

ORDINANCE NO. 06-2016

AN ORDINANCE OF THE COUNTY OF BERKS, PENNSYLVANIA AUTHORIZING THE COUNTY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT FOR THE PURPOSE OF PROVIDING MUTUAL AID AMONG THE COUNTY OF BERKS, BOYERTOWN AREA FIRE AND RESCUE, INC. AND SUCH OTHER ENTITIES OR MUNICIPALITIES WHICH PARTNER IN THE FUTURE TO ASSIST FIRST RESPONDERS IN THE MITIGATION OF EMERGENCIES RELATED TO TRENCH AND STRUCTURAL COLLAPSE

BE IT ENACTED AND ORDAINED by the Board of Commissioners of the County of Berks, Pennsylvania and it is hereby enacted and ordained by the authority of the same as follows:

Section 1. Purpose A mutual aid agreement between the County of Berks (“County”), Boyertown Area Fire and Rescue, Inc. (“Fire Company”) and such other entities or municipalities which may partner in the future (collectively “Partners”) to assist first responders in the mitigation of emergencies related to trench and structural collapse consistent with the requirements of the Pennsylvania Emergency Management Services Code and with the objectives of protecting the health, safety and welfare of municipal residents and landowners.

Section 2. Grant of Power This Ordinance is adopted pursuant to authority granted in:

- (A) The Pennsylvania Emergency Management Services Code, Act 323 of November 26, 1978 (35 Pa.C.S.A. §7101 et seq.) as amended, or as it may be amended from time to time;
- (B) The Pennsylvania Intergovernmental Cooperation Act, Act 177 of 1966 (53 Pa.C.S.A., Section 2301, et seq.) as amended, or as it may be amended from time to time.

Section 3. Definitions The following words or phrases, when used in this Ordinance, shall have the meanings indicated:

Code – the Pennsylvania Emergency Management Services Code, Act 323 of 1978 (35 Pa.C.S.A. §7101, et seq.) as amended, or as it may be amended from time to time.

DES – the Berks County Department of Emergency Services, Berks County, Pennsylvania.

Section 4. Participation Pursuant to and in accord with the above-referenced authority, County is hereby authorized to participate with the Partners in a mutual aid agreement for reciprocal emergency assistance regarding ownership, possession, use and training for use of emergency equipment in accordance with the authority granted in the above-referenced laws and this Ordinance.

Section 5. Authority to Enter Agreement Pursuant to and in accordance with the above-referenced authority, County is hereby authorized and directed to enter into the Reciprocal Agreement which governs the ownership, possession, use and training for use of emergency equipment, a copy of which is attached to this Ordinance and incorporated herein by reference (the “Agreement”).

Section 6. Organization The Agreement authorized under and by virtue of the authority of the Code and this Ordinance shall be by and between the Partners. The participation by County in the Agreement shall be governed and controlled by the terms and conditions of the Agreement, as duly amended, the provisions of applicable Pennsylvania laws and regulations, and such other policies as may be duly adopted in accordance with the Agreement.

Section 7. Finances Security and maintenance of the equipment shall be provided with funds provided by the Partners in accordance with the provisions of the Agreement referred to above, and such other grants or funding as may be available. The manner and extent of

financing the Agreement shall be as follows: (i) no borrowing will be required by the County to fund its obligations under the Agreement; (ii) funds to implement the County's obligations under the Agreement shall come from usual budgeted amounts for such matters; and (iii) other provisions governing the manner and extent of financing joint projects and purchases shall be as set forth in the Agreement.

Section 8. Administration The administration of the Agreement shall be undertaken in accordance with the terms of the Agreement.

Section 9. Term The Agreement shall be for an indefinite term and dependent upon the continued participation of the Partners. A Partner can terminate the Agreement upon ninety (90) days prior written notice as provided for in the Agreement.

Section 10. Property All property shall be acquired, managed or disposed of pursuant to the Agreement in accordance with the terms of the Agreement and ownership of the Property shall remain with the County through DES. No acquisition of real property or real estate is authorized.

