MAIDENCREEK TOWNSHIP SOLICITOR'S REPORT

Orlando Law Office
Eugene Orlando, Jr.
2901 St. Lawrence Avenue
Reading, PA 19606

NOVEMBER 2020

Mutual Cooperation Resolution with Fleetwood Borough

12 Chestnut Street Easement

Maidencreek Township Authority Ordinance – waiting on authority action

Diane Hollenbach

From: Eugene Orlando <EOrlando@orlandolawoffices.com>
Sent: Monday, October 19, 2020 9:27 AM
To: Diane Hollenbach
Subject: FW: Mutual.AgreementRevised - Maidencreek/Fleetwood
Attachments: Mutual.AgreementRevised.docx

Diane
See below
Put this in the board's agenda please

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From: Andrew S. George [mailto:ageorge@kozloffstoudt.com]
Sent: Monday, October 19, 2020 9:16 AM
To: Eugene Orlando <EOrlando@orlandolawoffices.com>
Cc: Alicia D. Kline <akline@kozloffstoudt.com>; Lianna Bemis <lBemis@kozloffstoudt.com>
Subject: FW: Mutual.AgreementRevised - Maidencreek/Fleetwood

Gene –
Thank you for sending the agreement for review. All looks good and we will draft a resolution and put on the agenda for signature at the next Council meeting (11/9/20).
Have a great day.
Andy

From: Eugene Orlando <EOrlando@orlandolawoffices.com>
Sent: Thursday, October 8, 2020 3:47 PM
To: Andrew S. George <ageorge@kozloffstoudt.com>
Subject: Mutual.AgreementRevised

Good afternoon Andy
Please review the attached.
My public works supervisor helped finalize this and most of it was cut and pasted from your suggested form.
Our board may adopt it tonight contingent on your Council's approval.
Call me with changes or additions.
Regards,
Gene Orlando

INTER-MUNICIPAL MUTUAL COOPERATION AGREEMENT

THIS AGREEMENT between 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 FLEETWOOD, a municipal corporation and government organized under the Pennsylvania Borough Code and located in Berks County, Pennsylvania, hereinafter called "Fleetwood." In this Agreement, Maidencreek and Fleetwood are collectively referred to as "Municipalities."

BACKGROUND

A. WHEREAS the Pennsylvania Intergovernmental Cooperation Act, Act of December 19, 1996, P.L. 1158, No. 177, found at 53 Pa. C.S.A. § 2301 et seq. as amended from time to time provides that two or more municipalities in this Commonwealth may jointly cooperate in the exercise or performance of their respective governmental functions, powers or responsibilities; and,

B. WHEREAS both Municipalities believe that because of their close proximity and respective resources, the interest of the taxpayers in their respective municipalities is best served by the pooling of resources and manpower; and,

C. WHEREAS, the Municipalities desire to enter into this Intergovernmental Agreement to provide for mutual aid and cooperation in use of equipment and manpower as a means of more efficiently carrying out their governmental functions;

1. GENERAL AUTHORIZATION

The Background provisions above are incorporated herein and are an integral part of this Agreement. Each Municipality shall adopt an Ordinance or Resolution in accordance with the Pennsylvania Inter-governmental Cooperation Act as amended (53 Pa. C.S.A. §2301 et.seq.) to adopt and give full force and effect to this Agreement.

2. AGREEMENT TO SHARE EQUIPMENT, PERSONNEL, AND RESOURCES

Maidencreek and Fleetwood hereby agree that from and after the effective date of this Agreement and for so long as it remains in effect, they agree to make available to each other and allow mutual use of the equipment, vehicles, work crews and personnel, and supplies (hereinafter the Resources), as more fully designed and set forth in this Agreement. In this agreement, the party seeking or requesting the Resources is sometimes referred to as the "Requesting Party" and the party providing of the Resource is sometimes referred to as the "Providing Party".

3. COORDINATED USE AND SCHEDULING

Both Municipalities recognize that their primary responsibility is to serve the needs of the citizens of each respective municipality. Nothing in this Agreement is intended to blur or remove the distinction in ownership or primary use and responsibility of the Resources of each Municipality and its primary duty to perform its duties with its own equipment, vehicles, personnel and resources all of which remain as the primary duty and responsibility of each Municipality. Rather it is recognized that coordination and cooperation can assist in carrying out those functions by proper coordination. Therefore all non-emergency use and sharing shall be scheduled in advance by and between each Municipality as determined from time to time by each respective Municipality. Accurate and complete Records shall be kept by each municipality whenever any such sharing or use occurs. It is the intent of this Agreement that the benefits of this Agreement be mutual and reciprocal so that neither Municipality is burdened or benefitted at the expense of the other. To the extent that personnel, equipment, vehicles, or resources of one municipality are used by the other, a corresponding use and benefit will be provided to the other municipality of the same or substantially equivalent value within a reasonable time as determined by the designated representative of each Municipality.

