Leesport and Ontelaunee have updated their Act 537 Plan in order to enter into a project to expand and upgrade Leesport's Wastewater Treatment Plant so as to increase Leesport's reserved capacity therein and to permit Ontelaunee to construct a public sanitary sewage collection system and transport and discharge collected sanitary sewage into Leesport's Wastewater

INTERGOVERNMENTAL COOPERATION AGREEMENTS

Treatment Plant for treatment to the extent capacity is reserved for Ontelaunee;
and

WHEREAS, Leesport and Ontelaunee entered into an Intermunicipal Agreement dated April 6, 2000, which Agreement set forth all the rights, privileges, obligations and undertakings of both parties in the construction of the expanded and upgraded plant and its operation, and

WHEREAS, Leesport and Ontelaunee have agreed to accept Bern into the Project as a Township abutting both Leesport and Ontelaunee to the extent of its request for reserved capacity in the Leesport expanded and upgraded Wastewater Treatment Plant, and

WHEREAS, during the passage of time since the execution of the aforesaid Intermunicipal Agreement, certain circumstances have changed which require the amendment of certain sections of the Intermunicipal Agreement in addition to the entry of Bern as a party thereto.

NOW THEREFORE, BE IT AGREED, by and among the parties hereto in consideration of the mutual promises made herein, and intending to be legally bound hereby that:

1. The preamble hereto is incorporated herein by reference thereto as fully as if the same were set forth herein in full.
2. The parties agree that the Bern Township Municipal Authority "Bern" has become and is a party to the Intermunicipal Agreement dated April 6, 2000, between Leesport and Ontelaunee setting forth the terms of the Project for construction of the expansion and upgrade of the Leesport Wastewater Treatment Plant and use thereof to the extent of its reserved capacity in the expanded plant.
3. Bern shall have all of the rights and privileges extended to

Ontelaunee by the Agreement as well as all the covenants, responsibilities, undertakings and indemnities accepted by Ontelaunee in the Agreement to the extent of its reserved capacity in the Leesport Wastewater Treatment Plant and any joint use of lines except where the context of the Agreement clearly sets forth a right or responsibility of Ontelaunee alone. An example of the latter is Section 2.11.

4. All the terms, sections and provisions of the Intermunicipal Agreement dated April 6, 2000, are incorporated herein as fully as if the same were set forth in full and shall be enforceable by any or all of the parties hereto against all or any of the parties hereto in accord with those terms except to the extent the Agreement is specifically amended hereafter.

5. Upon payment of capital costs charged to a party and upon completion of Leesport construction and approval by Pa. DEP, each party shall be deemed to hold the reserved capacity for treatment set forth in Exhibit "g" attached hereto subject specifically to the provisions modifying reserved capacity set forth in the Intermunicipal Agreement dated April 6, 2000, including Sections 2.31 and 3.2.

6. The parties agree that the design of the upgrade and expansion of the Stage II facilities and raising of funds to pay the expenses of construction and the letting of contracts for the construction of the Stage II facilities has been completed by the parties to the extent that Sections 2.32, 2.33, 2.34.1, 2.34.2, 2.35 and 2.36 are now obsolete but have historical value.

7. Section 2.5 of the Agreement shall be amended by deleting the figure, \$20,000.00 and inserting in its place, the figure \$50,000.00 and adding the following paragraph:

Expenditures for projects from this Special

INTERGOVERNMENTAL COOPERATION AGREEMENTS

Construction Fund shall be limited to the cost of extraordinary expenses and the cost of mandatory expenses.

8. Section 2.6 of the Agreement shall be amended by deleting the figure, \$20,000.00 and inserting in its place, the figure \$50,000.00 and adding the following paragraph:

Expenditures for projects from this Maintenance Reserve Fund shall be limited to the cost of extraordinary expenses, the cost of mandatory expenses and the cost of discretionary expenses as limited by this Agreement.

9. The parties agree that any reference to Exhibit "E" referred to in Section 3.2 or any other section of the Intermunicipal Agreement dated April 6, 2000, shall be to the Exhibit "E" attached hereto and made a part of this Amendment and to that extent the section is amended.

10. Section 3.1 Basic Principle of the Agreement is deleted and the following 3.1 is substituted in its place:

3.1 Basic principle: The basic principle on which "Leesport", "Ontelaunee" and "Bern" shall share capital costs of the Stage II expansion of the Treatment Plant facilities is by allocation thereof in accordance with the reserved flow of each party.

11. The parties agree that the provisions of Section 3.25 shall be amended by revoking the same and substituting in its place the following:

3.25. "Ontelaunee and Bern" agree that each of them shall make a payment to "Leesport" for use of the Stage I facilities constructed by "Leesport" which payment shall be based upon a payment of \$200.00 per EDU to be paid as part of the capital contribution set forth in Section 3.3 and as shown on Exhibit "E" attached hereto and made a part hereof.

12. Section 3.3 is amended by deleting the section in its entirety and substituting in its place:

3.3. The parties further agree that in consideration of the

construction by "Leesport" of the facilities contemplated by Stage II, "Bern" and "Ontelaunee" will each make a capital contribution to "Leesport," which capital contribution will be calculated in the following manner:

(a) The Consulting Engineers for "Leesport," shall determine the capital cost of the facilities contemplated by Stage II for expansion and upgrade of the Plant.

(b) Each party's share of the capital costs of the expansion facilities contemplated by Stage II shall be determined by the ratio set forth under the names of each respective municipality in Section 2 of Exhibit "E" attached hereto and made a part hereof by reference thereto.

(c) "Bern's" and "Ontelaunee's" respective contributions toward the construction of the Stage II facilities, as shall be determined as in (b) above; provided, however, that such capital contribution shall be subject to adjustment, as appropriate, as hereinafter provided.

The capital contributions made and to be made by "Ontelaunee" and "Bern" to "Leesport" under this Paragraph 3.3 shall be made as follows:

1. "Ontelaunee" has paid to Leesport the amount set forth in Section 2 of Exhibit "E" set under the name of the municipality it serves.
2. "Bern" shall deposit into an escrow account with "Leesport's" Trustee upon execution of the Agreement the amount set forth in Section 2 of Exhibit "E" set under the name of the municipality it serves. The Trustee shall be authorized to immediately withdraw from such account the amount necessary to reimburse "Leesport" for the sums which "Leesport" has paid prior to the date of execution of this Agreement applicable to "Bern's" share of the planning and construction costs. Thereafter, the Trustee may make withdrawals from such account as the Trustee receives requisitions to pay current invoices and deposit such amounts into the joint municipal construction fund representing "Bern's" share of such cost.

The parties agree that the capital contributions made by

INTERGOVERNMENTAL COOPERATION AGREEMENTS

"Ontelaunee" and to be made by "Bern" attributable to Stage II facilities, shall be subject to final adjustment within thirty (30) days after receipt by the parties of a certificate of "Leesport" Consulting Engineers certifying that the Stage II facilities are complete, all capital costs can be ascertained and, if applicable, that final settlement has been made by "Leesport" with respect to any grant received by "Leesport" for application for and toward payments of a portion of the costs and expenses of construction of Stage II facilities. Such adjustment shall be made by recomputing, in accordance with the principles set forth in this Section, the amount of the capital contribution attributable to the Stage II facilities using actual capital costs as certified by "Leesport" Consulting Engineers. "Ontelaunee" and "Bern", respectively within ninety (90) days after final adjustment, shall make the appropriate payment of the balance of the capital contributions due to "Leesport" or, if appropriate, "Leesport," within forty-five (45) days after final adjustment, shall make the appropriate refund of any overpayment of the capital contributions made by "Bern" or "Ontelaunee."

13. The parties agree that Section 4.45 of the Intermunicipal Agreement shall be amended by adding the following sentence to each section, "Each party shall pay its proportionate share of fixed costs of operation of the Wastewater Treatment Plant on a quarterly or other necessary basis which ongoing obligation shall begin when the expanded plant is complete and connections thereto by "Ontelaunee" and "Bern" are allowable and Bern and Ontelaunee are so informed by written notice specifying the amount due and the date payable. Each party shall be obligated to pay its proportionate share of fixed costs regardless of whether any connections to the completed Leesport Plant have been made from its jurisdictional area."

14. In addition to the covenants set forth in Section 5 of the Intermunicipal Agreement dated April 6, 2000, Leesport makes all the covenants to Bern that it has made and makes to Ontelaunee in Section 5 as fully as if they had been set forth in full herein. In addition, Bern makes all the covenants to Leesport that Ontelaunee has made and makes to Leesport in Section 5 of the Agreement as fully as if the same had been set forth in full herein.

15. Section 4.7 of the Agreement is established by adding the following section:

4.7 Bern and Ontelaunee shall cause to be adopted as effective in their respective jurisdictional areas wherein a collection system which is connected to the Leesport Wastewater Treatment Plant is located, ordinances and resolutions regulating the discharge of sanitary sewage into the Sewage Collection System according to standards and procedures equal to, or more stringent than Leesport has adopted, including but not limited to, industrial and commercial discharges and pretreatment.

16. Section 4.8 of the Agreement is established by adding the following section:

4.8 Leesport, through its authorized representatives, shall have the right in an emergency situation where the proper operation of the Sewage Wastewater Treatment Plant is threatened, to enter into the geographical areas of each party wherein sanitary sewers which discharge into the Leesport Collection System or Wastewater Treatment Plant are located and take whatever steps are deemed necessary to resolve the emergency.

