

# WHITPAIN TOWNSHIP

ORDINANCE #369


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AN ORDINANCE AUTHORIZING THE TOWNSHIP TO ENTER INTO AN INTERMUNICIPAL AGREEMENT TO CONTINUE THE DEVELOPMENT OF AN ALTERNATIVE TMDL PLAN FOR THE WISSAHICKON CREEK WATERSHED

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## CERTIFICATION

I, ROMAN M. PRONCZAK, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT I AM THE TOWNSHIP MANAGER IN MONTGOMERY COUNTY, PA AND THAT ATTACHED HERETO IS A TRUE AND COMPLETE CORRECT COPY OF ORDINANCE #369

  
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Roman M. Pronczak, P.E., Township Manager  
Oct. 16, 2018

ENACTED: 10-16-18

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**IT IS HEREBY ENACTED AND ORDAINED** by the Whitpain Township Board of Supervisors as follows:

**SECTION 1. Short Title.**

This Ordinance shall be known and may be cited as the “Renewed Intergovernmental Agreement for the Development of an Alternative TMDL Plan for the Wissahickon Creek Watershed”.

**SECTION 2. Legislative Intent.**

- A. Whitpain Township is a second class township.
- B. The Act of December 19, 1996, P.L. 1158, No. 177, referred to as the Intergovernmental Cooperation Law provides that local governments may jointly cooperate in the exercise or in the performance of their respective governmental functions, powers, or responsibilities.<sup>1</sup>
- C. In 2016, the Wissahickon Creek Watershed Municipalities (including Abington Township, Ambler Borough, Cheltenham Township, Horsham Township, Lansdale Borough, Lower Gwynedd Township, Montgomery Township, North Wales Borough, Philadelphia County, Springfield Township, Upper Dublin Township, Upper Gwynedd Township, Upper Moreland Township, Whitemarsh Township, Whitpain Township, and Worcester Township) and certain wastewater treatment plants, including Abington Township Wastewater Treatment Plant, Abington Borough Wastewater Treatment Plant, Upper Gwynedd Township Wastewater Treatment Plant, Upper Dublin Township Wastewater Treatment Plant (Bucks County Water & Sewer Authority) entered into an Intermunicipal Agreement for the development of an

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<sup>1</sup> See 53 Pa. C.S. §2301, *et seq.*

Alternative TMDL Plan for the Wissahickon Creek Watershed (“Agreement”).

- D. The term of the Agreement was for two years and the Agreement stated funds to be provided by each of the Wissahickon Creek Watershed Municipalities to fund the work described in the Agreement during those two years.
- E. Certain municipalities and authorities who were parties to Agreement, including Whitpain Township, now desire to enter into a new Intergovernmental Agreement (the “Renewed Agreement”) to renew the project described in the Agreement through March 31, 2020 and to provide funding for the activities described in the Renewed Agreement in the amount of \$5,000 in 2018 and \$10,000 in 2019.
- F. The renewing municipalities and authorities are Abington Township, Ambler Borough, Cheltenham Township, Lansdale Borough, Lower Gwynedd Township, Montgomery Township, North Wales Borough, Philadelphia County, Springfield Township, Upper Dublin Township, Upper Gwynedd Township, Whitemarsh Township, Whitpain Township, Abington Township Wastewater Treatment Plant, Ambler Borough Wastewater Treatment Plant, Upper Gwynedd Township Wastewater Treatment Plant, Upper Dublin Township Wastewater Treatment Plant (Bucks County Water & Sewer Authority).

### **SECTION 3. Goals and Objectives: Scope of the Study.**

- A. The goal of the Alternative TMDL Plan is to achieve water quality standards in water bodies throughout the Wissahickon Creek Watershed.
- B. The objectives of the Alternative TMDL Plan are delineated in the attached Renewed Agreement’s Attachment “A” [“Milestones”].

### **SECTION 4. Renewed Agreement Terms.**

- A. The terms of the Renewed Agreement, including (1) intergovernmental agreement; (2) definitions; (3) guiding principles; (4) goals and objectives; (5) administrative organization; (6) applicable law; (7) integration; (8) no oral modification; (9) severability; (10) representation by counsel; (11) counterparts; and (12) execution by facsimile or electronic scanning, are set forth in

the attached Renewed Agreement as Appendix "A" and incorporated in this Ordinance as though set forth in full.

