

**TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2019 - 1

AN ORDINANCE OF THE TOWNSHIP OF TULPEHOCKEN, BERKS COUNTY, PENNSYLVANIA, AUTHORIZING THE TOWNSHIP OF TULPEHOCKEN PURSUANT TO THE PROVISIONS OF THE SECOND CLASS TOWNSHIP CODE AND THE INTERGOVERNMENTAL COOPERATION LAW TO ENTER INTO AN AGREEMENT AUTHORIZING THE COOPERATION OF TULPEHOCKEN TOWNSHIP WITH UPPER TULPEHOCKEN TOWNSHIP FOR EQUIPMENT AND MANPOWER RESOURCES SHARING

WHEREAS, the Township of Tulpehocken ("Tulpehocken") is a Second Class Township in the Commonwealth of Pennsylvania; and

WHEREAS, as a Second Class Township, Tulpehocken Township is governed by the Second Class Township Code of Pennsylvania; and

WHEREAS, Section 1507 of the Second Class Township Code of the Commonwealth of Pennsylvania, 53 Pa. C.S. §66507, and the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S.A. §2301, et seq., as amended, authorize 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, Section 1507 of the Second Class Township Code, 53 Pa. C.S. §66507, and the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S.A. §2301, et seq., as amended, further provide that the Board of Supervisors must make such agreements by ordinance; and

WHEREAS, Section 2303 of the Intergovernmental Cooperation Law, 53 Pa.C.S. §2303, authorizes two or more local governments to jointly cooperate in the exercise or in the performance of their respective governmental functions, powers or responsibilities and enter into joint agreements for cooperation; and

WHEREAS, pursuant to the Second Class Township Code and Intergovernmental Cooperation Law, the Board of Supervisors of Tulpehocken Township is authorized to enter into agreements with other municipal corporations to perform governmental powers, duties and functions; and

WHEREAS, the Boards of Supervisors of Tulpehocken Township and Upper Tulpehocken Township recognize the benefits of sharing municipal resources and services, including maintenance, equipment and manpower ("Resources"); and

WHEREAS, the Boards of Supervisors of Tulpehocken Township and Upper Tulpehocken Township believe that cooperation in their sharing of Resources is in the best interest of the residents of each Township; and

WHEREAS, the Boards of Supervisors of Tulpehocken Township and Upper Tulpehocken Township desire to formalize their sharing of Resources and enter into an Intergovernmental Cooperation Agreement ("Agreement") providing, inter alia, that the Townships will share each party's respective Resources from time to time for the mutual benefit of the Townships; and

WHEREAS, the parties hereto have taken all such municipal action as is necessary to enter into this Agreement and desire to reduce their understanding into written form.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Tulpehocken, Berks County, Pennsylvania, it is hereby enacted and ordained by the authority of the same as follows:

SECTION 1. AUTHORIZATION AND AGREEMENT

The following language shall constitute the Ordinance authoring entrance into an Intergovernmental Agreement by the Township of Tulpehocken with the Township of Upper Tulpehocken for sharing resources in the form of manpower and equipment.

A. Purpose

The Township of Tulpehocken ("Tulpehocken") and the Township of Upper Tulpehocken ("Upper Tulpehocken") have negotiated an Agreement whereby and whereunder they agree to share resources of manpower and equipment for the mutual benefit of the parties and best interests of the residents of each municipality.

B. Grant of Power – This Ordinance is adopted pursuant to authority granted in:

1. 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
2. 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").

C. Conditions of Agreement

The terms and conditions of the Intergovernmental Cooperation Agreement between Tulpehocken and Upper Tulpehocken (the "Agreement") is attached hereto as Exhibit "A" and made a part hereof.

D. 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.

E. Finances

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

1. No borrowing will be required by the Township to fund its obligations under the Agreement;
2. Funds to implement the Township's obligations under the Agreement shall come from usual budgeted amounts for such matters; and
3. Other provisions governing the manner and extent of financing joint projects and purchases shall be as set forth in the Agreement.

F. Organization

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

G. Property

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.

H. Entity

No new entity has been created by the Agreement.

SECTION 2. EXECUTION AND DELIVERY OF AGREEMENT

By enactment hereof, the Board of Supervisors of Tulpehocken Township hereby approves the Township entering into an Intergovernmental Cooperation Agreement with the Township of Upper Tulpehocken for the purpose of sharing equipment and manpower resources ("Agreement") in substantially the form attached to this Ordinance, and authorizes and directs the Chairman of the Board of Supervisors to execute and deliver to the Secretary of the Township to attest such Agreement.

SECTION 3. REPEAL OF ORDINANCES.

Any ordinance or part of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provision.

SECTION 4. SEVERABILITY.

If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the

within Ordinance. The Board of Supervisors of the Township of Tulpehocken hereby declare that they would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences, clauses, phrases, or word that may be declared illegal, unconstitutional or invalid.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall become effective at the earliest date permitted by law.

ENACTED AND ORDAINED as an Ordinance of Tulpehocken Township, Berks County, Pennsylvania, this 13th day of February, 2019.