A. If possible, prior to taking such action, Leesport's representatives shall notify the party or parties having jurisdiction over the area where the emergency is located. In any event, written notice of the incident and its resolution, if any, shall be given to the party in whose jurisdiction such emergency occurred as soon thereafter as feasible. Ontelaunee and Bern shall designate the party, person or persons to be notified.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

17. The provisions of Section 6, paragraph 5.1 of the Intermunicipal Agreement dated April 6, 2000, are amended by adding the following definitions to the terms thereof:

Cost of Ordinary Expenses - shall mean the cost of making ordinary alterations, repairs, renewals, replacements and improvements to the treatment plant or collection system of such nature that they are properly chargeable as current expenses rather than capital costs under generally accepted accounting principles and which are included in the Authority budget for the year in which made.

Cost of Mandatory Expenses - shall mean the cost of making alterations, repairs, renewals, replacements and/or improvements to the treatment plant or collection system, which are required and mandated by a governmental body having the legal right to require such actions or which are necessary for the system to function, of such nature that they are properly chargeable as capital costs rather than current expenses under generally accepted accounting principles, the necessity of which is described in a written statement by the Leesport Authority Engineer.

Cost of Voluntary Expenses - shall mean the cost of making alterations, repairs, renewals, replacements and/or improvements to the treatment plant or collection system which are neither necessary or mandated but requested by one or more parties who made the request and who will benefit directly from the expense.

Cost of Discretionary Expenses - shall mean the cost of making alterations, repairs, renewals, replacements and/or improvements to the treatment plant or collection system which are necessary for the function thereof, of such nature that they are properly chargeable as capital costs rather than current

expenses under generally accepted accounting principles. Such repairs are limited to not more than Seventy-Five Hundred Dollars (\$7,500.00) at any one time or the balance in the Maintenance Reserve Fund maintained by Leesport at the time of expenditure, whichever is lesser.

Cost of Extraordinary Expenses - shall mean the cost of making unplanned alterations, repairs, renewals, replacements and/or improvements to the treatment plant or collection system that by their nature were not able to be pretested or budgeted, which are necessary for the proper function of the treatment plant or collection system the necessity of which is described in a written statement by the Leesport Authority Engineer and which are of such nature that they are properly chargeable as capital costs rather than current expenses under generally accepted accounting principles.

Industrial - when used in this Agreement the term shall not only include the normal definition of the term but also all commercial or other uses which may generate wastes other than only domestic or household waste.

18. In order to protect the Treatment Plant, it shall be necessary for Leesport to review the plans at the Applicant's expense relating to quality and quantity of discharge and authorize any non-residential connection to the sewage system therefor proposed to be made in the areas of Bern Township and Ontelaunee Township which contain sanitary sewers connected to the Leesport System in addition to authorization from the respective Authority in which area the connection is located, which authorization from Leesport shall not be unduly withheld.

19. Section 8.11 of Section 8.1 is revoked and substituted in its place is Section 8.1A.

8.1 A. As the result of the reallocation of

INTERGOVERNMENTAL COOPERATION AGREEMENTS

reserved capacity in the Wastewater Treatment Plant, the parties agree that figures set forth in Exhibit "E" opposite each party's name on line ___ shall be considered the full amount of reserved capacity for that party.

B. Bern and Ontelaunee may regulate the sale or transfer of reserved sewage treatment rights within their respective jurisdictions. Any transfer or sale of such rights across municipal boundaries shall require the authorization of all parties as well as the adjustment of responsibilities herein.

20. The Township of Ontelaunee and the Township of Bern are included in this Agreement for the following reasons:

1. To implement Section 4.8 of this Agreement insofar as it is necessary.
2. To make payment of operating expenses to the extent of the obligations assumed by their respective Authorities in the event the Authorities cannot make the payments.
3. To guarantee any borrowings or loans made by their respective Authorities to pay obligations made and assumed by Authorities.
4. In the event either Township shall take over the operations and obligations of its Authority.

21. Other than the addition of Bern as a party hereto and the amendments made to the Intermunicipal Agreement dated April 6, 2000, as set forth herein, the parties hereto reconfirm the said Intermunicipal Agreement as agreed to.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed, sealed and attested on their respective behalfs as of the date

first above written.

LEESPORT BOROUGH AUTHORITY

By: Robert A. Jones (SEAL)

Attest: [Signature] (SEAL)

ONTELAUNEE TOWNSHIP

By: Kenneth M. Strutt (SEAL)

Attest: Melissa E. Ernst (SEAL)

ONTELAUNEE TOWNSHIP AUTHORITY

By: [Signature] (SEAL)

Attest: [Signature] (SEAL)

BERN TOWNSHIP

By: Bernard J. Potts (SEAL)

Attest: [Signature] (SEAL)

BERN TOWNSHIP MUNICIPAL AUTHORITY

By: [Signature] (SEAL)

Attest: Darryl A. Jenks (SEAL)

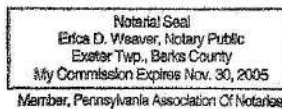
INTERGOVERNMENTAL COOPERATION AGREEMENTS

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this 21st day of August, A.D., 2002, before me, a notary public, the designed officer, personally appeared Robert Jones, who acknowledged himself to be the Chairman, of LEESPORT BOROUGH AUTHORITY, and that he as such Chairman being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chairman.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Erica D. Weaver

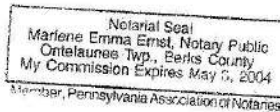


COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this 7th day of August, A.D., 2002,³ before me, a notary public, the designed officer, personally appeared Keith Stoult who acknowledged himself to be the Chairman, of TOWNSHIP OF ONTELAUNEE, and that he as such Chairman being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chairman.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Marlene Emma Ernst



COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this 15th day of August, A.D., 200³, before me, a notary public, the designed officer, personally appeared Lawrence S. Peltz who acknowledged himself to be the Chairman, of ONTELAUNEE TOWNSHIP AUTHORITY, and that he as such Chairman being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chairman.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Marlene Emma Ernst

Notarial Seal
Marlene Emma Ernst, Notary Public
Ontelaunee Twp., Berks County
My Commission Expires May 3, 2004
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this 9th day of July, A.D., 200³, before me, a notary public, the designed officer, personally appeared William J. Peltz, who acknowledged himself to be the Chairman, of TOWNSHIP OF BERN, and that he as such Chairman being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chairman.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Diane M. DeJesus

NOTARIAL SEAL
Diane M. DeJesus, Notary Public
Bern Twp., Berks County
My Commission Expires 8-7-2005

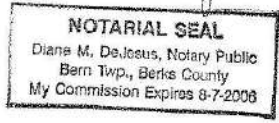
INTERGOVERNMENTAL COOPERATION AGREEMENTS

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF BERKS :

On this 14th day of June, A.D., 2008³, before me, a notary public, the designated officer, personally appeared Robert H. Bussel, who acknowledged himself to be the Chairman, of BERN TOWNSHIP MUNICIPAL AUTHORITY, and that he as such Chairman being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chairman.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Diane M. DeJesus



02/28/03 09:14 610 6212000

SSM

002/002

EXHIBIT "E"

LEESPORT BOROUGH AUTHORITY
WASTEWATER TREATMENT PLANT EXPANSION PROJECT
UPDATE of FLOW ALLOCATIONS and ESTIMATE of COST SHARING

1. CRITERIA:

Proposed Plant Capacity (gpd)	500,000 gpd	
Allocation of flow (gpd)		
	Bern Township	38,050 gpd
	Borough of Leesport	250,000 gpd
	Ontelaunee Twp.	211,950 gpd
	TOTAL	500,000 gpd
		7.61%
		50.00%
		42.39%
		100.0%

Costs to Pro-rate:

a) Project Cost	\$ 4,820,355
b) Initial Maintenance Reserve	\$ 50,000
c) Share of Existing Facilities	\$ 200 per EDU

2. SHARING OF COSTS:

	Bern Township	Borough of Leesport	Ontelaunee Township	Totals
Percentage share of Expansion	7.6%	50.0%	42.4%	100.0%
Equivalent EDUs (at 350 gpd/EDU)	109	714	606	1,429
Share of Project Cost	\$ 368,829	\$ 2,410,178	\$ 2,043,349	\$ 4,820,355
Share of Maintenance Reserve	\$ 3,805	\$ 25,000	\$ 21,195	\$ 50,000
Share of Existing Facilities (@\$200/EDU)	\$ 21,743	N/A	\$ 121,114	\$ 142,857
TOTAL "ESTIMATED" SHARE	\$ 392,377	\$ 2,435,178	\$ 2,185,652	\$ 5,013,212

Notes:

- Costs subject to change as project develops.
- Any additional costs/refunds are reconciled at completion of construction.
- Revision 14 dated 9/6/02 include:
 - Update costs based on receipt of bids, and expenditures to date
 - Add Bern Township to project
 - Revise cost sharing formula - costs shared based on flow allocation to each municipality

INTERGOVERNMENTAL COOPERATION AGREEMENTS

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RECEIVED

OCT 31 2001

SPOTTS, STEVENS & MCCOY

AGREEMENT

THIS AGREEMENT, made this 6th day of April, A.D., 2000, by and

between:

LEESPORT BOROUGH AUTHORITY, a Pennsylvania Municipality Authority, whose office is located in the Borough of Leesport, Berks County, Pennsylvania, hereinafter referred to as "LEESPORT";

A N D

TOWNSHIP OF ONTELAUNEE, a Pennsylvania Township of the Second Class, whose office is located in the Township of Ontelaunee, Berks County, Pennsylvania, and ONTELAUNEE TOWNSHIP AUTHORITY, a Pennsylvania Municipality Authority, whose office is located in the Township of Ontelaunee, Berks County, Pennsylvania, both entities from the Township of Ontelaunee hereinafter shall be referred to collectively as "ONTELAUNEE".