- B. In addition to the required funding under the terms of the Renewed Agreement, any additional funds for the implementation and enforcement of the Renewed Agreement may be appropriated by the Board of Supervisors, as it shall determine, in its sole discretion, from time to time by resolution.

**SECTION 5. Authority to Enter Renewed Agreement.**

The Chairman of the Board of Supervisors is hereby authorized to execute all documents and perform all necessary actions to cause the Township to enter into the Renewed Agreement, the terms of which are officially adopted through the enactment of this Ordinance.

**SECTION 6. Repeal and Ratification.**

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Any other terms and provisions of the ordinances of the Township that are unaffected by this Ordinance are hereby reaffirmed and ratified.

**SECTION 7. Severability.**

Should any section, paragraph, sentence, clause, or phrase in this Ordinance be declared unconstitutional or invalid for any reason, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and affect, and for this reason the provisions of this Ordinance shall be severable.

**SECTION 8. Effective Date.**

This Ordinance shall become effective five (5) days after enactment.

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**ORDAINED AND ENACTED** this 16th day of October, 2018, by the Whitpain Township Board of Supervisors.

**WHITPAIN TOWNSHIP  
BOARD OF SUPERVISORS**

  
ADAM ZUCKER, *Chairman*

[Seal]

Attested by:

  
ANTHONY F. GRECO  
*Secretary*

**APPENDIX "A"**  
*[Intermunicipal Agreement]*

Intergovernmental Agreement  
for the Development of a Water Quality Improvement Plan  
for the Wissahickon Creek Watershed

**Section 1 Intergovernmental Agreement.**

THIS AGREEMENT is made by and among each of the Wissahickon Creek Watershed Municipalities and Wastewater Treatment Plants executing this Intergovernmental Agreement (Agreement) for the preparation of the Wissahickon Water Quality Improvement Plan (Plan), each Party shall individually be referred to as a "Party" and shall collectively be referred to as the "Parties". The list of Parties is as follows, and shall be updated by Addendum as necessary. This Agreement is authorized by Chapter 23, Subchapter A (relating to intergovernmental cooperation) of the General Local Government Code, 53 Pa. C.S. §2301 et seq.

**Municipalities**

Abington Township	Philadelphia County
Ambler Borough	Springfield Township
Cheltenham Township	Upper Dublin Township
Lansdale Borough	Upper Gwynedd Township
Lower Gwynedd Township	Whitemarsh Township
Montgomery Township	Whitpain Township
North Wales Borough	

**Wastewater Treatment Plants:**

Abington Township Wastewater Treatment Plant  
Ambler Borough Wastewater Treatment Plant  
Upper Gwynedd Township Wastewater Treatment Plant  
Upper Dublin Township Wastewater Treatment Plant (Bucks County Water & Sewer Authority)

**Section 2 Definitions.**

Expert Panel Services: A panel of technical experts, comprised of the firm of Kleinfelder, Incorporated, (currently providing Technical Consultation), Professor Steven Rier and Paul Marchetti, whose purpose is to review the engineering and scientific portions of the data submitted by the WQAT and to assist with the preparation of the Wissahickon Water Quality Improvement Plan, and to offer technical guidance to the Wissahickon Clean Water Partnership.

Legal Consultant: Legal representation currently provided to the Wissahickon Clean Water Partnership by the firm of Manko Gold Katcher Fox, LLP to review data, reports and information submitted by the WQAT and to offer guidance to the Partnership in regards to the preparation of the Wissahickon Water Quality Improvement Plan, and in the Partnership's relations with State and Federal Government agencies.

Water Quality Advisory Team: The team (WQAT) formed by the Pennsylvania Environmental Council (PEC), comprised of members of PEC, the Wissahickon Valley Watershed Association, the Environmental Finance Center, the Center for Sustainable Communities, and the Montgomery County Planning Commission.

Water Quality Improvement Plan: The goal of the Plan (WQIP) is to identify, quantify and report on the existing water quality and habitat in the various water bodies throughout the Wissahickon Creek watershed and to promote policies, practices, capital work and retrofits to existing structures. The WQIP will prioritize these efforts to affect improvements in the habitat of the watershed in a timely and economical sequence.

