

**UPPER WEST BRANCH BRANDYWINE CREEK WATERSHED
COST-SHARING AND COOPERATION AGREEMENT**

THIS AGREEMENT ("Agreement"), is made this 5th day of September, 2017, by and between the TOWNSHIP OF HONEY BROOK, Township of the Second Class incorporated under the laws of the Commonwealth of Pennsylvania having an address of 500 Suplee Road, Honey Brook, Pennsylvania 19344 (the "Township"), and the BOROUGH OF HONEY BROOK, a municipal corporation incorporated as a Borough under the laws of the Commonwealth of Pennsylvania having an address of 71 Pequea Avenue, Honey Brook, Pennsylvania 19344 (the "Borough") (the Township and Borough each a "Municipality", and collectively the "Municipalities"), pursuant to the authority granted by the various municipal laws of the Commonwealth of Pennsylvania and respective Ordinances.

BACKGROUND

WHEREAS, areas within both the Borough and the Township are located in the Upper West Branch Brandywine Creek within the Christina Watershed; and

WHEREAS, both the Borough and the Township are subject to the National Pollutant Discharge Elimination System permitting for stormwater discharges from a regulated Small Municipal Separate Storm Sewer Systems Permit ("MS4 Permit") process administered by the Pennsylvania Department of Environmental Protection on behalf of the United States Environmental Protection Agency, which requires a reduction of the amount of sediment, and by proxy, the rate and quantity of stormwater, discharged to the Upper West Branch Brandywine Creek to comply with the Christina Basin TMDL (Total Maximum Daily Load); and

WHEREAS, MS4 permit regulations allow TMDL implementation plans to be coordinated and complied with on a regional or watershed basis through a collaborative effort; and

WHEREAS, the Municipalities wish to enter into this agreement to provide cost sharing and cooperation in assessing the impact of the MS4 permit on their communities and, as necessary, for the implementation of measures to comply with the MS4 Permit implementation plan; 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, pursuant to the Second Class Township Code, 53 Pa.C.S. §66507, the Township of Honey Brook is authorized to enter into agreements with other municipal corporations to perform governmental powers, duties and functions; and

WHEREAS, pursuant to the Borough Code, 53 Pa.C.S. §46202(34), the Borough of Honey Brook may enter into contracts with other municipalities to perform governmental powers, duties and functions; and

WHEREAS, the Municipalities have agreed to collaborate and coordinate and share costs for the development and implementation of plans within a common watershed-wide planning area in order to comply with MS4 permitting requirements; and

WHEREAS, upon review of the MS4 permit requirements for the upcoming 2018-2023 permitting cycle, the Municipalities have acknowledged that certain projects may be required to be completed to achieve MS4 compliance within the Upper West Branch Brandywine Creek in the Christina watershed, and that the scope and cost of achieving such compliance should be shared between the Municipalities; and

NOW, THEREFORE, in consideration of the above and with the intention to be legally bound hereby, the Municipalities agree as follows:

PURPOSE AND AUTHORITY

1. The Municipalities have entered into this Agreement for the purpose of coordinating and sharing the costs of planning and implementation to comply with each Municipality's TMDL MS4 requirements applicable to the Upper West Branch Brandywine Creek in the Christina watershed, as required by Pennsylvania Department of Environmental Protection and United States Environmental Protection Agency MS4 permitting regulations.
2. The Municipalities have entered into this Agreement to cooperate pursuant to the Pennsylvania Intergovernmental Cooperation Act, 53 Pa.C.S. §2301 et seq, (the "Act"), the applicable municipal codes of the Commonwealth of Pennsylvania, and Ordinances duly enacted by the Municipalities. Both Municipalities agree and pledge good faith cooperation to each other in the exercise of the powers, duties and functions set forth herein.
3. Each Municipality shall adopt an Ordinance authorizing this Agreement, shall execute this Agreement, and shall comply with all requirements set forth in this Agreement.

AGREEMENT TO COOPERATE AND SHARE COSTS

4. The Borough and the Township do hereby agree to coordinate and share costs related to the planning and implementation of activities required to comply with each Municipality's TMDL MS4 requirements for the Upper West Branch Brandywine Creek in the Christina watershed, as set forth herein, which shall generally include:
 - a. Best Management Practice (BMP) implementation;
 - b. BMP operation and maintenance; and
 - c. MS4 permit administration.