W I T N E S S E T H :

WHEREAS, the Updates to Act 537 Sewage Facilities Plan for Ontelaunee and Bern Township, respectively, provide for a sewer collection system within parts of the Township and the "Leesport" Act 537 Sewage Facilities Plan provides for the expansion of the existing "Leesport" waste treatment facility to accept the sewage flows from both Townships and "Leesport" and "Ontelaunee," have accepted and adopted the recommendations of the Act 537 Plan Update; and

WHEREAS, "Leesport" has constructed a sewage collection and treatment system to serve the area within the confines of the Borough of Leesport, in accordance with plans and specifications prepared by Spotts, Stevens & McCoy, Inc.; and

WHEREAS, "Ontelaunee" plans to proceed with the construction of a sewage collection system in the built-up areas of the Township abutting the Borough of

Leesport and wishes to discharge such sewage into "Leesport's" sewers for conveyance to and treatment at the "Leesport" treatment plant and to provide at this time for future expanded use of the treatment plant (A map which shows the service area of "Leesport," "Bern Township," and "Ontelaunee" is attached herewith and marked Exhibit "A"); and

WHEREAS, "Leesport" is willing to provide treatment for "Ontelaunee's" sewage in its treatment plant and is further willing to expand and upgrade its treatment plant to serve primarily "Ontelaunee" and "Leesport" with any unallocated space available for use by any person; and

WHEREAS, the parties hereto deem it advisable and to their mutual advantage to use jointly the existing "Leesport" sewers, and the expanded and upgraded "Leesport" treatment plant which expansion and upgrading will be performed by "Leesport" with construction completion scheduled for approximately 35 - 42 months after submission of "Leesport's" revised Act 537 Plan to the Pennsylvania Department of Environmental Protection for approval.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1.

Use of Facilities

1.1 Subject to the terms of this Agreement, "Leesport" agrees that "Ontelaunee" has the right to discharge sewage, of a volume within the capacity reserved, from collection sewers to be constructed within the "Township" to the existing "Leesport" waste treatment plant. All connections to "Leesport's" system shall be made in accordance with "Leesport" standards under the supervision and subject to inspection by "Leesport" or its representatives. All costs of connection by "Ontelaunee" to the "Leesport" system including the costs

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of supervision and inspection by "Leesport" shall be paid by "Ontelaunee." Flow of Sewage into the "Leesport" system shall not commence until "Leesport" determines the Expanded Plant is ready for it. "Leesport" agrees to convey, treat, and dispose of the same in a manner approved by the EPA and DEP and the terms and conditions of this Agreement. Without the prior agreement of "Leesport," sewage from collection systems of any areas other than those above mentioned may not be so discharged by "Ontelaunee," and "Leesport" shall not be obligated to receive or treat sewage from any other areas. "Leesport" shall have the right by agreement with other municipalities to collect, receive and treat sewage, provided "Leesport's" reserve capacity is not thereby exceeded, and any such sewage shall be considered as sewage of "Leesport" for all purposes of this Agreement. With respect to the expanded and upgraded treatment plant capacity, "Leesport" shall reserve for "Ontelaunee" the number of gallons per day set forth in Section 1 of Exhibit "E" attached hereto and made a part hereof by reference thereto.

1.2 (a) "Leesport" agrees to notify "Ontelaunee," as applicable, in writing, the first time the average daily flow (as defined in Section 2.2 hereof) of sewage waste from "Ontelaunee" sewage collection system reaches ninety percent (90%) of its reserved capacity.

(b) After receipt of written notice in accordance with paragraph (a) above, "Ontelaunee," shall not permit the connection of any additional units to its sewage collection system without the prior written consent of "Leesport," which consent shall not be withheld unless, in the opinion of "Leesport's" Consulting Engineers, such connection may have the effect of causing "Ontelaunee" to exceed its reserved capacity.

(c) "Leesport" agrees to notify "Ontelaunee," as applicable,

in writing, the first time the flow of sewage waste from the Township's sewage collection system reaches one hundred percent (100%) of its reserved capacity.

(d) After receipt of written notice in accordance with paragraph (c) above, "Ontelaunee" shall, in no event, (i) permit additional connections to its sewage collection and treatment system and (ii) undertake an infiltration and inflow study and take any and all necessary remedial action.

(e) If, at any time, the flow of sewage waste from "Ontelaunee's," sewage collection system exceeds its reserved capacity, "Leesport," to the extent permitted by law may pursue any one or more of the following remedies:

*to
remedial*

(i) Impose fines and penalties, as follows: when the average of the measured (or calculated, as herein provided) actual sewage flow from "Ontelaunee's" system exceeds its reserved capacity in the treatment plant for a period of three (3) consecutive months, "Leesport" shall give "Ontelaunee," written notice to terminate such excess flow within the succeeding three (3) month period. If "Ontelaunee" shall fail to terminate such excess discharge within the succeeding three (3) month period, it shall pay to "Leesport" a penalty of twenty-five (25%) of the charges imposed pursuant to Section 4 hereof, in addition to the normal treatment charges, plus any fines levied by DEP or other governmental agency due to such excess discharge, for each day from the notification date until such time as the average daily flow is reduced below the level of said reserved capacity. If such excess discharge continues for more than six (6) months from said notice, the twenty-five percent (25%) penalty shall be increased to fifty percent (50%) for

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each day after such sixth month:

(ii) Require "Ontelaunee," as applicable, to purchase reserved capacity (on terms and conditions set by "Leesport") from any party, provided that party has additional capacity in the treatment plant (giving full regard to the aggregate reserved capacity of all users of the treatment plant) or any such contract user which has excess reserved capacity and desires to sell the same;

(iii) Pursue an injunction or any other equitable remedy in any court or agency of competent jurisdiction;

(iv) Pursue damages or any other legal remedy in a court of competent jurisdiction; or

(v) Pursue any other remedy or administrative order available at law, in equity, or administrative proceeding or otherwise.

(f) Each party hereby agrees to defend, indemnify and hold the other parties harmless from and against all losses, damages, suits, actions, fines or penalties, of any nature or kind resulting, directly or indirectly, from the indemnifying party's exceeding of its reserved capacity.

*5
competency
mt*

1.3 Once a service connection has been made which results in the sewage from a particular system being delivered to the treatment plant for final disposition, a party shall not thereafter divert the sewage from the system to a different treatment facility without the consent of the other unless such party is otherwise using the treatment plant up to a minimum of eighty-five percent (85%) of its reserve capacity. No refund of any capital contribution shall be given to a party electing to divert sewage under this provision. The parties

shall use the treatment plant to treat any sewage which, by good engineering practice, can be delivered to the treatment plant on a practical and economical basis or unless such delivery would result in a party exceeding its reserve capacity in the treatment plant as provided in Sections 1.1 and 1.2.

1.4 If, however, "Ontelaunee" constructs an additional collection system or systems in other areas not contemplated to be included in this Agreement at the time of this Agreement, "Ontelaunee" may divert the sewage from the additional collection system or systems to another treatment facility without first obtaining the consent of "Leesport," provided good engineering practice and economic feasibility so dictate.

1.5 The treatment plant is designed for the efficient processing of sanitary sewage. Toxic substances which either party shall determine to be injurious to the treatment plant or detrimental to its operation or otherwise dangerous to health or to the public interest, and storm water, roof, underground or surface drainage, shall not be discharged into any interceptor sewers in any form, shape, or manner. The parties shall not permit the discharge of any of the prohibited wastes of waters listed in Exhibit "B" herein. The parties agree to require pretreatment of industrial wastes discharged into their respective sewer systems in order to prevent discharges deemed harmful or to have a deleterious effect upon the sewage treatment process at the treatment plant. "Leesport" shall cooperate and assist "Ontelaunee" in obtaining of samples upon the request of "Ontelaunee." Only persons designated by "Leesport" shall collect the samples. "Ontelaunee" shall cooperate and assist "Leesport" in the obtaining of samples upon the request of "Leesport." Nothing in this paragraph shall prevent a user from collecting samples of its own waste.

INTERGOVERNMENTAL COOPERATION AGREEMENTS

SECTION 2.

Design and

Construction of Initial Facilities

and Future Enlargements

2.1 "Leesport" has constructed a treatment plant in accordance with the plans and specifications of Spotts, Stevens & McCoy, Inc., which treatment plant has been in operation since 1972. The treatment plant facilities so constructed are herein referred to as "the Stage I facilities."

SP, SVSD
2.11 The existing wastewater treatment plant is capable of treating 200,000 gallons per day all of which is allocated to "Leesport" but of which some is used by improved properties in Ontelaunee Township which, upon completion of the Stage II facilities shall become part of the allocation of "Ontelaunee" thereby increasing "Leesport's" unused allocation. Transfer referred to above includes all facilities located totally in Ontelaunee Township south of the Borough of Leesport. Other areas shall be the subject of a separate agreement.