### **Section 3 Guiding Principles.**

- a. The Parties have a mutual interest in restoring the impaired waters of the Wissahickon Creek Watershed and recognize that the issues associated with the TMDL developed by the EPA are too broad for any one municipality to effectively address, and therefore, the parties commit to collaboratively work together in a mutually cooperative and respectful manner to develop the WQIP to replace the EPA TMDL.
- b. To evaluate historical and recent monitoring data to develop a scientifically defensible strategy that is acceptable to the Parties, PADEP, and USEPA, and which identifies specific areas within the watershed that have characteristics that may be contributing to the reduced water quality.
- c. The WQIP will include a list of potential capital projects and to promote policies and practices to reduce the existing deleterious characteristics and contributing conditions, including remediating degraded physical structures and habitat conditions in the watershed, replacing or retrofitting existing structures, implementing new practices and constructing new facilities, to improve the impaired conditions in the Wissahickon Creek Watershed as effectively, efficiently and economically as possible.
- d. The Parties agree that projects will be assessed and prioritized based on the anticipated ability to provide results that can be measured to monitor the progress of water quality improvements, and financial feasibility. The effectiveness of a project, or projects, would be evaluated and a determination made on the type(s) of subsequent work projects to pursue during the implementation phase, which is a separate phase from this plan development phase.

### **Section 4 Goals and Objectives: The scope of study**

The goal of the Water Quality Improvement Plan is to improve water quality and habitat standards in the water bodies throughout the Wissahickon Creek watershed.

Objectives: The detailed objectives of the IGA are delineated in Attachment "A", "Milestones".



## **Section 5 Administration and Organization.**

### Effective Date.

- a. The Effective Date of this Agreement shall be the date at which each party adopts and executes the Intergovernmental Agreement (IGA) by Resolution.

### Term

- a. The term of this Agreement (Term) shall begin on the Effective Date at which each party adopts and executes the Intergovernmental Agreement, and ending on March 31, 2020.

### Party Representation

- a. Participation in the preparation of the Plan shall continue to be through the Wissahickon Clean Water Partnership and its established committees.
- b. The Water Quality Advisory Team shall review and provide comments and suggestions on various data, materials, sections of the Plan, and the complete Plan in draft and final. The Team shall have no voting privileges, but is intended to provide input on the Plan.
- d) Management Committee: The organization of the Wissahickon Clean Water Partnership shall continue such that each Party shall designate a primary voting representative and an alternate to serve as the representative on the Management Committee regarding all matters related to the Plan preparation. The name of and contact information for the representative and alternate shall be provided to the Consultant in writing, as well as any subsequent changes.
  - 1) The Management Committee shall consist of one (1) representative from each Party. The seventeen (17) voting representatives (primary voting representatives) will form the Management Committee. The alternate shall be entitled to fully participate in all Stakeholder and Committee meetings, but may vote only when the designated representative is unavailable.
  - 2) The members of the Management Committee shall be appointed by their governing board, shall serve at the discretion of their board for an indefinite term, and shall regularly report to their governing body and provide drafts of materials prepared for review and comment by their governing body.
  - 3) Where a Management Committee member vacates his or her position, the Party shall appoint a new representative, in a timely manner, such that the Management Committee does not have a vacancy for any forthcoming meeting.
- e) Officers - Members of the Management Committee have elected 2 Co-Chairs, a Secretary and a Treasurer. An Officer shall serve for the duration of the Term, unless he or she resigns as an officer, as agreed to by the Management Committee. If an officer is unable to complete his term, a new officer shall be elected by the management committee. These officers shall

perform the duties necessary to implement this Agreement and as generally envisioned by Robert's Rules of Order, latest edition.

