



**LUZERNE COUNTY COUNCIL
PUBLIC HEARING**

July 23, 2019
Pittston Memorial Library
47 Broad Street
Pittston, PA 18640

5:45PM CALL TO ORDER

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

ROLL CALL

PUBLIC COMMENT ON PROPOSED ORDINANCE Entering into an Intergovernmental Agreement with Butler Township for the Repair and Dedication of Roads in Accordance with the Pennsylvania Intergovernmental Cooperation Law, Act 177 of 1996, previously adopted as Act 180 of 1972.

Each speaker shall have three (3) minutes to address the Agenda item. Each speaker is asked to submit a Speaker Card before the first speaker is called and to limit individual comments to three (3) minutes. Speakers may not yield or transfer their time to another speaker.

ADJOURNMENT

ORDINANCE NO. ____ of 2019

An Ordinance of County Council of Luzerne County Entering into an Intergovernmental Agreement with Butler Township for the Repair and Dedication of Roads in Accordance with the Pennsylvania Intergovernmental Cooperation Law, Act 177 of 1996, previously adopted as Act 180 of 1972.

WHEREAS, Section 2304 of the Intergovernmental Cooperation Law (“PICL”) promulgates a municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with or delegate or transfer any function, power or responsibility to one or more other local governments, the Federal Government or any other state or its government; and

WHEREAS, Section 2305 of the Intergovernmental Cooperation Law allows a local government may enter into intergovernmental cooperation with or delegate any functions, powers or responsibilities to another governmental unit or local government upon the passage of an ordinance by its governing body; and

WHEREAS, Luzerne County and Butler Township seek to enter into an Intergovernmental Agreement for the sole purpose of Luzerne County (“the County”) repairing, at its expense, certain roads owned by the County that are located within Butler Township (“the Township”); and

WHEREAS, upon completion of such repairs by Luzerne County, the County shall dedicate the specified roads to the Township for ownership and maintenance and the Township shall accept such dedication and responsibility of the roads; and

WHEREAS, the respective municipalities have acted and intend to act pursuant to Article M, Section 5, of the Pennsylvania Constitution and 53 Pa. C. S. § 2303, et seq., providing for intergovernmental cooperation; and

WHEREAS, Section 2307 of the Intergovernmental Cooperation Law states that the Ordinance adopted by the governing body of a local government entering into intergovernmental cooperation or delegating or transferring any functions, powers or responsibilities to another local government or to a council of governments, consortium or any other similar entity shall specify:

- (1) The conditions of agreement in the case of cooperation with or delegation to other local governments, the Commonwealth, other states or the Federal Government.
- (2) The duration of the term of the agreement.
- (3) The purpose and objectives of the agreement, including the powers and scope of authority delegated in the agreement.
- (4) The manner and extent of financing the agreement.
- (5) The organizational structure necessary to implement the agreement.
- (6) The manner in which real or personal property shall be acquired, managed, licensed or disposed of.
- (7) That the entity created under this section shall be empowered to enter into contracts for policies of group insurance and employee benefits, including Social Security, for its employees, if applicable.

WHEREAS, Luzerne County wishes to enter into an Intergovernmental Agreement with Butler Township in accordance with the PCIL.

NOW, THEREFORE, BE IT HEREBY ENACTED AND ORDAINED by the County Council of Luzerne County as follows:

SECTION ONE. Incorporation of Preamble.

The provisions set forth above in the preamble to this Ordinance are incorporated herein by reference in their entirety.

SECTION TWO. Conditions of Agreement

That Luzerne County and Butler Township enter into such Intergovernmental Agreement, attached hereto and incorporated herein by reference, in accordance with the terms therein and any other laws which apply.

SECTION THREE: Duration

The duration and term of the Agreement shall be the length of time required by Luzerne County to repair to specification the following roads located within Butler Township: West Foothills Drive (C-38), North and South Beisel's Road (C-39), East County Road (C-37), Police Grove Road (C-31), Hobby Mountain Road (C-31), Airport Road and Honey Hole Road (C-41). Upon completion of repair for each individual road, the County shall dedicate and the Township shall accept such dedication of each individual road.

SECTION FOUR: Purpose

The purpose of the Agreement is for Luzerne County to transfer ownership of and responsibility for the aforesaid roads to Butler Township once said roads are in satisfactory condition per the terms of the Intergovernmental Agreement.

SECTION FIVE: Manner and Extent of Financing

That Luzerne County shall finance the cost of repairs, including but not limited to labor and materials to repair the subject roads, through the use grant and/or County budgeted funds.

SECTION SIX: Severability

The provisions of this Ordinance 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 Ordinance. It is hereby declared to be the intent of the County of Luzerne that such Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION SEVEN. Effective Date.

This Ordinance shall take effect on the fifteenth (15th) day following its enactment.

SECTION EIGHT. Repealer.

Any Resolution or Ordinance or parts thereof that conflict with or are inconsistent with this Ordinance are hereby repealed to the extent of the conflict or inconsistency with this Ordinance.

ENACTED by the County Council of the County of Luzerne this _____ day of _____, 2019.