2.12 The existing wastewater treatment plant shall be enlarged to a capacity of 500,000 gallons per day thereby increasing capacity by 300,000 gallons per day, together with an incidental upgrade as set forth in the "Leesport" Act 537 Plan.

2.2 It is contemplated that the Stage I facilities will not have adequate capacity to serve the entire wastewater flow from "Ontelaunee" when all existing residences and other establishments in "Ontelaunee" in the service areas as shown on Exhibit "A" are connected to the "Leesport" sewer system. An enlargement of the treatment plant will be required to treat the additional flow and to provide for future growth in "Ontelaunee." The actual average daily flow of a party, used to determine compliance with the allocation of reserve capacity,

is determined by dividing the total flow recorded in three (3) consecutive months (or other period as subsequently defined by DEP) by the number of days in that period. "Leesport" and "Ontelaunee" shall take such steps as may be necessary to arrange the necessary financing and have available the necessary funds to pay the costs thereof as provided in Section 3.3; and the parties shall use their best efforts to cause such steps to be completed so that construction of such additional facilities can begin without unnecessary delay. The expansion and upgrading contemplated in this paragraph are herein referred to as "the Stage II facilities."

2.31 Project costs of construction of Stage II facilities shall include expenses of a Consulting Engineer to design the expanded and upgraded wastewater treatment plant, submission for approval by DEP, redesign of plant, if necessary, preparation of bidding documents and advertisement thereof, receipt and review of bids, award of contracts and review of contract documents, construction, employment of Consulting Engineer to oversee construction, to inspect construction, to make a final review of construction, to prepare and submit reports of progress, preparation of application for grants where grant is shared proportionately, legal services, permit fees, submissions to other regulatory agencies, and any other cost or expense normally and customarily associated with the construction of an enlarged and upgraded wastewater treatment plant.

The parties also agree that upon completion of the Stage II facilities the reserved hydraulic capacity having an organic strength not exceeding typical domestic waste for each party shall be as set forth opposite the respective names of the municipalities in Section 1 of Exhibit "E" attached hereto and made a part hereof by reference thereto. These allocations of reserve

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capacity are not absolute in that changes in the criteria determining discharge of treated sewage by the Plant or the definition of standard strength sewage by DEP or other regulatory agencies may result in a lesser allocation. Furthermore there may be a temporary delay in a party's ability to use the capacity due to events beyond the control of "Leesport" such as flooding of the Plant or a party exceeding its reserved capacity prior to corrective action being taken.

2.32 The parties agree that "Leesport" shall authorize its Consulting Engineers to design the expansion and upgrade of the "Leesport" treatment plant based upon the proposed facilities set forth in the Act 537 Plan of "Leesport" as approved by the parties and have it submitted for approval by DEP.

The parties agree that "Leesport" shall not proceed with the design phase of the expansion and upgrade until all parties shall have contributed their share of expenses to the project fund maintained by "Leesport" for payment of costs for this project in accord with the schedule set forth in paragraph 3.3 hereof.

The parties agree that "Leesport" shall be authorized to use monies from the fund to pay the costs of the design and submission to DEP.

2.33. Upon approval of the design for the enlargement and upgrade of the treatment plant, "Leesport" shall notify the parties hereto in writing sending a copy of the approved plans to each party.

2.34.1 Upon approval of the aforesaid design by regulatory agencies, "Leesport" shall prepare the documents for receiving bids, advertise for bids, and receive the bids notifying all parties in writing of the date bids will be received and sending copies of the bid documents to all parties.

2.34.2 "Leesport" shall not be authorized to proceed with the

bidding process until all the funds required by paragraph 3.3 hereof have been deposited in the project fund by all parties.

2.35 Upon receipt of bids, "Leesport" shall review the bids with a view to awarding the contracts within the time period specified. Copies of the actual lowest bids on each contract shall be supplied to "Ontalaunee" Consulting Engineers upon request and a synopsis of all bids shall be supplied to the parties.

Upon review and comment by "Leesport's" Consulting Engineer, "Leesport" shall determine whether the contracts for construction of the expanded and upgraded treatment plant shall be awarded and to whom.

2.36 "Leesport" shall not award said contracts until all funds required by paragraph 3.3 hereof shall have been deposited in the construction account or arrangements made with Leesport for an automatic draw for Leesport from a line of credit executed by a bank, subject to approval of Leesport.

2.38 All parties acknowledge that the bid prices received by Leesport are not necessarily the final construction costs of the project. Changes may be made to the construction contracts during the course of construction and certain quantities may be exceeded in the contracts. The parties agree to pay their share of the costs exceeding the estimate within ninety (90) days of notice thereof in accordance with Section 3.3 hereof.

2.37 "Leesport" shall award the contracts and monitor the construction of the project paying on account of work completed and materials delivered in accordance with the terms of the construction contract until completion of construction.

2.4 In the event that further enlargement of the treatment plant after construction of Stage II is required, no party shall be under any obligation to

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reserve any capacity therein not needed by it. The parties agree that if any party requires additional reserve capacity, the party requiring the additional reserve capacity will provide the funds to cover the cost of a further enlargement and "Leesport" will construct the same provided there is room at the "Leesport" facility for such enlargement; the party paying for the enlargement shall have the additional reserve capacity reserved for its own use. As provided in Section 3.4, if all parties wish to reserve additional capacity in an enlargement of the plant after the construction of Stage II, the cost thereof shall be contributed jointly by the parties in the proportion in which they are reserving additional capacity.

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2.5 After the completion of Stage II, whenever a project shall be undertaken involving any alterations, repairs, renewals, replacements or improvements to the treatment plant, the cost of which is estimated to exceed Twenty Thousand (20,000.00) Dollars, before such work is undertaken and contracts let, each party shall deposit its share of such cost in a common fund to be titled Special Construction Fund. Any federal or other governmental grant, any insurance proceeds, or other funds applicable to such construction shall also be deposited therein. Payment shall be made from any such construction fund by "Leesport" only upon requisitions approved by the Consulting Engineer and "Leesport" Solicitor, substantially in the form of the requisitions required pursuant to "Leesport" procedure. Copies of all such requisitions shall be delivered to all parties. The balance from time to time in any such construction fund may be invested in the same manner as investments under law or as the parties may approve. Any balance remaining upon completion of the project, including unexpended interest during construction shall be returned to the parties in the proportions contributed or transferred to the maintenance reserve

fund to be maintained by "Leesport" under Section 2.6.

2.6 Any alterations, repairs, renewals, replacements or improvements to the treatment plant costing less than Twenty Thousand (\$20,000.00) Dollars, for the purpose of this Agreement shall be treated as operating expense as set forth in Paragraph 4.2 of this Agreement.

"Leesport" shall cause a maintenance reserve fund of Twenty Thousand Dollars (\$20,000.00) to be established for said alterations, repairs and replacements, payments to which shall be made as a capital contribution by the parties in accordance with Section 3.3. After the initial funding, replenishment of the fund shall be treated as operating expenses.

SECTION 3.

Sharing Capital Expense

3.1 Basic Principle: The basic principle on which "Leesport" and "Ontelaunee" shall share capital costs of the Stage II expansion treatment plant facilities as set forth in Table 13 of "Leesport's" Act 537 Plan, a copy of which is attached hereto marked Exhibit C and made a part hereof.

3.2 The parties agree that the expanded and upgraded "Leesport" treatment plant (both Stage I and Stage II combined) will be designed for flows allocated as follows and that capacity is reserved for the parties subject to the limitations set forth in Section 2.31 hereof as set forth opposite each respective municipality's name in Section 1 of Exhibit "E" attached hereto and made a part hereof by reference thereto.

3.25 "Ontelaunee" agrees that they shall make a payment to "Leesport" for use of the Stage I facilities constructed by "Leesport" which payment shall consist of Fifty-Seven Thousand Two Hundred Dollars (\$57,200.00) based upon Two Hundred Dollars (\$200.00) per EDU to be paid as part of the

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Capital Contribution set forth in Section 3.3.

3.3 The parties further agree that in consideration of the construction by "Leesport" of the facilities contemplated by Stage II, "Ontelaunee" will make a capital contribution to "Leesport," which capital contribution will be calculated in the following manner:

- (a) The Consulting Engineers for "Leesport," shall determine the capital cost of the facilities contemplated by Stage II for expansion and upgrade of the Plant.
- (b) Each party's share of the capital costs of the expansion facilities contemplated by Stage II shall be determined by the ratio set forth under the names of each respective municipality in Section 2 of Exhibit "E" attached hereto and made a part hereof by reference thereto.
- (c) Each party's share of the capital cost of the upgrade facilities contemplated by Stage II shall be determined by the ratio set forth under the names of each respective municipality in Section 2 of Exhibit "E" attached hereto and made a part hereof by reference thereto.
- (d) "Ontelaunee's" contribution toward the construction of the Stage II facilities, shall be determined as in (b) and (c) above; provided, however, that such capital contribution shall be subject to adjustment, as appropriate, as hereinafter provided.

The capital contributions to be made by "Ontelaunee" to "Leesport" under this Paragraph 3.3 shall be payable in installments, subject to final adjustment, as hereinafter provided.

All installment payments are a percentage of the project costs of the

expansion and upgrade of the treatment plant. The initial payments shall be based upon costs of project development/administration and estimated costs of the contracts of construction. Upon receipt of bids and award of contracts, the percentage installment shall be calculated on the actual costs as reflected in all contracts and adjusted as such to meet the actual costs of the project as reflected in the construction contracts.