FORMATION OF STEERING COMMITTEE

5. The Municipalities agree that the purposes of this Agreement shall be achieved through the formation and functioning of a Steering Committee, which shall be composed of following four (4) individuals:
 - a) the Township Engineer;
 - b) the Borough Engineer;
 - c) the Township Manager or other Township representative as designated by the Township Supervisors; and
 - d) the Borough Mayor or other Borough representative as designated by Borough Council.
6. The Steering Committee shall select one of its members to serve as Chairperson, one of its members to serve as Secretary, and one of its members to serve as Treasurer.
7. Each Municipality may designate an alternate representative to serve as a representative of the Municipality on the Steering Committee, in the absence of its Representative at a given meeting.
8. The Steering Committee shall have the powers and duties as provided for in the Ordinances and this Agreement, consistent with the authority of the Act and other applicable laws.
9. The Steering Committee shall operate as recommending body to the governing boards of each Municipality, with all recommendations to be subject to official action by the governing board of each Municipality.
10. The Secretary of the Steering Committee shall maintain the official records (including minutes) of the Steering Committee, and shall forward to each Municipality any correspondence or other documentation received by the Committee related to its purpose.

MEETINGS

11. The Steering Committee shall hold regular meetings which shall take place at such place and time as mutually agreed upon by the Municipalities and/or members of the Steering Committee.
12. Notice of meetings shall occur in accordance with the Sunshine Act of the Commonwealth of Pennsylvania, as applicable.
13. All meetings must have a Quorum consisting of at least one (1) member from the Borough and one (1) member from the Township to conduct business. If a Quorum is not present at the start of the meeting, the meeting shall be delayed or rescheduled.
14. The Secretary of the Steering Committee, or other designee of the Committee in the absence of such Secretary, shall prepare minutes that record all meeting activities. The Secretary of the Steering Committee shall distribute approved minutes, including recommendations for action or expenditure, to the other Municipality following every meeting of the Committee.
15. Members of the Steering Committee may vote by being present at or remotely participating in the meeting.
16. A unanimous vote of the members of the Steering Committee shall be required to make a recommendation for action to the governing boards of the Municipalities.

COST-SHARING AGREEMENT

17. Beginning on the date of execution of this Agreement, and continuing through the end of the 2018-2023 MS4 permit cycle, which is anticipated to last from approximately March 10, 2018 through March 9, 2022, including any governmentally authorized extensions of such MS4 permit cycle (the “2018-2023 MS4 Permit Cycle”), each Municipality agrees to share the costs of the anticipated combined expenditures set forth below under “Budget”, based upon the following table, with such percentages of financial responsibility having been calculated based upon each Municipality’s agreed upon share of the total combined Total Suspended Solids (TSS) load reduction:

	Proposed Share of Financial Responsibility
Township of Honey Brook	20.0%
Borough of Honey Brook	80.0%
TOTAL	100.0%

BUDGET

18. The Municipalities acknowledge that the anticipated combined expenditure (including fees, costs, and expenses) of both Municipalities for BMP implementation, operation and maintenance, and permit administration for all activities required to satisfy both Municipalities' MS4 Permit requirements related to the Upper West Branch Brandywine Creek watershed, from the Effective Date through the end of the 2018-2023 MS4 Permit Cycle is \$ 51,587,00, as based upon the Municipalities' engineers' agreed upon projected costs, attached hereto as Exhibit A. The Steering Committee shall operate assuming such amount is the initial budget cap for the 2018-2023 MS4 Permit Cycle. Any recommendation by the Steering Committee to the Municipalities that involves total expenditures for the 2018-2023 MS4 Permit Cycle in excess of the initial budget cap shall be accompanied by a detailed accounting and justification of all previously approved expenditures and the justification for the request of additional expenditure.
19. Each Municipality shall place all recommendations of the Steering Committee for activity or expenditure on such Municipality's monthly business agenda for official action, with any such approval of a recommended activity or expenditure being conditioned upon the other Municipality's approval thereof.
20. By authorizing an expenditure of funds as recommended by the Steering Committee, a Municipality agrees to pay its share of such expenditure as set forth in Paragraph 17 above.
21. By authorizing an activity as recommended by the Steering Committee, a Municipality agrees to pay its share, as set forth in Paragraph 17, of any costs arising as a result of such activity.
22. Where agreed by both Municipalities, in-kind contributions shall be accepted to fulfill all or a portion of a Municipality's required contributory share.
23. The Treasurer of the Steering Committee shall maintain documentation of the expenditures of both Municipalities related to the Municipalities' MS4 Permits.
24. Each Municipality shall be responsible for its own out of pocket costs, engineering costs, and solicitor fees attendant to its involvement with the activities authorized by this Agreement.

