

ORDINANCE NO. 804

AN ORDINANCE OF THE BOROUGH OF MOUNT PENN, BERKS COUNTY, PENNSYLVANIA, AUTHORIZING THE MUNICIPALITY TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT WITH OTHER MUNICIPALITIES, TO PARTICIPATE IN THE BERKS COUNTY MS4 STEERING COMMITTEE FOR THE PURPOSE OF MEETING THE EDUCATIONAL REQUIREMENTS OF THE 2013-2018 MS4 NPDES PERMIT AND OTHER SERVICES AS MAY FROM TIME TO TIME BE DEEMED NECESSARY, IN ORDER TO ENSURE THAT PROPER APPLICATION/ANNUAL REPORTS TO THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION ARE ACCOMPLISHED FOR RENEWAL OF MS4 PERMIT(S) REQUIRED OF THE MUNICIPALITY.

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

WHEREAS, there are currently certain municipalities within Berks County which are participating in the Berks County MS4 Steering Committee, as these municipalities have determined that it is in the best interests of their residents to cooperate in providing required Educational Programming ("Cooperative Educational Program") and other services to assist them in assessing the legal and regulatory requirements and implications to properly submit applications for permits/annual reports under the new MS4 (PAG-13) regulations and, if necessary, compliance with the associated state generated model storm water management ordinance; and

Whereas, there are certain municipalities in Berks County, including the Borough of Mount Penn, which have been invited to join in the Berks County MS4 Steering Committee: and

WHEREAS, the participating municipalities in the Berks County MS4 Steering Committee shall share in the cost of providing a Cooperative Educational Program and for other

MS4 services needed to coordinate completion and submission of applications/annual reports in accordance with requirements of the new MS4 permit (PAG-13), annual reports and, if necessary, the associated state generated model storm water management ordinance, to the Pennsylvania Department of Environmental Protection; and

WHEREAS, the Borough of Mount Penn is authorized to participate in the Berks County MS4 Steering Committee upon the execution of an intergovernmental cooperation agreement and the passage of an ordinance by its governing body under the Pennsylvania Intergovernmental Cooperation Act, Act 177 of 1996 (*53 Pa. C.S.A. Section 2301, et seq.*), as amended (the "Act"); and

Whereas the Borough Council of the Borough of Mount Penn has determined that it is in the best interests of its residents to join with other Berks County municipalities in the Berks County MS4 Steering Committee in order to provide a Cooperative Educational Program and other services needed to coordinate completion and submission of applications/annual reports in accordance with requirements of the proposed new MS4 permit (PAG-13) and, if necessary, the associated state generated model storm water management ordinance, to DEP.

NOW THEREFORE BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of Mount Penn, Berks County, Pennsylvania, and it is hereby ENACTED AND ORDAINED by the authority of the same as follows:

SECTION 1. TITLE AND BACKGROUND. The short title of this Ordinance shall be "The Berks County MS4 Steering Committee Ordinance", and the same may be cited in that manner, and the Background of this Ordinance is as set forth above in the WHEREAS clauses, which are incorporated herein by reference.

SECTION 2. PURPOSE. The purpose of this Ordinance is to enable the Borough of Mount Penn to participate with other Berks County municipalities in the Berks County MS4 Steering Committee to obtain a Cooperative Educational Program and other services needed to coordinate completion and submission of applications/annual reports in accordance with requirements of the proposed new MS4 permit (PAG-13) and, if necessary, the associated state generated model storm water management ordinance, to DEP.

SECTION 3. AUTHORIZATION. The Borough 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 Ordinance was enacted), with the intent and effect that the Borough shall be bound by the Agreement.

SECTION 4. EXECUTION. The President of Borough Council of the Borough is hereby authorized and directed on behalf of the Borough: (i) to execute and deliver the Agreement; and (ii) 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 Borough under the Agreement.

SECTION 5. RATIFICATION. All actions of any officer, agent or other representative of the Borough heretofore taken in the pursuit of the Berks County MS4 Steering Committee and/or the Borough's participation therein are hereby ratified and approved in all respects.