Payment schedule is:

A. One percent (1%) of project cost due upon the execution of this Agreement and/or the submission of the "Leesport" Act 537 Plan to DEP whichever occurs first;

B. Twenty-five percent (25%) of project cost due at beginning of design of Stage II facilities.

C. Four percent (4%) of project cost due at time of preparation of bid documents.

D. Seventy percent (70%) of project cost due thirty-one (31) days after receipt of bids by "Leesport." Payment of "Ontelaunee's" capital contribution for use of the Stage I facilities as established in Section 3.25 hereof shall be due and payable at the time set forth herein for the Stage II facilities project.

The actual date the capital contributions shall become due in items B, C and D, shall be determined by the time shown in the estimated payment schedule set forth in the "Leesport" Act 537 Plan, as adjusted by actual events.

"Leesport" shall send to each party a statement of its calculated share to be paid at each time of payment. Construction shall not begin until all obligations of the parties are paid in full. Any penalties, costs, expenses, or increased costs, incurred by "Leesport" due to late payment of funds by any party

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hereto shall be the responsibility of the party making the late payment who shall reimburse "Leesport" therefore.

The parties agree that the capital contribution to be made by "Ontelaunee" attributable to Stage II facilities, shall be subject to final adjustment within thirty (30) days after receipt by the parties of a certificate of "Leesport" Consulting Engineers certifying that the Stage II facilities are complete, all capital costs can be ascertained and, if applicable, that final settlement has been made by "Leesport" with respect to any grant received by "Leesport" for application for and toward payments of a portion of the costs and expenses of construction of Stage II facilities. Such adjustment shall be made by recomputing, in accordance with the principles set forth in this Section, the amount of the capital contribution attributable to the Stage II facilities using actual capital costs as certified by "Leesport" Consulting Engineers. "Ontelaunee" within ninety (90) days after final adjustment, shall make the appropriate payment of the balance of the capital contributions due to "Leesport" or, if appropriate, "Leesport," within forty-five (45) days after final adjustment, shall make the appropriate refund of any overpayment of the capital contributions made by "Ontelaunee."

3.4 Extraordinary Repairs, Renewals, etc.: The cost of making ordinary alterations, repairs, renewals, replacements and improvements to the treatment plant of such nature that they are properly chargeable as current expenses rather than capital costs under generally accepted accounting principles, shall be paid by "Leesport" as provided in Section 4, and shared by the parties as therein provided. Extraordinary alterations, repairs, renewals, replacements and improvements which, under generally accepted accounting principles, are classed as capital assets, shall be paid by "Leesport" and shall be reimbursed by

"Ontelaunee" to the extent of their proportionate share of the cost thereof, based upon their then proportionate share of reserve capacity, provided that if the amount of cost involved is in excess of Twenty Thousand Dollars (\$20,000.00) Dollars, each party shall deposit such proportionate share thereof in the "special construction fund" as provided in Section 2.5. If, however, there had been damage to the treatment plant caused by the discharge of prohibited sewage or industrial wastes by any party, the costs of repairs shall be met wholly by such party; provided that pending recovery of the cost of repairs from the party causing the damage, the repairs shall be made to be paid in accordance with the preceding sentences of this section. Upon recovery from the culpable party, the other parties shall be reimbursed for their contributions.

Any extraordinary repairs as set forth herein to be made to the portion of the Wastewater Treatment Plant which was the subject of the expansion and upgrade within one (1) year of the completion of the project shall be made under the contractors one (1) year warranty and not from the funds held by Leesport by virtue of this provision.

3.5 Due to the fact that "Ontelaunee" is establishing a sanitary sewage collection system for the first time and has no current source of funding, Ontelaunee Township join in this Agreement for the purpose of lending its credit and its power to tax to its Authority in order to assure "Leesport" that the capital contributions to be made by "Ontelaunee" will be paid which the said Township agrees to undertake.

SECTION 4.

Sharing Net Operating Costs

4.1 Basic Principle: The basic principle on which the parties hereto shall share Net Operating Costs for each fiscal year shall be in proportion to

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the respective volume of sewage discharge by each into the treatment system in such fiscal year on a gallonage basis; provided, however, that certain of the Net Operating Costs hereinafter designated as Fixed Operating Costs shall be allocated for payment based upon each party's allocation of reserved capacity in the treatment plant.

4.2 Determination of Net Operating Costs: The term "Net Operating Costs" shall mean all of "Leesport's" expenses required in operating and maintaining the treatment plant, including, without limitation, expenses of operation, maintenance, insurance, inspection and repair of the treatment plant and expenses of making all ordinary alterations, renewals, repairs, replacements and improvements to the treatment plant as may be necessary to maintain adequate service, the expenses of the Consulting Engineer and the Certified Public Accountant incurred in making the reports and inspections hereinafter required and that portion of "Leesport's" administrative, legal, trustee, engineering and auditing expenses and all other items of general expense incurred by "Leesport" properly allowable to the treatment plant operation under generally accepted accounting principles. There shall be deducted, however, from such expenses:

- (a) Any grants or reimbursements received by either party from other federal, state or governmental agencies which are attributable to the treatment plant and have not been deducted in determining capital costs under Section 3.3; and
- (b) Based on the percentage of cost share for the upgraded/expanded wastewater treatment plant, "Ontelaunee" shall be credited with its proportioned share of the Act 339 2% operating subsidy received by "Leesport" for the Stage I and Stage II facilities.
- (c) The amount of any surcharge for industrial wastes determined

under Section 4.5.

4.3 Measuring Volume, Meters:

(a) For the purpose of determining and calculating the volume and/or character of sewage and wastes discharged into the treatment plant, the following methods shall be used:

(1) For the purpose of determining the volume of sewage and wastes collected from users within the areas served by "Ontelaunee" as applicable shall purchase and install, and offer ownership to "Leesport" which shall maintain and operate and replace, from time to time, recording meters located at the points of connection designated on the attached map, Exhibit "A", or to such other points as agreed to by parties to the sewer facilities of "Leesport." "Leesport" shall operate, maintain, repair, calibrate and replace such meters from time to time. Cost of maintenance, etc. shall be considered a normal operating expense attributable solely to "Ontelaunee."

(2) For the purpose of determining the characteristics of sewage or wastes as set forth under Section 4.4 or Section 4.5, "Ontelaunee" or "Leesport," as applicable, shall install, or cause to be installed a sampling manhole at the point of discharge from the property of any user capable of discharging sewage or wastes of unacceptable character or quality.

(3) In some cases, the volume of sewage being

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discharged at a particular point of connection may not be sufficient to warrant the cost of installing a meter. In such a case, "Leesport" may agree that "Ontelaunee" shall not be required to install a meter if provisions, satisfactory to "Leesport," are made for estimating the amount and character of sewage and wastes being discharged into the system. The amount will be determined on a per "equivalent dwelling unit" basis by dividing the average daily volume of metered wastewater by the average number of metered sewer "equivalent dwelling units."

(b) Meter records and access to meter installation shall be made available to any party hereto upon request therefor. The record of sewage flow through "Ontelaunee" meters will be read by "Leesport" and forwarded to "Ontelaunee" on or before the fifth day of the first month of each quarter showing the total and daily sewage flows discharged during the previous quarter.

(c) In the event of failure of the "Ontelaunee" sewage meter, repairs will be made as soon as practicable by "Leesport." In the case of missing flow records due to faulty meter registration or otherwise, an estimate of flows will be made for purposes of determining volume of sewage and wastes discharged. This estimate will be based on an evaluation of past flow records as applied to present conditions and as reviewed and approved by both parties. Certificates of sewage meter calibration will be obtained annually by meter owner from the meter manufacturers and copies of the

certificates will be sent to all other parties.

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(d) In the absence of meter reading during the early periods of low flows when the sewage recording meters may not accurately register flow, quantity shall be estimated on the basis of 3 persons per connected equivalent dwelling unit with a discharge rate of one hundred (100) gallons per capita per day.

4.4 Method of Payment: "Ontelaunee" shall reimburse "Leesport" for its proportionate share of Net Operating Costs during each fiscal year ending December 31, beginning with the year in which "Ontelaunee" first discharges sewage into the treatment plant, by equal quarterly installments on January 1, April 1, July 1 and October 1 of each year based on an estimate of "Ontelaunee's" proportionate share. Such estimate, which shall be submitted to the parties on or before December 1 of each year, shall be prepared by the Consulting Engineer based upon the budget for the operation of the treatment plant for the ensuing fiscal year, each party's allocated reserved capacity and volume of sewage and industrial wastes which each party estimates it will discharge into the treatment plant in such year, (which estimates shall be submitted to "Leesport" on or before October 15). On or before June 1 following the end of each fiscal year, "Leesport" shall furnish a report of the Certified Public Accountant showing, in reasonable detail, the determination of the Net Operating Costs for the fiscal year ended, the volume of sewage discharged by each, and the proper apportionment of such costs between "Ontelaunee" and "Leesport." If such report shall show an overpayment by "Ontelaunee" on the basis of its quarterly installments, "Ontelaunee" shall receive a credit against future quarterly installment payments. If such report shall show an underpayment by "Ontelaunee," the amount thereunder shall be paid to "Leesport" within sixty (60) days after receipt of

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such report by "Ontelaunee."

