

**TOWNSHIP OF WASHINGTON
NORTHAMPTON COUNTY, PENNSYLVANIA**

ORDINANCE NO. 291

**AN ORDINANCE OF WASHINGTON TOWNSHIP,
COUNTY OF NORTHAMPTON, COMMONWEALTH OF
PENNSYLVANIA, TO ADOPT AN INTERMUNICIPAL
AGILITY AGREEMENT WITH LOWER MOUNT BETHEL
TOWNSHIP, NORTHAMPTON COUNTY, PENNSYLVANIA
AND TO PROVIDE FOR A GENERAL REPEALER,
SEVERABILITY CLAUSE AND EFFECTIVE DATE.**

WHEREAS, the Township of Washington, Northampton County, Pennsylvania (“**Washington**”), is a duly organized and existing Township of the Second Class within the County of Northampton, Commonwealth of Pennsylvania and is also referred to as a “local government” under the Intergovernmental Cooperation Act, 53 Pa. C.S.A. Section 2301 et seq.; and

WHEREAS, the Township of Lower Mount Bethel, Northampton County, Pennsylvania (“**Lower Mount Bethel**”), is a duly organized and existing Township of the Second Class within the County of Northampton, Commonwealth of Pennsylvania and is also referred to as a “local government” under the Intergovernmental Cooperation Act, 53 Pa. C.S.A. Section 2301 et seq.; and

WHEREAS, Lower Mouth Bethel and Washington are adjacent to one another and the boundary lines of the municipalities pass through various roads, streets and villages; and

WHEREAS, each township, through their respective and duly elected officials, have determined that it is in the best interests of both Lower Mouth Bethel and Washington to enter into an agreement to perform certain road work and maintenance operations cooperatively in an agile road maintenance enterprise similar to that recommended by the Pennsylvania Department of Transportation; and

WHEREAS, the Second Class Township Code authorizes such agreements amongst municipalities for the purpose of performing governmental powers, duties and functions (53 P.S. Sec. 66507); and

WHEREAS, pursuant to the Intergovernmental Cooperation Act, 53 Pa. C.S.A. Section 2301 et seq., two or more local governments can jointly cooperate with one another in the performance of respective governmental functions, powers and responsibilities; and

WHEREAS, pursuant to the Second Class Township Code, the Board of Supervisors of a township may, among other things, construct, repair and maintain roads and streets within the township (53 P.S. Section 67301); and

WHEREAS, Lower Mount Bethel and Washington are desirous of memorializing that their respective municipalities are willing to undertake the duties and the responsibilities for the agility programs as outlined in this Ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Supervisors of Washington Township, Northampton County, Pennsylvania, as follows:

Section 1. Recitals. All recitals are herein incorporated by reference.

Section 2. Intermunicipal Agility Agreement. Washington Township hereby agrees to enter into a cooperative effort with Lower Mount Bethel Township for the use of vehicles, equipment and/or labor to perform certain projects of mutual interest or projects primarily or solely benefiting either of the townships provided that such projects are limited in scope and duration. Projects subject to the Townships' agreement (authorized for signature by this Ordinance) will be those for road, street and/or highway construction, repair and maintenance purposes. The vehicles, equipment and labor services that shall be exchanged or rendered pursuant to the agreement shall be listed as an exhibit to the written agreement to be entered into by both municipalities, copies of the agreement and exhibit are attached hereto and marked as Exhibit "A," as the same may be amended from time to time.

Section 3. Signature Authorization. The Chairman of the Board of Supervisors of Washington Township, or the Vice-Chairman in the Chairman's absence, is authorized and directed to sign the Intermunicipal Agility Agreement attached hereto and marked as Exhibit "A".

Section 4. Repealer. All inconsistent provisions of all other ordinances, resolutions and/or other regulations of Washington Township, Northampton County, Pennsylvania are hereby repealed to the extent of the inconsistency. All other provisions of the ordinances, resolutions and/or other regulations of Washington Township, Northampton County, Pennsylvania shall remain in full force and effect.

Section 5. Severability. The provisions of this Ordinance are declared to be severable. If any article, section, subsection, paragraph, clause, phrase or provision of this Ordinance shall be held invalid and/or unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any other part or provisions hereof, other than the part so judged to be invalid or held unconstitutional.