BOARD OF SUPERVISORS OF
TULPEHOCKEN TOWNSHIP,
BERKS COUNTY, PENNSYLVANIA

Gary A. Deh,
Chairman

Richard A. Kramer
Member

John H. Fick
Member

ATTEST:

Christy Klaherty
Secretary



CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing is a true and accurate copy of Ordinance No. 1-2019 adopted by the Board of Supervisors of Tulpehocken Township, Berks County, Pennsylvania at a regular meeting held on February 13, 2019, pursuant to notice as required by law.

Dated: February 13, 2019

Christy Flaherty
Township Secretary

EXHIBIT A
AGREEMENT

**INTERGOVERNMENTAL COOPERATION AGREEMENT BY AND
BETWEEN UPPER TULPEHOCKEN TOWNSHIP AND TULPEHOCKEN TOWNSHIP
REGARDING COOPERATIVE SHARING OF ROAD
MAINTENANCE EQUIPMENT AND MANPOWER**

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT ("Agreement"), made this 13th day of February, 2019, by and between UPPER TULPEHOCKEN TOWNSHIP, Berks County, Pennsylvania, a Pennsylvania municipal corporation, specifically a township of the second class, having an address of 6501 Old Route 22, Bernville, Berks County, Pennsylvania 19506 (hereinafter referred to as "Upper Tulpehocken")

and

TOWNSHIP OF TULPEHOCKEN, a Township of the Second Class, having an address of 22 Rehrersburg Road, Rehrersburg, Pennsylvania 19550 (hereinafter referred to as "Tulpehocken"),

WITNESSETH:

WHEREAS, Upper Tulpehocken Township and Tulpehocken Township and are hereinafter sometimes referred to collectively as "Townships" or "Participating Municipalities"); and

WHEREAS, pursuant to the Pennsylvania Intergovernmental Cooperation Act, 53 Pa. C.S. §2301, *et seq.*, the governing body of two or more local governments may make agreements with other municipalities to jointly cooperate in performing governmental functions, powers, and responsibilities; and

WHEREAS, the Townships are political subdivisions existing as Second Class Townships under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, pursuant to the Second Class Township Code, 53 Pa.C.S. §66507, the Boards of Supervisors of Tulpehocken Township and Upper Tulpehocken Township are authorized to enter into agreements with other municipal corporations to perform governmental powers, duties and functions; and

WHEREAS, the Townships recognize the benefits of sharing municipal resources and services, including road maintenance equipment and manpower ("Resources"); and

WHEREAS, the Boards of Supervisors of Tulpehocken Township and Upper Tulpehocken Township believe that cooperation in their sharing of road maintenance equipment and manpower is in the best interests of the residents of each municipality; and

WHEREAS, the Townships desire to formalize their sharing of road maintenance equipment and manpower and enter into an Intergovernmental Cooperation Agreement

providing, inter alia, that the Townships will share each party's respective Resources from time to time for the mutual benefit of the parties; and

WHEREAS, the parties hereto have taken all such municipal action as is necessary to enter into this Agreement and desire to reduce their understanding into written form.

NOW, THEREFORE, the parties hereto, INTENDING TO BE LEGALLY BOUND HEREBY, agree as follows:

1. Incorporation of Background. The above section captioned "Witneseth" and the "Whereas" clauses therein are incorporated herein by reference as though set forth in full.
2. Purpose. The express purpose of this Agreement shall be to formalize any prior arrangements between Upper Tulpehocken and Tulpehocken in which the parties have shared Resources and to carry out their desire to continue to share Resources for the mutual benefit of the parties.
3. Definitions. The following terms when used in this Agreement, shall have the meanings ascribed to them herein:
 - a. Authorized Representative – the person granted authority by the municipality to request use of the Resource as the Requesting Party or to permit use of the Resource as the Providing Party
 - b. Providing Party – the municipality with ownership or control of the resource
 - c. Requesting Party – the municipality seeking to borrow or use a resource
 - d. Resources – road maintenance equipment or manpower to be shared between the Providing Party and the Requesting Party
4. Administration of Cooperative Sharing. Upper Tulpehocken and Tulpehocken shall have access to and use of each party's Resources on an as needed basis, provided, that the Authorized Representative of the Requesting Party shall provide reasonable notice of requested use to the Authorized Representative of the Providing Party and consent from the Authorized Representative of the Providing Party is obtained. The Authorized Representatives of the municipalities may formulate a mutually agreed upon use schedule for any and all of the Resources that may be shared. In the event of an emergency, a party may use any or all of the Resources without reference to a use schedule provided that consent to use the Resources has been obtained from the Providing Party.
5. Training and Certification of Operators of Resources. The Requesting Party shall ensure that the operator or user of any Resource has the requisite knowledge, training, experience, skills and licenses and certifications, where applicable, necessary for the proper operation of such

Resource. The Providing Party has the right to request and review copies of any requisite certifications for operators of equipment requested by the Requesting Party.

6. Costs. There shall be no fee charged in the form of a rental charge for usage of any of the Resources to the Requesting Party per this Agreement. The Requesting Party shall be responsible for all ordinary maintenance expenses associated with the use of the Resources while in the Requesting Party's Temporary Possession. Remuneration, however, shall be due to the owner of any Resource for unusual or burdensome costs or repairs incurred in the cooperative sharing of such Resource. Judgment for the payment of such costs shall be the mutual responsibility of the respective parties' municipal governing bodies.