4.45 Costs of operation, etc. shall be divided into two (2) classifications, fixed costs and variable costs. Fixed costs shall be paid pursuant to the percentages of allocated reserve capacity of the parties in the expanded Plant. Said calculation shall be made without considering the unallocated and unreserved capacity of the expanded plant. Variable costs shall be paid pursuant to the percentage of use of the Plant by the parties as set forth in Section 4.4.

Fixed costs shall consist of salaries, administration, accounting and legal, engineer, insurances, employer taxes, employee benefits, and fifty percent (50%) of the estimated repair and maintenance budget. Variable costs shall consist of all other costs.

4.5 Admission of Industrial Wastes into the Sewer System:

(a) Treatment of Industrial Wastes: The economy and desirability of the combined treatment of industrial wastes and domestic waste is recognized. However, not all types and quantities can be so treated. Hence, it shall be the established policy of the parties to accept those types and quantities that are not harmful or damaging to the structures, processes or operation of their sewer systems and/or sewage treatment plant or are not specifically prohibited by this Agreement. It is also recognized that to provide this service, additional expenditures are required. These expenditures must be borne by those parties receiving the benefits.

(b) Review Required for Industrial Wastes: The discharge into the sewer systems of industrial wastes having any one or more of the characteristics set forth in Exhibit "D" hereof, attached hereto and

made a part hereof, shall be subject to prior review by the parties. These characteristics may change from time to time depending upon the requirements of the regulatory parties having jurisdiction over the discharge from "Leesport's" Plant which characteristics shall be substituted for Exhibit "D" in this Agreement. Notice of such change shall be given to "Ontelaunee" which shall review the characteristics of its customers' discharge to determine if additional procedures are necessary for treatment of the discharge.

Prior to discharging said waste into the sewer system, or prior to continuing the discharge of said waste into the sewer system, the owner of the property from which such discharge is proposed to be made shall apply to the operator of the sewer system in which the industry is located in writing for a permit to make such a discharge.

Such application shall be made on Industrial Waste Permit Application forms furnished by the aforesaid operator. Said forms shall contain all pertinent data including, but not limited to, estimated or actual quantity of flow, character of waste, maximum rate of discharge and proposed pretreatment facilities, together with any plans, specifications or other information considered pertinent in the judgment of the aforesaid operator.

The Industrial Waste Permit Application forms shall be completely filled out and returned to the aforesaid operator for review and approval. Only upon approval of the aforesaid operator and "Leesport," if it is not the initial operator, will an Industrial Waste Permit be issued and the discharge be allowed.

Where necessary, in the opinion of the aforesaid operator or "Leesport," the property owner shall provide, at his expense, a survey analysis and report by a Registered Professional Engineer acceptable to the aforesaid operator and

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"Leesport."

(c) Preliminary Treatment and Handling of Industrial Wastes:

Whenever necessary, in the opinion of the operator and "Leesport," the owner of an improved property shall provide, at his expense, such facilities for preliminary treatment and handling of industrial wastes as may be necessary to:

- (1) Reduce B.O.D. to 250 mg/L, suspended solids to 250 mg/L; or meet the requirements for domestic waste able to be treated at the "Leesport" Plant; or
- (2) Reduce objectionable characteristics or constituents to come within the maximum limits permitted in this Agreement; or
- (3) Control the quantities and rates of discharge over a 24 hour day and 7 day week.

Plans, specifications, and any other pertinent information relating to proposed facilities for preliminary treatment and handling of industrial wastes shall be submitted for approval to the aforesaid operator and "Leesport," and no construction of any such facility shall be commenced until approval thereof first shall have been obtained, in writing, from the aforesaid operator and "Leesport" and until approval thereof first shall have been obtained from any governmental regulatory body having jurisdiction.

Whenever facilities for preliminary treatment and handling of industrial wastes shall have been provided by the owner of such improved property, such facilities shall be continuously maintained in satisfactory operating condition at the expense of such owner; and the aforesaid operator and "Leesport" shall have access to such facilities at reasonable times for purposes of inspection and

testing.

(d) Changes in Industrial Processes: Industrial Waste Permits shall remain in effect only so long as the type of waste remains unchanged. Any person discharging wastes covered by an Industrial Waste Permit, and who contemplates a change in the method of operation or other factors which will alter the type of waste then being discharged into the sewer system, shall apply for a new Industrial Waste Permit at least thirty (30) days prior to such a change.

(e) Harmful Discharges: The aforesaid operator and "Leesport" reserve the right to refuse permission to connect to the sewer system, to compel discontinuance of use of the sewer system or to compel pretreatment of industrial wastes in order to prevent discharges deemed harmful or to have a deleterious effect upon any portion of the sewer system or receiving stream.

4.5 Determination of Charges for Industrial Wastes:

(a) Additional Charges for Industrial Wastes: There shall be additional charges for industrial wastes having dissolved solids, suspended solids and/or BOD in excess of the average dissolved solids, suspended solids and BOD of normal domestic waste. Normal domestic waste shall be considered as having the following concentrations plus the concentration of dissolved solids in carriage water expressed in milligrams per liter:

- (1) BOD - 250 mg/L
- (2) Suspended solids - 250 mg/L
- (3) Ammonia Nitrogen 30 MG/L

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This definition of normal domestic waste may change from time to time depending upon the requirements of the regulatory agencies having jurisdiction over "Leesport's" discharge of effluent. In the event of a change, the new requirements shall be substituted for the present requirements as if they were present at the time of execution of this Agreement. Notice shall be given by "Leesport" to "Ontelaunee" which shall review their customers' discharge characteristics for possible required additional procedures for treatment.

(b) Surcharge Formula: In order to determine the additional charge for industrial wastes with strength greater than that of domestic waste, the following formula shall be used:

$$S_q = 0.00834 Q_i [(BOD_1 - 250) \$X + (SS_1 - 250) \$Y + (NH_3 - N - 30) \$Z]$$

Where:

S_q is the quarterly surcharge to be added to the normal sewer rent.
0.00834 is a constant to convert waste concentrations expressed in mg/L to thousands of pound of waste.

Q_i is the quarterly industrial waste flow expressed in million gallons.

BOD_1 , SS_1 and $NH_3 - N$ are the respective concentrations of BOD_1 , suspended solids and dissolved solids of the industrial waste expressed in mg/L.

200, 250 and 30 are constants which express the waste load concentrations in mg/L for equivalent domestic wastes.

$\$X$, $\$Y$ and $\$Z$ are actual treatment costs expressed in dollars that are

incurred per 1,000 pounds of BOD, suspended solids, and dissolved solids, respectively, as determined by the Consulting Engineer for "Leesport" on a yearly basis and as approved by "Leesport."

When a value of BOD, suspended solids, and/or ammonia nitrogen is less than the maximum allowable concentration set forth in the Industrial Waste Surcharge Formula, then the maximum allowable concentration shall be used in the calculation of the Industrial Waste Surcharge.

(c) Additional Surcharges: The formula specified in 4.6, (b) of this Agreement is to determine additional charges or surcharges for the treatment of industrial wastes having concentrations of BOD, suspended solids, and/or ammonia nitrogen, in excess of those of domestic waste. It is, however, recognized that the discharge of any waste or other matter which contains any one or more of the prohibited substances listed in Section 6 of this Agreement may result in extraordinary laboratory, labor, maintenance, and/or treatment expenses to the parties.

4.6 "Ontalaunee" shall calculate the surcharge, submit the charge to the industrial waste customer, collect the same and pay the amount to "Leesport."

SECTION 5.

Covenants

5.1 Covenants of Both Parties: "Leesport" and "Ontalaunee" covenant and agree with the other that each will at all times:

(a) Maintain its sewer in good repair, working order, and condition, continuously operate the same; and from time to time make

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all necessary repairs, renewals, and replacements thereof and all improvements thereto in order to maintain adequate service;

(b) Comply with all present and future laws, rules, regulations, permits, orders and requirements lawfully made by the Pennsylvania Department of Environmental Protection, the United States Environmental Protection Agency, and any other state or federal governmental body having jurisdiction;

(c) Make available at all reasonable times to the other parties or their agents, servants, employees, and representatives access to all records insofar as the same relate to matters covered in this Agreement. Each party also agrees that the other parties, their agents, servants, employees and representatives shall have access to the physical facilities of the other parties hereto at reasonable times in order to assure compliance with the terms and provisions of this Agreement.

(d) Enact and keep in full force and effect, ordinances, resolutions, rules and regulations, as appropriate, prohibiting anyone from discharging into the sewer system any substances prohibited under the provisions of Section 1.5, and among other things, requiring that all persons discharging industrial wastes into the sewer system shall notify "Leesport" or "Ontelaunee," as applicable, within ten (10) days whenever they change methods of operation so as to alter the type of waste previously discharged in order that the new waste may be sampled as to whether or not it meets the provisions of this Agreement.

5.2 Covenants of "Leesport": In addition to its covenants under Section

5.1, "Leesport" covenants and agrees with "Ontelaunee" that it will at all times:

(a) Operate and maintain the treatment plant and make such alterations, repairs, replacements and renewals and improvements thereto and to the equipment and facilities therein as may be necessary to keep the treatment plant in first class repair and efficient operating condition and to meet the standards prescribed by the Pennsylvania Department of Environmental Protection, United States Environmental Protection Agency, and any other state or federal governmental authority having jurisdiction thereof.

Operation of the plant shall be under the supervision of a sewage plant operator certified by the Commonwealth of Pennsylvania.