- 1) Treasurer - shall collect, maintain and disburse funds in a timely fashion for legitimate expenses related to Legal Services and Expert Panel Services, as approved by the Management Committee.
- f) Administration: Officers of the Management Committee will administer the activities of the Management Committee. The following are tasks that shall be undertaken and the responsibility of administration. The Management Committee may choose to delegate some or all of these activities to the Consultant:
  - 1) Preparation and circulation of minutes to all Parties from all Management Committee meetings.
  - 2) Hold all Management Committee meetings.
  - 3) Review and comment on all draft Alternative Plan documents and revisions prepared by the Consultant, and submit the Plan as approved by the Management Committee to PADEP and EPA.
  - 4) Review and Submit progress reports prepared by the Consultant to PADEP and EPA in a timely manner.
  - 5) Calculate and invoice fees for each Party.
  - 6) Retain all records, as that term is defined by the Pennsylvania Right-to-Know Law, for the time period required by applicable law but not less than six (6) years.

#### Meetings.

- a) The Management Committee shall organize and schedule routine meetings of the Management Committee as needed, but at least quarterly.
- b) The purpose of the meetings shall be to conduct the following activities as necessary:
  - 1) Review and comment on, and when necessary vote on draft and final sections of the Plan.
  - 2) Presentation and approval of Progress Reports.
  - 3) Presentation and approval of the Financial Report.
  - 4) Presentation of report(s) to PADEP, EPA and other agencies.
  - 5) Presentation and vote on other Party business pertaining to the Plan process.
  - 6) Oversight and coordination of all aspects of the Legal Services and Expert Panel Services.

- c) Except as otherwise provided herein, all voting shall be completed by voice vote and decisions shall be based on a simple majority vote of Management Committee Parties in attendance.
- d) Each Party in attendance shall be entitled to one (1) vote on all matters addressed at a meeting and for which a vote is taken.
- e) Quorum. A quorum (more than 50% of Management Committee members as represented by a voting representative) is necessary for the Management Committee to take official action.
- f) The Management Committee shall comply with all laws applicable to the Parties, including, but not limited to, the Public Official and Employees Ethics Act, the Sunshine Act, and any and all other applicable laws. All actions of the Management Committee shall be approved by a majority of its voting members. Management Committee members shall be entitled to attend meetings of the Management Committee, which shall occur no less than four (4) times per year or more frequently as needed, following advance written notice to all members of the Management Committee by regular mail, facsimile or email.

#### Financing

- a) A monetary contribution shall be provided by each Party, to cover the costs of Legal Services and Expert Panel Services. The total cost for these services is not to exceed \$255,000 in total.
  - 1) Contribution Formula. The contribution from each Party shall be \$5,000 per Party for the balance of 2018 and \$10,000 per Party for the period January 1, 2019 through March 31, 2020. Depending on the costs incurred for Legal Representation and the Expert Panel Service, these costs may be less, but in any event they shall not exceed a total of \$15,000 per Party for the duration of the Term.
  - 2) Invoicing and Payment. Parties shall be invoiced within the fourth quarter of 2018, and by February 15, 2019. Payments shall be remitted within 30 days of the invoice letter.
  - 3) Organization Account. A separate Management bank account shall continue to be maintained by the Management Committee for the deposit of each Party's Contributions. The funds therein shall be used solely for reimbursement for eligible costs and expenses pertaining to Legal Services, Expert Panel Services and consultants as approved by the Management Committee. Administration of these funds to pay for proper expenses under this Agreement shall be the responsibility of the Management Committee.
  - 4) Remaining Funds. Any funds remaining at the conclusion of the Term, shall be returned to the Parties, divided equally among the Parties that have paid their Annual Contribution. Such funds shall be disbursed to the Parties remaining at the completion of the Term no more than sixty (60) days after the date of Term completion.

## **Section 6 Applicable Law**

The Parties agree and affirm that Pennsylvania law applies to this Agreement and all matters covered by and addressed by this Agreement. It is acknowledged and agreed that the sole and exclusive jurisdiction and venue for any dispute relating to any matter covered by this Agreement, and/or regarding any dispute over the enforcement or Interpretation of this Agreement, shall rest with the Montgomery County Court of Common Pleas. The Parties hereby submit to the exclusive jurisdiction of that Court.

## **Section 7 Integration**

This Agreement contains the entire agreement between the Parties. There are no understandings or agreements, verbal or otherwise, in relation hereto, except those expressly and specifically set forth herein. The Parties have not relied upon any statement, projection, disclosure, report, information or any other representation or warranty except for those as may be specifically and expressly set forth in this Agreement.