LUZERNE COUNTY COUNCIL

AYES:

NAYS:

ATTEST:

BY: _____

Sharon Lawrence,
Clerk to Council

BY: _____

Tim McGinley, Chair

BY: _____

Eugene Kelleher, Vice-Chair

INTERGOVERNMENTAL COOPERATION AGREEMENT

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT (this "Agreement") dated the _____ day of _____, 2019, by and between:

BUTLER TOWNSHIP, a Pennsylvania Political Subdivision and Township of the Second Class, with a municipal office located at 415 West Butler Drive, Drums, Luzerne County, Pennsylvania 18222 (hereinafter the "Township");

AND

LUZERNE COUNTY, a county within the Commonwealth of Pennsylvania, with a County office located in the Luzerne County Courthouse and having an address of 200 N. River Street, Wilkes-Barre, Pennsylvania 18711 (hereinafter the "County"). The Township and County are sometimes referred to in this Agreement as the "Parties".

BACKGROUND

WHEREAS, the County is the owner of certain roads located within the Township, more specifically: West Foothills Drive (C-38), North and South Beisel's Road (C-39), East County Road (C-37), Police Grove Road (C-31), Hobby Mountain Road (C-31), Airport Road and Honey Hole Road (C-41); and

WHEREAS, the aforementioned roads located within the Township are in various states of disrepair; and

WHEREAS, in the interest of the public health, welfare, and safety, the County and Township recognize the benefits of repairing the roads and dedicating them to the Township; and

WHEREAS, the Act of December 19, 1999, P.L. 1158, No. 177, 53 Pa. C.S.A., Section 2301, et. seq., also known as the Intergovernmental Cooperation Act (Act 77), and more specifically Section 2303(a) provides that two local governments within the Commonwealth of Pennsylvania may jointly cooperate in the exercise or in the performance of their respective governmental functions, powers, or responsibilities; and

WHEREAS, Section 2302 of the Intergovernmental Cooperation Act defines local governments to include counties and townships;

WHEREAS, Section 2303(b) of the Intergovernmental Cooperation Act further provides that in the carrying out the provisions of the Act, the local governments so cooperating shall enter into a joint agreement; and

WHEREAS, under Section 2305 of the Intergovernmental Cooperation Act, a local government may enter into an intergovernmental cooperation agreement with another local government upon the passage of an Ordinance by its governing body; and

WHEREAS, the Parties wish to enter into this Agreement for the purpose of the repair and subsequent dedication of West Foothills Drive, North and South Beisel's Road, East County Road, Police Grove Road, Hobby Mountain Road, Airport Road and Honey Hole Road located in Butler Township, Luzerne County, Pennsylvania under the terms and conditions set forth below.

NOW, THEREFORE, intending to be legally bound hereby, the Parties agree as follows:

TERMS AND CONDITIONS

1. BACKGROUND. The recitals set forth in the Background section above form a material part of this Agreement, and are incorporated herein by reference.

2. COUNTY WORK. The County agrees to perform the work on the aforementioned roads, at its own cost and expense, to Pennsylvania Department of Transportation standards and/or to a standard mutually agreed upon by the Parties to this Agreement.

3. OWNERSHIP. Upon the completion of the work contemplated in this Agreement, the County shall offer West Foothills Drive (C-38), North and South Beisel's Road (C-39), East County Road (C-37), Police Grove Road (C-31), Hobby Mountain Road (C-31), Airport Road (C-32) and Honey Hole Road (C-41) to the Township for dedication, and the Township shall accept dedication of the aforementioned roads.

4. TERM. The term of this Agreement shall be until the completion of its purpose.

5. LIABILITY.

(a) Each party shall indemnify and hold harmless the other party as a result of any action accruing during an individual party's performance under this Agreement, and for any actions that may be brought against the other party for injuries or damage occasioned while an individual party is performing under this Agreement.

(b) Luzerne County shall be responsible for all workers compensation claims made by the Luzerne County employees as a result of performing work under this Agreement.

6. SEVERABILITY. The provisions of this Agreement are severable, and if any section, sentence, clause, 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 or impair the remaining sections, sentences, clauses, parts or provisions of this Agreement. It is hereby declared to be the intent of the governing bodies of each local government that this Agreement would have been entered into if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

7. COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS. The Parties agrees to comply with all federal, state and local laws, rules, regulations, and ordinances while performing their duties under this Agreement.

8. NO RIGHT TO BIND EACH OTHER. Except as to the obligations set forth in this Agreement, the Parties otherwise understand and agree that they do not have any authority to bind one another in any way or enter into any other contracts on behalf of one another with any third party.

9. ENTIRE AGREEMENT/AMENDMENTS. The parties agree that this Agreement constitutes the entire understanding between the parties and any representations, oral or written, not contained herein, are without effect. This Agreement may be amended only by written instrument signed by the Parties.

10. ASSIGNMENT. The Parties shall not assign this Agreement, in whole or any part, to any person or other entity without the prior written consent of the both Parties. Any attempt at assignment without the prior written consent of the other party shall be null and void, not binding on the Parties and the same shall constitute a default under this Agreement.

11. AMBIGUITY IN THIS AGREEMENT. If any ambiguity or ambiguities in this Agreement exists or are claimed by either the Township or County, or if any court should determine that any ambiguity exists in this Agreement, the parties acknowledge that this Agreement was drafted by both of them and the rule that any ambiguity shall be construed against the drafter shall not apply.

12. GOVERNING LAW; JURISDICTION AND VENUE. This Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania, and the Parties agree that jurisdiction and venue is only proper in Luzerne County since this is where the subject roads are located and the place where this Agreement was entered into between the Parties.

13. SIGNATURES. The Parties sign below intending to be legally bound by this Agreement.

Attest:

Butler Township Board of Supervisors:

Manager

By:

Chairperson

Attest:

Luzerne County Council:

Sharon Lawrence, Clerk to Council

By:

Tim McGinley, Chair