

TOWNSHIP OF AMITY
BERKS COUNTY, PENNSYLVANIA

Resolution # 10-07

**A RESOLUTION OF THE TOWNSHIP OF AMITY, BERKS COUNTY,
PENNSYLVANIA, TO AUTHORIZE THE PARTICIPATION ALONG WITH
OTHER SOUTHEASTERN PENNSYLVANIA MUNICIPALITIES FOR
LEGAL, ENGINEERING AND LEGISLATIVE SERVICES FOR STORM
WATER REGULATORY SUPPORT**

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; and

WHEREAS, the First Class Township, Second Class Township and Borough Codes, as well as the provisions of Pennsylvania's Intergovernmental Cooperation Law, provide for intergovernmental cooperation between and among municipalities in the exercise or performance of their respective governmental functions, powers, and responsibilities and authorize joint agreements as may be deemed appropriate for such purposes; and

WHEREAS, the Participating Municipalities in the Montgomery County Consortium of Communities have determined that it is in the best interests of their residents to cooperate in obtaining legal, engineering and legislative services to assist them 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; and

WHEREAS, municipalities in Berks County, including the Township of Amity, have been invited to join with the Participating Municipalities in the Montgomery County Consortium of Communities to form a consortium which includes municipalities from throughout southeastern Pennsylvania.

WHEREAS, the Participating Municipalities hereby agree and commit to share on a pro-rata (population) basis, based on population, the total sum of not more than One Hundred Thousand Dollars and 00/100 (\$100,000.00) in projected costs for all legal, engineering and legislative services needed to coordinate their comments regarding the impacts of these programs upon their communities to the Pennsylvania Department of Environmental Protection and their elected officials as appropriate, in the best interests of their residents.

NOW, THEREFORE, BE IT RESOLVED as follows:

- a). Amity Township shall enter into the Pennsylvania Stormwater Coalition Cost-Sharing and Cooperation Agreement which is attached hereto, made a part hereof and marked as Exhibit "A."
- b). The Township officers are directed to execute the Agreement, as presented.

TOWNSHIP OF AMITY
BERKS COUNTY, PENNSYLVANIA



By:

Attest: 

I certify that this is a true and correct copy of a Resolution adopted by the Township of Amity, Berks County, Pennsylvania on August 18, 2010.

 (SEAL)

EXHIBIT "A"

**THE PENNSYLVANIA
STORMWATER COALITION**

COST-SHARING AND COOPERATION AGREEMENT

[FOR STORMWATER REGULATORY SUPPORT]

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**

- 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 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)	Population of Municipality (per 2000 Census)	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.

15. All fees, costs and expenses associated with the Project shall be approved 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]

ATTEST:

[Signature]

Amity
[INSERT] TOWNSHIP:

[Signature]

ATTEST:

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