

**INTERMUNICIPAL FIRE AND EMS SERVICES FUNDING, OPERATION
AND OWNERSHIP AGREEMENT**

This **INTERMUNICIPAL FIRE AND EMS SERVICES FUNDING, OPERATION AND OWNERSHIP AGREEMENT** (“Agreement”) is made and entered into this 5TH day of DECEMBER, 2023, by and between **EASTTOWN TOWNSHIP, TREDYFFRIN TOWNSHIP**, (“Easttown” and “Tredyffrin” individually, and collectively the “Townships”), **BERWYN FIRE COMPANY** (“BFC”), and the **BERWYN FIRE COMPANY VOLUNTEER FIREFIGHTERS RELIEF ASSOCIATION** (“VFRA”) all of Chester County, Pennsylvania.

BACKGROUND

WHEREAS, Easttown Township (“Easttown”) and Tredyffrin Township (“Tredyffrin”) have worked cooperatively at the administrative level with the Berwyn Fire Company (“BFC”) to jointly consider a path forward to renovate and upgrade the existing BFC Fire Station (“Fire Station”) located at 23 Bridge Avenue, Berwyn, Easttown Township, Pennsylvania, as set forth in that land development application approved by the Easttown Township Board of Supervisors on January 17, 2023 (the “Fire Station Renovation”); and

WHEREAS, BFC was founded in 1894, and is currently a 501(c)(3) non-profit corporation which serves portions of the Easttown and Tredyffrin communities with essential fire and emergency medical services, including but not limited to services originating from the Fire Station location which was first constructed in 1929 and is in need of modernization; and

WHEREAS, Easttown and Tredyffrin have the powers to provide for fire and emergency medical services pursuant to the Second Class Township Code, including, inter alia, the authorizations of Section 1528 (Ambulances and Rescue and Life Saving Services); Section 1553 (Emergency Services); Sections 1801-1806 (Fire Prevention and Protection); Sections 3201-3210 (Taxation and Finance); and pursuant to other related powers under federal, state and local law or regulation; and

WHEREAS, Easttown and Tredyffrin also have the authority under the Second Class Township Code at Section 1507 (Intergovernmental Cooperation) to make agreements with each other, and with other municipal corporations, in performing governmental powers, duties and functions and in carrying into effect the provisions of 53 Pa.C.S. Ch. 23 Subchapter A (relating to Intergovernmental Cooperation); and

WHEREAS, as a Home Rule Charter municipality, Tredyffrin has the authority pursuant to 53 Pa.C.S. §2961 of the Home Rule Municipality Law, and pursuant to §105 of

the Township's Home Rule Charter, to exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or its home rule charter; and

WHEREAS, Easttown and Tredyffrin intend to establish an initial path and joint framework for partial local funding and support for the renovation and upgrade to the existing Fire Station, based upon the proportional use and other relevant factors concerning fire and emergency medical services used by their respective residents and property owners; and

WHEREAS, on October 4, 2021, both Easttown and Tredyffrin approved and adopted a Resolution setting forth a framework for funding for the renovation and upgrade to the existing Fire Station; and

WHEREAS, after multiple discussions with BFC, Easttown and Tredyffrin now rescind their respective October 4, 2021 Resolutions and replace them with the terms of the within Agreement, which sets forth the updated intent of Easttown and Tredyffrin for funding the renovation and upgrade to the existing Fire Station, and other operational, ownership, and funding matters.

NOW, THEREFORE, for and in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Boards of Supervisors of Easttown Township and Tredyffrin Township, Chester County, Pennsylvania, the Berwyn Fire Company, and the Berwyn Fire Company Volunteer Firefighters Relief Association, all of Chester County, Pennsylvania, agree as follows, with the recitals set forth in the Background Section of this Agreement also incorporated herein as if set forth in their entirety:

1. Statement of Conditional Funding Intent.

Easttown and Tredyffrin intend to commit the joint total sum of Nine Million Dollars (\$9,000,000.00) ("Joint Township Contribution") as a "not to exceed" amount, representing 100% of the estimated hard and soft costs for the renovation and upgrade to the existing Fire Station, less approximately Two Million Dollars (\$2,000,000) received by BFC as Redevelopment Assistance Capital Program ("RACP") funding, and less any other grant funds or donations received by BFC to renovate and upgrade the existing Fire Station, subject to the proportions and conditions set forth below:

A. Easttown 30% Funding Intent. Not to exceed Two Million, One Hundred Thousand Dollars (\$2,100,000.00).

B. Tredyffrin 70% Funding Intent. Not to exceed Four Million, Nine Hundred Thousand Dollars (\$4,900,000.00).

C. BFC / RACP Funding. To the extent that the timing of the Two Million Dollars (\$2,000,000) to be received by BFC in the form of RACP funding requires advance

payment to renovate and upgrade the existing Fire Station, with later RACP reimbursement received by BFC, then Easttown and Tredyffrin may advance such funds to BFC in the proportion percentages (Easttown 30%, Tredyffrin 70%) set forth in Sections 1.A and 1.B above, subject to BFC repayment of the advance funding by the Townships. Any advance funding is further subject to Section 1.M. below as to Timing for Township Appropriations.