7. Transportation and Storage. The Requesting Party shall be responsible for transporting the Resource from the Providing Party's storage location to the locale at which the Resource is to be used and back to the storage location of the Providing Party. The Requesting Party shall also be responsible for securely storing the Resource while in its possession but not in use.

8. Liability. The parties agree that the party whose employee is operating any Resource equipment shall be solely responsible for the operation of the Resource during the time that the Resource is entrusted to such employee and is being utilized by such employee for road maintenance work within the municipal boundary of the municipality which employs such employee. Each party shall be responsible for all compensation including overtime and all workers' compensation claims made by the party's own employees as a result of the use of the Resources. Each party shall remain liable as to its own property and area within its municipal boundary for any action or causes of action which may emanate from and/or be related to the party's own usage of the Resources under this Agreement.

9. Insurance. Each municipality agrees to carry, at its own expense, adequate general liability insurance for Resource equipment, physical damage insurance for Resource equipment and workers' compensation insurance for employee Resources. The municipalities shall be entitled to review and accept the other's insurance of the Resources to ensure adequacy. Each municipality shall name the other municipality as an additional insured on all applicable policies. Provisions shall be made for thirty (30) days advance written notice, by mail to other municipality of changes or cancellation of any such insurance.

10. Release and Indemnification. The Requesting Party hereby remises, releases, forever discharges and indemnifies and agrees to hold harmless, and by this Agreement does, for itself and its officers, directors, employees, agents, and assigns, remise, release and forever discharge and indemnify and agree to hold harmless the Providing Party, its officers, directors, employees, successors, assigns, of and from all claims, demands, damages, expenses (including attorneys' fees and costs), actions, causes of actions, suits at law or in equity of whatever kind or nature, both civil and criminal or mixed, for or because of any matter or thing done or admitted or suffered to be done which arises from the Requesting Party's reckless or negligent use or maintenance of the Resources or related to its responsibilities under the Agreement. Each municipality acknowledges that the claims, demands, damages, expenses (including attorneys' fees and costs), actions, causes of action, in suits at

law or in equity which they are releasing, discharging and indemnifying herein include but are not limited to any claims, rights and causes of action arising under any and all state and federal statutes, claims for attorneys' fees, any claim or violation of federal or state constitutions or statutory rights, substantive or procedural, any claim under common law, tort and/or contract theories, whether such claims are known or unknown, foreseen or unforeseen. Each party shall, within five (5) days following notice of any claim of a third party relating to the Resources or this Agreement, give written notice to the other municipal party of any claim arising while any Resource was in use by and in their possession. Each municipality acknowledges that said release and indemnification excludes any claim, demands, damages, expenses (including attorneys' fees and costs), actions, causes of action, suits at law or in equity of whatever kind or nature, both civil and criminal or mixed, for or because of any matter or thing done or admitted or suffered to be done which arises from the willful, wanton, intentional or gross negligence of the other municipality or its officers, directors, employees, agents, and assigns thereof with regards to use of the Resources.

11. Term. The term of this Agreement shall be for a period of one (1) year effective as of the execution of the Agreement. This Agreement shall be automatically renewed for an additional term of one (1) year at the conclusion of the initial term and for each renewed term thereafter unless, at least ninety (90) days prior to a renewal, the party which does not desire to renew the Agreement gives written notice of such refusal to renew to the other party in writing.

12. Entire Agreement. This Agreement constitutes the entire understanding between the parties with regard to the subject matter hereof.

13. Modification. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further Agreement duly approved and executed by the parties hereto.

14. Governing Law. This Agreement is made pursuant to, and shall be construed, interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to otherwise applicable principles of conflicts of law.

15. Notices. Notices provided for herein shall be sufficient if sent by registered mail, postage prepaid and addressed as follows or to such other addresses as the parties may designate to each other in writing from time to time:

TO TULPEHOCKEN TOWNSHIP TO UPPER TULPEHOCKEN TOWNSHIP

Tulpehocken Township
22 Rehrersburg Road
Rehrersburg, PA 19550

Upper Tulpehocken Township
6501 Old Route 22
Bernville, PA 19506

16. Successors and Assigns. All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

17. Partial Invalidity and Severability. If any term, condition or provision of this Agreement or application thereof to any person or circumstance shall at any time or to any extent, be invalid, illegal, unenforceable or unconstitutional, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, illegal, unenforceable or unconstitutional, shall not be affected thereby, and each term, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement.

19. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this 13th day of February, 2019.

BOARD OF SUPERVISORS
TOWNSHIP OF TULPEHOCKEN
BERKS COUNTY, PENNSYLVANIA

BOARD OF SUPERVISORS
UPPER TULPEHOCKEN TOWNSHIP
BERKS COUNTY, PENNSYLVANIA

By: Gary A. Lask (SEAL)
Chairman

By: Steven Davis (SEAL)
President

Attest: Christy Flaherty
Secretary

Attest: Susan Ehret
Secretary