(b) At all times during the term of this Agreement, for the purpose of performing and carrying out the duties imposed upon the Consulting Engineer by this Agreement, employ as Consulting Engineer, an independent agency or firm or an independent Professional Engineer having a favorable reputation for skill and experience in the construction and operation of sewer system and registered in the Commonwealth of Pennsylvania. The Consulting Engineer shall make and file annually with "Leesport" and with "Ontelaunee" a written report upon the treatment plant and the operation thereof during the prior fiscal year setting forth its recommendations for the ensuing year upon dates as set forth in paragraph 4.4 and a budget showing estimated costs of operation for the ensuing year. Until notice to the contrary, the Consulting Engineer shall be Spotts, Stevens and McCoy, Reading, Pennsylvania.

(c) Maintain proper books of account and records relating to the

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operation of the treatment plant and employ an independent Certified Public Accountant or firm of accountants registered in the Commonwealth of Pennsylvania to perform the functions and duties required by this Agreement. Such accountant(s) will furnish to "Leesport" and to "Ontelaunee," not greater than one hundred eighty (180) days after the close of each fiscal year, a statement and a report showing the Net Operating Costs of the treatment plant and the proper allocation thereof between the parties and any capital costs incurred and the proper sharing of those costs.

(d) Comply with the requirements of "Leesport's" loan relating to maintenance of insurance on the treatment plant and the application of the proceeds therefrom in the event of any loss or damage to the treatment plant.

5.3 "Ontelaunee" covenants and agrees with "Leesport" that "Ontelaunee" will at all times:

(a) Charge to its customers sewer rates and charges which will be ample to insure at all times receipt of revenues sufficient, together with other funds available, to make all payments required to be made by it hereunder pursuant to Sections 3.3, 3.5, 4.4, 4.6 and 7, and in the event it shall pledge its revenues from such rates and charges under any trust indenture, that under the provisions of such indenture the payments to be made by "Ontelaunee," as applicable, under Sections 3.3, 3.5, 4.4, 4.6, and 7 hereof, will be treated as operating expenses and shall take priority over debt service on the bonds being secured by such pledge.

(b) Enact and enforce and cause the municipalities in which it is

providing sewer service to enact and enforce ordinances, resolutions, rules, regulations and permits governing sewer connections and the admission of sewage into the sewers, which ordinances, resolutions, rules, regulations and permits shall be at least as stringent as existing ordinances, rules, regulations and permits of "Leesport," and enact and enforce additional ordinances, resolutions, rules, regulations and permits conforming with future ordinances, rules regulations and permits adopted by "Leesport" and such municipalities to govern the admission of sewage into the "Leesport" treatment plant. A copy of all ordinances, resolutions, rules, regulations and permits in triplicate and prints of all plans of completed sewers shall be submitted by "Ontelaunee" to "Leesport" within ninety (90) days after enactment of the ordinance and completion of plans.

SECTION 6.

Definitions

6.1 The following terms, whenever used or referred to in this Agreement, shall have the following respective meanings unless a different meaning clearly appears from the context:

- (a) "Treatment Plant" means the "Leesport" treatment plant and related facilities, including pumping station, together with any additions, modifications and/or improvements.
- (b) "Sewage" refers to all substances discharged into the treatment plant including any and all wastes from residences, business buildings, institutions, and industrial establishments.
- (c) "Sanitary Sewage" means normal water-carried household and

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toilet wastes from any improved property.

(d) "B.O.D." (Biochemical Oxygen Demand) shall mean the quantity of oxygen expressed in parts per million by weight, utilized in the biochemical oxidation of organic matter under standard laboratory procedure for five (5) days at 20° Centigrade. The standard laboratory procedure shall be that found in the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association, Inc.

(e) "Independent" when used in connection with the Consulting Engineer or the Certified Public Accountant, shall mean a person who is, in fact, independent. If any such person is an individual, he shall not be, and if any such person is a partnership or corporation; it shall not have a partner, director, officer or substantial stockholder who is a member of the board or an officer or employee of "Ontelaunee" or "Leesport," or an officer or employee or board member of any of the municipalities from which the sewage is being treated.

(f) "Leesport" Debt is the Sewer Revenue Debt financed by the First National Bank of Leesport or any other Revenue Debt financed by any financing institutions.

(g) "Fiscal Year" is the twelve (12) month period ending December 31.

(h) "Reserve Capacity" means that design sewage treatment capacity, as based on average daily flows, provided in the treatment plant and reserved by the parties hereunder.

(i) "Borough" shall mean the Borough of Leesport, Berks County.

Pennsylvania, a Pennsylvania municipal corporation, acting by and through its Council or, in appropriate cases, acting by and through its authorized representatives.

(j) "Ontelaunee Township" shall mean the Township of Ontelaunee, Berks County, Pennsylvania.

(k) "Color" of an industrial waste shall mean the color of the light transmitted by the water solution after removing the suspended material, including the pseudocolloidal particles. Color shall be measured in Platinum Cobalt Units (PtCo Units).

(l) "Chlorine Demand" shall mean the quantity of chlorine absorbed in water, sewage or other liquids, allowing a residual of 0.1 ppm, after 15 minutes of contact.

(m) "Dissolved Solids" shall mean the anhydrous residues of the dissolved constituents in water or wastewater.

(n) "Domestic Waste" shall mean the normal water-carried household and toilet wastes from residences, business buildings, institutions and industrial establishments.

(o) "Dwelling Unit" shall mean any room, group of rooms, house trailer or other enclosure occupied or intended for occupancy as a separate business or as separate living quarters by a family or other group of persons living together or by a person living alone.

(p) "Garbage" shall mean solid waste resulting from the domestic and commercial preparation, cooling and dispensing of food and from handling, storage and sale of produce.

(q) "Ground Garbage" shall mean garbage that has been shredded to such a degree that all its particles will be carried freely under

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normal sewer flow conditions, with no particle greater than one-half (1/2) inch in any dimension.

(r) "Ground Water" shall mean water which is standing in or passing through the ground.

(s) "Improved Property" shall mean any property within the "Borough" and "Township" upon which is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage and/or industrial wastes shall be or may be discharged.

(t) "Industrial Establishment" shall mean any improved property used, in whole or in part, for manufacturing, processing, cleaning, preparing, laundering or assembling any product, commodity or article including but not limited to food and/or drink, or from which any process waste, as distinct from domestic waste, shall be discharged.

(u) "Industrial Wastes" shall mean any liquid or gaseous substance, whether or not solids are contained therein, discharged from any establishment during the course of any industrial, manufacturing, trade, commercial or business process or in the course of the development, recovery, and/or processing of natural resources, as distinct from domestic waste.

(v) "Sewer System" shall mean all facilities, as of any particular time, for collecting, pumping, treating or disposing of domestic waste and/or industrial wastes.

(w) "Shall" is mandatory; "may" is permissive.

(x) "Storm water" shall mean that portion of the precipitation

which runs off over the surface during a storm and for a short period following a storm and enters the sewer system and causes the flow at the sewage treatment plant to exceed the normal or ordinary flow.

(y) "Surface Water" shall mean that portion of the precipitation which runs off over the surface of the ground.

(z) "Suspended Solids" shall mean solids that either float on the surface of or are in suspension in water, sewage or other liquids and which are removable by laboratory filtration.

(aa) "Total Solids" shall mean solids that either float on the surface of or are in suspension or dissolved in water, sewage or other liquids, and which are determined by appropriate procedures found in the latest edition of "Standard Methods for the Examination of Water and Wastewater" published by the American Public Health Association, Inc.

(bb) "Toxic Substance" shall mean any noxious and/or deleterious substance in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, to constitute a hazard to humans or animals, to create a public nuisance, or to create any hazard in any sewer system or in the receiving stream of the sewage treatment plant.

(cc) "Manhole" shall mean a shaft or chamber leading from the surface of the ground to a sewer; large enough to enable a man to gain access to the latter.

(dd) "Multiple Dwelling" shall mean any improved property in which shall be located more than one dwelling unit.

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(ee) "Owner" shall mean any person vested with ownership, legal or equitable, sole or partial, of any property located in either municipality.

(ff) "Person" shall mean individual, partnership, company, association, society, corporation or other group or entity.

(gg) "pH" shall mean the negative logarithm of the weight of hydrogen ions in grams per liter of solution, indicating the degree of acidity or alkalinity of a substance. A stabilized "pH" will be considered as a "pH" which does not change beyond the specific limits when the waste is subjected to aerations. It shall be determined by one of the accepted methods described in the latest edition of "Standard Methods for Examination of Water and Wastewater" published by the American Public Health Association, Inc.

(hh) "Sanitary Sewer" shall mean any pipe or conduit constituting a part of the sewer system, or usable for sewage collection purposes, which carries sewage and to which storm, surface and ground waters are not admitted.

(ii) "Equivalent Dwelling Unit" shall mean consumption equal to 300 gallons per day or use equal to 3 persons at 100 gallons per person per day.

