

AMENDED AND RESTATED
INTERGOVERNMENTAL COOPERATION AGREEMENT
ESTABLISHING THE
BRANDYWINE VALLEY SCENIC BYWAY COMMISSION

THIS AGREEMENT, made the _____ day _____, 2014, by and among the Chester County Townships of Birmingham, East Bradford, Kennett, Pennsbury, and Pocopson, and the Delaware County Township of Chadds Ford, all second class Townships existing under the laws of the Commonwealth of Pennsylvania, hereinafter collectively referred to as “Municipalities” or sometimes individually as “Municipality.”

WITNESSETH:

WHEREAS, the Municipalities entered into the Intergovernmental Cooperation Agreement Establishing the Brandywine Valley Scenic Byway Commission by Agreement dated March 8, 2006; and

WHEREAS, pursuant to paragraph 10.d of the Agreement and the ordinances of each Municipality by which the Agreement was authorized, the Agreement may be amended by action taken by all Municipalities; and

WHEREAS, pursuant to paragraph 6.b of the Agreement, the Agreement was Amended and Restated on June 15, 2010 (hereinafter “Agreement”) by action taken by all Municipalities; and

WHEREAS, the Municipalities identified in the Agreement have agreed to certain amendments to the Agreement which are incorporated in this Amended and Restated Intergovernmental Cooperation Agreement and which shall hereafter be the Agreement of the Municipalities governing the information and operation of the Commission; and

WHEREAS, the Municipalities intend by the approval and adoption of this Amended and Restated Agreement that the Agreement shall hereafter read in its entirety as follows:

WHEREAS, the Intergovernmental Cooperation Act (P.L. 1158, No. 177; 53 Pa. C.S.A. § 2301, et. seq.) permits municipalities to enter into agreements to cooperate in powers and responsibilities, including agreements for the enhancement and conservation of Pennsylvania’s scenic byways; and

WHEREAS, it is believed by the Municipalities that the citizens within their respective municipalities will benefit from a scenic byways program, established under the Scenic Highways Act (P.L.408, No. 58; 74 Pa. Const. Stat. § 8301, et. seq.), jointly administered by them; and

WHEREAS, it is the desire of the Municipalities to establish a Commission of appointed representatives (hereinafter “Commissioners”) to administer and carry out the Agreement to be known as the Brandywine Valley Scenic Byway Commission (hereinafter the “Commission”); and

WHEREAS, the purpose of this Agreement is to provide for a Commission to study, advocate for, seek funding for, and implement Municipality approved plans for the improvement and protection of the Brandywine Valley Scenic Byway (hereinafter “Byway”) approved by Governor Rendell and the Pennsylvania Department of Transportation under the Scenic Highways Act (P.L. 408, No. 58; 74 Pa. Const. Stat. § 8301, et. seq.) in April 2005; and

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, for and in consideration of the mutual covenants herein contained, covenant and agree that the following terms and conditions shall govern the formation and operation of the Commission.

1. INCORPORATION OF THE RECITALS

The above recitals are incorporated herein as if fully set forth.

2. BRANDYWINE VALLEY SCENIC BYWAY COMMISSION

- a. Commission. The Municipalities hereby authorize the creation of the Commission, which shall have the responsibility and authority to study, advocate for, seek funding for, and implement Municipality approved plans for the improvement and protection of the Byway, as well as exercise any necessary powers implied by statute.
 - i. Each Municipality must adopt an ordinance ratifying its participation in the Commission and authorizing the execution of the Agreement.
 - ii. Each Municipality must maintain an ordinance regulating outdoor advertising devices in a manner that complies with the Scenic Highway Act along its designated section of the Byway.
- b. Commissioners. The Commission shall consist of a joint board of representatives appointed by the Municipalities, and it shall act, conduct business, and carry out or exercise its delegated powers, duties, responsibilities, and authority through these representatives. The representatives will serve as Commissioners.
 - i. Each Municipality shall appoint two (2) Commissioners to the Commission.
 - ii. If other municipalities become parties to this Agreement, then each such municipality shall have such representation on the Commission as determined by an amendment of this Agreement.
- c. Voting. Each Commissioner shall have one (1) vote.