Section 11. Repealer Any and all ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance's provisions.

Section 12. Severability If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word

or remaining portion of the within Ordinance. The Board of Commissioners of the County of Berks, Pennsylvania, hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the limitations, restrictions, sentences clauses, phrases or word that may be declared illegal, unconstitutional or invalid.

Section 13. Effective Date This Ordinance shall become effective at the earliest date permitted by law.

DULY ORDAINED and ENACTED as an Ordinance this 15th day of December, 2016.

COUNTY OF BERKS


Christian Y. Lembach, Chair


Kevin S. Barnhardt, Commissioner

Attest:


Maryjo Gibson, Chief Clerk

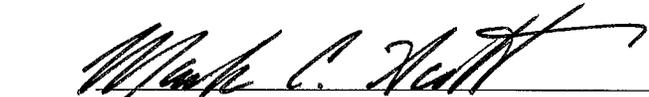

Mark C. Scott, Esq., Commissioner

EXHIBIT "A"

RECIPROCAL AGREEMENT

RECIPROCAL AGREEMENT

THIS AGREEMENT, made the 15 day of December, 2016, by and between the County of Berks, Berks County Services Center, 633 Court Street, 13th Floor, Reading, Pennsylvania 19601, (hereafter referred to as the "County"), and Boyertown Area Fire and Rescue, Inc, 962 N. Reading Ave. Boyertown, PA 19512 (hereafter referred to as the "Fire Company"). The Fire Company and any future potential signatories are hereafter collectively referred to as the "the Partners," pursuant to the authority granted by the ordinance/resolution or other corporate action referred to below:

Name and Address of Party	Date Agreement Signed	Ordinance No./Action and Date
County of Berks Berks County Services Center 633 Court Street, 13th Floor Reading, PA 19601	12/15/2016	No. 06-2016 12/15/2016
Boyertown Area Fire and Rescue, Inc. 962 N. Reading Ave Boyertown PA 19512		

BACKGROUND

WHEREAS, pursuant to the Act of November 26, 1978, No. 323, P.L. 1332, 35 Pa. C.S.A. §7101 et seq., as amended, known as the Emergency Management Services Code (the "Code") in part, directs counties and political subdivisions to develop mutual aid agreements with other political subdivisions for reciprocal emergency assistance, as further authorized by the Pennsylvania Intergovernmental Corporation Act, 53 Pa. C.S.A. § 2301, et seq.; and

WHEREAS, the County, through its Berks County Department of Emergency Services, (hereafter referred to as "DES") desires to develop capabilities within the County to assist first responders in the mitigation of emergencies related to trench and structural collapse; and

WHEREAS, the County, through DES has acquired certain rescue equipment as a result of various methods, including funding through the Department of Homeland Security as more fully described in Exhibits attached hereto and made a part hereof (hereafter referred to as the "Equipment"); and

WHEREAS, the Equipment is assigned to the specific Partner noted on said Exhibits; and

WHEREAS, the Equipment is useful for emergencies including, but not limited to heavy vehicle and machinery rescue and confined space rescue; and

WHEREAS, the Partners, either directly, or through a designated department of either a borough, township or city, desires to develop a similar resource group serving their primary

response area and have already devoted considerable resources into the training and equipping of such units; and

WHEREAS, independently acquiring the Equipment would present considerable undue financial burden for the Partners as they may be called to provide the service in areas outside of their normal jurisdictions, and

WHEREAS, the County and the Partners mutually desire to formalize the arrangements and understandings relative to the use of, and training with, the Equipment.