(jj) "Costs" or "Project Costs" shall mean any costs properly chargeable to the capital account of any project or projects, including without limitation:

A. Obligations incurred and payments made or required to be made to workmen and laborers or to contractors, builders, suppliers

and materialmen;

B. Costs of acquiring by purchase or condemnation, including amounts of any award or final judgment in or of settlement or compromise of any condemnation proceedings of lands, rights of way, rights, licenses, easements and any other interests in real property as may be deemed necessary or convenient in connection with the Project or amounts of any damages incident to or consequent upon acquisition or construction; and payments for restoration of property damaged or destroyed in connection with construction;

C. Costs of acquiring property, real, personal and mixed, tangible or intangible, or any interest therein, deemed necessary or desirable for carrying out purposes relating to the Project, including, without intending to limit the generality of the foregoing, costs of acquiring any sewer system or other properties in place, or any undivided interest therein, which can be operated as part of the Project and all fees and expenses incidental thereto, including without intending to limit the generality of the foregoing, reasonable engineering and, legal fees, costs of abstracts of title insurance, title opinions, surveys and reports;

D. Costs of performance, payment or other contractor's bonds and premiums on insurance of any type deemed necessary during construction and costs of inspection and performance, maintenance or other type bonds required by any governmental regulatory authority related to construction of any part of the Project, to the extent that any of the foregoing shall not be required to be paid by contractors or otherwise provided for;

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E. Fees and expenses of engineers or architects for studies, tests, surveys, reports, maps, estimates of costs, revenues and other facts, preparation of plans and specifications and making preliminary investigations therefor, project representation, inspections and performance of all other duties of engineers or architects in connection with any acquisition or construction thereof;

F. Other costs, charges and expenses incident to completion of any improvement, alteration, extension or addition to the Project which properly are chargeable to the cost of acquisition or construction under sound accounting or engineering practice;

G. Reimbursement and/or credit to any party for advances made by it for any of the above items, including any interest paid or required to be paid by "Leesport" with respect to any such advances, or for any other costs incurred by "Leesport" or for work done by "Leesport" with respect to the Project which properly are chargeable as costs related to financing, acquisition or construction;

H. Amounts, if any, required to be repaid to any governmental agency upon completion of any construction on account of any overpayment of or adjustment of any grant extended in aid of such construction.

Whenever any "Costs" or "Project Costs" are incurred in connection with the Project and any future project relating thereto, the same shall be equitably apportioned between such project and the then existing plant on the basis of sound and acceptable engineering and/or accounting principles.

(kk) "Project" shall mean the undertaking by "Leesport" to expand

and upgrade its Treatment Plant which is the subject of this Agreement and upon completion thereof, "Ontelaunee" will have the contractual right to discharge sanitary sewage thereto.

SECTION 7.

Line Capacity

"Leesport" agrees that to the extent capacity remains available in its intercepting and collecting sewers, "Ontelaunee" may utilize the same in exchange for paying its equal share of the cost of maintenance and repair thereof which shall be included in the billing of operating costs of the plant. However, at such time as "Leesport" requires for its own use its design capacity, "Ontelaunee" must provide its own interceptor or collection sewer capacity upon twelve (12) months notice.

Whenever "Leesport" requires or desires to share in the use of additional capacity in the new interceptor or collection sewers to be constructed within "Leesport," the design, construction and financing thereof shall be undertaken jointly by "Leesport" and "Ontelaunee."

When "Ontelaunee" requires or desires additional capacity in new interceptor or collection sewers and "Leesport" does not require or desire to share in the use of such sewers, "Ontelaunee," may provide for the construction and financing thereof. In order to facilitate installation of required facilities as contemplated in this paragraph, "Leesport" shall obtain the right from "Borough" to use required right of way, easements, licenses, and privileges in, over and under "Borough" streets, lanes, highways, roads, and other "Borough" owned properties for the purpose of construction, maintenance and replacement of such facilities without consideration or charge, except the cost of preparing documents and recording, and shall otherwise cooperate in such required

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construction and acquisition of property or interests in property, subject to approval of the "Borough" engineer as to location. All "Borough" ordinances and regulations relating to the manner of opening the surface and the repair of streets, lanes, alleys, highways, and roads shall be followed by "Ontelaunee."

SECTION 8.

Miscellaneous

8.1 Each municipality shall obtain approval by the regulatory authorities of its individual Act 537 Plan using its best efforts to do so.

8.11 The parties hereby have oversubscribed to their estimated minimum required reserve capacity in the expanded Wastewater Treatment Plant which oversubscription is 25,000 GPD for "Ontelaunee" and 76,000 GPD for "Leesport". The reserve capacity reflected in Exhibit "A" attached hereto reflects that over subscription. Ontelaunee's subscribed reserved capacity for its actual use is 150,000 GPD. Leesport's subscribed reserved capacity for its actual use is 249,000 GPD.

Therefore, the parties agree that should a third person, be it a political subdivision, or a potential user request to purchase capacity for treatment of waste in the "Leesport" Treatment Plant generated outside of both parties' areas of jurisdiction, each party shall be notified thereof.

Both parties agree that each of them shall first sell a part or all of their respective oversubscribed reserve capacity to the purchaser in an amount proportional to each of the parties' oversubscribed reserve capacity at a price to be determined by joint consultation. Each party shall have the right to withdraw all or any part of their oversubscribed reserved capacity from consideration for sale by notifying the other party in writing.

Neither party shall sell any of its capacity reserved for its own use for

use outside of its own area of jurisdiction before all of the oversubscribed reserved capacity of both parties is sold. After all the oversubscribed reserved capacity is sold, each party may sell its reserved capacity for use outside of its area of jurisdiction with permission from the other party.

For purposes of payment of costs of operation the parties shall be considered as remaining responsible for each of their subscribed or oversubscribed reserve capacity until the sold reserve capacity is put in use. In that event, that portion of the sold reserve capacity actually in use by the purchaser, his or its successors or assigns, shall be the responsibility of the party into whose system the sewage discharge from the purchaser first enters for determining costs of operation. The unused portion shall remain the responsibility of the selling party until more than fifty percent (50%) of the sold reserved capacity to the purchaser is used after which the entire amount of capacity sold to the specific purchaser shall be the responsibility of the party into whose system the sewage discharge from the purchaser first enters for purposes of costs of operation.

In any sale where a portion of reserved capacity is sold by each party, the percentage of reserved capacity each party sold shall be used in determining the calculation for costs of operation.

For purposes of this Agreement, wherever the term "reserve capacity" is used without the term "oversubscribed" to modify it, the term "reserve capacity" shall be construed to mean both subscribed and oversubscribed reserve capacity.

8.2 "Ontelaunee" hereby authorizes "Leesport," its Chairman, or other representatives or agents, to apply for and accept any grants or contributions from any federal, state or any other governmental agency, and each party agrees to give the other such authorization as may be necessary to facilitate the

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obtaining of such grants. "Leesport" agrees that in the design and construction of any additional facilities for which it may be eligible for a governmental grant and specifically with respect to the design and construction of Stage II, it will attempt to comply with all of the requirements therefor, so long as the same are consistent with good engineering practice in the opinion of the Consulting Engineer.

8.3 "Ontelaunee" shall be charged and will pay to "Leesport" interest from the due date at the rate of twelve (12%) per annum on the unpaid balances on any amount unpaid for a period of thirty (30) days after properly billed. If "Ontelaunee" shall become as much as six (6) months in arrears in payment hereunder and such arrearage shall not have been eliminated in full within ninety (90) days after "Leesport" shall have given written notice of such default, "Leesport" in addition to any other legal remedy, shall have the right to refuse to receive or treat "Ontelaunee's" sewage, as applicable, until the full amount due has been paid in full, and such refusal shall not in any way impair the rights of "Leesport" under this Agreement. The foregoing shall not apply to any alleged arrearage which "Ontelaunee" shall be contesting in good faith provided that it shall have paid all amounts admitted to be due. Collection shall be enforceable by "Leesport" by appropriate action, suit or proceeding at law or in equity, the costs of which shall be paid by "Ontelaunee."

8.4 Each party shall indemnify and save harmless the other against all losses, costs or damages, on account of any injury to persons or property incurred with respect to the matters covered by this Agreement when due to the negligence of such party, its representatives, servants, agents or employees.

8.5 No payments made pursuant to any provision of this Agreement by "Ontelaunee" shall entitle it to ownership of the physical plant, or any interest

therein except the rights granted under this Agreement.

8.6 Either party hereto may assign its rights hereunder to any other legally qualified state or municipal body authorized by law to conduct the business of the assignor. All rights and liabilities hereunder shall fall upon the assignee, but the assignor shall remain responsible and liable hereunder.

8.7 The failure of either party hereto to insist upon strict performance of this Agreement or of any of the terms or conditions thereof shall not be construed as a waiver of any of its rights hereunder.

8.8 This Agreement may be executed in any number of counterparts, each of which shall be regarded for all purposes as one original and all of which shall constitute and be but one and the same.

8.9 This Agreement shall be governed by the laws of Pennsylvania.

8.10 Should any one or more of the provisions of this Agreement for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement shall, in such circumstances, be construed and enforced as if such illegal or invalid provision had not been contained herein.

8.11 This Agreement shall become effective upon its execution and delivery by the parties hereto, and thereafter shall be terminated only by mutual agreement of the parties.

8.12 The term of this Agreement shall be perpetual.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, sealed and attested on their respective behalfs as of the date

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first above written.

LEESPORT BOROUGH AUTHORITY

By: [Signature] (SEAL)
Attest: [Signature] (SEAL)

ONTELAUNEE TOWNSHIP

By: [Signature] (SEAL)
Attest: [Signature] (SEAL)

ONTELAUNEE TOWNSHIP AUTHORITY

By: [Signature] (SEAL)
Attest: [Signature] (SEAL)