This Agreement does authorize use in Emergency Situations during declared emergencies and adequate records shall be kept to determine the use and value of resources used in such emergencies so that proper subsequent provisions for reciprocity can be arranged.

3. SUPERVISION AND TRAINING

In general employees report to and remain subject to their respective immediate supervisors within their own municipality. Employees may be temporarily placed under the supervisor of another Municipality and in that event will follow instructions of the supervisor in charge, but notwithstanding anything to the contrary, in the event of any disagreement of conflict, employees shall follow and comply with the instructions and supervision of their immediate superiors of their own municipal employer.

The Requesting Party shall insure that the operator or user of any Resource has the requisite knowledge, training, experience, skills, licenses and certifications where applicable that are necessary for the proper operation and use of the Resource. The Providing party has the right to request copies of any requisite licenses or certifications for operators of equipment requested by the Requesting Party.

4. COSTS

There shall be no fee charged in the form of a rental charge for usage of the Resource to the Requesting Party per this Agreement. The Requesting Party shall be responsible for all ordinary maintenance expenses associated with the use the Resources while in the Requesting Party's temporary possession. Remuneration, however, shall be due to the owner of the Resource for unusual or burdensome costs or repairs incurred in the cooperative sharing of the Resources.

Judgment for the payment of such costs shall be the mutual responsibility of the respective parties' municipal governing bodies.

5. 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.

6. LIABILITY

The parties agree that the party whose employee is operating the equipment shall be solely responsible for the operation of the Resources during the time that the Resources are entrusted to them and being utilized by the individual party for maintenance work within their municipal boundary. Each party shall be responsible for all compensation including overtime and 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 and/or be related to the party's own usage of the Resources under this Agreement.

7. DESIGNATED CONTACT

Each Municipality shall appoint and designate a primary contact person from time to time who shall be responsible for communication, record keeping and supervision of the performance of this Agreement. Each Municipality may rely upon the authority of the Designated Contact unless and until notice of any change is provided to the other in writing or by electronic means. Each Municipality will notify the other promptly in the event of any changes in the Designated Contact person.

8. SEPARATE AND INDEPENDENT ENTITIES

Each Municipality is and remains Independent and is solely responsible for all wages, benefits, all insurances, repairs and replacement of its own equipment and vehicles. Nothing in this Agreement is intended to nor shall it be interpreted to change or modify any such responsibilities or obligations. Nothing in this Agreement authorizes or approves the expenditure of any money or the entry into any contract or agreement. All actions requiring prevailing wages, public bidding, municipal approvals for contracting etc continue in full force and effect and are not modified by the terms of this Agreement.

9. INSURANCE

Each Municipality shall be solely responsible for Comprehensive General Public Liability, Automobile Liability, and Workers Compensation Insurance and each Municipality

shall notify all of its insurance carriers in writing regarding this agreement. 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. EFFECTIVE DATE AND TERMINATION

This Agreement shall become effective upon the adoption of both Municipalities of the authorizing Ordinance or Resolution and shall remain in effect until terminated by either Municipality. Either Municipality may terminate this agreement upon written notice to the other not less than sixty (60) days in advance of the effective date of termination. Upon termination, the records of the Municipalities will be reviewed and appropriate adjustment and reconciliation, reciprocal service, and/or compensation as may be mutually agreed shall be made prior to the effective termination date.

11. PROVISIONS SEVERABLE

The provisions of this Agreement are severable and if any section, sentence, clause, or part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction such decision of the Court shall not affect the remaining sections, clauses, parts or provisions of this Agreement. It is hereby declared to be the intent of Maidencreek and Fleetwood that such Agreement would have been undertaken as if such illegal, invalid, or unconstitutional section, sentence, clause, part or provision had not been included herein.

12. 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 heirs, executors, administrators, 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.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound have caused this Agreement to be duly executed as of the ___ day of _____, 2020.

TOWNSHIP OF MAIDENCREEK

_____
Heidi Fiedler, Chairperson

_____
David Franke, Vice-Chairman

_____
Claude Beaver, Supervisor

BOROUGH OF FLEETWOOD

_____
Suzanne Touch, Council President

_____
Peter Merkel, Council Vice-President

_____
Jim Meals, Council Member

_____
Mark Watkins, Council Member

_____
Ralph Touch, Council Member

_____
John Rothenberger, Council Member

_____
Colin Boyer, Council Member