Section 6. Effective Date. This Ordinance shall become effective five (5) days after adoption, as required by law.

DULY ENACTED AND ORDAINED as an Ordinance this 13th day of July, 2016 by a majority of the Board of Supervisors of the Township of Washington, Northampton County, Pennsylvania, at a duly advertised meeting of the Board of Supervisors at which a quorum was present.

Washington Township Board of Supervisors

By: 
David Renaldo, Chairman

By: 
David Hess, Vice Chairman

By: 
Robert Smith, Supervisor

Attest:


Gail Putvinski, Secretary

EXHIBIT "A"

**Washington Township
Lower Mount Bethel Township**

Intermunicipal Agility Agreement

THIS AGREEMENT, made and entered into this 11th day of July, 2016, by and between the Township of Washington, a Second Class Township and political subdivision of the Commonwealth of Pennsylvania, with offices at 1021 Washington Blvd, Bangor, Northampton County, Pennsylvania, hereinafter referred to as “**Washington**” and the Township of Lower Mount Bethel, a Second Class Township and political subdivision of the Commonwealth of Pennsylvania, with offices at 2004 Hutchinson Avenue, Martins Creek, Northampton County, Pennsylvania, hereinafter referred to as “**LMBT**”; and, the parties shall be singularly or collectively referred to as “**Municipality**” or “**Municipalities**”.

WHEREAS, the Municipalities are adjacent to one another and are situated in the County of Northampton; and

WHEREAS, the boundary lines of Washington and LMBT pass through various roads, streets and villages; and

WHEREAS, informal agreements between the road crews and employees from both Washington and LMBT have proved beneficial to both Municipalities in the past; and

WHEREAS, Washington and LMBT, through their respective and duly elected officials, have determined that it is in the best interests of both Municipalities to enter into an agreement to perform certain road work and maintenance operations as partners in an agile road maintenance enterprise similar to that recommended by the Pennsylvania Department of Transportation; and

WHEREAS, the Second Class Township Code authorizes such agreements amongst municipalities for the purpose of performing governmental powers, duties and functions (53 P.S. Sec. 66507); and

WHEREAS, each Municipality is a "local government" under the Intergovernmental Cooperation Act, 53 Pa. C.S.A. Section 2301 et seq.; and

WHEREAS, pursuant to the Intergovernmental Cooperation Act, 53 Pa. C.S.A. Section 2301 et seq., two or more local governments can jointly cooperate with one another in the performance of respective governmental functions, powers and responsibilities; and

WHEREAS, pursuant to the Second Class Township Code, the Board of Supervisors of a township may, among other things, construct, repair and maintain roads and streets within the township (53 P.S. Section 67301); and,

WHEREAS, the Municipalities are desirous of memorializing that their respective municipalities are willing to undertake the duties and the responsibilities for the agility programs as outlined in this Agreement.

NOW, THEREFORE, for good, valuable, mutual and sufficient consideration, and intending to be legally bound hereby, and pursuant to the applicable provisions of the Pennsylvania Second Class Township Code, the Intergovernmental Cooperation Act and applicable Pennsylvania law, it is hereby agreed as follows:

(1) WASHINGTON and LMBT hereby each enter into a cooperative effort for the use of vehicles, equipment and/or labor to perform certain projects of mutual interest or projects primarily or solely benefiting either of the Municipalities, provided that such projects are limited in scope and duration as reasonably determined by the Municipalities. Projects subject to this Agreement are those for road, street and/or highway construction, repair and maintenance. The vehicles, equipment and labor services that shall be exchanged or rendered on a reciprocal basis pursuant to this Agreement are listed on Exhibit "A" which is attached hereto and made a part hereof.

(2) Neither Municipality shall have the obligation to perform a cooperative project for the other Municipality while an existing contract for performance of such work with a third party is in effect, unless the third party contract is amended or the third party contract vendor cannot provide the

services to the respective Municipality as required by the contract. When requesting the other Municipality's cooperative efforts pursuant to this Agreement, the requesting Municipality shall be deemed to have represented that: (a) there are no existing contracts with third parties then in effect for the work to be performed, or (b) if a third party contract does exist, that the third party contract vendor cannot provide the services to the requesting Municipality as required by the contract and that appropriate default notices have been delivered to the third party vendor.