TERM

25. This Agreement shall continue in full force and effect for the duration of the 2018-2023 MS4 Permit Cycle and shall terminate at the end of such cycle unless determined by all parties that such Agreement should continue and such extension is agreed to in writing by all involved parties.

26. This Agreement may be modified by mutual, written agreement of the parties subject to whatever review and approval may be required by governmental agencies.

NOTICE

27. Any notice given hereunder by any party to another party shall be in writing and shall be deemed given when delivered personally or five (5) days after being sent by certified mail, return receipt requested, as follows:

To the Municipality:

Borough of Honey Brook
71 Pequea Avenue
P.O. Box 249
Honey Brook, PA 19344

Township of Honey Brook
500 Suplee Road
P.O. Box 1281
Honey Brook, PA 19344

Copy to:

Kimberly P. Venzie, Esquire
Buckley, Brion, McGuire & Morris, LLP
118 W. Market Street, Suite 300
West Chester, PA 19382

Christopher J. Hartman, Esquire
Hartman Valeriano Magovern & Lutz, P.C.
1100 Berkshire Blvd
Suite 301
P.O. Box 5828
Wyomissing, PA 19610

MISCELLANEOUS PROVISIONS

28. The services performed and expenditures incurred under this Agreement shall be deemed for public and governmental purposes, and all immunities from liabilities enjoyed by the Municipalities within their respective municipal boundaries shall extend to their participation in services outside their respective boundaries and within the geographical area of the Upper West Branch Brandywine Creek watershed.
29. 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 other part thereof.
30. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
31. This Agreement may be signed in counterparts or any number of duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

32. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

33. This Agreement represents the entire agreement between the parties hereto. Any amendment to this Agreement shall be in writing and must be signed by all parties hereto in order to be valid and enforceable.

34. This Agreement shall become effective on the date ("Effective Date") occurring five (5) days after the date of enactment of an authorizing ordinance by the last Municipality to enact an authorizing Ordinance.

IN WITNESS WHEREOF, the Municipalities have caused this Agreement to be duly executed as of the day and year above written.

Approved by Ordinance 2017-189 of the Township of Honey Brook, the 13th day of Sept, 2017.

ATTEST:

Signature

Print Name

TOWNSHIP OF HONEY BROOK:

Signature

Print Name

Chairman, Board of Supervisors

Approved by Ordinance 241 of the Borough of Honey Brook the 5th day of SEPT, 2017.

ATTEST:

Signature

Print Name

BOROUGH OF HONEY BROOK:

Signature

Print Name

President of Borough Council

Mayor

EXHIBIT A

Estimated Costs for BMPs

Sector	BMP Name	Lifespan (Years)	Capital Unit Cost	Capital Unit	Number of Units	Total Capital Costs (\$)
Existing BMPs						
Agriculture	Soil Conservation and Water Quality Plans	10	\$15.00	\$/acre	10.8	
Agriculture	Continuous No Till	1	\$0.00	\$/acre	10.8	
Agriculture	Cover Crop Standard Drilled Rye	1	\$0.00	\$/acre	10.8	
Agriculture	Nutrient Application Management, Tier 1 Crop Group	1	\$75.00	\$/acre	10.8	\$810.00
Agriculture	Barnyard Runoff Control	15	\$5,890.00	\$/acre	2.8	
Agriculture	Loafing Lot Management	10	\$11,901.00	\$/acre	0.2	
Agriculture	Animal Waste Management System-Livestock	10	\$1,011.19	\$/AU	130	
Agriculture	Stream Access Control with Fencing	10	\$41,020.00	\$/acre	4.2	
Total Costs for Existing BMPs						\$810.00
Proposed BMPs						
Urban	Tree Planting	75	\$2,100.00	\$/acre	0.25	\$525.00
Urban	Rain Garden	25	\$11,814.45	\$/acres treated	2.9	\$34,261.91
Agriculture	Forest Buffers	75	\$4,000.00	\$/acre	4.2	\$16,800.00
Total Costs for Proposed BMPs						\$51,586.91
Total Costs for Existing + Proposed BMPs						\$52,396.91

Hypothetical Cost Share:			
Boro	80%	\$41,917.52	
Twp	20%	\$10,479.38	

note: cost estimates are from on Chesapeake Bay CAST Model for Pennsylvania