SECTION 6. NECESSARY ACTS. The Borough 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 7. PENNSYLVANIA INTERGOVERNMENTAL COOPERATION ACT. This Ordinance is adopted pursuant to the authority granted in the Act and, as required thereby, the following matters are specifically found and determined:

- (a) The conditions of the Agreement are set forth in the 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 this Ordinance and in the Agreement;
- (d) The manner and extent of financing the Agreement is through, among other things, the payments set forth 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; and
- (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 the 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.

SECTION 8. REPEAL OF ORDINANCES. Any ordinance or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provisions.

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 enable municipalities to share ideas, services and other resources to enable those participating entities to properly complete applications/annual reports 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

WHEREAS, the Participating Municipalities recognize that inaction on their part is not an option and that costs in making application individually would in most instances, be greater than those incurred through cooperative cost sharing for an educational program ("Cooperative Educational Program") and for other services among the Participating Municipalities; and

WHEREAS, the Participating Municipalities agree that time is of the essence in completing the aforementioned objectives.

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 ("Berks") shall appoint two (2) individuals; provided, however, that BCCD and Berks shall each only have one (1) vote.
3. Berks County Conservancy ("BCC") 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 Dollars (\$3,000.00) as follows:
 - (a) One Thousand Dollars (\$1,000.00) on or before January 15, 2013; and
 - (b) Commencing January 15, 2014 and annually thereafter through 2017, the sum of Five Hundred Dollars (\$500.00), provided, however, that in the event DEP or the United States Environmental Protection Agency shall grant time extensions for MS4 Permits that begin March 10, 2013, then the annual \$500.00 payments shall continue until said MS4 Permits are renewed.. 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 into this Agreement at any time; provided, however that payment of the full Three Thousand Dollar (\$3,000.00) fee is still required and the initial One Thousand Dollar (\$1,000.00) fee and any fees due and payable pursuant to Section 6(b) above prior to the execution of this Agreement shall be paid concurrently with such execution.

8. The Participating Municipalities through the Committee shall cooperate in providing the required Cooperative Education Program and such other services as are necessary to assist them in assessing the legal and regulatory requirements and implications to properly submit applications for permits/annual reports under the new MS4 (PAG-13) regulations and, if necessary, compliance with the associated state generated Model Stormwater Management Ordinance. 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.

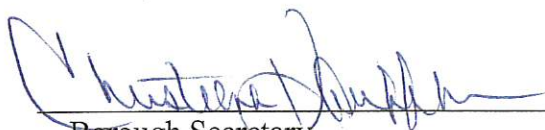
12. Successors. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania.



President, Borough Council

ATTEST:

 (SEAL)

Borough Secretary



Mayor

AGREEMENT - EXHIBIT "A"

MS4 INTERGOVERNMENTAL COOPERATION

EDUCATIONAL PROGRAM

The Joint Education Program is a five year program intended to consist of a combination of some or all of the following educational offerings. The written program will be submitted by the Berks County MS4 Steering Committee to each participating municipality as part of its September 9, 2012 MS4 permit application. The written program will meet the requirements of the MS4 Permit for Education; MCM #1, MCM#2 and the Municipal Education portion of MCM#6.

Berks County Planning Commission ("BCPC") Educational Offerings:

- Maintain website with MS4 and stormwater information
- Prepare, coordinate and maintain the Joint Educational Program
 - Coordinate Joint Educational Program between BCPC, BCCD and BCC
- Municipal Outreach (elected, appointed and employee)
- School Outreach
- Developer education through subdivision and land development reviews
- Prepare and coordinate an annual Educational Activity Report

Berks County Conservation District Educational Offerings:

- Prepare and present educational programs at Berks County schools (1 hour program)
- Berks County Envirothons - to promote urban watershed education
- Dan Hartman Leadership Conservation School (sponsor scholarship(s) for students to attend and for related programming)
- Workshop and training offerings (municipal, designer and/or engineer as well as a Watershed Roundtable)
- Hand out Informational Fact Sheet with reviews on the topic of stormwater

Berks County Conservancy Educational Offerings:

- Use grant projects as MS4 educational packages for municipalities
- Develop stormwater educational brochure (print ready) for distribution to residents
- Visit school classes to discuss water conservation
- Attend municipal meetings to give presentations on a variety of conservation issues
- Help municipalities plan and execute a "town meeting" to educate residents about water conservation
- Organize and advertise a tree planting project in municipalities (trees are an additional charge, approximately \$30 per tree for mature 6' native trees)