(3) Both WASHINGTON and LMBT shall maintain insurance coverage for their respective employees insuring for commercial general liability, workers' compensation and employer's liability. Each Municipality shall be responsible for the actions of their respective employees. An employee of the respective Municipalities shall remain the employee of that Municipality for all workers' compensation purposes and/or other employee benefits (including Social Security), provided that he/she is acting pursuant to the terms of this Agreement, regardless of where he/she is performing that service or under whose direction the project is proceeding. Each Municipality shall name the other as an additional insured on its commercial general liability insurance policy and provide proof thereof to the other Municipality.

(4) Neither WASHINGTON nor LMBT shall unreasonably refuse to accede to a request to participate in a project benefiting primarily or solely the other Municipality that is limited in scope and duration as required by this Agreement; however, both WASHINGTON and LMBT acknowledge and agree that the respective needs of each Municipality take precedence over such requests.

(5) Any vehicles or equipment owned or leased by one Municipality shall be operated exclusively by an operator supplied by that Municipality. Each Municipality reserves to such operator the right to refuse any direction given by the other Municipality to perform any act with the said vehicle or equipment which, in the judgment of the operator, is unsafe, unwise, negligent or otherwise a potential danger to persons or property, including the vehicle or piece of equipment itself. Any damages caused as the result of operation of the vehicle or equipment shall be the sole responsibility of the

Municipality owning or leasing the vehicle or equipment, who shall hold the other Municipality harmless from any liability therefore provided the vehicle or equipment has been operated in conformance with this Agreement.

(6) WASHINGTON and LMBT hereby agree to keep all vehicle and equipment to be utilized in the cooperative effort in good repair, properly inspected and certified by the appropriate agencies; and, that all employees who are to be supplied by the respective Municipality to be operators of vehicles and equipment shall have the proper current certifications and licenses. Copies of such documents shall be made available upon request.

(7) Under normal circumstances, the WASHINGTON Road Foreperson and LMBT Director of Public Works shall be the individual who is the manager of the project when such project is in his/her respective Municipality. Nevertheless, the Board of Supervisors of WASHINGTON and the Board of Supervisors of LMBT reserve the right to designate a different project manager in particular circumstances for particular projects. The WASHINGTON Road Foreperson and LMBT Director of Public Works shall each develop a plan of cooperation, listing projects within his/her respective Municipality which may be pursued under this Agreement. Prior to becoming effective, the respective Municipality shall approve the plan for projects located within its boundaries. Following approval, the Municipality shall transmit its approved plan to the other Municipality for their records.

(8) Employees' wages shall be based upon the hourly rate per their respective Municipality and shall include the costs of all benefits accruing to the employee above the employee's actual hourly wage. Each municipality shall be responsible for payment of its own employee's wages for any project undertaken pursuant to this Agreement. Each municipality shall provide the other with a list of employees and their wages calculated pursuant to this Agreement upon request of the other Municipality. Work done in accordance with this Agreement on the various projects shall be kept separately for record keeping purposes and determining the benefit to the other Municipality hereunder but shall otherwise be considered as part of the regular performance of the employees' duties to their

respective Municipality. The rates for equipment used under this Agreement shall be based upon the then-current FEMA Schedule of Equipment Rates. If a particular piece of equipment is not one that is specifically listed in the then-current FEMA Schedule of Equipment Rates, the rate shall be based upon the piece of equipment that is most similar and listed on FEMA's Schedule of Equipment Rates. WASHINGTON hereby agrees to assume all record keeping responsibility for projects undertaken. LMBT shall have the right to audit WASHINGTON's records during normal business hours. It is the intention of the parties that the cooperative activities undertaken pursuant to this Agreement shall benefit each Municipality roughly equally, however, neither Municipality shall have the obligation to make any payment to the other if in any given year, one Municipality has benefitted more than the other under this Agreement.

(9) This Agreement and the cooperative efforts to be performed between WASHINGTON and LMBT are contingent upon: (a) assurance from their respective insurance carriers that this Agreement in no way jeopardizes insurance coverage for either Municipality; and (b) each Municipality being provided with documentation, in form satisfactory to their respective attorneys, that the Teamsters Local 773 union which represents each Municipality's employees has approved of the aspects of this Agreement that impact the Municipality's respective collective bargaining agreement with the union.

