

SOUTH MIDDLETON TOWNSHIP
CUMBERLAND COUNTY, PENNSYLVANIA

ORDINANCE NO. 01-08

**AN ORDINANCE OF SOUTH MIDDLETON TOWNSHIP,
CUMBERLAND COUNTY, PENNSYLVANIA, CONDITIONALLY
AUTHORIZING THE TOWNSHIP TO ENTER INTO
AND PARTICIPATE IN AN INTERGOVERNMENTAL
COOPERATION AGREEMENT WITH THE
COUNTY OF CUMBERLAND, DICKINSON TOWNSHIP,
NORTH MIDDLETON TOWNSHIP, WEST PENNSBORO TOWNSHIP
AND CARLISLE BOROUGH FOR PURPOSES OF
DELINEATING THE RESPECTIVE LIABILITIES
AND RESPONSIBILITIES OF THE AFORESAID GOVERNMENTAL ENTITIES
IN REGARD TO AN ANTICIPATED LOAN FROM THE
PENNSYLVANIA INFRASTRUCTURE BANK; LIMITING
THE TOWNSHIP'S OBLIGATION OF REPAYMENT; AND
CONDITIONALLY AUTHORIZING THE PROPER
OFFICERS OF THE TOWNSHIP TO TAKE THE
REQUIRED, NECESSARY OR DESIRABLE ACTION
IN CONNECTION WITH THIS ORDINANCE**

PREAMBLE

South Middleton Township, Cumberland County, Pennsylvania, a Township of the Second Class, acting pursuant to the Intergovernmental Cooperation Act, 53 P.S. §481, et seq., and pursuant to the powers vested in it under the Second Class Township Code, as amended, (P.L. 350, No. 60) hereby enacts this Ordinance conditionally adopting the Intergovernmental Cooperation Agreement with Dickinson Township, North Middleton Township, West Pennsboro Township, Carlisle Borough and the County of Cumberland for the purposes of setting forth the respective rights, liabilities and obligations of the aforesaid governmental entities with regard to an anticipated loan from the Pennsylvania Infrastructure Bank.

NOW THEREFORE, it is hereby enacted and ordained by the Board of Supervisors of South Middleton Township in and for the Township of South Middleton, as follows:

BE IT ORDAINED as follows:

SECTION 1. South Middleton Township and its officials and officers are hereby conditionally authorized to enter into the attached Intergovernmental Cooperation Agreement with the governmental entities of Dickinson Township, North Middleton Township, West Pennsboro Township, Carlisle Borough and the County of Cumberland.

A copy of the Intergovernmental Cooperation Agreement is attached hereto and marked Exhibit A and incorporated herein by reference thereto.

SECTION 2. The authority conferred upon the officials and officers of South Middleton Township is contingent upon each of the aforesaid governmental entities adopting an Ordinance authorizing each respective municipality to enter into and participate in the aforesaid Intergovernmental Cooperation Agreement and further contingent upon each of the aforesaid governmental entities adopting a Resolution accepting the loan and all terms and conditions thereof. In the event that any of the aforesaid governmental entities fail to enact such an Ordinance and Resolution, this Ordinance, and the authority conferred hereunder, shall be considered null and void.

SECTION 3. It is the express intent of this Ordinance that, in addition to the conditions set forth in Section 2, the Township's responsibility for the repayment of the anticipated loan and interest shall be no greater than a one-sixth share of the principal and interest. This Ordinance and any action taken pursuant to this Ordinance shall not be deemed to have committed the Township to repayment of any amount beyond its one-sixth share of the principal and interest. In the event that the Township's obligation to repay exceeds its one-sixth proportional share of principal and interest, this Ordinance, and all actions taken pursuant to this Ordinance, shall be deemed to be null and void.

SECTION 4. This Ordinance shall take effect upon satisfactory proof that each of the five above-referenced governmental entities has adopted Ordinances satisfactory to the Board of Supervisors of South Middleton Township.

ENACTED AND ORDAINED THIS 14TH DAY OF JUNE, 2001.