D. Preconditions to Easttown and Tredyffrin Funding and Conditions to BFC Obligations. As a precondition to Easttown and Tredyffrin funding the renovation and upgrade to the Fire Station, BFC will not enter into any agreement to sell the existing cell tower facility, or the right to receive rent therefrom, located at the BFC Station or on real property owned by BFC. In the event either Easttown or Tredyffrin refuses or fails to fund the construction and renovation of the Fire Station in accordance with the terms of the Agreement, BFC shall be relieved of its obligations and commitments set forth in this Agreement.

E. Fire Station Ownership. BFC shall continue to own the Fire Station during the renovation and construction period through to occupancy of the renovated building. Following the completion of the Fire Station renovations and construction, and no later than 180 days following issuance of occupancy permits (or if later, the time of final close-out of the RACP grant process or other later time as jointly determined by the Townships), all assets of BFC, including revenue streams associated with those assets set forth below in this Section, subject to restrictions and terms set forth below in Section 1.L., shall be transferred to a new as yet created Tredyffrin-Easttown Fire Department (“T/E Fire Department”) entity, as legally permitted, or to each township, by the ownership percentages or allocations agreed to by the Townships (Easttown 30%, Tredyffrin 70%) (the “Asset Transfers”). BFC assets shall include:

- the Fire Station located at 23 Bridge Avenue, Berwyn, PA.;
- all land/real property owned by BFC, specifically those properties located at 737 and 743 Berwyn Avenue, Berwyn, PA, and the assignment of leases and revenues associated with those properties;
- the cell tower at the Fire Station and the assignment of associated leases and revenues; and
- all fire and EMS assets, including but not limited to equipment, vehicles and apparatus.

F. Lease of Renovated Fire Station. Within 180 days following transfer of ownership of the Fire Station from BFC to the Townships or to the as yet created T/E Fire Department (or if later, the time of final close-out of the RACP grant process or other later time as jointly determined by the Townships), BFC and the Townships or the T/E Fire Department will enter into a mutually-agreeable lease back agreement of the new Fire Station to BFC for its use and occupancy. The initial term of the lease shall be up to 5 years, with renewable terms as determined by the Townships and BFC.

BFC shall pay nominal rent of One Dollar (\$1.00) per year to the Townships for the lease of the new Fire Station. BFC shall maintain the interior of the new Fire Station and pay all utilities associated therewith, and the Townships shall maintain the exterior of the new Fire Station, as will be set forth in more detail in the lease back agreement.

G. Lease of Equipment, Vehicles and Apparatus. Following transfer of ownership of the assets of BFC to the Townships or to the as yet created T/E Fire Department, BFC and the Townships or the T/E Fire Department will enter into a mutually-agreeable lease back agreement of all of the fire and EMS equipment, vehicles and apparatus to BFC for its use and occupancy. The initial term of the lease shall be 5 years, with renewable terms as determined by the Townships and BFC. BFC shall pay a nominal lease payment of One Dollar (\$1.00) per year to the Townships or T/E Fire Department for the lease of the fire equipment, vehicles and apparatus. BFC shall maintain and insure the fire equipment, vehicles and apparatus, as will be set forth in more detail in the lease back agreement.

H. RACP Funding Authorization. The Joint Township Contribution is contingent upon receiving written approval and authorization from the Pennsylvania Office of the Budget, or similar appropriate state agency that oversees the RACP funding program, that the Joint Township Contribution terms and the potential transfer of ownership outlined herein are compliant with the RACP grant award, and BFC bidding and award structures, including any prevailing/non-prevailing wage components thereof.