(10) Modifications to the equipment or personnel listed on Exhibit "A" may be incorporated at any time during the life of this Agreement through the execution of a written amendment signed by authorized agents for both Municipalities herein involved.

(11) This Agreement shall be effective for five (5) years beginning on the date appearing above, unless terminated sooner upon thirty (30) days' advance written notice by either Municipality to the other, at which time all rights and obligations arising hereunder shall cease.

(12) An ordinance authorizing this Agreement has been duly advertised and properly adopted by the Municipalities pursuant to the Intergovernmental Cooperation Act, 53 Pa C.S.A. Section 2305.

(13) This Agreement, together with the Exhibit, represent the final and entire agreement between the parties hereto. The recitals set forth in the beginning of this Agreement are incorporated in and made a part of this Agreement. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto.

(14) If any term, covenant or condition of this Agreement, or the application thereof to any party or circumstance, shall be invalid or unenforceable, this Agreement shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

(15) The parties hereto acknowledge that this agreement contains the implied covenant of good faith and fair dealings in the performance under this Agreement. The parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

(16) Exhibits and schedules (if any) attached to this Agreement and referenced herein are all an integral part hereof.

(17) The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

(18) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its laws regarding conflict of laws. Jurisdiction and venue for any legal proceedings pursuant to this Agreement shall be with the Court of Common Pleas of Northampton County, Pennsylvania.

(19) This Agreement is a contract that either party may enforce. The failure of either party, at any time, to require performance by the other of any provision of this Agreement shall not affect or impair the right of that party to enforce the same at a subsequent time. The waiver, by either party, of any breach of any provision of this Agreement shall not be deemed a waiver of any succeeding breach of

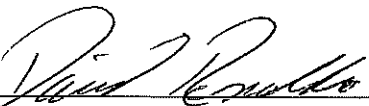
such provision or a waiver of the provision itself. Unless stated otherwise, all rights and remedies contained in this Agreement are cumulative and are in addition to any other rights or remedies at law or in equity.

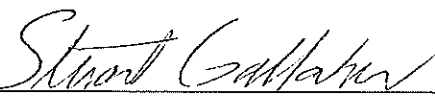
(20) All notices, requests, demands, consents, approvals or other communications required or permitted to be given under any provision of this Agreement shall be in writing and shall be deemed given upon either personal delivery or the mailing thereof by certified mail, return receipt requested, postage prepaid, addressed to each party at the addresses recited on page 1.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement the day and year first above written and intending to be legally bound hereby.

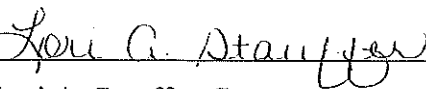
WASHINGTON TOWNSHIP

LOWER MOUNT BETHEL TOWNSHIP

By: 
Chairman, Board of Supervisors

By: 
Stuart Gallaher, Chair

By: 
Secretary

By: 
Lori A. Stauffer, Secretary

(impress Township seal)

(impress Township seal)

EXHIBIT A

Vehicles, Equipment and/or Labor to be Utilized

Lower Mount Bethel Township

Equipment

1. 2006 John Deere 6410 Tractor
2. 2005 Ford Explorer
3. 2009 GMC ¾ ton pickup
4. 1998 Mack Tandem Dump Truck w/ snow plow
5. 2007 International Dump Truck w/ snow plow
6. 2016 International Dump Truck w/ snow plow
7. 2006 Ford Mason Dump w/ snow plow
8. 1999 John Deere 310SE Backhoe
9. 2003 300T Roller
10. Tarmelt Cracksealing Kettle
11. 2002 Bandit Woodchipper
12. 2010 Rear Mount Sweeper
13. 2006 Rear Mount Tiger Mower
14. 2013 Doosan Wheel Loader

Personnel

- 1 Road Foreman
- 2 Laborer CDL

Washington Township

Equipment:

International I7400 Dump Trucks	4
HTC Side Unloader	1
310 John Deere Backhoe	1
545D Ford New Holland Tractor w side mower and sweeper	1
WABCO Grader	1
Bomag Roller	1
Vibe Plate	1

Staff:

- 1 Road Foreman
- 2 Road Crew (Laborer)

No materials are included with this agreement. It is the responsibility of each municipality to supply any materials required for all projects within their municipalities.