- i. Quorum at any meeting of the Commission shall consist of a majority of the Municipalities being represented by at least one (1) Commissioner.
 - ii. Business requiring a vote shall be transacted only if a quorum of Commissioners is present at the meeting. Such business shall only be passed by no less than a majority of the said quorum.
- d. Attendance. Commissioners must attend 70% of the total meetings each year and not miss more than three (3) consecutive meetings during each year. Any Commissioner who fails to meet this attendance requirement may be removed by a resolution of the appointing Board of Supervisors.
 - e. Liaison. Each Commissioner shall serve as liaison for his/her appointing Municipality. The Commissioners are responsible for keeping their respective Municipalities informed of Commission business so that the Commissioners can reflect and represent the position and views of their respective Municipality.
 - f. Terms. Each Commissioner shall be appointed for a term determined by their Municipality with terms beginning on January 1st.
 - g. Removal. A Commissioner serves at the pleasure of the appointing Municipality and may be removed by the appointing Municipal governing body at any time with or without cause.
 - h. Vacancies. In the event of vacancy due to removal, resignation, disqualification, or death of a Commissioner, the appointing Municipality of such Commissioner shall within 90 days of the vacancy appoint a successor to the unexpired term.
 - i. Officers. Officers of the Commission shall be Chairperson, Vice Chairperson, Secretary, Treasurer, and such other officers as the Commission deems necessary. Vacancies, as may occur from time to time, shall be filled pursuant to the Commission's bylaws.
 - j. Committees. The Commission may establish both standing and ad hoc committees as it sees fit to carry out its duties. The duties, number of Commissioners, and membership requirements of said committees shall be established by the Commission pursuant to the Commission's bylaws.

3. DUTIES AND POWERS OF THE COMMISSION

- a. Purpose. The Commission shall study, advocate for, seek funding for, and implement Municipality approved plans for the improvement and protection of the Brandywine Valley Scenic Byway, as well as exercise any necessary powers implied by statute.

- b. Planning. The Commission shall recommend, and if approved by the respective Municipalities, implement a corridor management plan for the Byway.
- c. Enhancements and Improvements. The Commission shall effectuate enhancements, improvements, and other such activities necessary to carry out the corridor management plan as approved by each Municipality affected by such plan.
- d. Educate. The Commission shall inform the Municipalities on management, maintenance, improvement, and challenges relating to the Byway. The Commission shall work with necessary organizations and individuals to educate its residents and visitors on the scenic, historical, cultural, recreational, and natural importance of the Byway in accordance with an educational program approved by the Municipalities.
- e. Fundraise. The Commission shall have the authority to apply for, secure, acquire, receive, administer, and dispense funds from municipal, state, federal, private, or other sources for use in conjunction with the Byway.
- f. Research. The Commission shall have the authority to conduct surveys, studies, hearings, and other such activities necessary to guide the continuing enhancement of the Byway.
- g. Conduct of Business. The Commission shall adopt and promulgate written bylaws to govern its operation, establish procedures for the conduct of its meeting, and prescribe the duties of its Commissioners, officers, and committees. Such rules shall incorporate any and all provisions set forth in this Agreement with regard to the conduct of Commission business. The Commission shall operate within and abide by all applicable laws of the Commonwealth of Pennsylvania. The Commission will establish a non-profit status classification.
- h. Employment. The Commission may contract for staff personnel and/or consultants, as permitted by available funds, to aid in its purpose.
 - i. Appointment and Termination. Appointments and termination of any contractor shall be made by a majority vote of all the Commissioners.
 - ii. Management and Supervision. The Commission may manage and supervise its contractors.
 - iii. Voting. Contractors shall have no voting rights with respect to the Commission.

4. FINANCES

- a. Fiscal Year. The fiscal year shall be July 1 to June 30.

- b. Fiscal Year Budget. The Commission shall prepare an annual accounting of all of its operations and activities on a fiscal year basis beginning on July 1 of each year.
 - i. On or before April 1 of each year, the Commission shall prepare a budget, which shall include in detail the costs and expenses expected to be incurred by the Commission in the performance of its duties for the subsequent fiscal year. The Commission shall approve the proposed budget by majority vote.
 - 1. The budget shall include the amount of funds which the Commission expects to receive from all sources other than the Municipalities as discussed in Paragraph 4 (d) hereof.
 - 2. The budget shall include the amount of funds which the Commission expects to receive from the Municipalities' annual fee discussed in Paragraph 4 (e) hereof.
 - 3. Such budget shall not include any expenditure for any item designated as an in-kind contribution.
 - ii. Any excess funds remaining at the end of the fiscal year shall be applied to the retained balance of funds of the Commission.
 - iii. During the first year of the Commission, preliminary budget projections shall be developed for the next three years.
 - iv. If any Municipality shall request a financial review prior to April 1, the budget prepared by the Commission shall be submitted to the governing bodies of the Municipalities for consideration and approval on or before May 1 of the year immediately preceding the fiscal year for which the budget is proposed.
 - 1. By June 15, each Municipality shall provide written notice to the Commission and all other Municipalities of its approval or disapproval of the proposed budget. Notice of disapproval shall state with particularity the reasons for disapproval and identify the line items and other portions of the budget with which the Municipality disagrees. A Municipality that fails to give written notice of disapproval by June 15 shall be deemed to have approved the proposed budget.
 - 2. If one (1) or more of the Municipalities votes to disapprove the budget, the Municipal governing bodies for the majority of the Municipalities must approve the entire budget and provide the

Commission with written notification of the approval. If less than a majority of the Municipalities approve the budget then parties shall meet to negotiate a budget.