ATTEST:

BOARD OF SUPERVISORS

/s/ Barbara A. Wilson

/s/ R. Duff Manweiler

/s/ Thomas E. Faley

/s/ Phyllis W. Givler

INTERGOVERNMENTAL COOPERATION AGREEMENT

This Agreement is made by and between the County of Cumberland, a County of the Fourth Class with its principal place of business at Cumberland County Courthouse, 1 Courthouse Square, Carlisle, Pennsylvania hereinafter “**County**”, and

Dickinson Township, a Township of the Second Class with its principal place of business at 219 Mountain View Road, Mt. Holly Springs, Pennsylvania hereinafter “**Dickinson**”, and

North Middleton Township, a Township of the Second Class with its principal place of business at 211 North Middleton Road, Carlisle, Pennsylvania hereinafter “**North Middleton**”, and

South Middleton Township, a Township of the Second Class with its principal place of business at 520 Park Drive, Boiling Springs, Pennsylvania hereinafter “**South Middleton Township**”, and

West Pennsboro Township, a Township of the Second Class with its principal place of business at 2150 Newville Road, Carlisle, Pennsylvania hereinafter “**West Pennsboro**”, and

Carlisle Borough, a Municipality within the Commonwealth of Pennsylvania with its principal place of business at 53 West South Street, Carlisle, Pennsylvania hereinafter “**Carlisle**”.

RECITALS

R. 1. The Pennsylvania Department of Transportation (PennDOT) operates the Pennsylvania Infrastructure Bank (Bank) which provides low interest loans to expedite the time table of transportation improvements; and

R. 2. County, Dickinson, North Middleton, South Middleton, West Pennsboro, and

Carlisle desire to apply for a loan from Bank to assist with engineering, environmental, and related expenses for the implementation of the Interstate 81 Exit 12 improvements, more fully described in the Gannett Fleming “Land Use and Traffic Impact Study, I81 – Exit 12”.

NOW THEREFORE intending to be legally bound the parties agree as follows:

1. INCORPORATION OF RECITALS: The Recitals set forth above are hereby incorporated by reference and made a substantive part of this Agreement.

2. MUNICIPALITIES DEFINED: County, Dickinson, North Middleton, South Middleton, West Pennsboro and Carlisle are herein individually referred to as Municipality, or collectively as Municipalities.

3. LETTER OF INTENT: The County agrees to submit a Letter of Intent to PennDOT no later than thirty (30) days after adoption of this Intergovernmental Cooperation Agreement.

4. PURPOSE: The implementation of the entire Exit 12 Interstate 81 Interchange Improvements is currently on PennDOT's Twelve-Year Transportation Program. The Loan is intended for the limited purposes of preliminary engineering and environmental clearance of the Exit 12 Interstate 81 Interchange and is referred to herein as the Project.

It is anticipated that funding of the Project by the Loan shall move the entire Exit 12 Interstate 81 Interchange Improvements forward approximately two (2) years on the PennDOT Twelve Year Transportation Program. Upon funding of the preliminary engineering phase for the Exit 12 Interstate 81 Interchange Improvements, the Municipalities shall be reimbursed for the Loan, together with interest, by PennDOT and/or federal highway funds as applicable.

The Municipalities acknowledge that the Project, as hereinbefore defined, is a preliminary and necessary part of that larger project consisting of the final design right-of-way, utility relocations and construction of Exit 12 to Interstate 81, located within the greater Carlisle region (the "Exit 12 Project"), which Exit 12 Project has heretofore been determined as beneficial to each Municipality specifically and the region generally.

5. LOAN: The Municipalities shall apply for a Loan not to exceed one million (\$1,000,000) dollars with payment of interest only for a period not to exceed five (5) years, unless unanimously agreed otherwise by the Municipalities. Interest shall be as set by the Bank, with a fixed rate, but shall not exceed one-half (1/2) of the then current Prime Lending Rate as determined by the Federal Reserve as published.

6. LOAN REPAYMENT AND PROCESSING LOAN: The Municipalities hereby understand, acknowledge and agree as to the process to be undertaken to finance the Project, as follows:

- A.** The County will borrow the proceeds of the Loan from Bank. The proceeds of the Loan will be used solely for the purpose of advance funding the Project. With respect to the Bank, County only will be the borrower of the Loan proceeds. The County shall acquire all approvals prior to closing the Loan, including, but not limited to, approval of (i) the Pennsylvania Department of Community and Economic Development pursuant to the Local Government Unit Debt Act, and (ii) any federal or state government, or agency thereof, that is required prior to the expenditure of the proceeds of the Loan in order to make the

reimbursement of such Loan proceeds eligible for reimbursement, whether or not as part of the funding of the Exit 12 Project;