NOW, THEREFORE, in consideration of the mutual covenants continued herein and intending to be legally bound, the parties hereby agree as follows:

1. The Background clauses set forth above are incorporated herein by reference.
2. The Equipment shall remain in the possession, custody, and care of the Partners throughout the term of this Agreement. The Equipment will be used by the assigned Partner, as required, to comply with the terms of this Agreement.
3. At all times during the term of this Agreement the Equipment is owned by and remains the property of the County through DES.
4. Security and maintenance of the Equipment shall be the responsibility of the assigned Partners. Maintenance shall be performed within guidelines described by the manufacturer(s). Any damage or destruction of the Equipment shall be reported to DES as soon as it occurs. Any damage or destruction of the Equipment assigned to a Partner shall be the responsibility of said Partner, which shall bear the costs of repair or replacement. The Partners shall insure the Equipment assigned to them as personal property of others in an amount at least equal to replacement value. Each Partner shall deliver a certificate of insurance to DES within seven (7) days of execution of this Agreement naming the County as an additional insured.
5. The Partners shall report to DES the use of the Equipment as soon as practicable each time the Equipment is deployed for response purposes, but in any event not more frequently than monthly. The Partners agree that the Equipment shall be used for training and emergencies in accordance with nationally accepted standards, including but not limited to those of OSHA and the National Fire Protection Association.
6. All persons who will be operating the Equipment shall be properly trained in the operation of the Equipment prior to its deployment.
7. The Partners shall conduct a complete operational check of the Equipment assigned on a regular basis as part of a standard equipment check process.
8. In exchange for use of the Equipment by the Partner or its designated emergency response entity, it is mutually agreed that in the event of an emergency, and at the request of

DES to assist first responders in the mitigation of emergencies related to trench and structural collapse:

- a.) The Partners shall operate the Equipment under procedures developed in conjunction with, and agreed to by, DES. These procedures shall be in coordination with related sections of the Berks County Emergency Operations Plan and the policies and procedures of DES.
- b.) The Partners shall train together and work to coordinate standardized operational guidelines to ensure their ability to interoperate on incident scenes.
- c.) DES shall serve as the oversight entity for this program in resolving all disputes among the Partners.
- d.) The Partners shall provide this service in any location within the East Central PA Counter-Terrorism Task Force at the request of DES and within the same terms outlined in the existing Berks County Countywide Mutual Aid Agreement as signed by the Partners. In the event, due to operational readiness or local impact, the Partners are unable to respond to an incident, the Partners shall immediately make the equipment available for reallocation with the East Central PA Regional Terrorism Task Force or another task force in the Commonwealth.
- e.) The Partners shall respond to an incident scene with such assigned Equipment along with a minimum of four (4) personnel.
- f.) The Partners shall not deploy the Equipment outside Berks County without DES consent. It shall be understood that a dispatch/activation of a Partner originating from DES is indicative of the issuing of such consent.
- g.) The Partners shall consult with DES in any future decisions regarding equipment acquisition or dissolution in regard to this unit.
- h.) DES shall repair or replace any equipment of the Partners damaged by the gross negligence of an employee of the DES.
- i.) DES may provide logistical support to any operation on request of any of the Partners. No employee of DES shall be precluded from participating in training or operations, as the individual's level of training permits. All costs of training DES employees shall be borne by DES.
- j.) DES shall consider any requests for additional rescue resources from the Partners as coming from a designated regional resource. However, the County cannot guarantee funding of any requests. DES shall make a best effort attempt to notify the Partners when grant opportunities that might benefit the program become available.
- k.) DES and the Partners agree that at all incident scenes a command structure shall be established without regard to agency affiliation and in compliance with NIMS tenets.

9. DES may recall the Equipment at any time, and for any or no reason, except during such time as the Equipment is deployed during an actual emergency. In the event of a recall, the Partners shall return the Equipment to DES or make available to DES staff for retrieval within 72 hours of recall.