I. T/E Fire Department Concept. Easttown and Tredyffrin, with input from BFC, will work together to explore the potential future creation of a mutually agreed upon T/E Fire Department entity which may eventually assume some or all assets, roles, and responsibilities of BFC. Should the T/E Fire Department be created at a future time, BFC will continue to function as a separate fire department entity but will be responsible financially and operationally to the new T/E Fire Department, or to Tredyffrin and Easttown jointly, as to the assets, roles, and responsibilities transferred. Prior to the formation of the T/E Fire Department, BFC will nonetheless remain subject to all property and asset transfer provisions, as well as staffing and financial obligations, restrictions, and terms set forth in this Agreement. The Townships reserve the right to create a potential Fire Administrator position, jointly answerable to the Townships and with fiscal and operational oversight over BFC, for possible implementation as soon as the third or fourth quarter of 2024, consistent with and not to exceed the power and authority of the Townships to see to it that fire and emergency medical services are provided for within the Townships, "by the means and to the extent determined by" the Townships pursuant to Section 1553(a) of the Second Class Township Code, as amended.

J. BFC Charter Amendments as to Asset Transfers Triggered Under Section 3. Within 180 days of the date of this Agreement, (or if later, the time of final close-out of the RACP grant process, or other later time as jointly determined by the Townships), BFC will amend its charter and by-laws to provide that Tredyffrin and Easttown, or the

yet created T/E Fire Department, will receive all assets of BFC, including if BFC ceases operation prior to completion of the Fire Station and asset transfer. All charter and by-laws amendments concerning the disposition or transfer of BFC assets shall require prior written approvals from Easttown and Tredyffrin.

K. BFC Charter prior to, or in the absence of, any Asset Transfer under Section 3. Prior to, or in the absence of, any Asset Transfers Triggered under Section 3, BFC will amend its charter and by-laws, within 90 days of the last executed signatures to this Agreement (or as extended by mutual agreement), to provide that in all cases, now and in the future, all BFC assets shall be held in trust for the purpose of fire and emergency services for benefit of the residents of the Townships, including while operating, or if BFC ceases operation. All charter and by-laws amendments concerning the disposition or transfer of BFC assets shall require prior written approvals from Easttown and Tredyffrin.

L. BFC Staffing and Financial Obligations. Effective immediately, BFC will not make any additional hires or increase any staffing, nor shall BFC create financial, loan, or other economic obligations, nor shall BFC create any title encumbrances, or obtain any new assets including but not limited to equipment, vehicles and apparatus, without prior written approvals from Easttown and Tredyffrin, except that BFC may incur regular charges and expenses consistent with annual BFC budgets approved by the Townships, and may further incur regular charges and expenses exceeding annual BFC budgets approved by the Townships in an amount no greater than \$5,000.00 per annum. During the time period prior to creation of the T/E Fire Department, the Townships shall work in good faith with BFC to maintain current levels of service in place as of the date of this Agreement.

M. Regulatory Issues and Assurances of Funds being Committed to Fire and Emergency Services Benefiting the Residents of Tredyffrin and Easttown Townships.

(1) Berwyn Fire Company Volunteer Firefighters Relief Association of Chester County, Pennsylvania (“VFRA”).

In the case of all funds and assets currently owned or held by VFRA, such funds and assets, regardless of ultimate disposition pursuant to Section 1.E., in all cases, now and in the future, shall be held in trust for the purpose of fire and emergency services for benefit of the residents of the Townships. Use of VFRA funds and assets shall be subject to statutory compliance with Act 118 of 2010, as may be amended, and its associated regulations relating to establishment and operation of volunteer fire relief associations in Pennsylvania, to the extent applicable. VFRA shall enter into agreements with the Townships and BFC, as applicable, to ensure that VFRA funds and assets continue to be

used, in all cases, to serve the residents of the Townships for fire and emergency services.

(2) EMS Assets and Services.

In the case of all funds and assets currently used for EMS services, the Townships and BFC shall cooperatively ensure that transfer of such assets, if required by the Townships subject to Section I.E. shall be structured in such a way that there is no interruption of EMS licensure and /or EMS services to the residents of the Townships. All such transfers shall comply with Act 37 of 2009, as amended, and its associated regulations, to the extent applicable.

(3) BFC Use of Asset, Lease and Revenue Streams; Use or Assignment of BFC Assets, Leases and Revenue Streams to the Townships.

All BFC assets, leases and revenue streams shall be used for the purpose of fire and emergency services for benefit of the residents of the Townships. To the extent any or all assets, leases and revenue streams are assigned by BFC to the Townships pursuant to the terms of this Agreement, such assets, leases and revenue streams shall be used by the Townships for the purpose of fire and emergency services for benefit of the residents of the Townships.

