

SHARED SERVICES AGREEMENT
BETWEEN THE TOWNSHIP OF HOPEWELL
AND BOROUGH OF PENNINGTON FOR
EXTENSION OF THE LAWRENCE-HOPEWELL TRAIL

This Shared Services Agreement (“Agreement”) dated this 5th day of March, 2013 is by and between the Township of Hopewell, a municipal corporation of the State of New Jersey with a principal business address of 201 Washington Crossing Pennington Road, Titusville, New Jersey 08560 (“Hopewell”) and the Borough of Pennington, a municipal corporation of the State of New Jersey with a principal business address of 30 North Main Street, Pennington, New Jersey 08534 (“Pennington”) (collectively the “Parties”).

WHEREAS, the Lawrence Hopewell Trail (LHT) is a bicycle and pedestrian recreational trail and transportation corridor crossing through public and private lands situated in Lawrence Township and Hopewell Township in Mercer County, New Jersey; and

WHEREAS, when completed, the LHT will be comprised of approximately 20.2 miles of trails accessible to the public; and

WHEREAS, the trail is currently 58% complete with 11.8 miles of trail open to the public; and

WHEREAS, a portion of the trail has been constructed on property owned by Bristol Myers Squibb Company along Pennington-Rocky Hill Road (County Route 624), to a point where the trail intersects wetlands near the Stony Brook Regional Sewerage Authority’s Pennington Plant; and

WHEREAS, the LHT’s “Pennington Extension” would provide direct access from the trail to Pennington Borough; and

WHEREAS, completion of the Pennington Extension requires a 700 foot long, 8-foot wide trail, porous asphalt bicycle and pedestrian walkway and retaining wall to be built through wetlands from the driveway of the Stony Brook Regional Sewerage Authority Pennington Plant to the Route 624 bridge over the Stony Brook; and

WHEREAS, the property on which the 700-foot trail extension will be constructed has been dedicated by Bristol Meyers Squibb company to the County of Mercer; and

WHEREAS, the property and construction lie within the corporate bounds of Hopewell Township; and

WHEREAS, financing for the 700-foot trail extension includes (a) a Federal Highway Administration grant (Federal Project No. TCP-09NJ604) in the amount of \$266,760; (b) a State NJDEP Recreational Trails Grant in the amount of \$24,700; (c) a municipal contribution from the Pennington Borough Open Space Trust Fund in the amount of \$195,000; and (d) a municipal

contribution from the Township of Hopewell for design engineering in the amount of \$60,000; and

WHEREAS, the federal grant for the 700-foot trail extension was authorized in the name of Pennington Borough; and;

WHEREAS, Pennington Borough and Hopewell Township have a mutual interest in providing for the construction of the 700-foot trail extension for the benefit of their respective residents; and

WHEREAS, Pennington Borough has budgeted a total of \$486,460 toward construction of the 700-foot trail extension, which sum includes the federal grant, the State NJDEP Recreational Trails Grant and an additional sum from its Open Space Fund, but Pennington Borough currently lacks the administrative capacity required to oversee the project, desires to limit its financial responsibility for the project to the budgeted amount, and desires to be shielded from further responsibility for the project upon its completion, all while working in partnership with the Township and the County to meet a regional need; and

WHEREAS, Hopewell Township has sufficient administrative staff to oversee the project; and

WHEREAS, the Uniform Shared Services and Consolidation Act, *NJSA 40A:65-1 et seq.*, permits any local unit to enter into an agreement with any other local unit to provide or receive any service that each local unit participating in the agreement is empowered to provide or receive within its own jurisdiction, including services incidental to the primary purpose of any of the participating local units (*NJSA 40A:65-4.a.1*).

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties do hereby covenant and agree each with the other as follows:

1. Nature of Services

The purpose of this agreement is to ensure the construction of an extension to the Lawrence-Hopewell Trail. The proposed extension is a 700 foot long, 8-foot wide porous asphalt bicycle and pedestrian walkway and retaining wall to be built through wetlands from the driveway of the Stony Brook Regional Sewerage Authority Pennington Plant to the Route 624 bridge over the Stony Brook (the "Project").