## **Section 8 No Oral Modification**

This Agreement may not be modified except in writing executed by all Parties. This Agreement shall be amended only in writing, by duly authorized representatives of all Parties, and such revision(s) must be approved by official action of each Party jurisdiction, and as required by any applicable law of the Commonwealth.

## **Section 9 Severability**

No determination by any court, governmental body, arbitration, or other judicial body, that any provision of this Agreement or any amendment that may be created hereto, is invalid or unenforceable in any instance shall affect the validity or enforceability of any other provision of the Agreement or applicable amendment. Each provision shall be valid and enforceable to the fullest extent permitted by applicable law, and shall be construed where and whenever possible as being consistent with applicable law.

## **Section 10 Representation by Counsel**

This Agreement has been negotiated by the Parties through their respective legal counsel and embodies terms that were arrived at through mutual negotiation and joint effort, and the Parties shall be considered to have contributed equally to the preparation of this Agreement. The Parties warrant and represent that the terms and conditions of this Agreement have been discussed and negotiated between them, and their respective counsel, and are voluntarily and knowingly accepted for the purpose of making a full and final compromise between the Parties, as referenced herein. The Parties further acknowledge that they understand the facts and their respective legal rights and obligations pursuant to this Agreement.

### **Section 11 Counterparts**

This Agreement may be executed in counterparts, each of which will be an original, and all of which taken together shall constitute one and the same instrument.

### **Section 12 Execution by Facsimile or Electronic Scanning**

Delivery of an executed counterpart of this Agreement by facsimile, or by electronically scanning and e-mailing an executed counterpart signature page, while not specifically required, will be acknowledged by the Parties as being equally as effective as delivery of a manually executed counterpart of this Agreement. The use of a signature page received by facsimile, or through an electronic scan and e-mail, shall not affect the validity, enforceability, or binding effect of this Agreement.

Attachment "A"  
Alternative TMDL Milestones and Activities

Project Result:

A Water Quality Improvement Plan supported by the Parties and approved by PADEP and USEPA, with associated MS4/TMDL permit issuance to follow. The Plan will demonstrate benefits of a successful multi-municipal approach to coordinating required stormwater and phosphorous discharges to achieve regulatory reductions into the Wissahickon Creek.

MILESTONE 1:

PEC continues to coordinate the Water Quality Advisory Team to develop Water Quality Improvement Plan.

MILESTONE 2

The Water Quality Advisory Team submits a draft Water Quality Improvement Plan that is science-based strategy for the Wissahickon watershed.

Activities:

- Key results of recent and ongoing studies and modeling efforts for the Wissahickon Creek watershed are compiled to fully describe the problems causing the water quality impairments
- Strategies and projects for Permittees to address water quality impairments and improve water quality are identified, evaluated, and prioritized for the watershed.

MILESTONE 3

The EFC develops and submits a long term comprehensive financial strategy for implementing Water Quality Improvement Plan suggested projects/programs.

Activities:

- In coordination with Water Quality Advisory Team, costs of plan projects/programs and associated timelines are identified.
- Equitable funding strategy approved by Wissahickon Clean Water Partnership are reflective of the capacities of individual municipalities, multi-municipal authorities and potential for other public and private funding sources.

MILESTONE 4

The WVWA keeps residents of the Wissahickon Watershed informed of project progress, educated and encouraged to understand why Wissahickon water quality needs to be improved and how a TMDL Alternative may be a beneficial solution. Expand on existing DRWI programs including workshops, restoration site visits, and municipal technical assistance as necessary to accomplish the above activities.

#### MILESTONE 5

By the first quarter of 2019 a Wissahickon Clean Water Partnership approved Water Quality Improvement Plan completed and submitted to all party jurisdictions for review and approval.

#### Activities:

- Water Quality Improvement Plan Draft Report compiled and presented to public and regulators for review with the multi-municipal Plan Report finalized thereafter.

#### MILESTONE 6

The finalized and multi-municipal approved Water Quality Improvement Plan is submitted to the PaDEP the U.S. EPA.

#### MILESTONE 7

Comments and questions provided by the PaDEP the U.S. EPA are addressed and resolved such that an implementable final plan can be enacted by all multi-municipal parties.