N. Timing for Township Appropriations. Initial appropriations for the Fire Station renovation and construction by Easttown will not occur until 2024. If construction for the Fire Station begins in 2023, Tredyffrin shall pay all of the initial construction costs, including Easttown's proportional share of such costs, until such time as Easttown can begin to make payments in 2024 on such terms and conditions as may be acceptable to Easttown and Tredyffrin.

2. Development of Additional Intergovernmental Cooperation Agreements.

Upon enactment and execution of this Agreement, and with the support and input of BFC and VFRA, Easttown and Tredyffrin will undertake cooperative efforts to detail and memorialize the additional concrete tasks and required municipal steps forward by developing additional mutually acceptable Intergovernmental Cooperation Agreements, to the extent necessary for final review and approval by the Easttown and Tredyffrin Township Boards of Supervisors.

3. Sole Discretion of the Townships as to Transfers.

Transfer of the Fire Station and other BFC assets, leases and revenue streams to the Townships as identified in Section 1.E., shall only occur if or when the Townships jointly determine, by public action, an intent to require such transfers. The Townships shall give BFC a 90 day notice

of transfer requirements following any such joint public action. Similarly, the transfer provisions and lease-back requirements of Sections 1.F, 1.G and the charter and bylaw amendment provisions of Section 1. J. shall only apply if or when the Townships jointly determine, by public action, an intent to require any applicable transfers. BFC shall engage in all required charter and bylaw amendments pursuant to Section 1.K., within 90 days of the last executed signatures to this Agreement (or as extended by mutual agreement) whether or not the Townships require any asset, lease, or revenue stream transfers.

4. General Authorizations.

The Easttown and Tredyffrin Township Boards of Supervisors, BFC, and VFRA hereby authorize their respective officers, agents, and employees to take any and all necessary actions to effectuate this Agreement, and prepare additional mutually acceptable Intergovernmental Cooperation Agreements, to the extent necessary for subsequent review and approval by each municipality, with the support and input of BFC.

5. Counterparts.

Signatures to this Agreement may be executed and exchanged through the use of facsimile and/or PDF signatures, any of which shall be considered the equivalent of original signatures, and which shall be attached and incorporated in counterparts, which together shall constitute a fully executed Agreement.

6. Severability.

If any provision of this Agreement shall at any time be deemed to be invalid or illegal by the entry by a court of competent jurisdiction of a final judgment which is not subject to appeal, then, in that event, this Agreement shall continue in full force and effect with respect to the remaining provisions of this Agreement as if the invalidated provision had not been contained herein.

7. Governing Law.

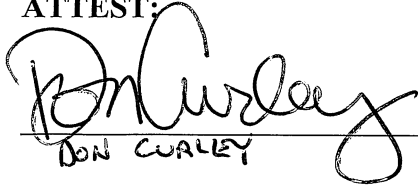
This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of laws.

8. Entire Agreement; Amendments.

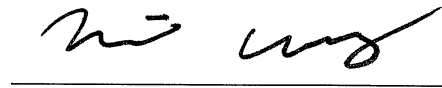
The foregoing constitutes the entire Agreement of the parties, and no modifications, amendments, additions or revisions thereto shall be valid and binding unless such changes are mutually approved and agreed to by all parties, in writing, by and through official action of Easttown Township, Tredyffrin Township, the Berwyn Fire Company, and the Berwyn Fire Company Volunteer Firefighters Relief Association.

ENACTED AND APPROVED by Easttown Township this 20 day of November, 2023.

ATTEST:

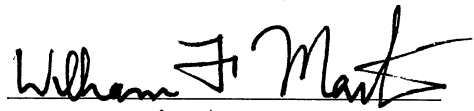

DON CURLEY

EASTTOWN TOWNSHIP



ENACTED AND APPROVED by Tredyffrin Township this 4th day of December, 2023.

ATTEST:



William Martin, Township Manager

TREDYFFRIN TOWNSHIP

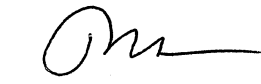

Julie Gosse, Chair

ENACTED AND APPROVED by Berwyn Fire Company this 5th day of December, 2023.

ATTEST:


Linda Martin
Secretary


BERWYN FIRE COMPANY

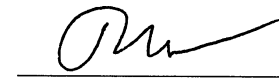

THOMAS TORRESSON, President

ENACTED AND APPROVED by Berwyn Fire Company Volunteer Firefighters Relief Association of Chester County, Pennsylvania this 5th day of December, 2023.

ATTEST:

BERWYN FIRE COMPANY
VOLUNTEER FIREFIGHTERS
RELIEF ASSOCIATION OF
CHESTER COUNTY,
PENNSYLVANIA


Linda Martin
Secretary


Thomas Torresson, President