- B. The County will be reimbursed from funds, whether federal or state, disbursed by PennDOT through the Harrisburg Area Transit Study (HATS) as part of the cost of the Exit 12 Project;
- C. In the event the County has not been reimbursed from Exit 12 Project funds from PennDOT through HATS or from any other funds, at the time the principal of and all accrued, but unpaid, interest on the note evidencing and securing the Loan to Bank is due, then Carlisle, Dickinson, North Middleton, South Middleton and West Pennsboro (for purposes of this paragraph 6, the "Reimbursing Municipalities") shall immediately pay to County its proportionate share (16.666%) of principal and interest as its several share of the Loan from any of its funds then available;
- D. Advance funding of the Project serves the interest of, and benefits, each of the Municipalities. The Loan, as among the Reimbursing Municipalities, is to be considered several debt, and not joint debt or a joint borrowing obligation of the Reimbursing Municipalities. Repayment by a Reimbursing Municipality shall not exceed its proportionate share hereinbefore specified;
- E. Each of the Reimbursing Municipalities agrees that if funds on hand are not sufficient to pay, when due, the amount required, then such Municipality shall borrow such sum as shall be necessary to make the full and timely payment due the County, including interest accrued on its share after the maturity date of Bank's Loan, or the payment thereof prior to maturity;
- F. The County shall (i) be the contracting party with respect to contracts entered into for the Project; (ii) keep the Reimbursing Municipalities fully apprised of work produced pursuant to Project contracts, and the expenditure of Loan proceeds therefor, and (iii) make a reasonable effort to notify the Reimbursing Municipalities in a timely manner as to whether they will be required to reimburse the County, provided that nothing in this clause (iii) shall be construed to relieve any Municipality from payment of its share except that interest accrued thereon after the maturity date of Bank's Loan shall not be payable to the County until sixty (60) days after notice required by this clause (iii), which notice may be given by the County at any time within 120 days of the maturity date of Bank's Loan.

7. RESOLUTION TO ACCEPT LOAN: Each Municipality shall by Resolution accept or reject the Loan if approved by the Bank within thirty (30) days of receipt of the Bank's Loan Commitment and so notify the remaining Municipalities. In the event any Municipality fails to accept Loan, it shall so notify the other Municipalities and shall have

no further responsibility to any other Municipality hereunder and this Agreement shall be null and void as to that Municipality. One or more of the remaining Municipalities thereafter may, by further Resolution, agree to accept the Loan Commitment and proceed with the Project.

8. FAILURE OF BANK TO APPROVE LOAN: This Agreement shall be null and void in the event the Loan is not approved or funded by the Bank.

9. TERM: The term of this Agreement shall be from its adoption by the Municipality until repayment of the Loan to the Bank.

10. JOINT EXERCISE OF POWER: The Municipalities agree to jointly exercise their municipal planning powers and acknowledge this Agreement is in the best interest of all their citizens.

11. INDEMNIFICATION: Each **Municipality** agrees, to the extent permitted by law, to indemnify and hold the others harmless from any and all liability directly or indirectly arising from this Agreement, the Loan and the implementation thereof by separate Agreement, Contract or otherwise.

12. WRITTEN MODIFICATION ONLY: This Agreement shall not be modified or amended, except by written instrument duly executed by the parties.

13. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be regarded for all purposes as an original.

14. GOVERNING LAW: This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania.

15. SEVERABILITY: If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the invalidity of unenforceability of such provision shall not affect the remainder of this Agreement, and this Agreement shall be construed and enforced consistently with the expressed purposes set forth herein as if the invalid or unenforceable provision had not been intended to be included within this Agreement.

16. HEADINGS: The headings set forth in this Agreement are for convenience only.

17. BINDING AGREEMENT: This Agreement shall bind the parties and their respective successors.

IN WITNESS WHEREOF, the County of Cumberland has executed this Agreement the ____ day of _____, 2001.

Attest:

County of Cumberland

IN WITNESS WHEREOF, _____
Dickinson Township has executed this Agreement the
_____ day of _____, 2001.

Attest: Dickinson Township

IN WITNESS WHEREOF, North Middleton Township has executed this
Agreement the _____ day of _____, 2001.

Attest: North Middleton Township

IN WITNESS WHEREOF, South Middleton Township has executed this
Agreement the 14th day of June, 2001.

Attest: South Middleton Township

/s/ Barbara A. Wilson

/s/ Phyllis W. Givler

IN WITNESS WHEREOF, West Pennsboro Township has executed this
Agreement the _____ day of _____, 2001.

Attest: West Pennsboro Township

IN WITNESS WHEREOF, Carlisle Borough has executed this Agreement the
_____ day of _____, 2001.

Attest: Carlisle Borough