- c. Receipt of Funds. The Commission may apply for, secure, acquire, receive, administer, and dispense funds from municipal, state, federal, private, or other sources.
- d. Annual Contribution. Each Municipality shall pay an initial annual contribution of \$ 500.00. The amount to be paid for years beyond the initial year shall be determined every two years and approved by each Municipality upon recommendation from the Commission.
 - i. Annual Fee Payments. The Municipalities shall make payments to the Commission on or before July 31.
- e. Contract. The Chairperson or the Vice Chairperson of the Commission is authorized to sign all contracts on behalf of the Commission.
- f. Debt. The Commission shall not borrow funds without the unanimous consent of the Municipalities.
- g. Audit. As necessary, an auditing committee will be appointed by the Chairperson and approved by the Commission. A copy of the audit shall be furnished to the Commission and each Municipality.

5. INSURANCE AND IMMUNITY

- a. Insurance, Waiver of Claims. The Commission shall maintain adequate liability insurance against claims arising out of the activities of the Commission. The Commission and Municipalities shall be named as named insured on all liability insurance policies. Each Municipality hereby waives any and all claims and causes of action against the Commission and all other parties to this Agreement that may arise out of the activities of the Commission. The Commission and the Municipalities shall cause any insurance policy providing liability coverage against claims arising out of their activities to contain a waiver of subrogation clause or endorsement under which the insurance company waives its right of subrogation against each party to this Agreement as to any and all causes of action or claims that may arise out of the activities hereunder.
- b. Immunity. The services performed and expenditures incurred under this Agreement shall be deemed for public governmental purposes, and all immunities from liability enjoyed by each Municipality shall extend to its participation in service outside of its boundaries. Similarly, as a matter reciprocal to the responsibilities, duties, authority, and jurisdiction delegated under this

Agreement, the Commission and its officers, Commissioners, contractors shall have the same immunities from liability, the limitations on damage, and the same rights, protections, and benefits as the Municipalities have under all applicable laws.

- c. **Proportional Liability.** For purposes of liability in actions arising out of the activities of the Commission that are not covered by insurance protection, the Municipalities shall have no liability. This provision does not and should not be construed as expanding the liability of the Commission or the Municipality. All immunities, limitations on liability, and damages, protections, and defenses under the laws of the United States and of the Commonwealth of Pennsylvania shall apply and are expressly preserved.
6. **EFFECTIVE DATE, RENEWAL, TERM, WITHDRAWAL, DISSOLUTION, AND NEW PARTICIPANTS**
- a. **Effective Date and Term.** This Agreement shall become effective on the latest date that any of the participating parties to this Agreement take action to approve the agreement. The Agreement shall terminate on December 31, 2019.
 - b. **Renewal.** This Agreement shall be automatically renewed for consecutive five-year periods with the terms of the agreement open to negotiation upon renewal.
 - c. **Withdrawal.** Any Municipality may remove itself from this agreement by written notice to the Commission. Dissolution can be affected by unanimous agreement of all current Municipalities.
 - d. **New Municipalities Wishing to Participate.** Additional municipalities may enter into the Agreement with a two-thirds vote of the Commission and with the approval of PennDOT.

7. ENTIRE AGREEMENT

This Agreement constitutes the entire contract by the Municipalities, and there are no other understandings, oral or written, relating to the subject matter hereof.

8. SEVERABILITY

If any sentence, clause, section, or part of this Agreement is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared the intent of the Municipalities that this Agreement would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included therein.

9. GOVERNING LAW

This Agreement shall be governed by the Laws of the Commonwealth of Pennsylvania. This Agreement is adopted pursuant to P.L. 1158; No. 177; 53 Pa. C.S.A. § 2301, et. seq. and P.L.408, No. 58; 74 Pa. Const. Stat. § 8301, et. seq. and each of the Municipalities shall take all necessary steps under the statute to comply with the same.

10. AGREEMENT APPROVAL PROCEDURES AND AMENDMENTS

- a. The Municipalities agree to take all action necessary to carry forth the provisions of this Agreement.
- b. Each Municipality will adopt an ordinance approving and authorizing the execution of this Agreement.
- c. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.
- d. Amendment. During the term of this Agreement, it may be amended only by written agreement of all Municipalities.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first written above.

Attest

TOWNSHIP OF BIRMINGHAM

BY: _____
Chair of the Board of Supervisors

Attest

TOWNSHIP OF CHADDS FORD

BY: _____
Chair of the Board of Supervisors

Attest

TOWNSHIP OF EAST BRADFORD

BY: _____
Chair of the Board of Supervisors

Attest

TOWNSHIP OF KENNETT

BY: _____
Chair of the Board of Supervisors

Attest

TOWNSHIP OF PENNSBURY

BY: _____
Chair of the Board of Supervisors

Attest

TOWNSHIP of POCOPSON

BY: _____
Chair of the Board of Supervisors