10. Partners, at their expense, shall carry and maintain, in full force at all times during the term of this Agreement the following insurance coverage: Comprehensive General Liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per

occurrence and \$2,000,000 aggregate; Commercial Automobile Liability insurance with a combined single limit of not less than \$1,000,000; Umbrella/Excess Liability insurance with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate; Worker's Compensation insurance in statutory limits; and Employer's Liability insurance with limits of not less than \$100,000 each accident, \$500,000 disease-policy limit, and \$100,000 disease-each employee. Prior to commencement of performance of this Agreement, Partners shall furnish to the Owner a certificate of insurance evidencing all required coverage in at least the limits required herein, **naming the County of Berks, its elected officials, agents, and employees as Additional Insured for "ongoing operations" and "products and completed operations" for a period of three years after final payment under the Commercial General Liability Coverage. Coverage should be provided by ISO Endorsements CG20 10 07 04 and CG2037 07 04 or their equivalent. Partner's Commercial General Liability and Umbrella/Excess Policy shall be Primary to and will not require contribution from any other insurance under which the Additional Insured is a Named Insured. To the fullest extent available or permitted by applicable state law, all policies shall contain a Waiver of Subrogation Clause.** Except for the State Workers Insurance Fund, the Certificate shall provide that no policies may be cancelled by the Company without thirty (30) days advance notice to the Owner, except in cases of non-payment of premium. Policies cancelled for non-payment of premium shall be cancelled in accordance with applicable State law. Such certificate shall be issued to: County of Berks, Attn: Contract Coordinator, 633 Court Street, 13th Floor Services Center, Reading, PA 19601. Except for the State Workers Insurance Fund, all insurance policies shall be in effect with companies holding an A.M. Best rating of "A-" or better or financial rating of IX or better with the A.M. Best's Company Key Rating, Guide Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Such companies shall also be acceptable to the Owner. Said policies shall remain in full force and effect until the expiration of the terms of this Agreement or until completion of all duties to be performed hereunder by the Partners, whichever shall occur later.

11. This Agreement shall become effective immediately upon its ratification by the undersigned Partners and the County, and shall remain in full force and effect unless terminated according to the provisions of this Agreement or in the event the Equipment is recalled.

12. Any party herein may terminate the within Agreement upon giving the other parties at least ninety (90) days prior written notice hereof.

13. All notices required under this Agreement shall be in writing. Written notices shall be effective if delivered by hand or if sent by registered or certified mail or by confirmed courier to the address each party has indicated above or at such other address either party may designate in writing during the term of this Agreement:

14. In the event that any provision of this Agreement shall be found to be void or unenforceable, such finding shall not be construed to render any other provision of this Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either party.

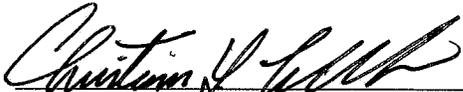
15. Any party's waiver of any of its remedies afforded hereunder or by law is without prejudice and shall not operate to waive any other remedies which such party shall have available to it, nor shall such waiver operate to waive such party's rights to any remedies for future breach, whether of a like or difference character. Furthermore, any termination of this Agreement shall not relieve or release any party hereto from any rights, liabilities or obligations which it has accrued under law or under the terms of this Agreement prior to the date of such termination.

16. This Agreement contains the complete and entire agreement between the parties and may not be altered or amended except in a writing executed by a duly authorized official.

17. This Agreement shall be interpreted under the substantive laws of the Commonwealth of Pennsylvania, without giving effect to any choice of law provisions.

IN WITNESS WHEREOF, the undersigned parties have duly executed this Reciprocal Agreement on the date above written.

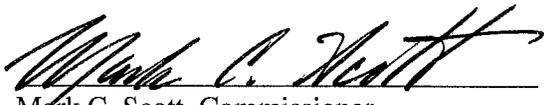
COUNTY OF BERKS



Christian Y. Lymbach, Chair

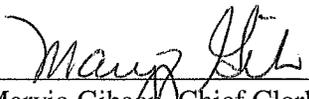


Kevin S. Barnhart, Commissioner



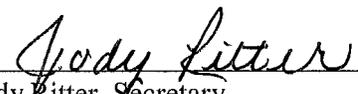
Mark C. Scott, Commissioner

Attest:



Maryjo Gibson, Chief Clerk

Attest:



Jody Ritter, Secretary

Boyertown Area Fire and Rescue Inc.