2. Design Plans

The Project is more specifically described in the following documents, which describe the plans for the Project and the work to be done:

- A. Pennington Connection to Lawrence-Hopewell Trail (Lawrence-Hopewell Trail Connector) Federal Project No. TCP-09NJ (004) NJDOT Job No. 6508301 (2 volumes).
- B. Final Site Plans of Pennington Connection to Lawrence-Hopewell Trail (Lawrence-Hopewell Trail Connector) (10 Sheets), dated 12/23/10, last revised 7/18/12.

3. Allocation of Responsibility

- A. Pennington Borough. Pennington Borough will be responsible for (i) preparing the bid specifications, (ii) soliciting the bids, and in cooperation with Hopewell Township, (iii) reviewing the bids submitted, (iv) awarding the contract for the construction of the project, (v) hiring the contractor, and (v) paying the contractor. No contract will be awarded, no contractors hired, no contractors paid and no charge order authorized without the prior approval of Hopewell Township. Pending the selection and hiring of an engineer by Hopewell Township, all work on the Project by the Pennington Borough Engineer will be suspended.
- B. Hopewell Township. Hopewell Township will be responsible for (i) reviewing the bid specifications and the bids submitted and making a recommendation to Pennington Borough on the awarding of the contract and the hiring of a contractor, (ii) overseeing construction, inspecting the work performed and recommending payments, (iii) ensuring compliance with grant requirements necessary to obtain reimbursement for project costs under the pertinent grant agreements, and (iv) selecting, hiring and paying an engineer to assist the Township in the performance of its responsibilities under the agreement. Hopewell Township's professional services agreement with its engineer shall name Pennington Borough as a third party beneficiary and require that the engineer's insurance certificate name Pennington Borough as an additional insured.

4. Costs/Consideration.

- A. Pennington Borough will be responsible for funding the Project, including the cost of the engineer hired by Hopewell Township to assist in the performance of its responsibilities under the agreement, up to the budgeted amount of \$486,460. The Parties understand and agree that Pennington's budgeted amount of \$486,460 is a total amount and that as of the date of this Agreement, Pennington has already expended \$9,329.02 of that budgeted amount towards the Project. In no case shall Pennington Borough be required to expend an amount in excess of \$486,460 on the Project.
- B. Project costs in excess of \$486,460 shall be borne by Hopewell Township.

5. Responsibility for Paying Project Costs

- A.** Pennington Borough will make payments to the contractor. Hopewell Township will recommend said payments upon inspection and recommendation by the engineer. If Project costs exceed \$486,460, Hopewell Township shall reimburse Pennington Borough for its contractor-payments upon presentation of an invoice signed by the Borough Administrator.
 - B.** Hopewell Township will make payments to the engineer. If the Project costs are less than \$486,460 at the time the performance bond is release, Pennington Borough will reimburse Hopewell Township for engineering costs in amount equal to difference between the amount spent at the time the performance bond is released and \$486,460.
- 6. Bonds.** Construction and maintenance guarantees shall be issued in favor of Pennington Borough, which shall release said guarantees upon recommendation of Hopewell Township after inspection and recommendation by the engineer.
- 7. Project Completion.** Upon completion of the Project, Hopewell Township shall recommend acceptance of the Project to Mercer County. Neither Hopewell Township nor Pennington Borough shall retain any ownership interest in the Project.
- 8. Duration of the Agreement.** This Agreement will remain in effect during the period of construction and for the entire period that any bond or other security posted as a construction or maintenance guarantee remains outstanding. If the Agreement is in effect for a period exceeding ten (10) years, it may be extended for an additional ten (10) years upon the mutual written consent of the Parties.
- 9. Arbitration.** Any controversy or claim arising out of or relating to this Agreement or breach thereof shall be settled pursuant to the laws of the State of Jersey by arbitration in accordance with the rules that exist in the American Arbitration Association and judgment upon an award pursuant to such arbitration may be entered into any court in the State of New Jersey. No party shall seek arbitration without the parties first having mediated their differences with the New Jersey Office of Dispute Settlement.
- 10. Notices and Demands.** A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by regular United States Mail, by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with receipt acknowledged) to the Parties at their respective addresses set forth herein, or at such other address or addresses with respect to the Parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to Hopewell Township:

Paul Pogorzelski, Hopewell Township Administrator/Engineer
201 Washington Crossing – Pennington Road
Titusville, New Jersey 08560

As to Pennington Borough:

Tim Matheny, Administrator
30 North Main Street
Pennington, New Jersey 08534

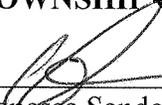
From time to time either party may designate a different person or address for all the purposes of this Notice provision by giving the other party no less than ten (10) days notice in advance of such change of address in accordance with the provisions hereof.

11. **Entire Agreement; Amendments to Agreement.** This Agreement represents the entire agreement by and between the Parties with respect to the issues set forth herein and supersedes and replaces any and all previous agreements between or for the benefit of the Parties. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the Parties with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect.
12. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles.
13. **Independent Counsel.** The parties acknowledge that they have independent counsel of their own choosing and with whom they have reviewed this contract and consulted with as to the terms set forth herein, and that they have received independent and separate advised regarding this agreement.
14. **Severability.** The terms, covenants and provisions of this Agreement shall be deemed to be severable and the invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other portion thereof.
15. **Assignment.** Neither party shall assign this Agreement without the prior written permission of the other party.
16. **Titles of Articles and Sections.** The titles of the several Articles and Sections of this Agreement, as set forth at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

17. **Successors Bound.** This Agreement shall be binding upon the respective Parties hereto and their permitted successors and assigns.
18. **Authorization.** Each of the Parties hereto which are business entities represent and warrant that each has complied with all necessary formalities and the undersigned signatory has been duly authorized to execute this Agreement on behalf of such entity.

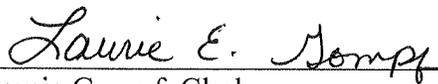
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

TOWNSHIP OF HOPEWELL



Vanessa Sandom, Mayor

Attest:



Laurie Gompf, Clerk

BOROUGH OF PENNINGTON



Anthony Persichilli, Mayor

Attest:



Elizabeth Sterling, Clerk

**BOROUGH OF PENNINGTON
RESOLUTION 2013 3.15**

**RESOLUTION AUTHORIZING SHARED SERVICES
AGREEMENT WITH HOPEWELL TOWNSHIP FOR
ASSISTANCE IN CONNECTION WITH CONSTRUCTION
OF PENNINGTON EXTENSION TO LAWRENCE-HOPEWELL
TRAIL IN HOPEWELL TOWNSHIP**

WHEREAS, the Borough of Pennington seeks to construct a bike path and retaining wall to connect the Lawrence-Hopewell Trail to Pennington, to be funded by federal and state grants and the Borough's Open Space Fund totaling \$486, 450;

WHEREAS, the Borough of Pennington seeks to enlist the assistance of Hopewell Township in the management of this project because, among other things, it is located in Hopewell Township;

WHEREAS, Hopewell Township has agreed to enter into a shared services agreement by which it would supervise construction of the project through its engineer as well as assume financial responsibility for any costs that exceed the amount of the Borough's budget for the project (\$486,450. minus the amounts already spent by the Borough);

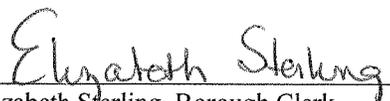
WHEREAS, a copy of the proposed agreement, as authorized and executed by Hopewell Township, is attached to this Resolution;

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Pennington, that the Mayor, with the attestation of the Borough Clerk, is hereby authorized to enter into the attached Shared Services Agreement between the Township of Hopewell and Borough of Pennington for Extension of the Lawrence-Hopewell Trail.

Record of Council Vote on Passage

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.
Dunn	X				Heinzel	M			
Griffiths	S				Ogren	X			
Heino	X				Tucker	X			

This is to certify that the foregoing is a true copy of a Resolution adopted by the Borough Council of the Borough of Pennington at a meeting on March 4, 2013.


Elizabeth Sterling, Borough Clerk