G. Jeff Bealer, President

EXHIBIT "A"
Equipment Assigned to Boyertown Area Fire and Rescue

Paratech 22-796090 V Base (10)
Paratech 22-796190 Rubber Base (5)
Paratech 22-796140 Hinged Base (7)
Paratech 22-796080 Cone Base (5)
Paratech 22-796134 4X4 Base (10)
Paratech 22-796092 Angle Base (5)
Paratech 22-796136 6X6 Base (10)
Paratech 22-796070 Rigid Base (20)
Paratech 22-796060 Swivel Base (16)
Paratech 22-796180A Rigid Ground Pad (10)
Paratech 22-796180C Hinged Ground Pad (6)
Paratech 22-796180B Swivel Ground Pad (5)
Paratech 22-890015 Neoprene Base (5)
Paratech 22-796114 Spanner Wrench (5)
Paratech 22-796036 36' Extensions (4)
Paratech 22-796024 24' Extensions (7)
Paratech 22-796012 12' Extensions (6)
Paratech 22-796107 6' Extensions (5)
Paratech 22-890517 Green 18' Hose (1)
Paratech 22-890516 Red 18' Hose (1)
Paratech 22-890515 Yellow 18' Hose (1)
Paratech 22-890545 Black 50' Hose (1)
Paratech 22-890546 Green 50' Hose (1)
Paratech 22-796360 6-10' Long Shore (5)
Paratech 22-796370 8-12' Long Shore (5)
Paratech 22-796390 10-16' Long Shore (5)
Paratech 22-796342 2' Long Shore Extension (5)
Paratech 22-796356 4' Long Shore Extension (5)
Paratech 22-796376 6' Long Shore Extension (5)
Paratech 22-796481 6' Raker Set (1)
Paratech 22-887100K 6 Ton Kevlar Medium Pressure Lifting Bag Set (1)
Paratech 22-887102K 10 Ton Kevlar Medium Pressure Lifting Bag Set (1)
Paratech P/N 889346 High Pressure Lifting Bag Set (1)
Paratech 22-796206 18"-24" Strut (3)
Paratech 22-796200 24"-36" Strut (3)
Paratech 22-796202 36"-57" Strut (6)
Paratech 22-796204 55"-87" Strut (6)
Paratech P/N 890490 Inline Relief Valve (3)
Hilti TE-55 Combi Demolition Hammer/Drill Tip (1)
Hilti Pointed Chisel TE-Y KSM 50 19" (1)
Hilti Pointed Chisel TE-Y KSM 36 14" (1)
Hilti Carbide Tip Drill 1" (1)
Hilti Carbide Tip Drill 9/16 X 13 (1)
Hilti Carbide Tip Drill 7/8 X 13 (1)
Hilti Carbide Tip Drill 1 1/8 X 23 (1)

Hilti Carbide Tip Drill 1 3/8 X 23 (1)
Hilti Flat Chisel 3/4" X 14" (1)
Hilti WSR-900 PE Reciprocating Saw (1)
8' X 4' X 1' Sheets Finform Shoring Board (5)
Ellis 4 X 4 Screw Jack (5)
Ellis 6 X 6 Screw Jack (5)
Ellis Bridge Jack (5)
Ellis T Head (5)
Ellis Reshore Spring (10)
Lock/Out Tag/Out **LOTO** Kit (1)
Paratech 6' Raker System (1)
Paratech Flying Raker Conversion Kit (2)
Paratech Raker Center Brace Kit (2)
Paratech Column Bases (6)
Paratech Outside Mechanical Thrust Blocks (3)
Paratech Inside Mechanical Thrust Blocks (3)
Paratech Hitch Base (1)
Garmin GPSMAP 62stc (4)